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## Towards a contextual understanding of human rights

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### ABSTRACT

Should human rights be understood within a specific context? In other words, should the discourse on human rights be historically contingent? If so, isn't there a risk that they will lose their universal character? I argue that the standard of human rights provided by major documents and treaties of human rights must be respected, but at the same time, there are rights that must be developed in accordance with a particular context and specific needs of the people. Some might object that in contextualizing human rights they run the risk of losing their universal character. The argument of the universal character of human rights does not always meet a unanimous consent of everyone. Some non-Westerners thinkers, for example, reject the idea of the universality of human rights because, they argue, human rights reflect and perpetrate the western culture, which is sometimes at odd with non-western cultures. They then advocate a reconstruction and clarification of the moral, political, and legal status of human rights. This requirement of clarifying the different aspects of human rights status appears in Ingram's argument when he affirms that the theoretical clarification of the apparent incoherence of the Universal Declaration of Human Rights, regarding the moral, political, and legal status of human rights must be sensitive to the multiple functions and justificatory grounds of human rights. Thus, the leading question to be answered in this paper will be: should there be a definitive list of rights for all contexts and all circumstances?

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The concept of human rights constitutes the standard from which we analyse, evaluate, and judge the action of our governments, the measure of understanding the morality of our living together as reasonable and rational beings, and the yardstick of international solidarity. Despite this *taken for granted* comprehension of human rights, there is some confusion in grasping their true meaning. Almost everyone resorts to human rights to fight injustices, to claim equal and dignified treatment, and to press charges against abuses of which some people are victims. But very few people can explain with clarity what they mean by human rights. Michael Rosen made a similar observation when he noted that 'almost everyone nowadays professes commitment to [human rights], yet

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few people would claim that they had a good principled account of what they are and why we have them' (Rosen 2012, 54).

This puzzling aspect of human rights also appears in the way we prioritize what we consider to be human rights proper. A clear example is the lesser importance given to social and cultural rights. The rhetoric of human rights often focuses on civil and political rights at the expense of social and cultural rights. The truth of such a statement can be proved by most of the reports on violations of human rights around the world, which barely mention violations of social and cultural rights. When, for example, the UN Security Council decides to intervene in a country, the decision is often made on the basis of violations related to civil and political rights. The intervention in Libya on 19 March 2011 is a clear example of this way of proceeding. Violations of cultural rights would hardly move the international community to intervene in order to guarantee their respect. A similar observation is made by David Ingram: 'In practice, only gross violations of civil and political rights – genocide, ethnic cleansing, and the like – are targeted under the current responsibility to protect (R2P) rule, and such violations have elicited only occasional international humanitarian intervention and criminal prosecution. Severe deprivations of economic welfare have not inspired similar responses' (2018, 227–8).

The overemphasis on civil and political rights is often accompanied by what Polly Vizard calls 'the tendency to interpret civil and political rights exclusively in terms of negative duties of omission, non-interference and restraint rather than in terms of duties of action and commission' (2005). Thinkers like Hayek, Nozick, and Berlin, who characterize freedom in terms of the absence of coercion by others, champion such a tendency. They develop an exclusively negative characterization of fundamental freedoms and human rights.

Until recently, human rights were more discussed and interpreted either in terms of their ethical foundation, which justifies their respect by resorting to the notion of the common humanity shared by all human beings, or in terms of their legal formulation. These two approaches to human rights did not leave enough room to the discussion of the environment that conditions the respect of such rights. Relevant concerns, such as world poverty, ecology, migration, underdevelopment, and the freedom to enjoy adequate living conditions, were not on the agenda. It is worth noting here, with Amartya Sen, that many of the terrible deprivations in the world have arisen from a lack of freedom to escape destitution. Even though indolence and inactivity had been classic themes in the old literature on poverty, people have starved and suffered because of the lack of an alternative (Sen 2005, 155).

In developing his theory of human rights, David Ingram challenges the exclusively negative approach to fundamental freedoms and human rights and shifts attention towards a *capability approach*. In so doing, he 'departs from other frameworks and [provides] direct support for a broad characterization of fundamental freedoms and human rights that takes account of poverty, hunger and starvation' (Sen 2005, 155). So understood, human rights must guarantee access to a range of goods and capabilities. Any denial of such opportunities is to be regarded as a violation of human rights. Ingram expresses it in a slightly different way: 'In fact, if human rights are claims on society to guarantee reasonably secure and equal access to a range of goods, resources, and capabilities for all persons, then much of the legally supported global economic

system in fact violates human rights, simply by denying persons the opportunity to freely, securely, and equally access these goods' (Ingram 2018, 222–223). Thus, it is for the sake of clarity and a balanced and comprehensive understanding of human rights that Ingram proposes in *World Crisis and Underdevelopment: A Critical Theory of Poverty, Agency, and Coercion*, a study that aims 'to develop a critical theory of underdevelopment that draws together normative concerns within a critique of contemporary global capitalism' (2018, xi).

My aim in this contribution is to discuss the issue of human rights contextualization raised in chapter five of *World Crisis and Underdevelopment*. In order to do so, it is important to understand the author's argument. Thus, the first step of this reflection will focus on understanding Ingram's argument. The second step will discuss the relevance of a context-oriented approach to human rights, and the third step will consider whether we should promote a centralized human rights regime or a state-oriented enforcement of human rights.

### Understanding Ingram's argument

One of the aims of David Ingram in his book is to clarify the meaning of human rights and social justice duties, which, he argues, are vague and ambiguous. This vagueness or ambiguity of human rights can lead not only to different understandings of their content, but also to a variety of approaches in their implementation. In order to highlight the variety of approaches to the implementation of human rights, Ingram underlines the difference between two sorts of justiciable human rights claims. He writes:

In sum, I have argued that there are two sorts of justiciable human rights claims: interactional and institutional. According to the interactional model, a justiciable human right is a claim against a discrete individual who wields official or unofficial police and administrative power over a rights claimant. Here, failure to respect the claimant's right entails a straightforward human rights violation, typically involving the commission of a serious humanitarian crime on a massive scale (such as genocide) which issues in criminal prosecution conducted under the auspices of a national or international criminal court. The second, institutional model of justiciable human rights responds to a weakness in the first model, namely a failure to conceptualize as criminal or legally culpable human rights negligence for which personal causal responsibility cannot be ascertained. These infractions can take two forms: failure to perform positive duties in implementing reasonable measures to reduce standard threats to life and failure to perform negative duties to refrain from imposing conditions that impede the performance of these positive duties. Importantly, both types of infractions can be caused by the normal, legal functioning of domestic or international institutions (2018, 257–8).

In the same line of thought, some thinkers like Charles Beitz, underline the necessity of clarifying the meaning and grounds of human rights and their relationship with other values. In that regard, Beitz writes: 'A theory of human rights faces a double challenge: not only to clarify the meaning and grounds of human rights, but also to illuminate the ways we might bring them into some reasonable relationships with other values with which they might conflict' (Beitz 2009, xii).

It is in this sense of clarifying the meaning and grounds of human rights that Ingram has assigned himself the task of addressing the problem of human rights inflation. This

question of rights inflation is to be considered in relation to the issue of rights truncation. The former (rights inflation) results from the expansion of rights protection to superfluous social and political functions. The latter (rights truncation) comes from a selective protection of individual rights. Ingram expresses it as follows: 'A narrow moral interpretation, focusing on minimal or selective protection of individual core interests, runs the risk of rights truncation. Likewise, a broad legal interpretation, expanding protection to include superfluous social and political functions, runs the risk of rights inflation' (Ingram 2018, 227).

Unlike defenders of narrower interpretations of human rights who argue that the robust moral and legal interpretations of human rights cannot be justified or practically implemented and who maintain that the 'inflationary' expansion of human rights beyond those that are justiciable in criminal courts has the unfortunate consequence of reducing respect for all human rights, Ingram argues that in order to correct tendencies towards truncation and inflation of human rights, it is advisable to develop a comprehensive account of human rights that takes into consideration the multiple and complementary functions that both legal and moral human rights serve (Ingram 2018, 223, 227).

The search for a comprehensive account of human rights has led Ingram to argue that the scope of human rights can be restricted neither to those rights that are justiciable in courts of law nor to just those moral claims that impose duties on others to respect an individual's personhood, agency, or basic interest to lead a life of her choosing. Such a restriction seems to discharge the government from its responsibility of attending to the basic needs of the people. In order to understand why a government's or society's permitting a person to starve might violate human rights, we have to adopt an understanding of human rights broader than these narrow interpretations. Thus, the legal and moral interpretations of human rights become crucial in addressing the question of economic injustices (See Ingram 2018, 221–222).

Following an argument developed by Allen Buchanan, Ingram argues that 'the problem of rights inflation, while real, is partly a figment of philosophical imagination, specifically, of the idea that there is only one justification for human rights and that that justification must appeal to the principle of moral respect for an individual's autonomous agency' (Ingram 2018, 224). In the same line of argument, he rejects the idea that current human rights law mirrors moral human rights in a strict sense. Differently put, the legal interpretation of human rights is not a reflection of the moral interpretation of these rights. Once we drop the mirroring view, notes Ingram, we are free to think of human rights as having multiple ethical grounds, compatible with collectivist moralities, group rights, and instrumental human rights norms, including duties to provide strong democratic and social welfare institutions (Ingram 2018, 224). In other words, thinking of human rights from the standpoint of multiple ethical grounds transcends the one-sided interpretation that overshadows the recognition of one's freedom in the freedom of the other.

Another important element that is brought to light in Ingram's development is the institutional understanding of human rights in relation with claims that touch on poverty and resource deprivation. The author of *World Crisis and Underdevelopment* contends that institutional understanding of human rights must accompany an inter-actional understanding if we are to grasp the full range of justifiable human rights

claims that touch on poverty and resource deprivation. He challenges the monopolization of an unfair share of the world's common resources by developed countries, which has led to a trade regime that 'encourages the underdevelopment if not destruction of local economies in [developing countries] by allowing governments of developed nations to impose tariffs that make it difficult for poor countries to sell their goods in these wealthier countries and by forcing poorer countries to open their markets to underpriced and subsidized exports from these same developed countries' (Ingram 2018, 22). It is because of this trade regime's *modus procedendi*, that Thomas Pogge thinks that 'the rich owe compensation to the poor and have a duty to rectify the current trade regime, both as a matter of social justice and as a matter of human (liberty) right, insofar as the rich have denied the poor free access to the subsistence and security resources that are due them as human beings' (See Ingram 2018, 23).

The consideration of the interactional understanding of human rights has led Ingram to contend that the official addresses of human rights should be expanded to include nonstate institutions. He concludes by defending a human right to democratic participation, which, in his opinion, must be respected at the level of global governance as well (Ingram 2018, xvi).

From what has been said thus far, I argue with Ingram that there is an urgent need for a context oriented approach to human rights in order to understand why societies that do not protect some of their members from severe poverty and deprivation must justly be accused of violations of human dignity and human rights. Such an approach addresses the challenge of scepticism that sees in human rights a heritage of Western culture and thus questions its universal character.

Human rights sceptics argue that there is a fundamental conflict between human rights and national obligations. In reading between the lines, there are two objections that can be brought to light here. Ingram expresses them clearly in these terms: 'Two sceptical challenges merit special consideration in this regard: the charge that human rights conflict with national obligations and the objection that they reflect a Western secular bias' (Ingram 2018, xvii).

Addressing these challenges, Ingram argues that the conflict between human rights and duties to the community, although internal to the humanitarian order, expresses a conflict that can occur between any human rights, in this instance between human rights ascribed to individuals and those ascribed to groups. For him, not only are group-ascribed human rights genuinely irreducible to individual-ascribed human rights, but both rights together capture the dual kinds of solidarity that should inform global democratic governance (Ingram 2018, xvii). As regards the second challenge that holds that human rights and secular democracy conflict with the core commitments of other non-Western religious values, Ingram contends that 'this objection not only is unsubstantiated but also neglects the contribution of world religions as the most original cosmopolitan form of solidarity – and one, moreover, that has recently attained prominence in promoting human rights and secular democracy' (Ingram 2018, xvii).

The above challenges lead to an important question concerning the understanding of human rights. Should human rights be understood within a specific context, be it political, economic, or cultural? In other words, should the discourse on human rights be historically contingent? If so, isn't there a risk that they will lose their universal character? The next section will address this question.

## Towards a contextual understanding of human rights

I argue elsewhere (Moka-Mubelo 2017, 127–144) that human rights should be conceived both as moral and legal rights because they are more about the kind of society and world that rational and reasonable beings would like to live in, rather than simply about entitlements. In that sense, to approach human rights merely as legal rights or moral rights fails to capture their full meaning and scope, and weakens the effectiveness of their implementation. If we admit that human rights are more about the kind of world we would like to live in, then building such a world requires an approach that takes into account the diversity of cultural and political views. Otherwise, human rights will be perceived as an imposition of Western culture on the rest of the world. This is the position held by some non-Western critics of the current corpus of human rights who challenge its universality. They argue that human rights reflect and perpetrate Western culture and worldviews, which are sometimes at odds with non-Western cultures. Makau Mutua, for example, argues that ‘the official human rights corpus, which was issued from European predicates, seeks to supplant all other traditions, while rejecting them. It claims to be the only genius of the good society’ (Mutua 2002, xi). He advocates a multicultural approach to human rights that allows the participation of all societies and cultural milieus as a requirement if the current corpus of human rights is to claim genuine universality. Such a process requires a reconstruction and clarification of the moral, political and legal status of human rights.

In order to respond to the requirement of reconstruction and clarification of the status of human rights, Ingram seems to be arguing in the sense of a cross-cultural reconstruction and clarification, especially when he warns against an elitist approach to human rights, and he advocates for their submission to a dialogical criticism so as to free them from residues of elitism. He writes: ‘I contend that theoretical and practical accounts of human rights, even when suitably conjoined, retain residues of elitism unless they are submitted to dialogical criticism and emendation that cuts across cultures and permits local flexibility in application and interpretation’ (Ingram 2018, 231).

In light of Ingram’s arguments, it becomes obvious that a careful reading of the main documents on human rights, especially the Universal Declaration of Human Rights, leads us to an apparent incoherence in the presentation of the moral, political, and legal aspects of human rights. Such an apparent incoherence calls for a theoretical reconstruction and clarification of the status of human rights. This is precisely one of Ingram’s arguments in chapter five of his book. For him, the clarification of the status of human rights must be sensitive to the multiple functions and justificatory grounds of human rights. Because of such sensitivity, political and legal theories must take into consideration what he calls the ecumenical moral content of human rights documents. The premature dismissal of the context-oriented approach to human rights has highly contributed to the scepticism that sees in human rights the imposition of the Western culture or a pretext used by the West ‘to sell war.’ To use Jean Brickmont’s expression (Bricmont 2006).

The question then becomes: should human rights be understood within a specific context, be it political, economic, or cultural? In other words, should the discourse on human rights be historically contingent? If so, isn’t there a risk that they lose their

universal character? In answering these questions, it can be argued that the standard of human rights provided by major documents and treaties of human rights must be respected, but at the same time, there are rights that must be developed in accordance with a particular context and specific needs of the people. Some might object that in contextualizing human rights or in adopting a context-oriented approach, human rights run the risk of losing their universal character. Such an objection, though relevant, does not take into account the contra-objection that the universal character of human rights does not always meet a unanimous consent of everyone.

Let's go a step back for a moment. The belief that human rights are an exclusive expression of Western culture missed the point of the recourse to human rights as the standpoint from which we make claims for a dignified life. The West might be the first to formulate the idea of human rights, but it does not mean that human rights are a monopoly of Western culture. The emergence of human rights in the West is not a result of cultural proclivity but rather a consequence of historical circumstances. As Jack Donnelly acknowledges, 'Westerners had no special cultural proclivity that led them to human rights. Rather, the West had the (good or bad) fortune to suffer the indignities of modern markets and states before other regions. By necessity rather than superior virtue they got a jump on the rest of the world in developing the response of human rights' (Donnelly 2003, 78).

Unlike the commonly accepted literature on human rights and the popular opinion according to which human rights are a package of Western values, I argue that there must be a clear distinction between the universal substance of human rights and the contextualized discourse of human rights. Without such a distinction, the debate takes a false turn. The reduction of human rights to Western values and culture by both Western and non-Western academics is a result of the failure to make such a distinction. Western discourse of human rights does not empty human rights of their substance to the extent that they would become irrelevant to non-Western countries. Equating the substance of human rights with Western culture is denying the possibility for other cultures to have the very rights we want to defend and promote while affirming that those who are not part of Western culture are excluded from the radar of human rights. The fact that the idea of human rights originated from and was developed by Western culture does not imply the non-existence of human rights knowledge by non-Westerners before the codification of human rights in official documents and treaties. The difference between cultures, as far as human rights are concerned, is the discourse on the content of human rights and the dimension upon which each culture emphasizes.

Thus, I contend that the real debate on human rights should not be about their origin, but rather about the origin of the discourse on the content of human rights and their codification in official documents, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, etc. In fact, the widespread use of the expression human rights is to be traced to a recent past related to the awareness raised by the atrocities of World War II and the drafting of the UDHR. This does not mean that before these events human beings did not have any human rights. That is to say, human beings did not wait for the codification of these rights in documents for them to actually have them. People did have rights, which were later codified, using a specific language and made known through a certain discourse.



Therefore, if there is any challenge against human rights, it should focus on a limited Western discourse of their substance.

Consider for example the right to life. This right is relevant and applicable to everyone regardless of the person's cultural identity, political ideology, sexual orientation, skin colour, or geographical location. Rejecting such a right on the basis that the current human rights corpus is embedded in Western culture is denying the right to life of some people. Here John Rawls' political approach to human rights can be useful in supporting the argument against those who reject human rights on the basis that they are the heritage of Western culture.

Returning now to the question of the universality of human rights with regard to the context-oriented approach. It has become almost a common belief that the contextualization of human rights makes them lose their universal character. This is not obvious. As I argue in *Reconciling Law and Morality in Human Rights Discourse* (Moka-Mubelo 2017, 31), if we understand universality as the applicability of all human rights equally to all people at the same time regardless of their socio-political and economic context, then rights that are developed in response to particular circumstances will face the challenge of universality. But if we understand universality as equal moral concern for all human beings, then the objection becomes irrelevant. The confusion about the universality of rights developed from a particular context comes from the tendency to associate universality with simultaneity. Contextualization and universalization do not exclude each other. Once we dissociate simultaneity from universality, we grasp the universal character that resides in human rights developed in response to particular circumstances and contexts because they can be conceived so by any morally responsible being.

It is my contention that the context-oriented approach to human rights is crucial in the re-articulation of the modern human rights discourse. Such an approach not only enables us to use particular experiences so as to construct a theory of human rights, but also sheds light on the necessity of bringing into dialogue different contexts that do not necessarily share the same understanding of human rights ethics. I call this context-sensitive universality.

Following a similar line of thought, Abdullahi Ahmed An-Na'im, whom Ingram discusses in chapter seven, argues that there is no 'need for any single foundation of human rights for all human beings everywhere, whatever that foundation may be' (An-Na'im 2013, 7). For him, 'Self-determination, including the right to decide the foundation of human rights one finds acceptable, is integral to the "human" in human rights. The foundation of human rights we accept are specific to who we are, in our own context, which need not be, and unlikely to be, accepted by all other beings who share a commitment to these rights' (An-Na'im 2013, 7). Thus, to accept alternative foundations to human rights requires respect for differences because if 'we can only acknowledge agreement with people who share the whole package [of human rights], and are moved by the same heroes, the consensus will either never come or must be forced' (Taylor 1999, 111). Without the acceptance and respect of differences, any approach to human rights will never be inclusive.

Ingram supports more or less the same idea when he argues that human rights are not unconditional and do not always trump other moral and legal rights. He argues in the section, *Understanding Human Rights Contextually: Pluralism Reconstructed*, that

‘moral and legal theories of human rights must be embedded within an institutional conception of social freedom; so understood, human rights fulfill multiple complementary functions: legal, political, and moral’ (Ingram 2018, 225). The multiple complementary functions of human rights might raise the question of their enforcement. Should the responsibility of enforcing human rights locally be left to individual states or shall it be regarded as a global and shared responsibility? The next section will address this question.

### **A centralized human rights regime versus a state oriented enforcement of human rights approach**

Should we advocate a more centralized human rights regime or shall we privilege a state oriented enforcement of human rights? This question leads to another one to be seriously considered: Does a state-oriented enforcement of human rights approach exclude the support of an international human rights system and thus lead to the inflation of human rights? The answer to these questions is not as obvious as some might think. The world has already experienced the failure by both individual states and the international community in protecting human rights in some cases. Ingram correctly describes the complexity of entrusting the protection of human rights either to states alone or to the international community. He writes: ‘Human rights impose duties on government to respect and safeguard the capabilities essential to dignity. The failure of states to discharge this function explains why human rights were embedded in international law. But the current international human rights order has also failed in this regard, raising the question: Is the current humanitarian regime justifiable?’ (Ingram 2018, 262).

Ingram’s response to this question highlights the fact that the current humanitarian regime was justified as a necessary response to problems inherent in the regime it replaced. But its failure to adequately respond to the life-threatening global crises suggests that its continued existence might no longer be justified (Ingram 2018, 262). The challenge of justifying the current humanitarian regime does not totally exclude the need for a reformed global human rights regime that effectively enforces the protection of human rights. For such a reform, Ingram suggests two ways of proceeding:

On one hand, a more representative General Assembly could be empowered to pass enforceable resolutions regulating the content and conduct of international trade and security-related agreements pertaining to the resettlement of refugees, the treatment of immigrants and guest workers, and the equitable distribution of burdens associated with climate change and environmental degradation. On the other hand, instituting an international court empowered to review UNSC decisions and universally enforce human rights treaties would protect individuals and states from unchecked abuses of power (Ingram 2018, 265–6).

For Ingram, a human rights regime reformed in this way would be more effective and democratically accountable. Though such a reform can lead to a more effective global human rights regime, there might still be, observes the author of *World Crisis and Underdevelopment*, the risk of domination by powerful states. Thus, he underlines the importance of a more centralized mechanism beyond that afforded by international treaties so as to make human rights binding for all nations. Even if this transnational

mechanism is not strictly legislative, notes Ingram, its legitimation will still have to accord with minimal democratic criteria of transparency, accountability, and susceptibility to reform instigated by popular initiative (Ingram 2018, 266). Here, Ingram brings to light the requirement of constitutional changes in the current humanitarian regime so as to address its deficiencies. Such changes imply the reconsideration of democratic legitimation at the transnational level.

With regard to the reconsideration of the current international order, Ingram argues that it is too heterarchical in constitutional structure to legitimately coordinate international efforts to respect, protect, and promote human rights. In order to remedy the defect of such an order, he suggests placing the human rights regime at the regulative pinnacle of a new global hierarchy, which he regards as the governing institution most appropriate for overseeing the operations of this now expanded regime of the United Nations (Ingram 2018, 281–2). The new global order capable of respecting, protecting, and promoting human rights as suggested by Ingram seems to be more efficient than the current regime. However, it leaves some crucial questions unanswered. For example, should the protection of human rights in a given context be a global concern and a shared responsibility? Or, as Ingram himself expresses it, can the well-being of distant foreigners become a matter of general concern? (Ingram 2018, 313).

In answering this question, I argue that the enforcement of human rights must be a primary internal responsibility of the state. However, it should not be entirely left to the discretionary power of the state. Here appears the relevance and the moral obligation of adequately and carefully implementing the R2P doctrine (The Responsibility to Protect) put forward by the International Commission on Intervention and State Sovereignty (ICISS) in 2001 and adopted in 2005. The R2P principle rests on three equally important pillars: (1) The primary internal responsibility of states to protect their citizens, (2) the international assistance to support states to fulfill their primary responsibility to protect, and (3) the responsibility of the international community to respond collectively in a timely and decisive manner. The responsibility to protect, observes David Chandler, implies ‘a duty on the state to act as a moral agent [...] States which fail to act in a morally responsible manner and abuse the human rights of their citizens then necessitate intervention by other states which are indeed capable of acting as agents of common humanity’ (Chandler 2004, 62–63).

As it will be noticed from the content of the R2P doctrine, the three pillars bring together the domestic and international aspects of human rights protection. The emphasis on only one aspect can lead either to a kind of protectionism that excludes any international assistance under the pretext of respecting the principle of non-intervention in the internal affairs of a sovereign state or to abuses of power, the arbitrariness and subjectivity by the intervening states in the application of the guidelines of the international duty to protect human rights.

It is true that some states fear the risk of misuse and abuse of the R2P to justify illegal unilateral coercive measures or interventions in the internal affairs of states. But such fear cannot become an excuse for states to commit atrocities against their own people under the pretext of safeguarding the state sovereignty. This fear can be overcome if the focus of the implementation of the R2P is on the prevention and protection against abuses by states. Both states and the international legal order must constantly be reminded that the responsibility to protect embraces three specific responsibilities: (i)

the responsibility to prevent, which focuses on addressing both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk, (ii) the responsibility to react, which insists on responding to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention, (iii) the responsibility to rebuild, which means to provide, particularly after military intervention, full assistance with recovery, reconstruction and reconciliation, and addressing the causes of the harm the intervention was designed to halt or avert (ICISS 2001, xi).

The failure of an effective implementation of the R2P, so to speak, is due to the fact that the emphasis is more on intervention rather than on prevention and rebuilding. Powerful states, with means to intervene, believe that they have the right to intervene in order to bring about peace and guarantee the respect and protection of human rights. The shift of the language from 'the right to intervene' to 'the responsibility to protect' was precisely brought in so as to avoid the misuse of military intervention under the pretext of humanitarian reasons. By the way, we can point out that many voices have challenged the pairing of the word 'humanitarian' with the use of force. For organizations such as Oxfam, International Committee of the Red Cross, and Médecins Sans Frontiers, there must be a visible separation between military interventions and humanitarian assistance. For them, military force can never be compatible with the promotion of humanitarian ends.

The question to be raised at this point is whether the shift in the language changes anything or guarantees the effective respect for and protection of human rights. The positive answer to this question depends on what Ingram describes as an international legal order that is more effective, just, and democratically accountable in protecting human rights. The accountability of the new international order advocated by Ingram requires that the R2P be paired with the RWP (Responsibility While Protecting), which was introduced by Brazil in 2011 as a response to the intervention in Libya in order to limit the freedom of powerful states to use military force whenever it pleases them, and thus abuse the R2P principle. The RWP emphasizes accountability and consultation with the Security Council once the use of military force has been accepted.

From what has been said thus far, it follows that the responsibility to respect, protect, promote, and enforce human rights is a common and shared responsibility. Such a responsibility requires an approach that emphasizes the commitment of both individual states and the international community in order to avoid a twofold risk. On the one hand, a centralized human rights regime, though effective in enforcing human rights, can easily lead to some disinterest on the part of states that are not directly affected by the atrocities of human rights abuses. On the other hand, a state-oriented enforcement of human rights approach can exclude any intervention and assistance that aims to protect human rights internally by resorting to the argument of state sovereignty, which, by the way, is not simply a pursuit of national interests on the international stage for the recognition of equal worth and dignity of states, but also, and mainly, the 'responsibility to respect the dignity and basic rights of all the people within the state' (International Commission on Intervention and State Sovereignty 2001, 8).

Given this risk and the current humanitarian crises, an international solidarity approach to the protection of human rights seems the less controversial approach. In fact, promoting a new international legal order and respect for human rights require a combined effort and shared responsibility. As H.S. Reiss remarks, 'right cannot

possibly prevail among men within a state if their freedom is threatened by the action of other states. The law can prevail only if the rule of law prevails in all states and in international relations. Only then are all individuals free: only then does rights prevail everywhere' (Reiss 1991, 33). Thus, there is a great need for what Ingram calls 'a willingness to make sacrifices for a cause greater than oneself, what we typically mean by solidarity' (Ingram 2018, 313).

It appears that for Ingram, solidarity can be regarded as the basis from which we can assure that rights prevail everywhere. I agree with him that as solidarity extends beyond feelings of devotion to those whom we feel closest, it engages more complex forms of social cooperation premised on the pursuit of common interests, of which social justice is one. In that sense, cosmopolitan solidarity presupposes that the world's peoples can agree on what their cosmopolitan interests are (Ingram 2018, 341). Some of those interests are the respect, the protection, the promotion, and the enforcement of human rights globally, in collaboration with different cultural milieus.

## Conclusion

Ingram concludes *World Crisis and Underdevelopment* with what can be regarded as a recommendation to build cosmopolitan solidarity out of solidarity networks. Such a recommendation is justified by the conviction that 'cosmopolitan solidarity enjoins protection of human rights and the salvation of humanity from apocalyptic destruction and suffering' (Ingram 2018, 341). These commitments would be more effective if we shifted from a universalizing approach to human rights to a contextual understanding of human rights. 'Empathy for the oppressed [that] finds just cause in redeeming a form of life sustained by mutual recognition' (Ingram 2018, 341) becomes more meaningful if the claim for the rights of the oppressed is understood within his or his context. There are rights that are significant in one context and less pressing in another. Thus, a contextual understanding of human rights becomes crucial in promoting cosmopolitan solidarity.

Far from leading to human rights inflation, a contextual understanding brings to light the requirement of the openness to learn from one another and provides the basis to criticize not only 'selective readings, tendentious interpretations, and narrow-minded applications of human rights, but also that shameless instrumentalization of human rights that conceals particular interests behind a universalistic mask – a deception that leads one to the false assumption that the meaning of human rights is exhausted by their misuse' (Habermas 2001, 129).

If we understand human rights from a context-oriented approach, we also understand why Ingram regards the injustice of the global economic order as a violation of a social duty to refrain from imposing economic structures on persons to which they could not reasonably consent and why he would like to address the question of whether truly universal, cosmopolitan duties owed to all human beings with whom we might have lesser degree of contact provide a different set of reasons for condemning economic injustices (Ingram 2018, 221).

## Disclosure statement

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