

Failure to Protect: The Colonial Nature of International Human Rights Law and International Humanitarian Law

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Abstract

Implementation mechanisms within International Law and their failure to act upon situations they were created for are much debated topics in the academic community. There are multiple examples of International Humanitarian Law and International Human Rights Law failing, across the world, in its objective of (a) creating an international obligation to prevent its violations and (b) implementing its principles via compliance mechanisms that do not exist. What is extremely worrying about this is that, although certain western nations support creating these norms, they do not have the political will to uphold them. Even though International Law has multiple implementation mechanisms, they have failed to enforce the *de jure* principles they have established. Nations across the world are well-aware of the lack of realistic implementation mechanisms within the International Law system but have kept this as a subject of only debates in the United Nations Human Rights Council and international conferences held under the ambit of the International Committee of the Red Cross. The failure of International Law in protecting Human Rights is due to the latent nuances of its colonial nature, which are stitched into the fabric of Public International Law. Countries that have created these norms, have created them with the aim that these norms should fail to apply to them. The paper argues that Public International Law has an intrinsic colonial nature, created for the twin purpose of loot and then acting as a justification for the same. The paper further argues that International Human and Humanitarian Rights regimes form a smokescreen for International Economic Law and allows it to operate in its shadows without much notice. To reinforce this argument, the paper uses Marxist theory of ideology *critique*, which states that law works as a disguise for the real processes at work, within the International legal system. The real forces at work remain unknown, while contemporary debate focuses on Public International Law and its failings (Danilenko 1999). It is essential to understand the fundamental issue this structure boils down to, i.e., the Great Powers can direct any action they desire with no fear of consequences, while other countries have no recourse due to the difference in economic and military might. This intrinsic colonial nature of International Law exists in an apparatus that tries to maintain the *status quo* with the Great Powers at the top.

Keywords: Colonialism, Public International Law, Third World Approaches to International Law, Human Rights, Marxist Critique

“The philosophers have only interpreted the world in various ways; the point, however, is to change it.”

- Karl Marx (Marx & Friedrich Engels 1978)

Introduction

On February 16, 2016, it was a quiet morning in Northeast Syria. The local hospital was operating normally, and children could be seen walking to a school in Aleppo. Russian Su-25 fighters suddenly appeared in the sky and bombed the school and the hospital, killing fifty civilians (Human Rights Watch 2017). The lack of distinction between military and civilian targets is a clear violation of customary International Humanitarian Law (*hereafter* IHL) (ICRC n.d.), though time stands testament to the fact that no real action has been pursued against Russia.

Consider this paradox: International Human Rights Law (*hereafter* IHRL) and IHL are said to have been created to protect and promote Human Rights, but they serve as a smokescreen for countries to demonstrate their commitment to Human Rights protection. This raises the question, are these implementation mechanisms fundamentally flawed? International Law's implementation mechanisms and their failure to act in the situations for which they were created are hotly debated within the academic community (Loba 2014). Numerous examples exist of IHL and IHRL, failing to achieve their objectives of (a) establishing an international obligation to prevent violations and (b) enforcing their principles through compliance mechanisms. The former United Nations Secretary-General, Boutros Boutros-Ghali, emphasised the importance of an integrated approach to Human Rights and the importance of committing United Nations (*hereafter* UN) members to adhere to these standards (UN Secretary General 1992). This brings up the concept of "political will" and the fact that International Law enforced norms have no value unless countries demonstrate the political will to uphold them (Koh 1998). What is particularly concerning, that while certain nations support the establishment of these standards, they lack the political will to enforce them. Such nations are more interested in exploiting loopholes in international standards in order to avoid compliance, all the while imposing them on other nations. These nations, typically, have a more robust economy and military, and wish to ensure they can maintain those strengths. These nations will be referred to as 'Great Powers' throughout this paper. Even though International Law contains numerous enforcement mechanisms, they are usually incapable of enforcing the *de jure* principles they have created on these Great Powers.

The Great Powers are fully aware of the absence of realistic implementation mechanisms within the International legal system, but limit their discussions to the United Nations Human Rights Council and international conferences convened by the International Committee of the Red Cross. **International Law's failure to protect Human Rights is a result of the latent nuances of its colonial origins, which are woven into the fabric of IHL and IHRL. The countries who created these standards did so, with the hope that these standards will not apply to them.** At the same time, within the scope of Public International Law (*hereafter* PIL), the failure of IHL and IHRL acts as a smokescreen for the workings of International Economic Law (*hereafter* IEL). This paper will examine whether the issue is with the realistic implementation of the law or, the structure of the law itself which prevents implementation. This paper argues that IHL and IHRL are intrinsically colonial in nature, having been created for the dual purpose of exploitation and then serving as a justification for such exploitation. In essence, these standards were created to be flouted by the Great Powers and remain available to them, as and when they wish to use them against countries that do not belong to their elite group.

This demonstrates the extreme importance of this subject's discussion. Contemporary practices are framed by modern thought. Nero was a Roman Emperor who was known for hosting grand garden parties. At one of his parties, insufficient light was provided for the guests. The emperor chose to burn his prisoners in order to illuminate his garden party. The attendees enjoyed themselves at these parties, which were lit by human fire (Sainath 2022). We can assume that this was an accepted practice, framed by prevailing thought at the time. Recent years have demonstrated how contemporary International Law continues to legitimize colonial exploitation of the Global South (Nikolai Bukharin 1917). It is necessary to bring to light and analyse the Great Powers' practices to prompt discussion on this subject.

Literature Review

Anghie states that, there is one unassailable truth, namely, that the current body of International Law, as it exists today, is not only the product of the policies of the Great Powers, but also, draws its vital essence from a common source of beliefs and, is predominantly structured around these Great Powers (Anghie 2006). Case in point, when the United States of America (*hereafter* USA) intervened in Kosovo under the guise of "Humanitarian Intervention" and the "responsibility to protect" (Henkin 1999). These terms have been incorporated into the body of International Law and are widely regarded as a component of customary International Law. According to Miéville, law is not an autonomous, ideal realm of validity that exists apart from social or economic realities but is structured by unequal power and dominance relationships. Miéville also believes that the use of International Law constitutes coercion in and of itself. Additionally, he asserts that International Law is not neutral, but is inextricably linked to territorial expansion or 'colonialism' (Miéville 2006).

Derrida's theory discusses the hegemony of one system of thought, which is precisely what we see in IHL and IHRL discussions (Derrida 1992). Gramsci's theory on hegemony clarifies this further, by stating that colonial society imposes a line of thinking conducive for exploitation (Said 1978). This paradigm permits small requests to exercise influence on the greater picture. Applying this rationale to International Law, the Great Powers have established conventions and treaties on IHL and IHRL, and have structured them in a way that protects them from the consequences of their own actions. Their objective is to keep the discussion focused on implementing IHL and IHRL within its current structure, even though the structure itself precludes such implementation. S. Mani argues that International Law is used by the Great Powers as a "moralist façade for unabashed and vigorous pursuit of national objectives" (Mani 2005, 24). Cain and Hunt discuss Marxist theory of *ideological critique* in this context (Cain & Hunt 1979). They assert that the law is used as a smokescreen to conceal the system's actual workings (Marx et al. 1979). This is especially true in the case of IHL and IHRL, which serve as a veil to shield the Great Powers from any real accountability.

Since the Paper relies on theories of jurisprudence by individuals providing a third world approach to International Law, the Paper is hinged on secondary data, wherein, the author uses available data instead of collating it firsthand.

Formation of the United Nations

The UN is among the numerous organisations that the forces of colonialism have helped form. Even though this paper will argue that the UN was conceived of and is still a colonial enterprise, I acknowledge that it is also contended, amidst the many continuities of exploitation, there was a small but significant break in the practice and self-description of PIL, at the conclusion of the formal colonial era (Mazower 2013). Thereafter, the colonial forces differentiated into autonomous entities and the plundering-justifying systems emerged. However, once the Allies won WWII and the UN was established, public opinion shifted about who should be in charge of the world. Thus, 1945 heralded hope of a better world, governed by better law (Berman 2012). Since then, it has been the responsibility of International Law to deliver on that pledge. Yet, "historical understanding ... is astonishingly jejune", "and there is very little acknowledgement of the mixed motives that accompanied" the UN's creation (Mazower 2013, 13). The "UN's later embrace of anticolonialism" has "tended to disguise the unpleasant truth that... it was a product of the empire and indeed... viewed by those having colonies to maintain as a more than sufficient tool for its defence," furthering the widespread misconception of the organisation's origins (Mazower 2013, 22).

The UN was established during the period of decolonization by and for those who wanted to ignore the past, and maintain the colonial order. Jan Smuts embodies this ambivalence. As far as Smuts was concerned, the UN was nothing more than a colonial enterprise, a governance instrument created so that the rising Soviet and American Empires might live in peace with the waning European ones. Smuts thought it was important to convince the British that their Empire would be better off, not worse, with a Post-War International agency to monitor the Global Order, and solidify the alliance between Britain and the United States (Morefield 2014). Additionally, he was well-aware of the criticisms levelled against the UN, including claims of hypocrisy and bad faith. It was "shot through with hypocrisy," with its "universalizing language of freedom and rights" being "all too partial," and serving as "a cloak covering the consolidation of a great power directorate" with an "imperial attitude" about how the world's weak and destitute should be ruled (Morefield 2014, 22). As Smuts put it, "something capable of winning popular support" was required "to prelude the development of the Charter" (Mazower 2013, 51). To meet this need, he wrote the illustrious preamble to the UN Charter, often considered the most motivational piece of prose in the annals of International Law (Mazower 2013, 51).

Apartheid in South Africa was legalised under Premier Jan Smuts. Smuts could not see any inconsistency between the UN's universalist tenets, the Institution of Apartheid, and the continuous colonial effort. All of them related to the same overall project, "this was... a strategy that assumed the virtuous nature of Imperial rule " even if Nazi Militarism had been vanquished, and a democratic imperial order had been maintained, owing to the establishment of the UN (Berman 2012, 121). It made it possible to continue the process of enforcing law and order, and bringing civilization to backward groups of people. Ironically, it was this policy that later became a target of the Great Powers' selective targeting regime, to maintain their smokescreen as pioneers of Human Rights.

The UN mirrors the ambiguity of the colonial statute that established it. The great figures of the anti-colonial fight battled to shift the scales in favour of the colonised across the world, the exploited indigenous. While the great figures of the Empire attempted to solidify and cling to their gains. The Universal Declaration of Human Rights (*hereinafter* UDHR) was conceived in 1948, amid a tumultuous mix of continuity, rupture, struggle, and persecution (Shah 2018). In addition, this was the year when South Africa's apartheid system was formally enshrined in law.

Colonialism and the UDHR

With its creation, the UDHR represented the most up-to-date version of the dynamics of difference at the time. It should not be too difficult to see the colonial reality behind the mystique of the founding document of 'Universal Human Rights,' given that it was negotiated and drafted almost exclusively by the Imperial Powers, at a time they were engaged in protracted, and vicious wars of oppression against nascent independence movements in their own colonies. While Eleanor Roosevelt was ushering in the formation of the UDHR, her husband's US government (and future administrations) aggressively excluded African Americans from the economic accomplishments of the New Deal (Valocchi 1994). Roosevelt "manipulated the Human Rights accords in ways that would insulate the United States from UN scrutiny" because of her position as chairperson (Anderson 2009). At a meeting, with a group of senators known as Dixiecrats, she "assured the Dixiecrats that the holy troika of lynching, Southern Justice, and Jim Crow schools would stay undisturbed, even with an International Convention to guarantee Human Rights" (Anderson 2009).

Economic segregation, poor education, biased trials and arbitrary killing of African Americans were all consistent with Universal Human Rights. It may be summed up as follows: "the Federal Government, even the liberals, stubbornly refused to make Human Rights a viable force in the United States or in International practice" (Anderson 2009, 2). This is also held true for Apartheid in South Africa; meanwhile the American genocide of its indigenous people was ongoing, along with the Canadian and Australasian ethnic cleansings. Neither this, nor the racial segregation and exploitation of the residual European colonial Empires were seen as incompatible with Universal Human Rights.

This seeming ambivalence is captured well by Berman:

"For many Europeans, especially European leaders, defense of empire and resistance to Nazism were indissoluble. The ... Gaullist imperial fantasy throughout the war, a time when "the soul of occupied France seemed to have taken refuge in Africa," when the "French Empire provided a body" for the "heart and soul" of Free France" (Berman 2012, 47).

To think that the last remark was penned by Rene Cassin, the main author of the UDHR, is very chastening (Berman 2012, 47). Human Rights legislation was never intended to be used in favour of the colonised, but rather, against them. The United States has taken on the role of world policeman, and it is now the primary *civilising* force, via its promotion of free trade and the spread of Western culture and Human Rights. As a result, "the obvious conclusion that there is a hierarchy of cultures... providing the reason for different sorts of intervention" is reached (Mutua 2002, 6). The rest of the world follows the West's example, in this binary, hierarchical vision of the world as if it were a kid looking up to its father; even though they are not the kind of parents that want their children to mature and become self-sufficient adults.

Selective Implementation

An important question that needs to be examined is, whether PIL does not achieve anything or is it selectively implemented as and when it suits the Great Powers? The answer is simple, the colonial structure of PIL, allows for selective implementation. This can be clearly seen by the successful workings of IEL, while IHRL and IHL seem to fail. Both these categories work together; the second functions by appearing to fail, while the first operates quietly enough that its very existence is overlooked, hidden behind its partner's spectacular failure (Beckett 2021). The reason Great Powers allow for IEL to be so effective, is to use it as a tool of exploiting the Global South. Placed in a state of perpetual deferral, international development is a project by the Great Powers aimed at maintaining the colonial status quo representing inequality, while presenting it as progress (Hickel 2018). As a result, all developmental gains are being reversed, and underdeveloped states are reverting to their traditional roles as repositories of inexpensive labour and resources (Hickel 2018). The old colonising methods, which had waned in the last two decades, have been resurrected with vigour.

Since, the World Trade Organisation (*hereafter* WTO) rules were enforced, they had an authoritative status and a fairly prescriptive content. However, because enforcement authority is asymmetrically distributed according to market size, there is little reason for wealthy countries to follow WTO rules. However, the Global South has no choice. As a result of this asymmetry, the rules are unambiguous and authoritatively determined. However, they are heavily biased against developing countries, adding another layer to the so-called modern *voluntary* colonial exploitation system, and tends to have significant cumulative effects.

There is a vast divide between the 'real value' of the labour and goods sold by the Global South and the prices at which they are paid. This is referred to as 'unequal exchange' by economists (Hippolyte 2015). In other words, even excluding land grabs and the costs of climate change, the developing world annually contributes approximately \$5.5 trillion to the developed world via "subsidies" (Chimni 2013). Economists found that in the year 2016, the Global South received around \$2 trillion in aid income from abroad and investment. At the same time, \$5 trillion flowed out of them (Hickel 2018, 71). In the words of Jason Hickel, "Rich countries do not develop poor countries; poor countries do – and have done so since the late 15th century" (Hickel 2018, 72). In this scenario, Cain and Hunt's Marxist theory of *ideology critique* makes perfect sense. While the Great Powers make it appear as though they are providing substantial assistance to the Global South, this is merely a cover for their exploitation. Nothing more than a ruse, a shadow on the wall to conceal IEL's hidden operations. The Great Powers celebrate the assistance they provide, while, it exists solely to exploit; this is a result of these powers' global hegemony, and the fact that the current body of law is structured around these Great Powers, as Gramsci and Anghie rightly hypothesised (Anghie 2006).

Selective implementation is not limited to IEL being enforced, while IHRL and IHL are unenforced. It extends to even selective implementation within IHRL and IHL. After World War II, some of the Great Powers, and a few others who constituted as the victors of the war, came together to form the International Military Tribunal for the Far East (*hereafter* Tokyo Trials) (Totani 2008). The Tokyo Trials were held to hold Japanese officials accountable for war crimes. The entire process was a farce, to the point where officials were tried for the newly formed crime of aggression, which was created after World War II and applied retroactively (Boister 2010). The critical question here is why Harry Truman was never prosecuted for his actions? The Japanese atrocities pale in comparison to Truman's authorization of the use of nuclear weapons against civilians. The answer is simple: the charter for the Tokyo Trials, or any military tribunal, was drafted in such a manner, that it conveniently lacked judicial

authority to prosecute members of the Great Powers (Ferencz 2016). There is no system in place to hold colonial powers accountable for their actions. While the USA discussed justice and the need for action against war criminals in 1944, they refused to recognize the International Court of Justice's (*hereafter* ICJ) jurisdiction in 1984. The ICJ found that the USA was responsible for arming rebel groups in Nicaragua, classifying it as an act of aggression (Gray 2003). The USA chose to reject the ICJ's jurisdiction over the matter and refused to pay the fine imposed by the ICJ (Czapliński 1989). The USA was able to do so, because of the structure of the law, which allows Great Powers to orchestrate anything they want without fear of repercussions. On the other hand, if the Global South countries choose to oppose these Great Powers, they will face unequal consequences.

It is concerning to note that the colonial structure of PIL allows for not only selective implementation but also selective targeting through provisions of IHRL and IHL.

Selective Targeting

Human Rights situations in the modern globalised world are drawing increased attention due to the inaction of the UN. Nations know that they cannot simply sweep the failure to protect Human Rights under the rug. Instead, they try to focus on certain so-called victories (Akbarzadeh and Connor 2005). A so-called victory created by excessive, and disproportionate UN attention is a paradox. Substantial political and diplomatic pressure often compels a country to abandon Human Rights abuses (Fidler 2003). This is not to say that these states do not deserve attention; it is only to say that the UN is giving support to one situation, while ignoring countless others. The important thing to note is that this excessive and disproportionate UN attention on a particular issue, leads to other Human Rights situations being ignored.

The UN's most significant Human Rights victory is the ending of apartheid in South Africa. Systemic abuses occurred under apartheid in South Africa. Racial segregation and subjugation meant that the state had imposed systematic Human Rights violations. Therefore, the UN's attention and action were absolutely appropriate on South Africa. During this time, similar systems of racial oppression and Human Rights abuses were implemented in other countries (Heinze 2007). The Soviet Union (*hereafter* USSR) used Apartheid-type policies that systematically oppressed Chechens, Ingush, Baltic peoples, Roma, Jews, Muslims, Tibetans, and Uighurs (Heinze 2007). One can draw a clear parallel between the oppression of millions of indigenous peoples in the USSR and South African apartheid (Heinze 2007). Despite numerous efforts to end Apartheid in South Africa, the UN took virtually no action when the same problem erupted elsewhere. No action was even considered for the redressal of any of the other situations (Freedman 2015). An important question which arises is, why so much attention is devoted to South Africa and so little to other similar situations? It's quite simple. The political setup which existed during the Cold War allowed the Great Powers to make a scapegoat out of South Africa. It can be construed that the UN is a colonial artefact created during the decolonial era by and for those seeking to defy the turn of history and preserve the colonial system. It exists as a governance mechanism that enables the nascent Soviet and American Empires to coexist peacefully with the dwindling European Empires (Mazower 2013). Countries with close ties to the Great Powers ended up being protected by Cold War

politics (Matas 1996). While making South Africa a scapegoat, they successfully diverted the world's attention from other Human Rights violations that they themselves were committing.

The selective targeting conducted by the UN goes on to reinforce the colonial nature of IHRL and IHL. As Anghie's theories had rightly mentioned, the application of International Law revolves around these Great Powers (Anghie 2006). So much so, the Great Powers decide who to persecute or use legal provisions against, thereby creating an image that you will be targeted if you are not a member of one of their camps. South Africa deserved to be targeted, but grave Human Rights violations were being orchestrated by Canada against the people of the First Nation, the USA against the Native Americans, Australia against the Aborigines and China against the Tibetans (Inouye 1999). These violations of Human Rights were conveniently ignored while all attention was focused on South Africa. Such a situation can be explained by Marxism's theory of *ideology critique*. According to this theory, the law operates in such a way that it conceals the system's true workings (Marx et al. 1979). The Great Powers focused their attention on South Africa to act as a smokescreen for their Human Rights violations.

A similar situation could be seen during the 2004 session of the Commission on Human Rights. The Commission passed five resolutions against Israel while voting against taking action in Chechnya (60th Session of the Commission on Human Rights 2004). Both armed conflicts involved flagrant and systemic violations of Human Rights. Individuals living in the weaker territories were oppressed, killed, and subjugated (Rajagopal 2007). The UN's mandate to protect Human Rights requires it to intervene in such instances. While the more severe situation in Chechnya was largely ignored, the situation in Israel received excessive scrutiny. The major problem with the colonial approach taken by the Great Powers is that it effectively prevents the application of IHRL and IHL against them and thereby gives them a free pass to commit Human Rights violations.

What are the Workings of IHRL and IHL trying to Cover up?

The purpose of the neo-colonial international order is to take resources from underdeveloped nations and redirect them to the rich nations. Placed under circumstances of continual deferral, development is an effort to perpetuate the colonial status quo's inequalities and depict it as progress (Crawford and Nouwen 2010). All the advances made during the developmentalist period have been reversed, and underdeveloped nations have resumed their old roles as reservoirs of inexpensive labour and resources (Gadkari 2022). After two decades of amelioration, the old methods of pillage have reappeared with vigour. The position of the Global South has further worsened due to their reliance on International Law to maintain a rules-based order. Mani observes that,

“The small countries well realize that the modern concept of sovereignty is issue-based. Hence their dependence on International Law and organization, not just for their own security, but more importantly because they need them as instruments for conditioning and catalysing their development through international co-operation. In fact, the relevance of or dependence on International Law and organization are inversely proportionate to the military and economic might of a State. The less powerful a State is, the more is its reliance on International Law and organization. As Dag Hammarskjöld said in 1960, it is the small powers which need the United Nations, not

the great ones. In an interface between multilateralism and unilateralism, the unilateralism of the Great Powers holds sway, unless of course they decide to pursue a course of moderation, or enlightened unilateralism. Some of the small countries may have failed to live up to the standards of good governance and realization of Human Rights, both of which require considerable resources. However, the “more fortunate” members of the international community have on their part grossly failed to live up to their commitments of international co-operation made within the framework of the international organization (Articles 55 and 56 of the UN Charter) or outside it” (Mani 2005, 306).

Permanent debt servitude may be devastating for the South, but it provides a reliable source of revenue for the North: Altogether, since 1980, the South has made debt service payments totalling \$13 trillion (Hickel 2018). While development expertise and loan conditionality build the groundwork for modern systems of plunder, global commerce, the third part of this unholy triad, is where the extractive processes really take place (Gadkari 2022). Whoever controls the rules of International Trade controls the flow of our planet’s vast wealth and resources (Chimni 2013). It is because the WTO regulations are legally enforced, they have an authoritative character and a very definite substance (Ehlermann 2003). However, since "enforcement authority is dispersed asymmetrically according to market size," there is little incentive for wealthy nations to comply with WTO regulations. But impoverished nations have no alternative" (Hickel 2018). As a result of this imbalance, the norms are explicit and authoritatively defined. At the same time, they are also significantly prejudiced against underdeveloped nations, completing the present system of "voluntary" neo-colonial pillage. The impacts cumulatively are astonishing. “At the end of 2016 ... Research[ers] ... found that ... developing countries received a little over \$2 trillion, including all aid, investment and income from abroad. But ... \$5 trillion flowed out of them in the same year” (Hickel 2018 , 25-26).

In addition, “there is a yawning gap between the ‘real value’ of the labour and goods that poor countries sell and the prices they are actually paid for them. This is what economists call ‘unequal exchange’. In the mid-1990s, at the height of the structural adjustment era, the South was losing as much as \$2.66 trillion in unequal exchange each year (in 2015 dollars)” (Hickel 2018, 28). In other words, even if land grabs and the costs of climate change are not accounted for, the underdeveloped world subsidises the industrialised world by nearly \$5.5 trillion yearly. Rich nations are not developing poor countries; rather, poor countries have been developing rich countries since the late 15th century.

The examples offered in the preceding section reveal the hypocrisy of PIL, which serves to reinforce (neo)colonial mechanisms of exploitation under the guise of decolonization and equality. The colonial package was rather straightforward. The local elites were tasked with maintaining order while extracting as many resources as possible for cheap sale to the coloniser. In exchange, the coloniser offered the local elite military protection, political favouritism, and the ability to profit themselves by keeping a tiny portion of the extracted resources (Gadkari 2022). Little changes were made to the existing model during the successful transition to a neo-colonial society. The local elite are officially autonomous, but continue to serve the previous coloniser's pleasure and interests. Their mission remains the same: to maintain order while harvesting as many resources as possible for inexpensive sale to the coloniser. The benefits package is almost the same. The majority of the military support is converted into weaponry supply and training, however intervention by invitation rules also

permit direct military protection. Political favouritism and the freedom to enrich oneself by skimming the proceeds of theft remain unaltered. According to Luis Eslava,

“European colonial powers had slowly begun to reread claims for independence not as a threat but as an opportunity for local elites to discipline their own populations and economies. The idea of indirect rule ... became the model of this new form of control. ... Achieving self-government began to be imagined, in this context, as a neat incremental transition, to be executed with the help, and according to the interests, of colonial powers and the international community as a whole” (Eslava 2019, 81).

This is hardwired into the structure of PIL by the colonisers' notion of statehood, which was forced on the colonised at the time of their independence. In PIL, a state is a specified region whose people are under the effective jurisdiction of its government (Crawford 2011). Inverting this equation, the legal government of a specified state area is whatever faction can force its will on the populace. Through PIL, these governments are granted certain formal privileges, including the right to dispose of the state's resources, the right to borrow in the state's name, the right to purchase arms and employ violence on its territory, and the right to bind the state to international treaties and conventions (Crawford, 2011). These rights enable the government to maintain control and carry out its neo-colonial duties. The state's resources are handed to the colonisers at prices (basically) determined by them. The funds are utilised to purchase the required armaments to maintain control. If the proceeds are inadequate, the state might be used as collateral for loans. The coloniser maintains control by the use of force, which is concealed or legitimised by political patronage. Profits are syphoned out, and the cycle continues. The treaty privilege greases the wheels of this mechanism. The unequal treaties of the colonial period are repackaged as the impartial expertise of the WTO and International Financial Institutions. PIL maintains its role as an extractive mechanism, channelling money from the poor to the affluent in order to sustain Euro-American growth by impoverishing the rest of the world.

The “Implementation Problem” Excuse to Justify the Failings of IHRL and IHL

All of this plundering, exploitation, and cruelty, as well as the resulting carnage, occurs in darkness, unseen and unheard. At least, that is the design, but the edges may be fraying. It is estimated that the PIL extraction machine hastens the deaths of fifty thousand people every day and inflicts unfathomable pain on billions more (Miéville 2010). Around thirty-five thousand children under the age of five are slaughtered on the altar of the Great Powers' avarice. In a magnificent exhibition of denial and wilful ignorance, the Great Powers choose not only to "unsee" all of this, but also to promote themselves as the international community in action (Miéville 2010). PIL also plays a significant part in this process.

The majority of PIL academics disregard the presence, operation, and impacts of the extractive machine. Others acknowledge these unpleasant truths yet, although being generated and governed by PIL, consider them illegal or extra-legal. It is because poverty, exploitation, degradation, human misery, and death on such a vast scale are illegal, PIL's adherents are allowed to ignore the crisis and refuse to acknowledge the existence of such heinous conditions

(Cali 2009). The emphasis is shifted from reality to the "practise" of law (Cali 2009). From the realm of pain, to the warm light of holy texts: treaties and treatises, committee hearings and reports, the International Law Commission and other so-called international norm makers, NGO reports and practitioner claims and demands, academic discussions and expert opinions. The noble law of humanity as imagined by its adherents, devoid of any real-world connotation or effect: their political fiction portrayed as truth, as law, as literature. PIL as a repository of moral, political, and economic desires – reimagined as a neutral vantage point from which to judge the world: whatever victory PIL has won in framing terms of political debate is pyrrhic: PIL enters dominant discourse as and indeed because recent actions are perceived to undermine it. In this version of events, PIL has gone mainstream because of a crisis. The more it is afflicted, the more apparent it gets (Miéville 2008).

It seems that Humanity's Law becomes important only when it *fails*. When it is breached spectacularly. Nevertheless, it functions exactly by *failing*. According to Charlesworth, international attorneys like a good crisis. A crisis serves as a focal point for the growth of the discipline (Charlesworth 2002). This is the traditional conception of PIL as noble yet weak. Judging a world, it cannot change because of a lack of enforcement. However, what "humanitarians" view as a violation of the law is really an instance in which global circumstances diverged dramatically from their ethical and geopolitical preferences. Humanity's law does not specify these violations; rather, it only gives a vocabulary – which is often thought to be authoritative – to critique international behaviour that we strongly disapprove of (Teitel 2011). Two consequences result from this:

- A. Humanity's law also has the means to communicate the opposing view, or to defend the in-issue behaviour.
- B. No official arbiter exists to arbitrate between these assertions; both are technically competent and sound.

In the humanitarians' conception of PIL, radical indeterminacy is depicted as an **issue of implementation; the law becomes obvious only in its dramatic violation** (Teitel 2011). This paradoxically protects legal analysis from its own indeterminacy and contingency by diverting attention from the reality that the law (in a different sense) was also implemented despite its seeming disregard.

Things look more objective in Humanity's Law visions. It seems that hierarchical, centralised, and authoritative impressions are generated by the existence of pseudo-courts, ineffective watchdogs, and faux-legislators, all of which produce the appearance of institutional order (Teitel 2011). This fictitious institutional structure promotes magical thinking, the belief in determinism and authority that do not exist or operate in reality. Assumed to be significant by its proponents, its edicts, choices, and demands have a fictitious or fantasy nature; they are grossly misinterpreted as objectivity, authority, and power.

Conclusion

The explicit purpose of this paper is to expose IHRL and IHL's true colonial nature. Human Rights were not intended to assist the oppressed and will not function in that capacity (Whyte 2018). IHRL and IHL are accomplishing precisely what their colonial creators intended to accomplish: justifying and naturalising the accumulation of wealth and privilege of those who

already have them, as well as, justifying and naturalising the suffering and exploitation of the rest. All the while, convincing victims of their oppressors' benevolence. These have acted as a façade for IEL for too long, and they must be exposed. The paper has argued that even within IHRL and IHL, selective implementation and targeting exists. The inherently colonial structure of the law enables the Great Powers to further their exploitation of the Global South.

The current provisions of IHRL and IHL create a system of “Rule by Law” and not “Rule of Law” since provisions are enforced unequally and aimed at exploiting the Global South. Reforming the IHRL and IHL systems may appear feasible at first glance (Chawla 2018). Although, upon closer examination, it does not appear to be realistic. The dream of Universal Human Rights is unattainable at the moment. The world cannot exist in a state in which everyone is a thief, and nobody is a victim. Thus, we have two options: either accept a world in which thieves preach to victims about their own backwardness and barbarism, or challenge the thieves – the civilised, the modern, the rights bearers. However, this cannot occur via IHRL and IHL.

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