Articles

Enhanced Multi-Level Protection of Human Dignity in a Globalized Context through Humanitarian Global Legal Goods

By Nicolás Carrillo-Santarelli[*]

A. Introduction: Protecting Communitarian Legal Goods in a Globalized World

All around the world people suffer from acts of violence committed by armed non-state actors or transnational organized criminals, from abuses attributable to corporations, or from unlawful acts of international organizations, among others. Sometimes, the power of these and other actors matches and even surpasses that of states, and the formal separation between legal systems creates gaps that can lead to the impunity of abuses attributable to such actors, resulting in a failure to address their unlawfulness.

Additionally, the growing phenomena of privatization and interdependence,[1] as well as the possibility that legally relevant actions carried out in one place may negatively affect or generate externalities that have a prejudicial impact abroad,[2] may accentuate the detrimental effects of violations and abuses. Yet, those who in spite of the possibilities offered in law interpret it in a way that renders it incapable of offering a proper solution since, according to them, human rights cannot be violated by non-state actors[3] or certain violations cannot be directly tackled by international law but only by a not always reliable domestic law.

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[1] *See* August Reinisch, *The Changing International Legal Framework for Dealing with Non-State Actors*, *in* NON-STATE ACTORS AND HUMAN RIGHTS 75-77 (Philip Alston ed., 2005); Celestino Del Arenal, *La nueva sociedad mundial y las nuevas realidades internacionales: Un reto para la teoría y para la política* (The new world society and the new international realities: A challenge for theory and policy), *in* CURSOS DE DERECHO INTERNACIONAL Y RELACIONES INTERNACIONALES DE VITORIA-GASTEIZ 2001 (Courses of International Law and International Relations of Vitoria-Gasteiz, 2001) 29, 32-34, 36, 52-54 (2002); Sandra Lavenex, *Globalization, Global Governance and the Bonnum Commune: A Conceptual Investigation*, 6 EUR. J. OF L. REF. 377 (2004).

[2] *See* Benedict Kingsbury, Nico Krisch & Richard Stewart, *The Emergence of Global Administrative Law*, IILJ Working Paper 2004/1, New York University 5; Inge Kaul & Ronald Mendoza, *Advancing the Concept of Public Goods*, *in* PROVIDING GLOBAL PUBLIC GOODS 95, 107 (2003); Sandra Lavenex, *supra* note 1, at 379.

[3] *Cf.* ANDREW CLAPHAM, HUMAN RIGHTS OBLIGATIONS OF NON-STATE ACTORS 25-58 (2006).

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If that interpretation were correct, the law would fall short of the real needs of human beings in the current global social context, and would be limited to the extent that it provides insufficient and incomplete protection to rights based on human dignity. That being said, many non-state actors have undeniably helped to strengthen the protection of dignity-derived rights of human beings, and have contributed to raising awareness, promoting human rights, and shaping our understanding of the importance of upholding the protection of human dignity against abuses committed by both state and non-state actors.

Currently, the legal protection offered to human dignity is incomplete and leaves many victims unprotected precisely because it fails to comprehensively acknowledge, and thereby regulate, gross violations committed by certain actors. This is due to its often being entrenched in a state-centered framework that permeates the conception of practitioners, and to considering legal systems as largely isolated from each other. Conversely, we are in great need of recognizing that there are humanitarian global legal goods (GLGs) common to and underlying different legal systems, and that they require protection against abuses regardless of the perpetrator's identity, because there are victims whose injuries must be effectively remedied by law.

To solve this, it must be noted that, in practice, there are ever-increasing links between legal systems, which must be taken advantage of because the current global society cannot be properly regulated by isolated mechanisms of individual legal systems. Recognizing that there are principles and norms common to different legal systems, the purpose of which is the protection of GLGs such as human dignity, and which give rise to minimum standards and duties to be synergetically implemented with the interaction of several actors and legal systems, can contribute to addressing these issues while offering a truly complete and integral protection to human beings. These principles are potentially accommodated in existing law, and may orient its future developments.

Achieving a fair application and creation of law is a difficult and complex thing, for a critical balance must be struck between various demands. Among other things, it must be ensured that norms correspond to the society they are meant to be applied in and reflect its structure—*sic societas, sicut jus.*[4] To some extent, this is an area in which international law sometimes lags behind human and social needs and reality, because the doctrinal notion of subjects and the limited recognition of only some of the relevant and influential participants in the global and international landscape fail to reflect today's reality,[5] and thus ignore many opportunities and challenges posed by actors within the system, such as certain relevant non-state actors..

[4] According to this maxim, law must take into account features of society. *See* ANTONIO REMIRO BROTÓNS, DERECHO INTERNACIONAL (International Law) 46 (2007).

[5] *See* Philip Alston, *The 'Not-a-Cat' Syndrome: Can the International Human Rights Regime Accommodate Non-State Actors?, in* NON-STATE ACTORS AND HUMAN RIGHTS 75-77 (Philip Alston ed., 2005).

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In the new socio-legal context, there are, among other features, an increase in the participation of multiple actors in the legal processes, blurring of divisions between legal systems and social levels,[6] an increase in the possibility of violations of the rights of individuals at the hands of several actors, and the formation of new identities and allegiances.[7] Additionally, it can be said that there has been a shift from a merely inter*national* society to a global one,[8] in which connections between levels and actors have intensified. Yet, international law has failed to properly take note of this change in some respects.

It is important for law to take account of these changes and meet the current demands of human beings. This is because law is a powerful tool of social transformation with the potential to affect the way in which people perceive reality and form expectations, and its norms entail political choices.[9] Changes in people's perception can lead to the strengthening of some of the values and interests law endorses. It has been demonstrated that when the behavior of non-state actors is regulated, they may become aware of the need to justify their actions according to relevant norms.[10]

Presently, there are situations in which certain actions negatively affect the content of human rights, the state's domestic law is unable to grant protection, and international law is silent on the subject. If it continues to be insisted that only states are capable of violating human rights, victims will be left unprotected, and it is risked that law is deprived of its legitimacy and support,[11] being seen as unfair and biased because the needs of only *some* victims—those of the state's action or inaction—are addressed. Additionally, given what I call the *Mastromatteo paradox*, denying that non-state actors may violate human

[6] *See* Harold Koh, *Why Do Nations Obey International Law?*, 106 YALE L.J. 2599, 2624 (1997); Lavenex, *supra* note 1, at 379.

[7] Koh, *supra* note 6, at 2633-2644, 2650, 2653, 2659; Alfred Van Staden & Hans Vollaard, *The Erosion of State Sovereignty: Towards a Post-territorial World?*, *in* STATE, SOVEREIGNTY, AND INTERNATIONAL GOVERNANCE 167-168 (Gerard Kreijen *et al.* eds., 2002).

[8] *See* for example, Lavenex, *supra* note 1, at 375-376.

[9] S*ee* Math Noortmann, *Non-State Actors in International Law*, *in* NON-STATE ACTORS IN INTERNATIONAL RELATIONS 62 (Bas Arts *et. al* eds. 2001).

[10] *See* Fred Halliday, The Romance of Non-state Actors, *in* NON-STATE ACTORS IN WORLD POLITICS 35 (Daphné Josselin & William Wallace eds., 2001).

[11] *See* Chris Jochnick, *Confronting the Impunity of Non-State Actors: New Fields for the Promotion of Human Rights,* 21 H. R. QUART. 58 (1999); CLAPHAM, *supra* note 3, at 44.

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rights is inconsistent with the positive duties states have under international human rights law.[12]

In sum, international law ought to be rooted in society and aimed at its positive transformation, providing reasonable means by which social problems can be adequately tackled and certain minimum values protected by virtue of international laws' coordination with other legal systems. This is of the utmost importance in a globalized world, where certain actors are empowered and able to circumvent domestic and even intergovernmental control systems.

B. The notion of global legal goods

Taking into account the previous analysis, it can be seen how relevant it is to protect goals commonly protected by multiple legal systems and actors that interact in a global legal space. Those lowest-common-denominator goals are global legal goods, *i.e.*, interests, values and goals protected by norms of different legal systems across various levels of governance and sometimes even promoted by multiple actors that operate in different geographical spheres.[13] such as One example of GLGs is that of humanitarian global legal goods, which are those concerned with the protection of human dignity. Their promotionn must take into account the social context, problems and opportunities offered by the possible cooperation among actors and normative systems in a global framework. Under this framework, there are increasing contacts between legal systems, transnational networks, and informal communicative processes, leading both state and non-state actors to commit themselves to standards adopted beyond local contexts or to lawfully impose

[12] For instance, as a result of these considerations, from an outdated traditional international human rights conception, no measures are to be adopted if a non-state actor impairs the enjoyment of a human right, and no State is responsible due to it having behaved with due diligence. *See e.g.,* European Court of Human Rights, Case of Mastromatteo v. Italy, Judgment of Oct. 24, 2002, at paras. 67-79 – which leads me to call this situation the "Mastromatteo paradox."

[13] *See* Markus Dirk Dubber, *The Promise of German Criminal Law: A Science of Crime and Punishment*, 6 GERM. L. J. 1069-1070 (2005), available at: http://www.germanlawjournal.com/index.php?pageID=11&artID=613 (last accessed: 20 June 2012); Santiago Mir Puig, *Legal Goods Protected by the Law and Legal Goods Protected by the Criminal Law as Limits to the State's Power to Criminalize Conduct*, 11 NEW CRIM. L. REV.(2008); Christoph Safferling, *Can Criminal Prosecution be the Answer to massive Human Rights Violations?,* 5 GERM. L. J. 1472 (2004), available online at: http://www.germanlawjournal.com/index.php?pageID=11&artID=526 (last accessed: 20 June 2012); Inter-American Commission on Human Rights, *Report No. 95/08, Admissibility*, *Nadege Dorzema et al., or "Guayabin Massacre" v. Dominican Republic*, at footnote 7 (2008), and Inter-American Commission on Human Rights, *Report No. 64/01*, *Leonel de Jesús Isaza Echeverry and Others v. Colombia*, at para. 22 (2001), in connection with Inter-American Court of Human Rights, Case of Durand and Ugarte v. Peru, Judgment of (Aug. 16, 2000) (Merits), at para. 117; Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Argentina*, *OEA/Ser.L/V/II.* 49, chap. II, The Right to Life, para. 1 of section A: General Considerations (1980).

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obligations on third parties based on those standards,[14] such as those that further the protection of human dignity and contribute to its effective protection.

Global legal goods are, in other words, those legal goods (goals, values and interests) that are protected in common by norms of different legal systems, either expressly or implicitly, and sometimes even by different actors and entities. They are protected either formally or informally, and the goods are found in a global legal space of normative interaction. The content and extent of the protection of those legal goods is not necessarily the same, and therefore the theory of global legal goods serves not only to identify ways in which interaction between mechanisms of various normative systems can enhance their protection, but also to identify and devise normative changes required for that protection.

In the light of this, overcoming the highly artificial separation of law from other sciences,[15] it is certainly constructive to look at notions that have been developed in other fields of knowledge, such as that of global public goods, in order to identify legal strategies that may be employed in order to deal with problems faced by individuals in a global landscape.

Two dimensions of the concept of global public goods are especially relevant in this regard: (1) The claim that globalization cannot be properly managed unless the global public goods are supplied (in legal terms, *ensured*) satisfactorily,[16] which demands close cooperation between different actors; and (2) the fact that the provision of global public goods brings benefits across national boundaries, whereas the lack of it causes detriments across boundaries.[17] Those two elements must be taken into account when analyzing international law and law in general, but legal analysis ought not to be subservient to economic considerations. Rather, a legal framework rooted in the protection of human dignity should inspire legal and other approaches to the examination of social and human needs, including the economic one.

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[14] *See* Andrea Bianchi, *Globalization of Human Rights: The Role of Non-state Actors, in* GLOBAL LAW WITHOUT A STATE, 185, 192-199 (Günther Teubner ed., 1997); Koh, *supra* note 6, at 2602, 2618, 2646, 2648, 2656-2657.

[15] First of all, the close relationship of law with theology and philosophy that existed for a long period of time implies that many legal principles are rooted in such sciences. Additionally, different fields of knowledge, such as psychology or sociology, may help us to understand why those who are bound comply with the law. Lastly, if one conceives that the study of law is not limited to the implementation of norms and involves lawmaking and other processes, it is necessary to admit that several factors, the understanding of which is facilitated by other sciences, may have impacts in law. About these ideas, *see* Mario Losano, *Towards a Common Good: A Path to Utopia?: From Philosophy through Legislation to the Dignified Life*, 6 EUR. J. OF L. REF. 329 (2004); Koh, *supra* note 6, at 2603-2604.

[16] *See* Inge Kaul, Pedro Conceiçao, Katell Le Goulven & Ronald Mendoza, *Why Do Global Public Goods Matter Today?*, *in* PROVIDING GLOBAL PUBLIC GOODS, *supra* note 2, at 3.

[17] *Id.* at 13-14; Inge Kaul & Ronald Mendoza, *Advancing the Concept of Public Goods*, *supra* note 2, at 87, 107; Inge Kaul, Pedro Conceiçao, Katell Le Goulven & Ronald Mendoza, *How to Improve the Provision of Global Public Goods*, *in* PROVIDING GLOBAL PUBLIC GOODS, *supra* note 2, at 25-26.

The recognition of the existence and relevance of global legal goods and their protection not only contribute to ease the management of globalization, as a correct provision of global public goods does. In this sense, that recognition may help to shape psychological and social attitudes of addressees of norms and stakeholders. Given the power of law to exert influence on society through legal symbols, on the one hand, and on the other hand, the existence of gaps in conjunction with the reality that legal systems cannot offer full protection of human dignity against non-state threats in isolation, the recognition of common legal goods endorsed by coinciding norms in international, transnational, and domestic legal systems may provide symbols of common global priorities. These common global priorities can then be claimed by civil society and modify legal practice.[18]

Moreover, the consideration that a duty of respecting and promoting such global legal goods binds all potential perpetrators may make the latter think twice before taking advantage of opportunities offered by an apparent lack of coordination or of regulation in a given legal level in order to benefit from harming humanitarian GLGs. Potential perpetrators might hesitate because they would be labeled as offenders and risk facing adverse actions such as boycotts, or even legal action, through complementary mechanisms of different legal systems acting jointly for the sake of common purposes and interests. Taking into account that some mechanisms may be limited in their impact, as happens with boycotts in regard to some actors, actions must often be complemented by other strategies in a complementary multi-level framework for the protection of GLGs.[19]

At the same time, GLGs address some aspects of the relationship between public entities and private entities, overcome distinctions between *jus inter-gentium* and *jus intra-gentes,*[20] and make it possible to take into account the input and opinion of actors in civil society regarding the protection of human dignity, which may be invoked as *lex humana* or

[18] Both state and other actors may regard themselves as furthering public goods or behaving in a way that implicitly promotes them. *See* Bob Reinalda, *Private in Form, Public in Purpose: NGOs in International Relations Theory*, *in* NON-STATE ACTORS IN INTERNATIONAL RELATIONS 12-13 (2001); Daniel Thürer, *The Emergence of Non-Governmental Organizations and Transnational Enterprises in International Law and the Changing Role of the State*, *in* NON-STATE ACTORS AS NEW SUBJECTS OF INTERNATIONAL LAW 43 (Rainer Hofmann ed., 1999).

[19] *See* Daniel Thürer, *supra* note 18, at 46-47; Bob Reinalda, *supra* note 18, at 13; Andrew Clapham & Scott Jerbi, *Categories of Corporate Complicity in Human Rights Abuses*, 24 HASTINGS INT. & COMP. L. J. 347-348 (2001); August Reinisch, *supra* note 1, at 53, 68, 77; Alexandra Gatto, *Corporate Social Responsibility in the External Relations of the EU*, *in* 24 YEARBOOK OF EUR. L. 431 (2005). On some limitations of mechanisms as boycotts, *see* CRIMINAL JURISDICTION 100 YEARS AFTER THE 1907 HAGUE PEACE CONFERENCE 186 (Willem Genugten, Michael Scharf & Sasha Radin eds., 2009).

[20] About such dimensions, *see* Antonio Gómez Robledo, FUNDADORES DEL DERECHO INTERNACIONAL (Founders of International Law) 14-15 (1989).

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through claims to modify existing law.[21] Accordingly, the introduction of GLGs may generate a practice of a transnational *jus gentium humanus*, centered on human beings, as demanded by theories stating that law and power are legitimate and fair, as long as they respect and promote human dignity.[22] In fact, humanitarian GLGs stress and shed light on the idea of how the prerogatives, powers, and entitlements provided by law to states and other actors, are legitimate and justified as long as they are respectful of human dignity.

After all, the people who are affected by law and its gaps, which encourage or discourage certain state and non-state practices, have unconditional inner worth, must be central in law, and are stakeholders, and have opinions and essential rights that must be taken into account, respected, and protected by all actors whose actions can affect their enjoyment. This is demanded by the "publicness" requirements of law, along with notions of legitimacy, rule of law, democratization, fairness, and global governance requirements.[23] The shifts in the conception of international law that are demanded by the theory proposed herein are consistent with the fact that the law regulating international and transnational issues must change and accommodate new realities.[24]

Legal theory and other sciences consider that cooperation among different participants in a given system is crucial in order to promote common interests,[25] although states and

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[21] *See* Andreas Fischer-Lescano, *Global Constitutional Struggles: Human Rights between colère publique and colère politique*, *in* INTERNATIONAL PROSECUTION OF HUMAN RIGHTS CRIMES 19-20 (Wolfgang Kaleck *et al.* eds., 2007); Andrea Bianchi, *supra* note 14; Luis Pérez-Prat Durbán, *Actores no estatales en la creación y aplicación del Derecho Internacional* (Non-state actors in the creation and application of International), *in* LA INCIDENCIA DE LA MUNDIALIZACIÓN EN LA FORMACIÓN Y APLICACIÓN DEL DERECHO INTERNACIONAL PÚBLICO: LOS ACTORES NO ESTATALES: PONENCIAS Y ESTUDIOS (The impact of globalization on the formation and implementation of Public International Law: Non-state actors: Papers and studies)(Victoria Abellán Honrubia & Jordi Bonet Pérez (dirs.), 2008); Loscano, *supra* note 15, at 323; Koh, *supra* note 6, at 2612, 2646, 2656; George Andreopoulos, Zehra Kabasakal Arat & Peter Juviler, *Conclusion: Rethinking the Human Rights Universe*, *in* NON-STATE ACTORS IN THE HUMAN RIGHTS UNIVERSE 332, 335-336 (George Andreopoulos *et al.* eds., 2006).

[22] *See* Anne Peters, *Humanity as the A and Ω of Sovereignty*, 20 (3) EUR. J. OF INT. L. (2009); Concurring Opinion of Judge Antônio Augusto Cançado Trindade to Inter-American Court of Human Rights, Advisory Opinion OC-17/2002 of Aug. 28, 2002, *Juridical Condition and Human Rights of the Child*, at paras. 10-20.

[23] *See* Janne Nijman, *Non-State Actors and the International Rule of Law: Revisiting the 'Realist Theory' of International Legal Personality*, Amsterdam Center for International Law Research Paper Series 2, 7-19, 39-40 (2009), available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1522520; Benedict Kingsbury, *The Concept of 'Law' in Global Administrative Law*, 20(1) EUR. J. OF INT'L L. 32-33, 55 (2009); Kaul & Mendoza, *supra* note 2, at 91, 101; Kaul, Conceiçao, Le Goulven & Mendoza, *Why Do Global Public Goods Matter Today? supra* note 16, at 15; Kaul, Conceiçao, Le Goulven & Mendoza, *How to Improve the Provision of Global Public Goods*, *supra* note 17, at 21, 26-36; Lavenex, *supra* note 1, at 382-384, 386-391.

[24] *See*, for example, Gómez Robledo, *supra* note 20, at 15; Koh, *supra* note 6, at 2626-2627.

[25] *See* Kaul, Conceiçao, Le Goulven & Mendoza, *Why Do Global Public Goods Matter Today?*, *supra* note 16, at 9-10, 16; Janneke Nijman, *Sovereignty and Personality: A Process of Inclusion*, *in* STATE, SOVEREIGNTY, AND INTERNATIONAL GOVERNANCE 133 (Gerard Kreijen ed., 2002).

other entities that have positive duties to prevent and tackle abuses retain primary responsibility for such an undertaking in the international system.[26] The lack of centralized institutions at the international level, the power of several actors that may defy state controls, and the need for a cooperative approach involving multiple actors and legal systems, all highlight the importance of abandoning a state-centered approach to international law and recognizing the blurring of divisions between legal systems and levels of governance.[27]

It must be acknowledged that there are certain legal goods protected by norms and principles common to legal systems of the international and domestic levels, either implicitly or expressly, directly or indirectly, which can be promoted and protected through interactions among legal systems and actors, and that they may be indirectly reinforced by transnational or non-state legal manifestations.

Legal practice has advanced towards the recognition of common principles of an international society, not composed solely of states,[28] as embodied in peremptory norms and *erga omnes* obligations.[29] Moreover, transnational legal practice and growing interaction between legal systems leads to the harmonization of the content of several of these legal systems, a process made possible by the material expansion of international law. The material expansion of International law has led to the existence of branches of the law common to different legal systems across various levels of governance, as happens with the field of human rights, whose foundation is the same: Human dignity.[30]

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[26] On these issues, see norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights, E/CN.4/Sub.2/2003/12/Rev.2, Aug. 26, 2003, at para. 1; Human Rights Committee, *Concluding Observations on Kosovo (Serbia)*, CCPR/C/UNK/CO/1, Aug. 14, 2006, at paras. 4, 8-22; Articles 4, 43 and 44 of the Convention on the Rights of Persons with Disabilities (Dec. 13, 2006), available at: http://www.un.org/disabilities/default.asp?id=150 (last accessed: 16 June 2012).

[27] *See* Kingsbury, Krisch & Stewart, *supra* note 2, at 9-10, 12-13; Kingsbury, *supra* note 23, at 52-55, 57; del Arenal, *supra* note 1, at 53; Koh, *supra* note 6, at 2624, 2631.

[28] It can be considered that the expression "international community of States" merely stresses the way in which international law is *traditionally formally* created, whereas the expression "international community" can encompass a broader set of actors. This is one of the possible interpretations of: International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, 2001, Paragraph (18) of the Commentary to Article 25.

[29] See International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, 2001, Paragraph (7) of the Commentary to Article 12; Paragraphs (3), (4) and (7) of the commentary to Chapter III; Remiro Brotóns, *supra* note 4, at 67; Santiago Villalpando, *The Legal Dimension of the International Community: How Community Interests are Protected in International Law*, 21 EUR. J. OF INT'L L. 394-407 (2010).

[30] *See* the Preamble and Articles 1, 22 and 23 of the Universal Declaration of Human Rights; CARLOS VILLÁN DURÁN, CURSO DE DERECHO INTERNACIONAL DE LOS DERECHOS HUMANOS (Course on International Human Rights) 63, 92 (2006).

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Global legal goods are those interests, values, and goals (legal goods) simultaneously protected in different legal systems (expressly or implicitly) and sometimes by different actors and entities (either formally or informally), that interact in a normative global space. The values commonly protected across legal systems may be general (e.g., the protection of human dignity) or concrete manifestations of the humanitarian global legal goods that protect human dignity. One example of a humanitarian legal good is be the protection of physical and psychological integrity that is embodied in the prohibition of torture, which is found across legal systems and in the practice of non-state actors that seek to promote human dignity.

The notion of global legal goods is borrowed mostly from criminal law theory, where it has been employed in order to analyze what interests are, or ought to be, protected by criminal norms. In light of this conception, I argue that to critically analyze the law, one can employ notions of global legal goods from either the perspective of the values that law protects *de lege lata* (the objective theory) or from the viewpoint of what values should be protected by the legal system *de lege ferenda* (the subjective approach).[31]

For instance, the prohibition of homicide protects the right to life, whereas other criminal provisions protect other interests, such as purely state rights or the protection of property or the environment.

The subjective approach to global legal goods is especially relevant, because even though norms of various legal systems protect the same values, and those values are to be protected through the interaction of the mechanisms and norms of the legal systems that

[31] In this regard, Markus Dirk Dubber comments that criminal law responses are appropriate to the extent that they are employed to protect certain interests, and that otherwise, their use could be deemed by some as *illegitimate*—although not unconstitutional, he argues. This evinces the possibility of employing the concept of legal goods both from a descriptive approach, identifying what interests are protected by law, and from a critical standpoint. Additionally, Santiago Mir Puig has clarified the fact that legal goods are not only found in criminal law, but may be present in a legal system in general, and that only when some conditions are met, is it proper to employ criminal law mechanisms to protect those legal goods. Additionally, this author has argued that alongside a formal approach that identifies legal goods protected by the law, a substantive conception asks the question of what legal goods deserve legal protection, and that among them, only in some cases, should protection be through criminalization. As can be seen, this conception has also inspired the two approaches to legal goods shown above in the main text. Let it be further said that Christoph Safferling posits the idea that the protection of some core human rights by criminal means amounts to the protection of some legal goods, illustrating how protecting human dignity, which is the foundation of human rights, is a value that can be regarded as a legal good. Finally, interpreting the case-law of the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights has considered that the "juridical interests" being protected by the law are legal goods, or that some human rights are protected by municipal law given their status as legal goods. On all these issues, *see* Dirk Dubber, *supra* note 13; Mir Puig, *supra* note 13; Safferling, *supra* note 13, at 1472; Inter-American Commission on Human Rights, *Report No. 95/08*, and Inter-American Commission on Human Rights, *Report No. 64/01*, *supra* note 13, at para. 22, in connection with Inter-American Court of Human Rights, *Case of Durand and Ugarte v. Peru*, *supra* note 13, at para. 117; Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Argentina*, *supra* note 13.

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must be in contact with each other for their protection to be effective—dimensions that allude to the objective approach[32]—it is possible that there are differences, subtle, minor, or relevant, in the implications concerning the protected global legal goods. However, when there are gaps that permit violations to take place with impunity, with no feasible way of victims being protected and violators held accountable at any level of governance, a critical analysis based on the examination of global legal goods is necessary.

In accordance with the idea that some legal goods can be protected by non-criminal means,[33] since non-criminal norms are also designed to protect certain values or interests, I argue that international norms likewise seek to protect diverse interests and values, which would be the legal goods they aim to protect. From a critical standpoint, *de lege ferenda*, it would be equally possible to assess which legal goods international law should begin to protect or protect in a stronger manner. Therefore, global legal goods can serve as standards to judge the fairness of international law in both procedural and material terms,[34] because if it fails to protect them properly from a substantive or procedural point of view, the international law would need to be reformed.

These ideas seem simple enough, but their implications are great when one realizes that there are legal goods that are equally and coincidentally protected across different legal systems, both vertically (across varying levels of governance—local, national, transnational, international) and horizontally (across comparable legal systems belonging to the same level of governance), as comparative legal analyses can reveal. Due to the practical demands of a world with ever-closer ties and greater interdependence,[35] the situations in which the boundaries between legal systems and levels of governance are blurred[36] can be explained to a great extent by demands of protecting coincident legal goods.

From a subjective point of view, a disaggregated analysis of the state may equally show that state agents ought to operate as protectors of international legal goods that find

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[32] See the reference to a statement issued by the President of the European Court of Human Rights in footnote 131, *infra*.

[33] *See* Mir Puig, *supra* note 13.

[34] Thomas Franck provided a valuable insight that distinguishes procedural and material elements of fairness of norms, which do not necessarily appear simultaneously. Franck identified legitimacy with the procedural component and distributive justice with the material one. I consider that the distinction is highly valuable, although I must confess that I disagree with holding distributive justice as the sole criterion of material justice and with the ethical relativism I perceive in his analysis of material justice. On the distinction put forward by Franck, *see* THOMAS FRANCK, FAIRNESS IN INTERNATIONAL LAW AND INSTITUTIONS 3-24 (1998).

[35] *See* del Arenal, *supra* note 1, at 32-34.

[36] *See* Kingsbury, Krisch & Stewart, *supra* note 2, at 9-10, 12-13; Kingsbury, *supra* note 23, at 52-55, 57; del Arenal, *supra* note 1, at 53; Koh, *supra* note 6, at 2624, 2631.

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accommodation in state legal systems, becoming guarantors of the norms that embody those legal goods. This is a phenomenon that has increased nowadays due to instances of domestic protection of common international norms and values, through universal jurisdiction or the enforcement of *erga omnes* obligations, among other examples, as discussed by Antonio Cassese.[37] Ultimately, this merging of identities of law enforcers responds to the identification of common goals which are shared by different entities and legal systems and have to be protected simultaneously across varying levels of governance and legal systems.

Therefore, beyond protecting legal interests of another legal system, authorities of different levels of governance and legal systems would be protecting legal goods *shared* by the legal system they are entrusted to uphold with other normative systems.

C. Principles and dynamics of the protection of global legal goods

One example of the protection of common legal goods is that of the protection of human rights: Their internationalization took place after their recognition in national legal systems,[38] and their current simultaneous protection in different levels of governance tends to be based on principles of *subsidiarity* or *complementarity*. According to the principles of *subsidiarity* or *complementarity* the State must be permitted and required to *effectively* deal with a violation in the first place, given its proximity to the violation and the greater quantity of resources at its disposal when compared to international agents.[39]

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[37] *See* Antonio Cassese, *Remarks on Scelle's Theory of "Role Splitting" (dédoublement fonctionnel) in International Law*, 1 EUR. J. OF INT'L L., 225-231 (1990).

[38] On the internationalization of human rights, *see* Thomas Buergenthal, *The Evolving International Human Rights System*, 100 AMER. J. OF INT'L L. 804-806 (2006) 787, 789-790; Felipe Gómez Isa, *International Protection of Human Rights*, *in* INTERNATIONAL PROTECTION OF HUMAN RIGHTS: ACHIEVEMENTS AND CHALLENGES 24, 31 (Felipe Gómez Isa & Koen De Feyter eds., 2006); Stephan Hobe, *Individuals and Groups as Global Actors: The Denationalization of International Transactions*, *in* NON-STATE ACTORS AS NEW SUBJECTS OF INTERNATIONAL LAW 120 (Rainer Hofmann (ed.), 1999); VILLÁN DURÁN, *supra* note 30, at 68-75; Concurring Opinion of Judge Cançado Trindade, *supra* note 22, at 15-34.

[39] On the different availability of resources in different levels, *see* John Knox*, Horizontal Human Rights Law*, AMER. J. OF INT'L L. 2, 19, 44 (2008) 2, 19, 44. About the principles of complementarity, subsidiarity, effectiveness of remedies, and the related figure of the exhaustion of domestic remedies, see Articles 17 of the Rome Statute of the International Criminal Court, 2.3 of the International Covenant on Civil and Political Rights, 2 of the Optional Protocol to the International Covenant on Civil and Political Rights, or 25 and 46 of the American Convention on Human Rights, among others. Additionally, see Inter-American Court of Human Rights, Case of Ivcher-Bronstein v. Peru, Judgment of February 6, 2001, Merits, Reparations and Costs, paras. 135-137; Inter-American Court of Human Rights, Case of Las Palmeras v. Colombia, Judgment of Dec. 6, 2001, at paras. 58, 60; Darryl Robinson, The Mysterious Mysteriousness of Complementarity, 21(1) CRIM. L. FOR. 2010. Altogether, these principles presuppose that the exhaustion of domestic remedies is not required in order to resort to international remedies when domestic remedies are ineffective, inadequate, too burdensome, or access to them is extremely difficult. *See* European Court of Human Rights, Case of Opuz v. Turkey, Application no. 33401/02, Judgment of Jun. 9, 2009, at paras. 112, 116, 127, 152-153, 159, 175, 201; Inter-American Court of Human Rights, Advisory Opinion OC-

Failing this, the international agents are competent to examine the situation. In such a scenario, the legal goods being protected are the same ones, and the existence of human rights obligations of the state oblige it to adjust its domestic legal system to conform to the international one, bringing each system's content closer to that of the other.

Naturally, this proximity is not absolute, and there are mechanisms, such as the margin of appreciation, that grant some leeway to the State to have its own understanding as long as it respects some criteria of minimum protection and is subject to international supervision.[40] This sort of mechanism is consistent with the need to allocate power in a balanced and careful manner across levels of governance and respecting democratic principles.[41] However, use of these mechanisms or lack thereof have occasionally aroused controversy due to the ideas that the core of human rights must not be subject to variations or the whim of states or that it is necessary to ensure that democratic and legitimate decisions are respected and international authorities do not impose their political preferences on political bodies.

Nonetheless, a common core or lowest common denominator exists in human rights law, and it lies in a *global* legal space of interaction, where multiple actors and legal systems participate. This notion is similar to one employed by global administrative law theory and reminiscent of the idea of global law as comprising transnational, non-national, international, supranational, and other legal manifestations.[42]

In the case of global legal goods, the space is generated as a result of the interaction of legal systems of different legal levels therein and the mutual influence of its participants, for just as the interpretation of international agents is to be considered by domestic authorities, the latter can exert an influence on the content of international law and exert pressure on international agents in the determination of the content and implementation of international law. In any case, the role of domestic authorities as guarantors of international law is undeniable. An example can be seen in the importance of domestic judges in guaranteeing European Union law or the European human rights system.[43]

11/90, *Exceptions to the Exhaustion of Domestic Remedies*, Aug. 10, 1990, at paras. 31, 35; Article 15 of the Draft Articles on Diplomatic Protection (2006).

[40] On the figure of the margin of appreciation, *see* Oren Gross & Fionnuala Ní Aoláin, From Discretion to Scrutiny: *Revisiting the Application of the Margin of Appreciation Doctrine in the Context of Article 15 of the European Convention on Human Rights*, 23 HUM. RTS. QUART. (2001).

[41] *See* JOHN JACKSON, SOVEREIGNTY, THE WTO, AND CHANGING FUNDAMENTALS OF INTERNATIONAL LAW 73-76 (2006).

[42] Different legal regimes and systems, and a myriad of legal practices of various actors, can meet in emerging legal spaces. For the Global Administrative Law account of this, *see* Kingsbury, Krisch & Stewart, *supra* note 2, at 12-18; RAFAEL DOMINGO, ¿QUÉ ES EL DERECHO GLOBAL? (What is the Correct Global?) 108 (2007).

[43] *See* Araceli Mangas Martín & Diego Liñán Nogueras, INSTITUCIONES Y DERECHO DE LA UNIÓN EUROPEA (Institutions and European Union Law) 432-433 (2004); Thomas Buergenthal, *supra* note, at 806.

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Global legal goods, however, can be protected in more than a subsidiary or vertical manner. In today's globalized world, actors may interact informally, or from the periphery, in order to promote the legal goods protected by norms they support. This promotional activism can be carried out in accordance with the criterion of simultaneity, according to which which non-state action may reinforce or fill the gaps of public action, whether the public action is carried out by states or international organizations.[44] To continue with this example, it is necessary to consider that actors such as non-governmental organizations (henceforth, NGOs) often strive to have an impact on the content and application of human rights law, and as a result exert pressure with the aim of ensuring compliance by other entities with human rights tenets.

The global foundational level of coinciding norms and goals, having a human rights dimension that is founded on human dignity, demands an equal and complete protection of all victims, regardless of the identity of either the offender or the legal system which is entitled to provide remedies. Victims, as human beings with an inalienable inner worth, deserve remediation for human rights violations, and that remediation is to be regarded as a goal in and of itself. It should not be regarded as a means[45] to facilitate achieving goals that are unique to a particular statist or otherwise limited framework.

Different legal systems of varied levels and origins—state or non-state, local to global—accommodate the foundation of human dignity, through hard law—agreements, binding custom, etc.—by means of soft law leading to custom, or by means of in-between manifestations, such as some codes of conduct. All of those manifestations may have legal effect due to the processes through which they emanate, are practiced, or become related to other norms or legal principles.[46] Whenever such legal manifestations protect human

[44] *See* Pierre Calame, *Non-state actors and world governance* 19-20, 22-23 (2008), available at: http://www.world-governance.org/spip.php?article297 (last accessed: 16 June 2012); Pérez-Prat Durbán, *supra* note 21, at 26-38; International Law Association, The Non-State Actors Committee, *First Report of the Committee on Non-State Actors*, THE HAGUE CONFERENCE 10 (2010).

[45] *See* CLAPHAM, *supra* note 3, at 535.

[46] Non-state normative manifestations, similar to what happens with soft law in regard to hard law, can be incorporated by State-endorsed legal systems, become customary law if supported by lawmakers in other legal systems, become part of a different normative regime, become an integral part of a binding instrument by virtue of reference or inclusion (making it necessary to interpret the latter in light of the former), become authoritative interpretations of binding instruments, or be opposable to their author or some other entity that endorses them or appears to do so somehow by virtue of the protection of third parties in application of general principles. In the Non-State Actors Committee of the International Law Association it was discussed that

> [m]any non-State actors, e.g. corporations and armed opposition groups, commit themselves to upholding international law. However, they tend to do so as a matter of policy/soft law than as a matter of hard law. In so doing, they may avoid legal accountability. There may nevertheless be doctrines and principles that could be

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dignity, they bring legal systems closer to each other in pursuit of the common goals of humanitarian protection. According to a teleological interpretation of law, the goal of protecting human dignity, embodied explicitly or implicitly in such norms, must orient the interpretation and application of law in every instance.[47]

It must be noted that the protection of human dignity exceeds the boundaries of what is formally known as the branch of human rights law, overcoming fragmentation[48] and creating the possibility of working as a cohesive force in law. Furthermore, peremptory law recognizes some human rights, depriving legislation of effects contrary to them.[49] The common foundation of norms belonging to several branches of law found in different legal systems, and the dimensions, values, interests, and goals protected by rights and principles derived from the protection of common legal goods of a global humanitarian nature,[50] are encompassed within GLGs. I use the term humanitarian in this context in a broad sense that is not limited to the regulation of armed conflicts. Such humanitarian global legal goods benefit human beings irrespective of where they dwell and who threatens them. It is interesting to note that the economic theory of global public goods acknowledges that

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used to harden these soft commitments into hard law (duty of care/negligence/corporate organization/legitimate expectations/good faith/unilateral act . . . .) (emphasis added).

Excerpt from: International Law Association, *Preliminary Issues for the ILA Conference in Rio de Janeiro, August 2008 (Draft Report)*, Rio de Janeiro Conference (2008), Non-State Actors Committee. Additionally, see International Law Commission, *Draft Articles on the Law of Treaties with commentaries*, 1966, paragraph 5 of the commentary to article 2, and Commentary to article 3; International Law Association, The Non-State Actors Committee, s*upra* note 44, at 8-13; Bruno Simma & Philip Alston, *The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles*, 12 AUS. YEARBOOK OF INT'L L. 100-102 (1988-1989); Memorandum of Understanding between the Justice and Equality Movement (JEM) and the United Nations *Regarding Protection of Children in Darfur*, Geneva, Jul. 21, 2010; Remiro Brotóns *et al.*, *supra* note 4, at 621-622; John Crook, *Abyei Arbitration – Final Award*, 13 (15) ASIL INSIGHTS 2009; Inter-American Court of Human Rights, Advisory Opinion OC-10/89, *Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights* Jul. 14, 1989, at paras. 30-37.

[47] On this criterion of interpretation, see, for example, Article 31.1 of the Vienna Convention on the Law of Treaties, 1969.

[48] *See* Reinisch, *supra* note 1, at 72-74.

[49] *See* the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, Prosecutor v. Anto Furundzija, Judgement, Dec. 10, 1998, at para. 155.

[50] In this article, the term humanitarian is used in a broad sense, not to be confused with the branch of international law devoted to the regulation of armed conflicts.

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the protection of human dignity is included in that category.[51] If other sciences make this observation, law must not fail to do so.

We must come to terms with the fact that a new approach to law in a global landscape is needed, otherwise the *formal* division of systems generates possibilities of unaccountability. The idea of a distinct global legal space born of legal practice and interactions has already been put forward in theories such as those of global administrative law,[52] which is compatible with constitutional or pluralist conceptions of law.[53]

Likewise, global legal goods protective of human beings and their dignity that are common to different legal systems, which have the protection of human dignity as a legal foundation, ought to lead to a practice where guarantees offered by respective systems complement and reinforce each other, ascertaining minimum rights and duties of protection and respect. Thanks to the force of example, this may lead to acculturation or internalization,[54] mutual influence, and the existence of mechanisms that may force practitioners to refer to the guarantees provided elsewhere, as demanded, for instance, by the principles of effectiveness or *pro homine* protection.[55] In this fashion, a common global legal space of humanitarian protection will be developed, which is imperative nowadays for we are living in a globalized social framework that must be addressed by an equally global, although humanized, legal framework.

Regarding a global legal framework that takes into account social developments, it is time that the contribution of several actors not recognized as formal subjects of law is acknowledged. When it comes to non-state input in GLGs, it must be borne in mind,

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[51] About human rights and dimensions of the protection of human dignity as public goods, *see* Kaul, Conceiçao, Le Goulven, & Mendoza, *supra* note 17, at 37, 44; Kaul & Mendonza, *supra* note 2, at 95 82-83, 84, 86, 97-98, 100, 106.

[52] Different legal regimes and systems, and a myriad of legal practices of various actors, can meet in emerging legal spaces. For an example, *see* Kingsbury, Krisch & Stewart, *supra* note 2, at 12-18.

[53] *See* Jeffrey Dunoff & Joel Trachtman, *A Functional Approach to Global Constitutionalism*, Harvard Public Law Working Paper No. 08-57, 31; Nico Krisch, *Global Administrative Law and the Constitutional Ambition*, LSE Law, Society and Economy Working Papers 2 (10/2009).

[54] *See* Ryan Goodman & Derek Jinks, *Incomplete Internalization and Compliance with Human Rights Law*, 19(4) EUR. J. OF INT'L L. (2008); Koh, *supra* note 6, at 2645-2659.

[55] See Articles 5 of the International Covenant on Civil and Political Rights, 5 of the International Covenant on Economic, Social and Cultural Rights, 29 of the American Convention on Human Rights, or 53 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; Álvaro Francisco Amaya Villarreal, *El principio pro homine: Interpretación extensiva vs. el consentimiento del Estado* (The*pro homine* principle: extensive interpretation vs. tate consent), *in* INTERNATIONAL LAW: REVISTA COLOMBIANA DE DERECHO INTERNACIONAL 356, 361, 374-375 (2005).

however, that non-state actors may have conflicting views on certain issues[56] and thus some of them may not truly or completely represent all, or most of, civil society. Moreover, non-state actor practice may lead to confusion between existing law and legal aspirations.[57] Hence, care must be taken to distinguish GLGs from particular interests either of states or of other actors. Indeed, the fact that a non-state actor promotes a viewpoint does not always signify that it truly represents human global society.[58] The fact that some non-state conduct and demands are based on claims of universal standards and ideas of representativeness requires them to respect universalistic criteria as well, out of consistency.[59]

GLGs are the legal goods protected by minimum and shared norms and principles in a global legal space that must be respected by every actor, and by and under every legal system. At the same time, they guide the interpretation of legal norms legally relevant acts towards the protection of human dignity. GLGs are goals that are protected by two sets of norms: First, by human rights *lato sensu*, or broadly speaking rights, which are directly conferred or recognized on behalf of human beings and protect their dignity, irrespective of their label.[60] Secondly, by humanitarian guarantees, which are norms that, although not granting direct rights to human beings, still benefit the protection of human dignity either directly or indirectly. Some examples of the latter category include criminal law provisions;[61] norms dealing with the obligations of non-state parties to armed

[56] For example, *see Explanation for Withdrawal from Amnesty and Establishment of the Benenson Society*, available at: http://www.docstoc.com/docs/31582041/Withdrawal-from-Amnesty-and-establishment-of-the-Benenson-Society (last accessed: 16 June 2012).

[57] *See* Bianchi, *supra* note 14, at 185, 191-195, 201-203.

[58] *See* Thürer, *supra* note 18, at 46.

[59] *See* Halliday, *supra* note 10, at 36.

[60] Treaties that do not have a heading textually mentioning human rights or that deal mainly with other aspects may nonetheless contain rights recognized or granted to individuals that qualify as human rights. Likewise, human rights are such as long as they directly protect dignity and are directly recognized to individuals by a legal system, rather than being such in accordance with their formal label. See Inter-American Court of Human Rights, Advisory Opinion OC-1/82 of September 24, 1982, *"Other Treaties" Subject to the Consultative Jurisdiction of the Court (Art. 64 American Convention on Human Rights)*, para. 34; Inter-American Court of Human Rights, Advisory Opinion OC-16/99 of October 1, 1999, *'The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law'*, paras. 71-87; International Court of Justice, LaGrand Case (Germany v. United States of America), Judgment of 27 June 2001, para. 77; Inter-American Commission on Human Rights, *Report No. 112/10*, *Inter-State Petition IP-02*, Admissibility, *Franklin Guillermo Aisalla Molina* at para. 117 (2010); IAN BROWNLIE, THE RULE OF LAW IN INTERNATIONAL AFFAIRS: INTERNATIONAL LAW AT THE FIFTIETH ANNIVERSARY OF THE UNITED NATIONS 65-66 (1998).

[61] *See* Claire de Than & Edwin Shorts, *International Criminal Law and Human Rights* 12-13 (2003); ANDREW CLAPHAM, HUMAN RIGHTS: A VERY SHORT INTRODUCTION 42 (2007); HERSCH LAUTERPACHT, INTERNATIONAL LAW AND HUMAN RIGHTS 36 (1950).

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conflicts, compliance with which protects victims;[62] norms of the law of the sea that call for measures which may result in the protection of human dignity;[63] norms and measures related to the protection of refugees such as protection from non-state persecution; the law that tries to tackle problems posed by transnational organized crime;[64] or the interpretation of rules dealing with self-defense in order to permit it against non-state actors in a context where the power of some states has eroded and where civilians are targeted by such actors.[65]

D. Legal effects and normative implications of the existence of global legal goods

GLGs are identified by their simultaneous appearance in legal systems either implicitly or expressly, identifying common goals that are better pursued jointly. The theoretical foundation of GLGs is open to debate: One may argue that they are based on cosmopolitan proposals[66] or on natural law theories, as derived from the requirements of adjusting law so that it respects human dignity, and from the centrality attached to the

[62] Taking into account that International Humanitarian Law ("IHL") is designed, among other considerations, to protect civilians from the effects of warfare and combatants under some circumstances, which is explained given the position of human dignity as one foundation of IHL, it is no surprise then that such dignity is violated when many norms of IHL are breached by any actor bound by that law, which includes non-state armed actors. About these ideas, *see* Frits Kalshoven & Liesbeth Zegveld, *Constraints on the Waging of War: An Introduction to International Humanitarian Law*, ICRC 12, 14, 70 (2001); Common Article 3 to the Geneva Conventions of 1949; ANDREW CLAPHAM, HUMAN RIGHTS OBLIGATIONS OF NON-STATE ACTORS, *supra* note 3, at 46-53. On the regulation of the participation of non-state actors in armed conflicts, see common article 3 to the Geneva Conventions of 1949; articles 1.4, 4, and 96.3 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol 1); Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II); Marko Milanovic, *Lessons for human rights and humanitarian law in the war on terror: Comparing Hamdan and the Israeli Targeted Killings case*, 89 INT'L REV. OF THE RED CROSS 377-381 (2007).

[63] Such as the norms that deal with piracy, slavery, illicit traffic in narcotic drugs or psychotropic substances, or the failure to render assistance. *See* United Nations Convention on the Law of the Sea, Dec. 10, 1982, Articles 98, 99, 100, 101, 102, 103, or 105, 106, 107, or 108, available online at: http://www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm (last accessed: 16 June 2012).

[64] *See* Kofi Annan, *Foreword*, *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, UNITED NATIONS OFFICE ON DRUGS AND CRIME iii-iv (2004), available at: http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf (last accessed: 16 June 2012).

[65] A discussion on the different opinions regarding this problem can be found in *Constantine Antonopoulos*, *Force by armed groups as armed attack and the broadening of self-defence*, LV NETH. INT'L L. REV. 162-172 2008).

[66] *See* Kingsbury, Krisch & Stewart, *supra* note 2, at 29, 32, 34; IMMANUEL KANT, PERPETUAL PEACE, A PHILOSOPHICAL ESSAY 119, 139, 142, 157, 166 (M. Campbell Smith, tr., 1917)

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welfare of human beings.[67] Others may consider that GLGs may be the product of global and transnational social processes leading to the adoption of law by recognizing common minimum standards of humanity.

Regarding this latter theory, one may be tempted to say that, analogically, global *public* goods are socially determined,[68] or one may focus solely on the fact that social movements and several actors may exert pressure towards the enjoyment and recognition of common legal goods in a global landscape, and that this should be decisive in defining global *legal* goods.

However, I consider that those rationalizations are *complementary* to the core one: The protection of human dignity, based on the consideration of the welfare of human beings as an end in itself, against the threats posed to it in the global landscape. The goal of continuously increasing this protection must be ethically strived for regardless of the existence of social agreements to do so. I consider that rights and guarantees flowing from human dignity should not be dependent upon contingencies such as the agreements of different actors or on the whims of formal decision-makers.

This is so because states and non-state actors alike may act based on private or selfish interests,[69] taking actions that are detrimental to the proper protection of human dignity in spite of declaring their belief in it. Taking into account democracy and accountability, lest this discourse be manipulated,[70] is unavoidable[71] and ought to have a normative impact.[72] The impact of will on lawmaking is not to be unchecked or almighty. One must bear in mind that the protection of human dignity cannot depend exclusively on the caprice of social preferences or actions, since it must be ensured that even when majorities, or those who hold official or informal power, act contrary to it or deny it, the fairness of law

[67] For an interesting theory about the importance of law striving for the well-being of human persons, *see* John Finnis, *The Priority of Persons*, *in* OXFORD ESSAYS IN JURISPRUDENCE, FOURTH SERIES 12, 13 (Jeremy Horder ed., 2002).

[68] *See* Kaul & Mendoza, *supra* note 2, at 80-88, 95-99; Lavenex, *supra* note 1, at 385.

[69] *See* Lavenex, *supra* note 1, at 381, 388; Del Arenal, *supra* note 1, at 29; Cassese, *supra* note 37, at 216; Reinalda, *supra* note 18, at 12-15; Thürer, *supra* note 18, at 46-47. Noam Chomsky has considered, for instance, that "states are not moral agents. They act in their own interests. And that means the interests of powerful forces within them." *See* Christopher Gunness, *Rogue States Draw the Usual Line*: *Noam Chomsky Interviewed by Christopher Gunness*, AGENDA (2001), available at: http://www.chomsky.info/interviews/200105--.htm (last accessed: 16 June 2012).

[70] Unfortunately, on occasions the discourse of human rights has been resorted to with double standards, hypocrisy, and with the purpose of serving different goals in practice. *See* Reinisch, *supra* note 1, at 61; ERIC POSNER, THE PERILS OF GLOBAL LEGALISM 204 (2009).

[71] *See* Lavenex, *supra* note 1, at 385.

[72] *See* Losano, *supra* note 15, at 328-331, 334-335.

depends nonetheless on the respect of human dignity, as individuals are the final beneficiaries of law.[73]

As has been said above, GLGs rest on their binding every potential offender. This is related to several trends: Firstly, the trend that considers that the content of human rights *can* be violated by non-state actors, and can be—inherently—recognized implicitly *or* expressly by means of different labels—such as destruction or abuse, among others, and even that of violations—contained in statements condemning non-state threats, issued by international bodies, NGOs, authors, and some authorities.[74] Secondly, the fact that the vicarious responsibility of the state does not guarantee that protection will always be granted to victims.[75] Thirdly, the idea that the nature of states as legal fictions implies that unlawful

[73] On these considerations, *see* Peters, *supra* note 22; Concurring Opinion of Judge Cançado Trindade, *supra* note 22, at paras. 10-20; DOMINGO, *supra* note 42, at 91, 110, 158-159.

[74] *See*, among others, Inter-American Commission on Human Rights, *Preliminary Observations of the Inter-American Commission on Human Rights after the visit of the Rapporteurship on the Rights of Afro-Descendants and against Racial Discrimination to the Republic of Colombia*, OEA/Ser.L/V/II.134, Doc. 66, 27 March 1999, at para. 46; ILIAS BANTEKAS & SUSAN NASH, INTERNATIONAL CRIMINAL LAW 14 (2003); Inter-American Court of Human Rights, Case of Velásquez-Rodríguez v. Honduras, Judgment of July 29, 1988, at paras. 166, 172; Inter-American Court of Human Rights, Advisory Opinion OC-18/03, *Juridical Condition and Rights of the Undocumented Migrants*, September 17, 2003, par. 140; Inter-American Court of Human Rights, Case of Castillo-Petruzzi et al. v. Peru, Judgment of May 30, 1999, para. 89; CLAPHAM, *supra* note 3, at 43-44, 47-53, 56-58, 70-73; Human Rights Committee, Concluding Observations, CCPR/C/UNK/CO/1, 14 August 2006, para. 4; Committee Against Torture, Communication No 120/1998: Australia, CAT/C/22/D/120/1998, 25 May 1999, para. 6.5; Inter-American Commission on Human Rights, Resolution 03/08, *Human Rights of Migrants, International Standards and the Return Directive of the EU*; Inter-American Commission on Human Rights, Press Release No 06/09, *IACHR Condemns Killings of Awá Indigenous People by the FARC*; Jochnick, *supra* note 11; Jordan Paust, *The Other Side of Right: Private Duties Under Human Rights Law*, 5 HARV. HUM. RTS J. (1992); *Reinisch*, supra note 1. On the labels of destruction and abuse of human rights; Robert Dufresne, *Review of: Liesbeth Zegveld, The Accountability of Armed Opposition Groups in International Law*, 15 EUR. J. OF INT'L LAW 227 (2004). Furthermore, as the Special Tribunal for Lebanon considered in a Decision issued by its Appeals Chamber on 10 November 2010 in the Case CH/AC/2010/02, just as there are express and implied powers, when there are none of these and one such capacity is required for an organ as an international tribunal to fulfill its functions, protect human rights and/or achieve goals inherent to it, it can have such functions. If non-state actors have the *factual—yet legally relevant*—potential to offend dignity, they must have the *inherent* duty to refrain from these legally relevant factual violations, or else relevant goals of the legal system will be left unprotected, contrary to the absolute nature of the core peremptory norms involved. Domestic, international, and transnational action that responds to those violations "evinces" those inherent duties. On the aforementioned Decision, see Special Tribunal for Lebanon, Appeals Chamber, Case No. CH/AC/2010/02, of 10 November 2010, paras. 44-49. Navi Pillay, UN High Commissioner for Human Rights, mentioned that human rights abuses were committed by all sides in conflicts in Côte d'Ivoire, reflecting how violations can be equally committed by state and non-state entities. *See* Press Release, United Nations Office of the High Commissioner for Human Rights, Human rights situation in Côte d'Ivoire "deteriorating alarmingly" – Pillay, Mar. 10, 2010, available at: http://www ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10831&LangID=E (last accessed: 16 June 2012).

[75] This is so because it may well happen that there are cases in which states do not generate the risk of a non-state violation and strive with due diligence to prevent or punish one such violation, and yet the violation is committed with impunity due to the incapacity of the state system to deal with it. In such an event, neither domestic nor international law will be able to hold the state involved accountable. An example of this can be

acts are committed in practice by non-state actors,[76] whose responsibility may be *complementary* to that of states[77] or other actors (as acknowledged in criminal law). Fourthly, the duty of the state to ensure the enjoyment of human rights between private parties; this is a duty that requires it to prevent violations from taking place and to deal with those that have been committed by non-state entities properly. The obligations to tackle violations *ex post facto* and to prevent potential violations acknowledge that the enjoyment of human rights can be impaired by non-state actors.[78] Fifthly, the general

found in: European Court of Human Rights, *Case of Mastromatteo v. Italy*, Judgment, 24 October 2002, paras. 67-79.

[76] The International Military Tribunal for the Trial of German Major War Criminals declared, for instance, that "[c]rimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced." *See* the Rome Statute of the International Criminal Court, available at: http://untreaty.un.org/cod/icc/general/overview.htm (last accessed: 16 June 2012). This consideration, coupled with how in practice violations are also easier to be perpetrated by groupings of individuals that can be legally addressed in conjunction with its individual members in order to increase the likelihood of measures protective of victims—potential and actual—being effective requires also that groupings of individuals and non-state actors have negative capacities—duties or procedural mechanisms.

[77] This has been acknowledged in doctrine and jurisprudence and is demonstrated by the fact that States may be complicit to crimes committed by non-state actors or by the possibility of holding both a state agent and a State simultaneously responsible for breaches of international law. See International Court of Justice, *Case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Serbia and Montenegro)*, 26 February 2007, parsa. 419-420; Antonio Cassese, *When May Senior State Officials Be Tried for International Crimes? Some Comments on the Congo v. Belgium Case*, 13 EJIL 864 (2002); Inter-American Court of Human Rights, Advisory Opinion OC-14/94, *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention*, December 9, 1994, para. 56.

[78] Regarding the horizontal protection of human rights by States, which are obliged to carry it out, see Inter-American Court of Human Rights, Advisory Opinion OC-18/03, *Juridical Conditon and Rights of the Undocumented Migrants*, September 17, 2003, par. 140; Inter-American Court of Human Rights, Advisory Opinion OC-17/2002, *Juridical Condition and Human Rights of the Child*, August 28, 2002, pars. 87, 90-91. Additionally, case-law references occasionally, implicitly, acknowledge that non-state actors may violate human rights, as can be seen, for instance, in the following passages of the Inter-American Court of Human Rights: There are "certain criminal acts that constitute, in turn, grave violations of the human rights", extracted from: Inter-American Court of Human Rights, *Case of the Pueblo Bello Massacre v. Colombia*, Judgment of 31 January 2006, para. 148; or "[the] State is obligated to prevent, investigate and punish human rights violations" [even if they are not] "carried out by an act of public authority or by persons who use their position of authority" [and the act] "is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified)", extracted from: Inter-American Court of Human Rights, *Case of Velásquez-Rodríguez v. Honduras*, Judgment of July 29, 1988 (Merits), para. 172. Regarding the State duty of protection, even against threats emanating from non-state actors, see also: European Court of Human Rights, *Case of Mastromatteo v. Italy*, Judgment of 24 October 2002, paras. 67-68, 88-96; European Court of Human Rights, *Case of Rantsev v. Cyprus and Russia*, Judgment of 7 January 2010, paras. 207, 232-234, 242, 288, 307-309; THEODOR MERON, THE HUMANIZATION OF INTERNATIONAL LAW 466-470 (2006). The Inter-American Commission on Human Rights has said, in turn, that

> [i]n recent decades Colombia has been assailed by an armed conflict that has affected hundreds of thousands of people. The armed actors in the conflict—guerrilla groups, security forces, and

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trend that seeks to make all violators of relevant international legal goods accountable for their actions. Lastly, the idea that non-state actors must respect GLGs is related to the ideas that international legal personality is a potentially misleading academic tool,[79] and that any actor can have rights and duties as long as a norm says so,[80] as long as that norm meets requirements concerning the respect of rights of its addressees, such as those of foreseeability and accessibility in the case of obligations,[81] given the possibility that even international norms may directly address non-state behavior.[82] In fact, concepts such as that of *hostis humani generis*[83] seem to acknowledge that certain acts are frowned upon by the world community irrespective of the nature of the entity committing them.

Global legal goods allow us to go one step forward, because they accommodate the existence of derived implied duties of respecting human dignity that bind every potential offender. Just as it has been recognized that international organizations must have those implied powers that are necessary for them to achieve their goals and accomplish their missions,[84] the common goal of the global community to respect certain minimum humanitarian guarantees mandates that any actor who harms them must be held responsible. This derives from a general legal principle: That causing harm generates responsibility and the obligation to repair.[85] Violating the rights and norms that embody GLGs causes injuries that must be repaired.

> paramilitary groups—have committed human rights violations and serious breaches of international humanitarian law against the civilian population. (emphasis added).

Extracted from: Inter-American Commission on Human Rights, *Preliminary Observations of the Inter-American Commission on Human Rights after the visit of the Rapporteurship on the Rights of Afro-Descendants and against Racial Discrimination to the Republic of Colombia*, OEA/Ser.L/V/II.134, Doc. 66, 27 March 1999, para. 46.

[79] *See* CLAPHAM, HUMAN RIGHTS OBLIGATIONS OF NON-STATE ACTORS, *supra* note 3, at 59-63, 70; JOSÉ MANUEL CORTÉS MARTÍN, LAS ORGANIZACIONES INTERNACIONALES: CODIFICACIÓN Y DESARROLLO PROGRESIVO DE SU RESPONSABILIDAD INTERNACIONAL 109-110 (2008).

[80] CLAPHAM, *supra* note 3, at 70-73.

[81] *See* European Court of Human Rights, *Case of Kononov v. Latvia*, Judgment of 17 May 2010, paras. 185, 187, 235-237.

[82] *See* Meron, *supra* note 78, at 40.

[83] *See*, for example, de Than & Edwin Shorts, *supra* note 61, at 257.

[84] *See* Noortmann, *supra* note 9, at 66-67; Koen De Feyter, *The International Financial Institutions and Human Rights. Law and Practice*, *in* INTERNATIONAL PROTECTION OF HUMAN RIGHTS: ACHIEVEMENTS AND CHALLENGES, University of Deusto 561- 562 (Felipe Gómez Isa & Koen De Feyter eds., 2006)

[85] *See* BING CHENG, GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS 233-234 (2006); Paragraph 15 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (A/RES/60/147).

On the other hand, GLGs are necessary if human rights are to be effectively protected as universal and interdependent rights, since state-centered approaches fail to grasp the way in which human rights are to be actually upheld in practice and protected against all actors—with the contribution of several actors. For individuals to be actually protected in accordance with the criteria of universality, "indivisibility and interdependence of human rights,"[86] they must be protected against *all* threats.

Up until now, the concept of universality has been traditionally understood in a somewhat geographical or intercultural sense.[87] The only way to ensure a comprehensive, integral,

[86] *See* Zehra Kabasakal Arat, *Looking beyond the State But Not Ignoring It*, *in* NON-STATE ACTORS IN THE HUMAN RIGHTS UNIVERSE, *supra* note 21, at 6. Moreover, the aim of the dimension of the *universality* of human rights—*ergo*, of human dignity protection—that is usually or traditionally discussed is the protection of individuals and their inherent rights everywhere, i.e. regardless of what State they are in or what State exercises authority or power over them—the territorial dimension. As a consequence, it has been considered that the prevalent culture in some States—let us remember that practices and customs are to be tried to be modified by States in order to adjust them to human rights standards, as can be seen and inferred in Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women and Article 2 of the American Convention on Human Rights—can have some elements that are somehow contrary to the full respect and protection of human rights. Thus, it has been considered that cultural arguments should not be employed against binding human rights norms—this is a subtle matter, for sometimes States are not bound by some non-peremptory human rights norms, and in other occasions the human rights discourse endorses ideas that are not really hard law and are arguably against reasonable cultural matters, ignoring the need to allocate power among several levels in accordance with democratic ideas and with the maxim that those affected by something should regulate it if they have the capacity and willingness to do so. As a result, we jump from territoriality concerns to cultural ones, evincing the way in which universality comprises multiple dimensions, not only territorial ones. And if so, we can go another step forward: If some cultural or non-cultural practices and patterns can be contrary to human dignity, is it not a fallacy to hold that only State-endorsed practices can run counter to that dignity? That is to say, it is possible that for instance one same practice of the majority of the population in one State, endorsed by it, is adopted by the minority of the inhabitants of another State, not being supported officially in any way whatsoever, but the fact that the practice is one and the same reflects how a universal and equal non-discriminatory protection should address both situations and contexts, as the problems are generated by one identical factor. Therefore, non-state actors carrying out that practice that are individuals of a minority in one State, not engaging its responsibility, must be made somehow to respect dignity, always in accordance with legality and the respect of their fundamental rights, because violators also have them. Hence, we have that for universality what matters is a complete protection of dignity in all dimensions: Territoriality regarding every potential and possible threat, and that non-state actors can pose the same challenges to its protection and respect that States can present.

[87] In the Vienna Declaration and Programme of Action, for example, it was stated that

> All human rights are universal, indivisible and interdependent and interrelated . . . . 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 . . . . Regional arrangements play a fundamental role in promoting and protecting human rights. They should reinforce universal human rights standards.

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and thus truly universal protection and recognition of human dignity is to broaden this concept to include universal protection against *all* potential threats. After all, human dignity is based on the recognition of the inherent worth of every human being and their not being used as means,[88] features that are not dependent upon who violates that dignity.[89] In connection with this, it is useful to distinguish between the universality of recognition and the universality of protection of dignity-derived rights, the former being the aspiration that someday all or at least certain human rights norms will be binding everywhere—the core of peremptory law already has that feature—while the latter proscribes the way that human dignity-protective norms are to be implemented once it is established that they are binding *de lege lata*.

As a consequence of broadening the protection offered to human rights through GLGs, it can be ensured that there can be neither some type of actors nor some legal systems that can validly deny that a violation of human dignity has taken place in legal terms, or deny that this violation gives rise to the duty of reparation. In fact, principles of hard law and soft law can recognize the necessity of non-state actors repairing the wrongs attributable to them.

As a matter of fact, there are some instances in which full reparation requires the participation of the material offender, not merely that of a vicariously responsible entity, as happens for instance in situations involving the right of victims to know the truth[90] underlying a violation they suffered. In some of those instances, the complete truth is known only to those who directly committed the violation; they are thus the only ones with the capacity to reveal it to the victims and have duties to repair the wrong. Ensuring that no actor will be able to elude accountability based upon the lack of its formal recognition as a subject of the law will allow powerful actors whose impact is undeniable, for instance corporations or the G-7/G-8, to be checked by legal norms and even to be held responsible, or to see measures implemented directly against them or their members and components, in case they breach norms protective of human dignity.[91] This is necessary to

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See Vienna Declaration and Programme of Action, World Conference on Human Rights, A/CONF.157/23, 12 July 1993, paras. I.5, I.37. Additionally, see the previous footnote.

[88] *See* Evan Criddle & Evan Fox-Decent, *A Fiduciary Theory of Jus Cogens*, 34 YALE J. OF INT'L L. 365, 369 (2004); CLAPHAM, *supra* note 79, at 535.

[89] *See* Jochnick, *supra* note 11, at 60-61.

[90] About such right, see among others paragraphs 22(b) and 24 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147.

[91] Powerful informal networks or groupings may impose their decisions on third parties while eluding liability by invoking their "informality" or legal "non-existence". Yet, their power and legal impact call for their accountability. About such groups, *see* Kingsbury, Krisch & Stewart, *supra* note 2, at 7-8, 21-22, 28; Kaul, Conceiçao, Le Goulven, & Mendoza, *supra* note 17, at 27, 32, 53-54.

overcome situations in which the impossibility of tracing a violation to a "legal person" fosters impunity.

This will also open up legal participation, enabling observers to criticize violations committed by non-state and state actors alike, based on coinciding elements of different legal systems in legal and humanitarian terms, not merely based on aspirations *de lege ferenda*. This may help to weaken the impermeability , which has existed until now, of legally unaccountable "clubs" in the international landscape.[92] Additionally, violators will know that they may face lawful sanctions and other responses in other legal systems or even from different actors.

To prevent legal systems from denying a minimum global protection of human rights, the acknowledgment of GLGs will counter forum-shopping or race-to-the-bottom competitions between domestic legislatures,[93] an unfortunate reality in today's world resulting from the pressure of economic and other interests. This will be achieved due to the fact that the interaction of domestic law with other legal systems, based on the existence of common foundations which exert influence on those systems and legal practice due to socio-legal processes, will tend to make sure that there are mechanisms in at least some legal systems that can be resorted to to request the protection of minimum guarantees common to the global socio-legal space.

GLGs will thus help to reduce the exclusion of some victims from legal protection. In fact, existing exclusions of victims are already unlawful: The principles of equality and non-discrimination belong to *jus cogens*,[94] and a differentiation of victims that does not offer reasonable protection to some of them based on the nature of the offender or the place where the violation took place is to be deemed disproportionate and unjustified.[95] For these reasons, GLGs will contribute to the effectiveness of the norms and trends acting in furtherance of the eradication of impunity.[96] At the same time, GLGs counter the exclusion of participants from the legal realm.[97]

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[92] *See* Lavenex, *supra* note 1, at 373, 387-388.

[93] *See* Reinisch, *supra* note 1, at 54-55.

[94] Inter-American Court of Human Rights, Advisory Opinion OC-18/03, *Juridical Condition and Rights of the Undocumented Migrants*, September 17, 2003, paras. 97-101.

[95] *See* Jessica Almqvist, *Facing the Victims in the Global Fight Against Terrorism*, Working Paper 18, FRIDE, 10-17 (2006).

[96] *See* the Preamble of the Rome Statute of the International Criminal Court; Vienna Declaration and Programme of Action, World Conference on Human Rights, A/CONF.157/23, 12 July 1993, pars. II.60, II.91; de Than & Edwin Shorts, *supra* note 61, at 12-13. It must be noted that there is a trend to hold every actor who violates principles considered important by the international community accountable. *See* Cortés Martín, *supra* note 79, at 56-58.

[97] About the need of inclusion of participants and the definition of what they are, *see* Noortmann, *supra* note 9, at 62-63; Meron, *supra* note 78, at 317; Nijman, *supra* note 23, at 138-139.

Another effect of GLGs, hinted at above, is that they will help to guide legal practice. This is because interpretation of law will have to take GLGs into account, as they embody objects and goals of various legal systems and constitute relevant complementary legislation.[98] After all, norms are to be interpreted taking into account their purposes *and* the *corpus juris* of the legal system in which they are included:[99] If the protection of human beings as the ultimate beneficiaries of norms is a goal of the law as a whole, and, in consequence, of its particular norms, this protection exerts influence on any interpretation by virtue of it being a purpose to consider and because it is embedded in the legal systems themselves.

In consequence, these principles condition the interpretation and coordination of legal systems, while at the same time ensuring the respect of rights and norms promoting human dignity.

Upholding human dignity, a common foundation of legal systems, thus constitutes a criterion for interpreting and determining the outcome of the application of law that can help to coordinate the different legal systems and legal actors that interact in a global legal space. This interpretative effect is reinforced by the inclusion of some general principles, such as the *pro homine* principle, which requires the election of the norm or interpretation most favorable to human dignity,[100] or the principle of effectiveness (*effet utile*) of rights that seeks to make sure that they are protected effectively in practice and in relation to other norms.

Some time ago, international law relied heavily on custom, given the lack of formality and institutional frameworks.[101] With the emergence of institutionalization and the generalization of treaty-making, this situation changed. Likewise, the current stage of global law is prone to change as legal practice evolves.

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[98] It is important to note that the purpose of a norm, its context, and complementary legislation are to be considered when interpreting it. *See* Article 31 of the Vienna Convention on the Law of the Treaties, 1969.

[99] Jurisprudence has interpreted international norms by bearing in mind the legal system in which they are located. See Inter-American Court of Human Rights, Advisory Opinion OC-17/2002, *Juridical Condition and Human Rights of the Child*, August 28, 2002, at paras. 23-24; European Court of Human Rights, Grand Chamber Decision as to the Admissibility of Application no. 71412/01 and Application no. 78166/01, 2 May 2007, at para. 122.

[100] See Articles 5 of the International Covenant on Civil and Political Rights, 5 of the International Covenant on Economic, Social and Cultural Rights, 29 of the American Convention on Human Rights, and 53 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; Álvaro Francisco Amaya Villarreal, *supra* note 55, at 356, 361, 374-375 (2005).

[101] *See* JOSÉ PASTOR RIDRUEJO, CURSO DE DERECHO INTERNACIONAL PÚBLICO Y ORGANIZACIONES INTERNACIONALES (Course of International Law and Organizations) 65-67 (2008).

This means that, while in the current, nascent phase, shared and tacitly agreed-upon global norms are the minimum, the interactive nature of this reality, in which the tools of one legal system complement and influence each other, permits legal systems to assimilate the institutions of other legal systems through practice and to generate new common understandings. Judges play an important role in this regard because they may take notice of decisions adopted within other legal systems and incorporate their reasoning, or exert influence in the formation of norms in other legal systems, such as the international one.[102]

This reflects the complementariness and interaction between different legal levels and their respective agents that is necessary in order to further and uphold common global principles of mutual concern. Additionally, legislative bodies may adopt or give effect to norms from other normative and legal systems, even from non-state norms and regulation.[103]

Because of this, it is not only the coinciding values and goals found in the common set of norms and principles inherent to all international, domestic, and transnational law that constitute the global interests that embody the GLGs; it is also the purposes of the rules expressly or implicitly found in any one of those legal systems, which are then taken into account by the remaining legal orders, depending upon their degrees of influence.

This implies that we have to be careful when analyzing humanitarian legal goods by remembering that, for instance, transnational actors have made commitments to uphold and to respect human dignity, but also that civil society and the public pressures those actors to do so. Additionally, we must remember that domestic laws which fail to implement some of those principles are regarded as unfair and illegitimate by a growing global public (opinion),[104] and that conversely, on other occasions, domestic norms and local rules give effect to internationally recognized minimum standards through laws dealing with transnational litigation[105] or universal jurisdiction.[106] At the same time, in

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[102] *See* Bianchi, *supra* note 14, at 185, 194-197; Francesco Francioni, *International Law as a Common Language for National Courts*, 36 TEXAS INT'L L. J. 589-590 (2001); Eyal Benvenisti, *Reclaiming Democracy: The Strategic Uses of Foreign and International Law by National Courts*, (102) AMER. J. OF INT'L L. 248 (2008).

[103] The International Organization for Standardization (ISO), for example, is a Non-Governmental Organization, and its standards can be taken into account in the context of the World Trade Organization (WTO). *See* Kingsbury, *supra* note 23, at 36-37; ISO, *ISO in Brief: International Standards for a Sustainable World*, available at: http://www.iso.org/iso/isoinbrief_2008.pdf (last accessed: 16 June 2012).

[104] About (global) public opinion (or civil society), its problems and features, *see* Andrea Bianchi, *supra* note 14, at 200-202; Halliday, *supra* note 10, at 34.

[105] *See*, for example, the Alien Tort Claims Act (ATCA) of the United States, which has been applied even against actions of non-state actors committed abroad. Regarding this Act, *see* Mireia Martínez Barrabés, *La responsabilidad civil de las corporaciones por violación de los derechos humanos: Un análisis del Caso Unocal* (The liability of corporations for violation of human rights: An analysis of Unocal Case), *in* LA INCIDENCIA DE LA MUNDIALIZACIÓN EN LA FORMACIÓN Y APLICACIÓN DEL DERECHO INTERNACIONAL PÚBLICO: LOS ACTORES NO ESTATALES: PONENCIAS

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practice, domestic authorities find a "common" language in international law,[107] and this helps to create common understandings.

This interaction of legal institutions may lead to implied agreements and processes of internalization and "acculturation,"[108] complemented by a psychological and moral persuasion[109] of key actors to believe in the legal value of humanitarian aspects of global law.

Given their importance, it is worth examining international peremptory norms that reflect humanitarian GLGs by protecting human dignity.[110] The strength of such norms derives from the fact that besides depriving hierarchically inferior international norms of their effects and conditioning the validity of both procedural and substantive dimensions of international dispositive norms upon the observance of *jus cogens*,[111] they exert influence over domestic norms by way of legitimizing or delegitimizing them on the international level and depriving them of effects if they are contrary to the international peremptory

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Y ESTUDIOS (The impact of globalization on the formation and implementation of Public International Law: Non-state actors: Papers and studies) 232-248 (Victoria Abellán Honrubia & Jordi Bonet Pérez (trs.), 2008). About ATCA and other domestic norms that may bind non-state actors or even be applied extraterritorially, *see* Reinisch, *supra* note 1, at 55-58.

[106] About this phenomenon, *see* Reinisch, *supra* note 1, at 55-60; Gómez Isa, *supra* note 38, at 46-47.

[107] See Francioni, *supra* note 102, at 588, 598.

[108] About the process of acculturation, *see* Goodman & Jinks, *supra* note 54, at 726-728. On internalization, *see* Koh, *supra* note 6, at 2645-2646, 2649-2651, 2656-2659.

[109] In practice, several factors interact simultaneously, and only by taking all of them into account, as well as their respective impacts, is it possible to understand the motivation and reasons for compliance. *See* Goodman & Jinks, *supra* note 54, at 727, 731; Koh, *supra* note 6.

[110] On different methods of identifying which norms that protect human dignity belong to *jus cogens*, and the recognition of some of those norms, *see* ANTONIO GÓMEZ ROBLEDO, EL IUS COGENS INTERNACIONAL, ESTUDIO HISTÓRICO-CRÍTICO (The ius cogens: A historical-critical study) 169-170 2003; Criddle & Fox-Decent, *supra* note 88, at 339-340, 352, 364, 368-369; Inter-American Court of Human Rights, Advisory Opinion OC-18/03, *Juridical Condition and Rights of the Undocumented Migrants*, September 17, 2003, paras. 97-101; International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, *Prosecutor v. Anto Furundzija*, Judgement, 10 December 1998, paras. 153-155; Lee Caplan, *State Immunity, Human Rights, and Jus Cogens: A Critique of the Normative Hierarchy Theory*, 97 AMER. J OF INT'L L. 742, 772 (2003).

[111] Kerstin Bartsch & Björn Elberling, *Jus Cogens vs. State Immunity, Round Two: The Decision of the European Court of Human Rights in the Kalogeropoulou et al. v. Greece and Germany Decision*, 4(5) GERM. L. J. 485-488 (2003); Nicolás Carrillo Santarelli, *La inevitable supremacía del ius cogens frente a la inmunidad jurisdiccional de los Estados* (The inevitable supremacy of jus cogens against the jurisdictional immunity of States), 18 REVISTA JURÍDICA DE LA UNIVERSIDAD AUTÓNOMA DE MADRID 74-76 (2009).

norms' *content*.[112] Additionally, references to the respect of international law in domestic norms should be construed so as to include the effects of the prevalence of peremptory norms, thus causing the deprivation of effect to norms that are contrary to *jus cogens* on the domestic level.[113]

It could be asserted that there is an implicit, negative duty for every actor that can potentially affect *jus cogens* in a negative way, according to which the actor must refrain from doing so; and that some actors have an obligation to promote and protect peremptory law in certain cases,[114] an assertion based on the minimum peremptory purposes of the international society. Implied negative and positive obligations are plausible, given that peremptory norms are obligatory irrespective of the consent or will of the actors bound by them. The implied negative duty to abide by the content of *jus cogens* flows from the imperative nature of those norms and the principle of effectiveness, according to which it can be considered that only by binding every potential violator and preventing every possible trespass can *jus cogens* norms be expected to be fully and effectively protected.

Notice that I alluded to the *content* of peremptory international norms: This is because they operate at the *international* level. In order to have peremptory effects, *jus cogens* norms must overcome boundaries of public-private dimensions of law or those related to the national, private, or international levels of normative systems, rather than just calling for the incorporation of their content into another legal system, which is a contingent operation that may have a limited impact. The best way to make sure that the peremptory international norms coordinate and prevent gaps, unaccountability, and impunity is by

[112] This power of depriving contrary norms of effects that occurs in the international legal plane is one aspect of *jus cogens*—whose application is therefore neither limited to the field of the law of treaties nor to the generation of nullity and termination of contrary norms. About this, see International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, *Prosecutor v. Anto Furundzija*, Judgement, 10 December 1998, par. 155; *See* Carrillo Santarelli, *supra* note 111, at 61-63.

[113] Domestic legal systems that incorporate peremptory norms in an implicit or explicit manner may accommodate the same effects that peremptory norms have in the international level. Additionally, the powerful expressive function of *jus cogens* is of no little consequence. *SEE* NICOLÁS CARRILLO SANTARELLI, LOS RETOS DEL DERECHO DE GENTES -IUS COGENS- 188-196, 210-216, 229-236, 243, 245 (2007).

[114] Just like International Organizations may have implied powers or functions *necessary* for accomplishing their goals and performing their functions, the goal of the international community as a whole of preserving and protecting peremptory norms, along with the absolute and unconditional prevalence of such norms in practice, binds every actor on the global scene to their respect, because otherwise the goals of the community would be impracticable, making it thus *necessary* to bind every potential perpetrator. About implied powers of International Organizations, *see* Cortés Martín, *supra* note 79, at 30, 37, 132-133; José Pastor Ridruejo, *Curso de Derecho International Público y Organizaciones Internacionales* (Course of Public International Law and International Organizations) 672-673 (2003). On the effects of *jus cogens* regarding their prevalence over possible outcomes contrary to them, *see* Nicolás Carrillo Santarelli, *supra* note 111.

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transplanting their content into norms of a global-transnational nature. In other words: The international prevalence must be transformed into a global legal prevalence, common to every legal system, and this could be achieved by the interaction between legal systems and referrals to international law from other legal systems.

While some have argued that is difficult to ascertaining which norms have a peremptory nature,[115] there are mechanisms to identify them.[116] In fact, international bodies have signaled some of these norms to the international society.[117] Additionally, the benefits of having such norms far outweigh their inconveniencies, as a dearth of those norms would risk endorsing dangerous viewpoints, which if accepted would render limitless the will of the subjects that these norms attempt to address. This is especially important considering the possibility of binding every potential perpetrator by implied obligations.

Only by binding every *participant* that interacts in a global legal space, irrespective of the doctrinal recognition of the participant as a legal person or not, can those hierarchical superior norms be deemed to be fully effective.

The introduction of humanitarian GLGs, which are not limited to the interests protected by peremptory law or to those protected by the so-called "civil and political" rights, is a pressing need given the needs of the less fortunate in the current global landscape. This is made more pressing when one considers the importance of tackling the roots of the problems faced by human beings around the world—poverty, lack of access to education, hunger, famine, [118] etc.[119]

Because GLGs are binding in every domestic legal system that interacts in the global space, and because they highlight positive obligations and mandates for the protection of human dignity, they create duties to address causes of human suffering that lead to rights violations. As a consequence, it is important that states, and in some cases international organizations and other entities, have guarantor positions and correlative obligations in the protection of human dignity as a result of the expectations placed upon them, their

[115] See Caplan, *supra* note 110, at 772.

[116] *See supra*, footnote 110.

[117] *Id.*

[118] *See* Food and Agriculture Organization of the United Nations, *The State of Food Insecurity in the World: Economic crises – impacts and lessons learned*, Rome, 2009, Key messages (heading).

[119] See United Nations, *A more secure world: Our shared responsibility, Report of the High Level Panel on Threats, Challenges and Change*, A/59/565, 2 December 2004, paras. 21, 22, 27, 45, 145, and 148.

functions, or their role in the factual needs of protecting human rights, especially those of vulnerable individuals.[120]

This can be accommodated in legal systems given the legal principles related to the protection of potential victims, and must lead to the acknowledgement that non-state actors can be bound by both negative *and* positive duties. The underlying rationale for the existence of both duties is the protection of GLGs by means of protecting common global norms from all potential entities involved in their violation by action or inaction. Those obligations are also justified by the need to ensure the enjoyment of the rights and guarantees they convey under international, global, and even some domestic legal systems. This is necessary because both non-state entities and states alike may have certain functions or competences that enable them, and at the same time require them, to abide by such obligations to promote and protect human dignity.

Additionally, in order to heighten the legitimacy of GLGs, one must take into account the criteria of procedural legitimacy, material justice or fairness,[121] accountability and democracy,[122] and the requirement of legal publicness.[123] After all, if concepts of law entail both political and theoretical dimensions,[124] the shaping of a system of law in a global age characterized by interactions among legal systems and actors must ensure the promotion and protection of human dignity through public, participatory, and transparent mechanisms, which ought to guide governance in the global world.

In spite of the benefits of GLGs, some mechanisms and principles must guide the way in which they are applied, lest chaos and uncertainty threaten the legitimacy of the concepts defended herein. To these aspects we turn in the next subsection.

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[120] On these factors, applied to the examination of State behavior, but in my opinion equally applicable to the supervision of non-state entities, see Inter-American Court of Human Rights, *Case of the Pueblo Bello Massacre v. Colombia*, Judgment of January 31, 2006 (Merits, Reparations and Costs), paras. 125-126.

[121] About these notions, *see* Koh, *supra* note 6, at 2641-2644; FRANCK, *supra* note 34, at 3-24 (I must mention that while I find Franck's insight on the distinction between legitimacy and material or substantive justice fascinating, I disagree with his conception of the latter, which to my mind may have more ethical aspects).

[122] *See* Lavenex, *supra* note 1, at 371, 386-389.

[123] *See* Kingsbury, *supra* note 23, at 30-33, 55.

[124] *Id.* at 57.

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E. The necessity of humanitarian global legal goods for proper protection dynamics

An integral and adequate protection of human beings against all threats cannot be achieved without cooperation,[125] complementarity, coordination,[126] and, especially, normative and strategic joint action for the purpose of constructing beliefs and commitments for the protection of human dignity,[127] all based on the existence of binding explicit or implicit duties. Collaboration is of the utmost importance, because isolated legal tools and initiatives from different legal systems, on their own, may be insufficient and suffer problems. Legal tools and initiatives from different legal systems, inadequate in isolation, must be complemented by actors and measures from other legal systems interacting in a global legal space in order to reinforce and strengthen the pursuit and protection of GLGs.

In this regard, for example, even though voluntary "codes of conduct" are important complementary measures, the existence of dignity-derived guarantees and legal obligations of non-state actors—express, implicit, or inherent—demand the development of remedies and the legal certainty of the existence of responsibility, which is important for the victims—direct and indirect, actual and potential—to feel that the law takes them into account and entitles them to denounce any violations against them. Otherwise, merely voluntary declarations and non-binding codes of conduct may help non-state entities in crafting their public image[128] (as propaganda instruments in some cases) and even to divert attention away from their conduct—even if objectionable from a human rights standpoint. Even if this proves not to be the case, *lex privata* mechanisms and instruments (normative components issued by private entities) may suffer from shortcomings, such as the absence of reliable procedural mechanisms to formally request supervision for compliance with regulations—especially given their non-binding character, or, if binding from the perspective of private entities, the lack of proper remedies. For this reason, actions of authorities from the international or domestic legal systems—such as judges—may fill the gaps left by those deficits by checking non-state behavior in other ways.[129]

Likewise, the action of other private entities may reinforce the protection of GLGs through other mechanisms—even non-judicial mechanisms.[130] In this regard, it must be borne in

[125] Cooperation is an important element in the production of global *public* goods, too. *See* Kaul, Conceiçao, Le Goulven & Mendoza, *supra* note 17, at 48.

[126] *See* Lavenex, *supra* note 1, at 383.

[127] *See* Lavenex, *supra* note 1, at 389-391; Halliday, *supra* note 10, at 34-37; Koh, *supra* note 6, at 2633-2644.

[128] *See* Reinisch, *supra* note 1, at 53; Gatto, *supra* note 19, at 431.

[129] *See* Eyal Benvenisti & George Downs, *National Courts Review of Transnational Private Regulation*, Working paper, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1742452 (last accessed: 16 June 2012).

[130] *Id.* at 4-5.

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mind that codes of conduct and instruments issued by private actors tend to offer no foreseeable safe protection, for they lack a means of redress, and the possibility that the whim of the offender may allow it to elude repairing caused injuries is far from the minimum protection standards that must be offered to human beings. If actors benefit from the social landscape, they must act imperatively to redress any damage or injury caused by their contact with others in the social landscape. Similarly, domestic authorities may act based on interests unique to their states, even of a selfish nationalistic nature—more on this shortly—whereas "international" authorities may act based on biasor seek to impose their will in spite of legitimate domestic decisions, ignoring a proper allocation of powers and law-making capacities in different levels of governance, thus ignoring legitimate decisions made in other levels of governance. On the other hand, international authoritiesmay lack resources required to properly protect GLGs. For this reason "international" authorities may rely on the indispensable cooperation of domestic authorities, with non-state cooperation playing a crucial role as well.[131]

F. Complementarity and interaction of actors and normative systems in the promotion of global legal goods

Actors and legal systems complement and reinforce each other in the protection of global legal goods based on the common existence of normative elements and contents that protect GLGs for all of them. Additionally, actors and legal systems may complement and fill the gaps of the remaining legal systems—overcoming the shortcomings of each—in accordance with simultaneous, subsidiary, and joint approaches, each having its own place, as will be explained in this section.

The three forms of interplay, i.e. *coordination, cooperation, and normative strategies*, are to be understood in all their dimensions: Among states,[132] among legal systems, and

[131] Abstract discussions of issues of resources available to domestic authorities in comparison with those at the disposal of international ones, commented on before, are not merely theoretical, as can be seen in a "Statement issued by the President of the European Court of Human Rights concerning Requests for Interim Measures (Rule 39 of the Rules of the Court), available at: http://www.echr.coe.int/NR/rdonlyres/B76DC4F5-5A09-472B-802C-07B4150BF36D/0/20110211_ART_39_Statement_EN.pdf (last accessed: 16 June 2012), where the President asks both lawyers and applicants to behave responsibly and diligently, and State authorities to cooperate in the protection of human rights, hinting how, after all, there can be said to exist a global single framework of protection in which both national and international authorities and mechanisms are included, and interact mutually, which shows how a global legal space dismisses formal separations as highly artificial in a world of interdependencies, *interactions and common goals and normative contents.* It is to be noted that the President of the Court addressed both States *and* non-state entities—applicants, representatives and legal practitioners. Moreover, on the cooperation of national authorities and non-state actors, *see* Buergenthal, *supra* note 38, at 804-806; Pérez-Prat Durbán, *supra* note 21.

[132] *See* Nijman, *supra* note 23, at 132-133; Lavenex, *supra* note 1, at 383.

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among actors,[133] taking advantage of the opportunities offered by the global landscape.[134] The coordinated, joint, and orderly action by several actors employing the mechanisms available under several interacting legal systems is essential for the protection of common legal interests and values of global legal goods.

This global context is shaped by and composed of multiple actors, who exert pressure over the content and implementation of law,[135] each clamoring for greater inclusion and participation in legal systems. The contribution of these actors is relevant for the effective application of humanitarian legal goods in the international level.[136] States or international organizations alone, acting independently, cannot be expected to provide a complete and effective protection of human dignity,[137] which explains why the cooperation, contribution, or commitment of a variety of other actors, ranging from NGOs to corporations, is required to further GLGs. In this context, non-state-with-non-state and state-with-non-state partnerships must be encouraged[138] in order to strengthen legal guarantees.

Besides the required interplay of multiple participants in the global context, an interaction between different legal mechanisms in an organized manner is required to fill existing gaps and vulnerabilities. This contact is related to the dynamics of inter-level governance in a multi-level framework,[139] such as complementarity or subsidiarity, that arrange the interaction and phases in which different legal levels try to tackle certain problems.

Usually, under international law, this organization is arranged in the form of stages, the first of which corresponds to the domestic plane. When the agents of domestic governments are unable or unwilling to apply national norms due to their inadequacy, non-existence, lack of political will to enforce them, or incapacity to do so,[140] international law is called upon.

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[133] *See* Nijman, *supra* note 23, at 133; *See* Kaul, Conceiçao, Le Goulven & Mendoza, *supra* note 17, at 42.

[134] *See* Annan, *supra* note 64, at iii-iv.

[135] *See* Pérez-Prat Durbán, *supra* note 21.

[136] *See* Buergenthal, supra note 38, at 804; Bianchi, *supra* note 14, at 189-190.

[137] Similarly, it has been pointed out that the participation of non-state actors is, and throughout history has been, crucial for the effective provision of global public goods. On this, *See* Kaul, Conceiçao, Le Goulven & Mendoza, *supra* note 16, at 9-10, 13-14, 16; MEGHNAD DESAI, PUBLIC GOODS: A HISTORICAL PERSPECTIVE, PROVIDING GLOBAL PUBLIC GOODS 63 (2003).

[138] *See* Kingsbury, Krisch & Stewart, *supra* note 2, at 22; Kingsbury, *supra* note 23, at 25; DAPHNÉ JOSSELIN & WILLIAM WALLACE, NON-STATE ACTORS IN WORLD POLITICS: A FRAMEWORK, IN NON-STATE ACTORS IN WORLD POLITICS 9 (Daphné Josselin & William Wallace eds., 2001).

[139] *See* Peters, *supra* note 22, at 535-536.

[140] See the principles of complementarity, subsidiarity, effectiveness of remedies, and the related figure of the exhaustion of domestic remedies, in Articles 17 of the Rome Statute of the International Criminal Court, 2.3 of the

However, tough political and other questions underlie the idea of whether mechanisms of subsidiarity should always be applied, i.e. whether a successive series of steps through different organizational levels is necessarily the proper answer, given the debates about democratic and fair allocations of power and decision-making, and about whether local or international authorities are better suited to deal with certain issues.[141] This is because domestic authorities may be unwilling or unable to deal with certain issues, or alternatively, because international entities may in practice try to impose the ideology and bias of their officers upon domestic authorities in an illegitimate manner. Both authorities must in turn respect fundamental rights of non-state entities.

It may be considered that there are no definitive answers to the previous questions, and that sometimes, local authorities are better suited to tackle certain issues than others. This cannot be said in other situations, however—particularly in those where local authorities attach greater importance to domestic interests over global considerations that may sometimes prove to be more important. Nonetheless, local decisions may have an impact outside the territory of a State,[142] which makes it necessary to have a system that is able to ensure protection of human beings from different countries. This can be made possible by making sure that domestic decisions may be revised and additionally that remedies exist when domestic ones are too burdensome, inadequate, ineffective, or non-existent,[143] following the subsidiarity logic and, additionally, the famous principle "*quod omnes tangit ab omnibus approbetu"* according to which "what affects all must be approved by all."[144]

International Covenant on Civil and Political Rights, 2 of the Optional Protocol to the International Covenant on Civil and Political Rights, or 25 and 46 of the American Convention on Human Rights, among others. Additionally, see Inter-American Court of Human Rights, *Case of Ivcher-Bronstein* v. *Peru*, Judgment of February 6, 2001, Merits, Reparations and Costs, paras. 135-137; Inter-American Court of Human Rights, *Case of Las Palmeras* v. *Colombia*, Judgment of December 6, 2001, Merits, paras. 58, 60.

[141] *See* JOHN JACKSON, SOVEREIGNTY, THE WTO, AND CHANGING FUNDAMENTALS OF INTERNATIONAL LAW 73-76 (2006); Domingo, *supra* note 42, at 217.

[142] In fact, increasingly measures taken within a State affect actors formally outside its legal system. S*ee* Kingsbury, Krisch & Stewart, *supra* note 2, at 5; Kaul & Mendoza, *supra* note 2, at 95, 107.

[143] For these reasons, the exhaustion of domestic remedies is not required in order to resort to international remedies when domestic remedies are ineffective, inadequate, too burdensome, or access to them is extremely difficult. *See* European Court of Human Rights, *Case of Opuz v. Turkey*, Application no. 33401/02, Judgment, 9 June 2009, paras. 112, 116, 127, 152-153, 159, 175, 201; Inter-American Court of Human Rights, Advisory Opinion OC-11/90, *Exceptions to the Exhaustion of Domestic Remedies*, August 10, 1990, pars. 31, 35; Article 15 of the Draft Articles on Diplomatic Protection, 2006. As a consequence, international remedies are often truly the "last hope" of victims. *See* the Concurring Opinion of Judge Cançado Trindade, *supra* note 22, at para. 35.

[144] On these issues, *see* Domingo, *supra* note 42, at 204-208, 217.

Another aspect related to multi-level frameworks, in a global and somewhat "neomonist" context,[145] has to do with the lesser resources currently available to international bodies when compared to those at the disposal of many—but not all—national authorities.[146] Therefore, the contribution and participation of national authorities in the promotion of GLGs is essential.[147] This is because of their closeness to the people and the immediacy with which they can address situations that need to be examined.

Because of the greater availability of means and resources to domestic organs, a proposal in favor of a more encompassing jurisdiction in both civil and criminal cases could be made with the purpose of making available more remedies to victims who have not been fully and effectively repaired under the legal system of a given state.[148] This proposal will, if implemented, create a situation where human beings will have more legal resources available to protect their essential rights and, *simultaneously*, offer states the opportunity to remedy the situation as they have the ability to examine the issue, *before* that case can be supervised in a supranational level, by virtue of it being seized by one of its authorities.[149] This highlights how all levels of decision and action in the protection of human rights are both connected with each other and yet are relevant in and of themselves. Hence, the duty of competent states and other authorities to investigate violations of dignity-derived rights is to be stressed.

When analyzing domestic remedies, one must note that if a given domestic remedy provided by the state is ineffective, inaccessible, or exhausted, and a violation persists, or if urgent action in the international domain is warranted so that the exhaustion of domestic remedies is not required, then victims, both actual and potential, ought to have access to the "last hope" of the international level.[150]

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[145] *See* Koh, *supra* note 6, at 2646, 2649-2650.

[146] *See* John Knox*, Horizontal Human Rights Law*, AMER. J. OF INT'L L. 2, 19, 44 (2008); Alicia Cebada Romero & Rainer Nickel, *El Tribunal Europeo de Derechos Humanos en una Europa Asimétrica: ¿Hacia el Pluralismo Constitucional?* (The European Court of Human Rights in an Asymmetric Europe: Towards Constitutional Pluralism?) 1-2, 9-10, available at: http://www.jura.uni-frankfurt.de/l_Personal/wiss_Ass/nickel/Publikationen/Cebada_y_Nickel_ECHR_and_constitutional_pluralism_Sevilla_final.pdf (last accessed: 16 June 2012).

[147] *See* Buergenthal, *supra* note 38, at 804-806; Reinisch, *supra* note 1, at 88-89; Knox, *supra* note 146, at 44.

[148] *See* Marta Requejo Isidro, *Transnational Human Rights Claims y acceso a la jurisdicción civil en Europa* (Transnational Human Rights Claims and access to civil courts in Europe), 27(11) REVISTA DE DERECHO COMUNITARIO EUROPEO 514-517, 521, 540-541 (2007).

[149] *See* European Court of Human Rights, Fourth Section, *Case of Hajduová v. Slovakia*, Judgment of 30 November 2010, para. 36.

[150] *See supra*, the content of footnote 143.

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Note that not every violation of humanitarian global legal goods is to be addressed at the international level. This is important given the few resources available at the international level, where the logic of "cooperation" largely prevails. However, one could apply the subjective approach to global legal goods to find that only serious violations—e.g. those violations of *jus cogens*, or of international criminal law—or violations where a non-state violator acts with authority over individuals, replacing or acting in a way similar to the state, always warrant international remedies.

Nonetheless, in order to preserve the rights to equality and non-discrimination held by victims of non-state actors in comparison to victims of state actors, alternative effective remedies must always be granted. In the end, a disaggregated analysis shows that the contingent constructs called states, like other actors—including non-state actors—ultimately operate through individuals.[151] Yet, the substantive acknowledgment of the violation permits authorities and non-state actors promoting human dignity based on simultaneous protection to grant protection, and appeals to them to devise ways in which that protection can be granted. This is given the legal goal of protecting global legal goods present in the authorities' internal legal system alongside others—as demanded by a teleological criterion, present for instance in Article 31 of the Vienna Convention on the Law of Treaties and in domestic legal systems.

This substantive acknowledgement also makes victims—potential and actual—feel that their interests and dignity are taken into account by law, and makes them conscious of the fact that they can demand legal protection, or resort to activism backed by legal goods, which can have an expressive or symbolic function as well.[152]

In any case, in the current global legal space, structures based on successive levels[153]—international and internal—are to be *complemented* by systems of simultaneous and complementary joint legal action when it comes to *non-state lex privata* (in my opinion improperly called global law).[154] Instead of *succession*, the ideal strategy and framework of

[151] See the Judgment of the International Military Tribunal for the Trial of German Major War Criminals, where it was considered that "Crimes against international law are committed by men, not by abstract entities [States], and only by punishing individuals who commit such crimes can the provisions of international law be enforced."

[152] On this function, *see* Goodman & Jinks, *supra* note 53, at 735; Mauricio García Villegas, *De qué manera se puede decir que la Constitución es importante* (How it can be said that the consitution is important), *in* DOCE ENSAYOS SOBRE LA NUEVA CONSTITUCIÓN (12 Essays on the New Constitution) 40 (Álvarez Jaramillo *et al.*, 1991).

[153] *See* Peters, *supra* note 22, at 535; According to Joel P. Trachtman, the principle of subsidiarity can be understood as entailing doing "at the state level what is best done at the state level, and . . . at the international level what is better done at the international level." Available at: http://www.globallawbooks.org/reviews/detail.asp?id=627 (last accessed: 16 June 2012), JOEL TRACHTMAN, REVIEW OF ERIC A. POSNER: THE PERILS OF GLOBAL LEGALISM (2009).

[154] It has been suggested that non-state actors can develop legal norms outside the frameworks of domestic and international law, due to reiterative processes by which behaviors are labeled as legal or illegal, during the course

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relationships between non-state global law and international or domestic law is one of *simultaneity*, and joint actions directed towards the protection of human dignity, in which private non-state pressure and action complements that of inter-governmental organizations and states.

In this fashion, non-state entities may exert pressure in the form of, for example, denouncements, calls for behavior modification, or reports. Claims of violations of human dignity issued by actors other than states—such as NGOs—should reinforce actions adopted within domestic or international bodies. In fact, many non-state actors intend, among other things, to influence the outcomes of state and inter-governmental policies and actions. Additionally, non-state actors employ *shaming* techniques against other non-state actors.[155]

In the light of the above, by stressing the idea that legal systems are intertwined and have underlying common goals, the procedural dimension of the protection of global legal goods *should* foster the contribution of multiple systems and actors, both by taking advantage of their strengths and complementariness and by adopting *multi-level and simultaneity-based strategies.*

As a result, domestic courts and authorities in all levels of governance ought to give effect to common global standards acknowledging a truly comprehensive *universal* jurisdiction concerning *ratione materiae*, *ratione loci*, and *ratione personae* bases. This would entail a thoroughly universal jurisdiction encompassing: The (1) territorial scope of jurisdiction, leaving no place in the world without a common minimum protection of human dignity; (2) substantive legal issues that can be analyzed, given their connection with the protection of human dignity; and (3) offenders whose behavior can be judged, all with the aim of granting a more complete protection to human beings by eliminating impunity. This can

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of processes of hierarchization, temporalization and externalization. About this, *see* Gunther Teubner, *'Global Bukowina': Legal Pluralism in the World Society*, in GLOBAL LAW WITHOUT A STATE 12-19 (Günther Teubner ed., 1997); Kingsbury, *supra* note 23, at 52-55; Domingo, *supra* note 42, at 108, 159. Denominating as *global* law the regulations emanating from private entities without reference to State-sponsored legal systems is not wholly accurate because, even if their taking place is reinforced in a global context, alluding to something as global is reminiscent of an all-encompassing category, and therefore "global *law*" ought to surpass what just private entities regulate by equally including other entities, such as public actors. Therefore, I agree with Rafael Domingo's suggested label of *lex privata.* Apart from terminological matters, however, both theories offer interesting insights. Note that *lex privata* is not a phenomenon exclusively present in the business field, but that is also experienced by non-state entities that strive or pretend to promote altruistic interests, as explained in Andrea Bianchi, op. cit. Henceforth, *lex privata* manifestations can counter negative regulations of other private actors that do not rely on the support of publicly endorsed law.

[155] *See* Halliday, *supra* note 10, at 29; Thürer, *supra* note 18, at 44-46; Pérez-Prat Durbán, *supra* note 21, at 22-23; Buergenthal, *supra* note 38, at 804; Bianchi, *supra* note 14, at 188- 191; Math Noortmann, Bas Arts & Bob Reinalda, The Quest for Unity in Empirical and Conceptual Complexity, *in* NON-STATE ACTORS IN INTERNATIONAL RELATIONS 301-302 (Arts, B. *et. al.* eds., 2001).

be made possible by virtue of properly interpreting and applying civil, criminal, or other norms, which will permit and encourage non-state actors to denounce existing violations and promote a reinforced protection of human dignity, while holding those and other actors accountable for violating GLGs.

In order to keep humanity as the center and cornerstone of law one must employ disaggregated approaches when analyzing state and other group entities.[156] Furthermore, domestic authorities should recognize that they can and ought to act in the name of the community dimension of global society.[157] This extension is the foundation for the prosecution of violations of GLGs by means of universal civil or criminal jurisdiction, or by mechanisms such as the *aut dedere aut judicare/aut punire* principle.[158]

Norms regulating the consequences of breaches, common principles, and rules dealing with the legal consequences triggered by breaches of humanitarian legal goods are part of the common standards protecting global legal goods. One such standard, besides the mechanisms of multi-level and reinforced, complementary protection of GLGs, is the principle that any breach of the content of norms that guarantee GLGs committed by a material violator incurs a duty to repair any damages caused by the breach. This principle also applies to all those who cooperated or participated in the offense, in light of the importance of the global legal goods and the common humanitarian foundations and purposes of law. This duty of repair flows from the general principle of law—found throughout domestic legal systems—of responsibility of an entity to whom the causation of an injury can be attributed. This acknowledges that all actual or potential threats to human dignity are legally relevant facts.

Regarding the way in which GLGs work and the legal implications of their dimensions, it is possible to identify several features:

First, GLGs operate in accordance with several criteria of distribution of complementary competences and allocation of responsibilities. As has been explained, GLGs are protected

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[156] Regarding the disaggregated analysis of State behavior, *see* Posner, *supra* note 70, at 40-41, 71.

[157] *See* Cassese, *supra* note 37, at 220-221, 225-231. Moreover, Humanitarian legal issues have a communitarian dimension that is not denied by the not-so integrated and synergic character of many layers of world relations. The international society can have communitarian traits when it is called to operate guided by solidarity. Therefore, the protection of human dignity is a common endeavor that forms part of the community *layers* of world (global) relations, reinforced by some of its norms being peremptory and generating *erga omnes* obligations. Concerning these issues, *see* MANUEL DÍEZ DE VELASCO, INSTITUCIONES DE DERECHO INTERNACIONAL PÚBLICO 61 (2001).

[158] Concerning this rule, *see* Bantekas & Nash, *supra* note 74, at 9-10. Additionally, *see* Articles 5, 7 and 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 146 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, or 129 of the Geneva Convention relative to the Treatment of Prisoners of War, among others.

in accordance with considerations of subsidiarity *and* simultaneity—protected, that is, by public and private actors via distinct means that mutually reinforce the likelihood of protection without overlapping in philosophy or operation.

Likewise, GLGs are protected by virtue of specialization. Here, specialization means that each legal system or actor carries out its respective functions and has its own mechanisms that may differ from those of other actors. For instance, state, inter-governmental, or supranational entities may seek to promote a culture respectful of dignity, to prevent abuses, to design legislation compatible with GLGs, or to implement other measures that *ex ante* seek to ensure the attainment of the goals of GLGs. While judicial actors seek to protect GLGs *ex post facto*, i.e. after a violation has been found, in order to award reparations, or in a preventative fashion, they remind other entities of their incumbent duties and order them to adopt some measures.

The criterion of specialization leads to a global "social" distribution of work, because each entity will support and reinforce others, regardless of the boundaries of the legal systems, to further the same common global legal good, and is consistent with the consideration that cultural and non-judicial mechanisms are important to protect human dignity.[159] It is further complemented by the possibility of back-up support, where one same legal tool or mechanism can be potentially employed by several agents to the protection of GLGs and across several legal systems, so that if one of the legal systems fails to implement it effectively, the same tool can be employed in another, interacting legal system, and by another participant, thereby preventing failure to employ a given relevant crucial mechanism of protection.

Secondly, actors can have negative and positive capacities in regard to the protection of humanitarian GLGs. In this sense, they may have duties, which may be positive obligations—to act—or negative obligations, commanding abstaining from acting contrary to GLGs. As to the positive capacities, when actors further GLGs, actors they are to be seen as acting legitimately in order to further global common interests.

Finally, it must be stressed that the current conception of international law lags behind reality for various reasons. The current conception fails to grasp the increasing interactions between multiple actors and legal systems, which creates a risk that the

[159] *See* BRUNO DEMEYERE, STATE'S INNOVATIVE MECHANISMS TO PREVENT CORPORATE HUMAN RIGHTS CRIMES ABROAD: USING 'DUE DILIGENCE' TO COMPLEMENT INTERNATIONAL CRIMINAL LAW'S REGULATORY LEVERAGE, CRIMINAL JURISDICTION 100 YEARS AFTER THE 1907 HAGUE PEACE CONFERENCE, 181-182, 185 (2009); John Ruggie, *Protect, Respect and Remedy: A Framework for Business and Human Rights*, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, 7 April 2008, A/HRC/8/5, paras. 27 through 32; Amartya Sen, *Elements of a Theory of Human Rights*, 32 PHILOSOPHY & PUBLIC AFFAIRS 345 (2004); Reinisch, *supra* note 1, at 53, 67-68, 77; Thürer, *supra* note 18, at 46-47; Reinalda, *supra* note 18, at 13; Clapham & Jerbi, *supra* note 19, at 347-348; Gatto, *supra* note 19, at 431.

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system will never achieve someof its goals, especially those that cannot be fulfilled by isolated initiatives. A normative response through a global legal space that protects those who are victims, and all those who are oppressed in the global social space, is mandatory, and can no longer be justifiably delayed.

It is in the hands of human beings to create the "spiritual" or "emotional" basis of a truly international and global society.[160] Currently, human beings participate in legal systems, including the international one, through various means, such as invoking and claiming their rights, having to abide by criminal or other obligations directly imposed upon them, and acting on various stages both directly and through various entities, including states. States are artificial constructions composed of persons, such as judges, who may be personally convinced of the need to protect a minimum set of legal goods common to humankind under every legal system and against all threats.

In fact, people are multidimensional and may be influenced by more than their supposed internal or domestic interests, especially in an age in which the identities, affiliations, and allegiances of individuals and other actors are varied and change.[161] As Antonio Cassese has highlighted, theories that explain how national authorities can implement international law are especially relevant nowadays, because those authorities may protect interests that are not limited to those of their states and that, given their general scope, may benefit and reach individuals beyond the borders of a single state or a group of states.[162]

That is the case with GLGs, which ought to be protected by the aforementioned national authorities, as mandated by their legal systems, given their interaction with the global legal space. This interaction connects the national authorities with other legal systems, which gives rise to the possibility of changing the legal culture through acting based on the growing awareness of the protection by law of interests common to humankind. This change is necessary, given that we are enmeshed in a system that is still, to a (too) great extent, based on the idea of territorially separate units that tend to favor selfish parochial concerns over those that are common to all human beings.[163]

Yet, the protection of GLGs is not limited by the action that states can undertake in furtherance of this goal. In fact, such action is insufficient given the loopholes of the state system, and the weakness of the states themselves before global phenomena and the powerful actors that operate transnationally. For this reason, it is important to open up the participation of people in the shaping and promotion of global legal goods, because

[160] *See* Andrew Clapham, *The Role of the Individual in International Law*, 21(1) EUR. J. OF INT'L L. 29-30 (2010).

[161] *See supra* footnote 7, among others.

[162] *See* Cassese, *supra* note 37, at 225-231.

[163] In the same sense, *see* Domingo, *supra* note 42, at 174-181.

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people will become aware of the need to promote global legal goods, and given people's chance of impacting their cultures, they will strive to make the cultures of entities they interact with internalize those legal goods. And so, by endorsing the rights of every human being in every corner of the world, those entities that protect those rights, or learn to do so by example, or by social pressure, will further the protection of global legal goods even if they have no direct nexus with the interests of the bodies or entities they participate in. This will lead to the generation of a true belief in the protection of interests common to a society that is not—and has not been—simply international. A new society may emerge in this way—one that is global, with transnational elements and increasing legal and other interactions between various levels of governance and actors. This is a consequence of the need for law to adapt itself to the society it is embedded in, in order for the law to be able to manage that society. This is reminiscent of the theories of Scelle and Jessup, who opted in favor of other terms, such as transnational law or *jus gentium*,[164] which describe more accurately the framework of the legal system we have grown so accustomed to calling international law.

In practice, far from the limitations that may be placed formally by notions of personality and subjectivity that some authors defend, it is undeniable that non-state actors can impact the guarantee of human rights both negatively and positively, and social factors corroborate the fact that states or other actors acting alone are poorly suited to provide a comprehensive protection of human dignity. This refers to a human dignity which, if only protected against states, will be open to violations attributable to non-state actors. These violations have legal relevance given the legal goods violated, which are the cornerstone of the protection framework, rather than on the identification of the identity of certain factual offenders. As a result, the legal system must pay attention to potential abuses—or positive actions—of any actor in regard to global legal goods.[165]

A new understanding of the legal framework for the complete protection of human rights must move beyond overcoming divisions of the roles of relevant actors; it must be understood that the needs of humankind require more than the current understanding of somewhat independent legal systems and actors[166] In the new legal framework, actors

[164] *See* PHILIP JESSUP, TRANSNATIONAL LAW (1956); Koh, *supra* note 6, at 2626; Gómez Robledo, *supra* note 110, at 179.

[165] *See* Nijman, *supra* note 23, at 36, 40.

[166] The effectiveness of norms and the protection of legal goods that have global dimensions is not possible nowadays with the isolated actions of entities or legal systems, as explained in the case of the actions against transnational crime in: Anna Badia Martí, *Cooperación internacional en la lucha contra la delincuencia organizada transnacional* (International cooperation in combating transnational organized crime), *in* LA INCIDENCIA DE LA MUNDIALIZACIÓN EN LA FORMACIÓN Y APLICACIÓN DEL DERECHO INTERNACIONAL PÚBLICO, LOS ACTORES NO ESTATALES: PONENCIAS Y ESTUDIOS (The impact of globalization on the formation and implementation of public international law, non-state actors: Papers and studie) 337-338, 342-343 (Victoria Abellán Honrubia & Jordi Bonet Pérez (Dirs.), 2008).

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and legal systems must contribute and coordinate with each other in furtherance of a common goal, something that is possible, as demonstrated by the increasing contacts and connections among legal systems, and that will generate a sort of global legal landscape. In this framework, the mindset of legal practitioners may be transformed, and even local judges may take up the task of upholding *global* human needs beyond what some selfish, domestic interest-group would desire.

G. Conclusions

The protection offered to human beings in a global landscape can be enhanced by providing legal structures, concepts, and tools better suited to dealing with the current globalization trends and realities, in order to cope with the challenges posed by some actors and to take advantage of the initiatives of others. One of the ways to do this is by acknowledging that, across legal systems and several state and non-state normative manifestations, there are norms, rules, and principles which protect human dignity, which share the same goals and interests, and which therefore have the same purpose of protecting humanitarian legal goods in a global legal space.

These global legal goods ought to be respected in every legal order and by every potential violator of such goods. At the same time, functions of public bodies and multiple actors, in their various manifestations of possible legal participation, are to be interpreted in the light of such GLGs. Only with a truly universal, non-discriminatory protection of all victims can the protection of human dignity be complete and integral. The important symbolic, expressive, ethical, and political messages sent by this core of shared legal goods, embodied in a legal landscape that is at least minimally global, can have an impact on the mindset of members of the global community and the values they endorse.[167] This may send a negative message against breaches attributable to any actor whose legitimacy will be questioned, and may legitimize actions carried out by diverse actors to protect human dignity.

Additionally, victims will be entitled to claim that their rights have been violated and to seek remedies and reparations under several legal systems, having reinforced legal protection for the rights that underlie the same shared legal goods. This would be made possible by the links between legal systems for the protection of GLGs, and the encouragement of cooperation between both states and non-state actors, who would consider global legal goods as a legal basis and justification for their operations.

[167] On the expressive function of law, *see* Ryan Goodman, *Incomplete Internalization and Compliance with Human Rights Law*, 19(4) EUR. J. OF INT'L L. 735 (2008); Mauricio García Villegas, *supra* note 152, at 40. For the impact and influence of words in law regarding non-state actors, *see* Philip Alston, *supra* note 5, at 3-4.

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Altogether, the benefits of acknowledging GLGs are twofold: Firstly, they may lead to the interpretation, by practitioners and authorities, of the norms of legal systems interacting globally in a way that is better suited to meeting the needs and tackling the problems faced by human beings in the current global landscape. This is in contrast to isolated regulations contrary to dignity or insufficiently protecting it, in any given legal system of any level of governance and produced by sources where public entities, or a lack thereof, create those regulations. This would be accomplished by inducing the remaining legal systems participating in the global space to complement each other, filling their respective gaps. Secondly, by dismissing a state-centered approach, GLGs may open up the number of participants entitled to contribute to the protection of GLGs. This can be accomplished by recognizing that a participant's conduct must be legally addressed, discouraged, or encouraged, as decided on a case by case basis, depending on whether the participant benefits or harms the enjoyment of rights derived from human dignity or the obligations that protect interests, values, and goals that constitute GLGs. This follows from the fact that all actors can have a negative or positive impact on the protection of human dignity, as doctrine and international practice show.[168] Thus an actor may be allowed to perform some activities of promotion or protection in favor of the GLGs, endorsed by the ethical-socio-legal society, while at the same time the actor's conduct is checked by those very global legal goods.

The logic of a complete, comprehensive protection of human beings, flowing from global law, must permeate every legal order, transforming every legal order's logic and the way in which they are understood, and has to be heeded by every potential offender and protector. This means that besides blurring theoretical divisions of domestic-international-transnational law, private-public law,[169] and state-non-state entities, which hinders the way in which cooperation is practically carried out, the nature, pillars, and structure of international law itself must change, ceasing to have state-centered remnants and becoming fully human-centered.

[168] It is recognized that non-state actors may prove to be invaluable contributors to the promotion of human rights *or* may be violators of their content. *See* Zehra Kabasakal Arat, *Looking beyond the State But Not Ignoring It*, *in* NON-STATE ACTORS IN THE HUMAN RIGHTS UNIVERSE 4-18 (George Andreopoulos *et. al. eds.*, 2006); Buergenthal, *supra* note 38, at 803-806. The Inter-American Commission on Human Rights, for example, has requested both States and non-state actors to answer questionnaires on the same issues, highlighting how the participation of these entities is crucial, and those actors have also filed reports before treaty bodies of the universal human rights system in the United Nations. *See* Pérez-Prat Durbán, *supra* note 21, at 35-36, available at: http://www.oas.org/es/cidh/defensores/docs/pdf/Def2011SCEN.pdf and http://www.oas.org/es/cidh/defensores/docs/pdf/Def2011EstEN.pdf (last accessed: 16 June 2012).

[169] *See* Kingsbury, Krisch & Stewart, *supra* note 2, at 5, 8-10, 12-13; Kingsbury, *supra* note 23, at 52-55, 57; del Arenal,*supra* note 1, at 25, 53.

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As Myres McDougal pointed out, legal systems may self-destruct when of retaining contradictory principles that impede the achievement of some of their goals.[170] It must not be forgotten that law ought to address social problems and offer protection to its true and definite addressee: The human person.[171] Currently, many victims are under-protected due to gaps related to "doctrinal" notions of legal personality—of potential and actual violators and protectors—and as a result of the lack of coordination and connection between legal systems and actors, which represents in many respects an untenable situation.

In sum, humanitarian global legal goods may guide the interpretation and application of law and serve as a set of conditions that every actor and legal order must meet and respect in the current *interdependent* globalized world. It is a world where non-state actors possess power, both soft and hard, and even systemic,[172] and where some entities are capable of circumventing or diminishing the efficacy of the norms, controls, and restrictions of isolated legal orders.[173] At the same time, states cannot elude, disregard, or ignore their existing duties to respect and protect human by making others focus exclusively on non-state obligations, as the states retain their obligations to ensure and respect dignity-derived rights and other norms that protect GLGs.[174] Traditional *notions* that limit the protections granted to human beings can be overcome by the possibilities offered by a global humanitarian interpretation of the law. This understanding may ensure that no victim would go unnoticed or unprotected. Furthermore, the notion of GLGs can counter the "legitimization" effect of legal norms that are contrary to human dignity.[175] By binding every legal order and participant, irrespective of the degree of its formality or recognition, the global community, whose membership and participation is not limited to states, can make sure that unlawful acts and omissions contrary to the most elementary legal goods will incur legal repercussions.

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[170] *See* Myres McDougal & Harold Lasswell, *The Identification and Appraisal of Diverse Systems of Public Order*, 53 THE AMER. J. OF INT'L L. 3-5, 11 (1959).

[171] *See* Concurring Opinion of Judge Cançado Trindade, *supra* note 22, at paras. 15, 19, 25; Nijman, *supra* note 23, at 136; JANNE ELISABETH NIJMAN, THE CONCEPT OF INTERNATIONAL LEGAL PERSONALITY; AN INQUIRY INTO THE HISTORY AND THEORY OF INTERNATIONAL LAW 473 (2004).

[172] *See* del Arenal, *supra* note 1, at 27-28, 34, 52-53, 64-66; Anna Badia Martí, *supra* note 166, at 319-320, 324, 336, 342; Francisco Galindo Vélez, *Consideraciones sobre la determinación de la condición de refugiado* (Considerations on the determination of refugee status), *in* DERECHO INTERNACIONAL DE LOS REFUGIADOS (International Refugee Law) 60-61(Sandra Namihas ed., 2001); Lavenex, *supra* note 1, at 388; Gatto, *supra* note 19.

[173] *See* Lavenex, *supra* note 1, at 377.

[174] *See* Clapham & Jerbi, supra note 19, at 339.

[175] About this phenomenon, *see* Nico Krisch, *Global Administrative Law and the Constitutional Ambition*, *supra* note 53, at 11, 18-19, 21.

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Furthermore, the emergence of GLGs will allow many actors and states without economic, military, or other sorts of power or practical influence to participate in the global legal sphere, and will encourage and even demand such participation. This is because global legal goods are strengthened by the interaction of several legal processes in which states, actors, polities, and populations participate. This in turn makes people aware of their truly universal rights, and empowers them in their claims whenever their dignity-derived entitlements are or can be injured, whether those entitlements have the form of rights or of claims of obeisance of the duties owed to them by other entities.

Finally, it can be said that if legal participants and actors become aware of the existence of humanitarian global legal goods and notice their coinciding—inherent, express, or implied—presence in different legal systems and their existence as goals of conduct for several entities, and take into consideration the humanitarian GLGs' defense and promotion, the protection of human dignity will in turn be enhanced and reinforced. This is the case, given that the comprehensive guarantees offered by joint simultaneous mechanisms and actions that aim to protect GLGs will operate within a coordinated legal dynamic that has global synergy. This is a fact made possible because GLGs are a common thread shared among multiple legal systems and actors interacting globally or, rather, universally, in ignoring formalistic borders.