ENHANCED MULTI-LEVEL PROTECTION OF HUMAN DIGNITY IN A GLOBALIZED CONTEXT THROUGH HUMANITARIAN GLOBAL LEGAL GOODS

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ENHANCED MULTI-LEVEL PROTECTION OF HUMAN DIGNITY IN A GLOBALIZED CONTEXT THROUGH HUMANITARIAN GLOBAL LEGAL GOODS

Nicolas Carrillo-Santarelli*

Abstract: The human rights field has undergone impressive developments, but formally it is still built upon a State-centered premise that may be at odds with what the protection of human beings demands nowadays, because those rights cannot be fully protected unless it is acknowledged that they can be violated by actors different from States and that their protection requires the contribution of several actors given the global challenges posed against them. Therefore, departure from a State-centered paradigm and an isolationist view of legal systems is essential.

In this globalized age, human dignity is threatened by actors that may have enough power to challenge State authorities or that may take advantage of the gaps and lack of coordination in domestic and international regulations alike in order to abuse human beings with impunity. To counter this, some initiatives have been undertaken, but in spite of them double standards, lack of political will, wrong messages regarding the accountability of non-state actors, instances of impunity due to the State-centric nature of law, and gaps call for a shift in our approach to the protection of human dignity to enable tackling the core of the problem.

By focusing on their aim, it is possible to identify norms protective of human dignity that protect legal interests and values whose protection is coincident in legal systems that interact in a global space. These legal goods are common to different legal systems, and from them flow implied duties that bind both State and non-state actors alike. These legal principles are embodied in norms that protect humanitarian goods that, given their global nature, exerting their influence across actors and legal systems, may coordinate the action of entities in different legal systems and offer a more comprehensive protection to human dignity.

The identification of legal goods protective of human dignity in several legal systems alike, in whose promotion and protection some non-state actors are interested, is crucial in order to develop strategies of protection in which States and other actors jointly participate, through multi-level and simultaneous action, since the realities of globalization and the transnational manner in which those interests are violated imply that an effective protection requires the joint participation of several entities in various legal systems. Those global legal goods, therefore, both impose implicit duties on every potential offender and legitimize the action of actors without whose contribution they can hardly be promoted in the current interdependent world.

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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 such acts, failing 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 abroad², may accentuate the detrimental effects of those violations and abuses. Yet, some authors and authorities deny an interpretation of existing law in a way that renders it capable of offering a proper solution since, according to them, human rights cannot be violated by non-state actors and some legal levels do not cover certain situations.

If that interpretation were correct, law would fall short of the real needs of human beings in the current global social context, and would be limited to providing a merely insufficient and incomplete protection to rights based on human dignity.

On the other hand, 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.

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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 and is entrenched in a mostly state-centered framework that permeates the conception of practitioners, with legal systems being formally largely isolated from each other.

Conversely, we are in much need of recognizing that there are humanitarian global legal goods (hereinafter, GLGs) common to and underlying different legal systems, and that they require protection against abuses regardless of their author, because there are victims whose injuries must be effectively remedied by law.

To solve this, note must be taken 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 certain legal systems. Recognizing that there are principles and norms common to different legal systems, whose purpose is the protection of coinciding goals (GLGs), such as human dignity, which give rise to minimum standards and duties to be synergically 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 orientate its future developments.

Achieving a proper and 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* ³), something in which international law is to some extent lagging behind ever since the doctrinal notion of subjects and the limited recognition of only some of the relevant and influential participants in the global and international scene fail to reflect today’s reality, ⁴ and thus ignore many opportunities and challenges posed by other actors.

In the new socio-legal context there are, among other features, an increase in the participation of multiple actors in the legal processes along with the blurring of

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divisions between legal systems and social levels, the increased possibility of violations of the rights of individuals at the hands of several actors, and the formation of new identities and allegiances. Additionally, it can be said that there has been a shift from a merely international to a global society, where the linkages 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 in it, because it is a powerful tool of social transformation whose norms entail political choices, given its potential to affect the way in which people perceive reality and their expectations, which can lead to the strengthening of some of the values and interests it 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 the relevant norms.

In spite of this, currently there are situations in which certain conducts negatively affect the content of human rights with the state not being able to grant protection by means of its domestic law and with international law remaining silent on the subject. This situation leaves victims unprotected, and risks depriving law of its legitimacy and support if it is insisted that only States violate human rights, for this may be seen as unfair because 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 rights is inconsistent with the positive duties States have under international human rights law.

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7 See, for example, Sandra Lavenex, supra, pp. 375-376.
11 As a result of these considerations, from an outdated traditional international human rights conception, no measures are to be adopted if a non-state impairs the enjoyment of a human right and no State is responsible due to its having behaved with due diligence, for instance. See, e.g., European Court of
In sum, international law ought to be rooted in society and aiming at its positive transformation, providing reasonable means by which social problems can be adequately tackled and certain minimum values protected by means of 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.

Additionally, a new understanding of how to protect lowest common denominator legal goods, i.e. interests and goals protected by norms of different legal systems across various levels of governance that protect the same values, dealing with the protection of human dignity, should take advantage of the present context, where there are increasing contacts between legal systems, transnational networks and informal communicative processes, leading both state and non-state actors to commit themselves to and be bound to abide by standards adopted beyond local fora, 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 (values and interests) protected in common by norms of different legal systems –expressly or implicitly-and/or by different actors and entities –either formally or informally-, making those goods a focus in a (global) legal space of normative interaction. The extent of the shared or common content 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

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Human Rights, *Case of Mastromatteo v. Italy*, Judgment, 24 October 2002, pars. 67-79 –which leads me to call this situation the “Mastromatteo paradox.”


interaction of 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\textsuperscript{14}, it is certainly convenient to look at notions that have been developed in other fields of knowledge, such as that of global public goods, in order to identify strategies that may be employed from a legal perspective in order to deal with problems faced by individuals in a global landscape.

Two dimensions of this concept of global public goods are especially relevant in this regard: i) the claim that globalization cannot be properly managed unless they are supplied (in legal terms, ensured) satisfactorily\textsuperscript{15}, which demands a close cooperation of different actors; and ii) the fact that the provision of the aforementioned goods brings benefits across national boundaries, whereas the lack of it spills bads ignoring boundaries as well\textsuperscript{16}. Those two elements must be taken into account when analyzing international law and law in general, but legal analysis ought not to be subjected to economic considerations: rather, a legal framework rooted in the protection of human dignity is to inspire legal and other approaches to the examination of social and human needs, including the economic one.

Besides contributing to the management of globalization, the mere acknowledgment of global goods may shape psychological and social attitudes. Given the power of law to exert influence on society through legal symbols, on the one hand, and the gaps and lack of protection of human dignity against non-state threats in legal systems that cannot offer full protection in isolation, on the other hand, the recognition of common legal goods endorsed by coinciding norms in international, transnational

\textsuperscript{14} 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 to understand why addressees comply with 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, whose understanding is facilitated by other sciences, may have an impact in law. About these ideas, see Mario G. Losano, “Towards a Common Good: A Path to Utopia?: From Philosophy through Legislation to the Dignified Life”, 6 European Journal of Law Reform (2004), p. 329; Harold Koh, supra, pp. 2603-2604.


and domestic legal systems may provide symbols of common global priorities, which can be claimed by civil society and contribute to modify the legal praxis\(^\text{17}\).

On the other hand, the consideration that a duty of respecting and promoting such 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 level in order to benefit from harming humanitarian GLGs, since they would be labeled as offenders and risk facing boycotts or legal action through complementary mechanisms of different legal systems acting jointly for the sake of the common purposes and interests –although some mechanisms may be limited in their impact, as for instance boycotts regarding some actors, reason why those actions must be complemented by other strategies in a complementary multi-level framework of protection of GLGs-\(^\text{18}\).

At the same time, GLGs address some aspects of the relationships between public entities and private entities, overcomes distinctions between \textit{jus inter-gentium} and \textit{jus intra-gentes}\(^\text{19}\), and makes it possible to take into account the input and opinion of civil society actors regarding the protection of human dignity, which may be invoked as a \textit{lex humana} or through claims to modify existing law\(^\text{20}\).

Accordingly, the introduction of global legal goods may generate a practice of a transnational \textit{jus gentium humanus}, centered on human beings, as demanded by theories

\(^{17}\) Both state and other actors may regard themselves as furthering public goals or behave in a way which implicitly promotes them. See Bob Reinalda, “Private in Form, Public in Purpose: NGOs in International Relations Theory”, in Arts, B. and others (eds.), \textit{Non-State Actors in International Relations}, Ashgate Publ., 2001, pp. 12-13; Daniel Thürer, “The Emergence of Non-Governmental Organizations and Transnational Enterprises in International Law and the Changing Role of the State”, in Rainer Hofmann (ed.), \textit{Non-State Actors as New Subjects of International Law}, Duncker & Humblot (ed.), 1999, p. 43.


\(^{19}\) About such dimensions, see Antonio Gómez Robledo, \textit{Fundadores del Derecho Internacional (Vitoria, Gentili, Suárez, Grocio)}, Universidad Nacional Autónoma de México, 1989, pp. 14-15, 98-99.

that pinpoint that law and power are legitimate and fair as long as they respect and promote their dignity, being rooted on it. 21 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, those human beings who are affected by law and its gaps, which encourage or discourage certain state and non-state practices, have non-conditional inner worth, are stakeholders and have opinions and essential rights that must be taken into account, respected and protected by all actors who have an impact in their enjoyment –given the legal relevance of their acts-, as demanded by publicness requirements of law along with notions of legitimacy, rule of law, democratization, fairness and global governance requirements 22. 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 23.

Legal theory and other sciences consider that cooperation among different participants is crucial in order to promote common interests 24, although States retain primary responsibilities in such a task. The lack of centralized institutions in the international level, the power of several actors that may defy State controls, and the need of a cooperative/complementary approach involving multiple actors and legal systems, all highlight the importance of abandoning a state-centered approach to


23 See, for example, Antonio Gómez Robledo, supra, p. 15; Harold Koh, supra, pp. 2626-2627.

international law and of noticing the blurring of divisions between legal systems and levels of governance.\textsuperscript{25}

1. Humanitarian Global Legal Goods: a notion

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 as well.

Legal practice has advanced towards the recognition of common principles of the international society, not composed solely of States,\textsuperscript{26} embodied in peremptory norms and \textit{erga omnes} obligations.\textsuperscript{27} Moreover, transnational legal practice and growing interaction between legal systems leads to the approximation of several of these systems, a process made possible by the material expansion of international law that leads to the existence of branches 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.\textsuperscript{28}

Global legal goods (henceforth, GLGs) are those interests, values and goals (legal goods) simultaneously protected in different legal systems –expressly or implicitly- and/or 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


\textsuperscript{26} It can be considered that the expression international community of States merely stresses the way in which international law is \textit{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, \textit{Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries}, 2001, Paragraph (18) of the Commentary to Article 25.


\textsuperscript{28} See the Preamble and Articles 1, 22 and 23 of the Universal Declaration of Human Rights; Carlos Villán Durán, \textit{Curso de Derecho Internacional de los Derechos Humanos}, Trotta, 2006, pp. 63, 92.
manifestations of this general humanitarian global legal good, such as for instance the protection of physical and psychological integrity, that is embodied in the prohibition of torture, found across legal systems and in the practice of non-state actors that seek to promote human dignity.

The notion of legal goods is borrowed from (mainly German) criminal law theory, where it has been employed in order to analyze what interests are or ought to be protected by criminal norms. In the light of this conception, I hold that one can employ a notion of legal goods both from the perspective of the values that law protects de lege lata (objective theory) and from the viewpoint of what values should be protected by the legal system de lege ferenda, enabling a critical analysis of law (subjective approach).

For instance, it can be considered that 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 the environment, for example.

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29 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, it is 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 that protection should be criminal. 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 J. M. 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 (that 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 Markus Dirk Dubber, “The Promise of German Criminal Law: A Science of Crime and Punishment”, German Law Journal, Vol. 6, 2005, at 1069-1070; 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”, New Criminal Law Review, Vol. 11, 2008; Christoph J. M. Safferling, “Can Criminal Prosecution be the Answer to massive Human Rights Violations?”, German Law Journal, Vol. 5, 2004, at 1472; Inter-American Commission on Human Rights, Report No. 95/08, Admissibility, Nadege Dorzema et al., or “Guayabin Massacre” v. Dominican Republic, 22 December 2008, footnote 7, and Inter-American Commission on Human Rights, Report No. 64/01, Leonel de Jesús Isaza Echeverry and Others v. Colombia, 6 April 2001, para. 22, in connection with Inter-American Court of Human Rights, Case of Durand and Ugarte v. Peru, Judgment of 16 August 2000 (Merits), para 117; Inter-American Commission on Human Rights, Report on the Situation of Human Rights in Argentina, OEA/Ser.L/V/II.49, 11 April 1980, in: Chapter II, The Right to Life, para. 1 of section A. General Considerations.
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 with the interaction of mechanisms and norms of the legal systems that must be in contact with each other for their protection to be effective—dimensions that allude to the objective approach—, \(^30\) it is possible that there are differences, subtle, minor or relevant, in the implications concerning the protected goals, and that therefore the synergy is not as should be expected, creating gaps that permit violations taking place in impunity without there being any feasible way of protecting victims and holding violators accountable in any level of governance, or granting protection insufficiently. In those events, a critical analysis based on the examination of global legal goods is expected.

In accordance with the idea that some legal goods can be protected by extra-criminal means, \(^31\) ever since non-criminal norms are also designed to protect certain values or interests, I hold that international norms likewise seek to protect diverse interests and values, which would be the legal goods they aim to protect. From a critical approach *de lege ferenda*, it would be equally possible to assess which legal goods international law should begin to protect or to protect in a stronger manner. Therefore, from a programmatic perspective, global legal goods can serve as standards on whose basis to judge the fairness of international law in both procedural and material terms \(^32\) for, if it fails to protect them properly from a substantive or procedural point of view, it 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, i.e. across levels of governance—local, national, transnational, international—and horizontally, that is to say across comparable legal systems belonging to the same level of governance, as comparative legal analyses can

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\(^{30}\) See the reference to a statement issued by the President of the European Court of Human Rights in footnote 128, infra.

\(^{31}\) See Santiago Mir Puig, supra.

\(^{32}\) 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 ethical relativism I perceive in his analysis of material justice. On the distinction put forward by Franck, see Thomas M. Franck, *Fairness in International Law and Institutions*, Clarendon Press – Oxford, 1998, at 3-24.
reveal. Due to the practical demands of a world with ever closer ties and greater interdependence, the situations in which the boundaries between legal systems and levels of governance are blurred 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 legal goods of an international origin or nature that find accommodation in State legal systems, becoming guarantors of the norms that embody those legal goods, 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 situations, as commented upon by Antonio Cassese.

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 levels of governance, which are legal goods whose protection, therefore, constitutes the protection of legal interests, goals and values present in the regulation or legal system employed by an actor or authority that are also present (shared with) in other normative systems: therefore, another step is made, because not only legal goods of a different or extraneous legal system will be protected, but in the case of GLGs legal goods that are simultaneously present in a global legal space where actors and normative systems of various social and legal levels (transnational, domestic or international) interact and shape a shared core.

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.

One example of the protection of common legal goods is that of the protection of human rights: the stage of their internationalization took place after their national

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33 See Celestino del Arenal, op. cit., pp. 32-34.
recognition, and their current simultaneous protection in different levels of governance nowadays tends to be based on the principles of *subsidiarity or complementarity*, according to which the State must be permitted and required to *effectively* try to 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. 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 the international one, bringing the each system’s content closer to that of the other.

Naturally, this proximity is not absolute, and there are mechanisms, as that of 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. This sort of mechanism is coherent with the need of allocating power in a balanced and careful manner across levels of governance and

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respecting democratic principles, although use of these mechanisms has aroused controversy sometimes.

However, 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 is a notion that 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.

In the case of global legal goods, the space is generated as a result of the interaction of legal systems of different 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, just as domestic judges are important for guaranteeing European Union law or the European human rights system, for example.

Global legal goods, however, can be protected not only in a subsidiary or vertical manner, ever since in today’s globalized world actors may interact either informally or from the periphery in order to promote legal goods protected by norms they support, carrying out this promotion activism in accordance to a criterion of simultaneity, in which non-state action reinforces or fills the gaps of public action (carried out by States and/or International Organizations). To continue with the example being employed, it is necessary to consider that actors such as NGOs often

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40 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 Benedict Kingsbury, Nico Krisch, Richard Stewart, The Emergence of Global Administrative Law, op. cit., pp. 12-18; Rafael Domingo, ¿Qué es el derecho global?, Thomson Aranzadi, 2007, at 108.
41 See Araceli Mangas Martín and Diego J. Liñán Nogueras, Instituciones y Derecho de la Unión Europea, Tecnos, 2004, at 432-433; Thomas Buergenthal, supra, at 806.
strive to 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 its 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 irrespective of who the offender is and which legal system is the one to be the first entitled to provide remedies, given the fact that as human beings with an inalienable inner worth, victims are to be regarded as goals in themselves, for whom rights are recognized and/or granted, instead of as means\(^43\) that facilitate achieving goals unique to a particular Statist or otherwise limited framework.

Different legal systems of varied levels and origins—State or non-state, local through global—accommodate the foundation of human dignity, either through hard law—through agreements, binding custom, etc.—or by means of soft-law leading to custom, or by means of in-between manifestations, as some codes of conduct, among others, all of which may have legal effects due to the process through which they emanate, practice or their relationship with other norms.\(^44\)

Whenever such legal manifestations protect human dignity, they make legal systems come closer to each other and pursue common goals of humanitarian

\(^{43}\) See Andrew Clapham, supra, p. 535.

\(^{44}\) Non-state normative manifestations, similarly 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 law-makers 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 the 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, for example. 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 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, First Report of the Committee on Non-State Actors, The Hague Conference (2010), Non-State Actors Committee, at 8-13; Bruno Simma and Philip Alston, “The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles”, Australian Yearbook of International Law, Vol. 12, 1988-1989, at 100-102; Memorandum of Understanding between the Justice and Equality Movement (JEM) and the United Nations Regarding Protection of Children in Darfur, Geneva, 21 July 2010; Antonio Remiro Brotons et al., Derecho Internacional: Curso General, Tirant Lo Blanch, 2010, at 621-622; John R. Crook, “Abyei Arbitration – Final Award”, ASIL Insights, Vol. 13, Issue 15, 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, 14 July 1989, paras. 30-37.
protection. According to a teleological interpretation of law, the goal of protecting human dignity embodied explicitly or implicitly in such norms must orientate the interpretation and application of law in every instance. On this see, for example, article 31.1 of the Vienna Convention on the Law of Treaties, 1969.

It must be noted that the protection of human dignity exceeds the boundaries of the human rights field strictly speaking, overcoming fragmentation somehow and having the possibility of working as a cohesive force in law. What is more: peremptory law recognizes some human rights, depriving of effects legislation contrary to them.46

The common foundation of several branches 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, are comprised in GLGs, understanding the term humanitarian in a broad sense not limited to the regulation of armed conflicts. Such 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 the protection of human dignity is included in that category.48 If other sciences notice this, 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, since 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 that of global

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45 See August Reinisch, op. cit., pp. 72-74.
47 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.
administrative law\textsuperscript{49}, which is compatible with constitutional or pluralist conceptions of law\textsuperscript{50}.

Likewise, legal goods protective of human beings in their dignity that are common to different legal systems, that have the protection of human dignity as a legal foundation, ought to lead to practice that approaches the guarantees offered in different legal systems to those found in others, for them to complement and reinforce each other, ascertaining minimum rights and duties of protection and respect, thanks to the force of example, which may lead to acculturation or internalization\textsuperscript{51}, mutual influence, and the existence of mechanisms that may force practitioners to refer to the guarantees provided elsewhere, as demanded for instance by principles of effectiveness or pro homine protection\textsuperscript{52}, among others. In this fashion, a common global legal space of humanitarian protection will be developed, which is accruing and 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 high time that the contribution of several actors not recognized as formal legal subjects is acknowledged. When it comes to non-state input in GLGs, it must be borne in mind, however, that non-state actors may have conflicting views on certain issues\textsuperscript{53} and thus some of them may not truly or completely represent all or most of civil society, or that their practice may lead to confusion between existing law and legal aspirations.\textsuperscript{54} Hence, care must be taken to distinguish GLGs from particular interests either of states

\textsuperscript{49} Different legal regimes and systems, and a myriad of legal practices of various actors, can meet in emerging legal spaces. For an example, see Benedict Kingsbury, Nico Krisch, Richard Stewart, \textit{The Emergence of Global Administrative Law}, op. cit., pp. 12-18.


\textsuperscript{53} For example, see “Explanation for Withdrawal from Amnesty and Establishment of the Benenson Society”, available in: \url{http://www.stalosyius.nsw.edu.au/associations/benenson/Withdrawal%20from%20Amnesty%20and%20establishment%20of%20the%20Benenson%20Society.pdf}

\textsuperscript{54} See Andrea Bianchi, op. it., at 185, 191-195, 201-203.
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. Additionally, the fact that some of their behavior and demands are based on claims of universal standards and ideas of representativeness requires them to respect universalistic criteria as well, out of consistency.

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 in and by every legal system. At the same time, they guide the interpretation of legal norms and manifestations 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, which are rights directly conferred or recognized to human beings that protect their dignity, irrespective of their label; and secondly by humanitarian guarantees, which are norms that in spite of not granting direct rights to human beings, benefit the protection of human dignity either directly or indirectly and whose compliance is mandatory, such as, for example, some criminal law provisions; norms dealing with the obligations of non-state parties to armed conflicts compliance with which protects victims; norms of the law of the sea that call for measures which

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55 See Daniel Thürer, op. cit., p. 46.
56 See Fred Halliday, op. cit., p. 36
57 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), par. 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”, pars. 71-87; International Court of Justice, *LaGrand Case (Germany v. United States of America)*, Judgment of 27 June 2001, par. 77; Inter-American Commission on Human Rights, Report No. 112/10, Inter-State Petition IP-02, Admissibility, Franklin Guillermo Aisalla Molina, Ecuador – Colombia, 21 October 2010, para. 117; Ian Brownlie, *The Rule of Law in International Affairs: International Law at the Fiftieth Anniversary of the United Nations*, Martinus Nijhoff Publishers, 1998, pp. 65-66.
59 Taking into account that International Humanitarian Law is designed, among others, 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 and Liesbeth Zegveld, *Constraints on the Waging of War: An Introduction to International Humanitarian Law*, ICRC, 2001, at 12, 14, 70; Common Article 3 to the Geneva Conventions of 1949; Andrew Clapham, *Human Rights Obligations of Non-State Actors*, supra, pp. 46-53. On the regulation of the participation of non-state actors in armed conflicts, see common
may result in the protection of human dignity;\textsuperscript{60} norms and measures related to the protection of refugees that are complementary to the rights granted to refugees; the law that tries to tackle problems posed by transnational organized crime;\textsuperscript{61} 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 the former actors\textsuperscript{62}, among others.

GLGs are identified by their simultaneous appearance in legal systems either implicitly or expressly, recognizing common goals that are better pursued jointly. The theoretical foundation of GLGs is open to debate: some may argue that they are based either on cosmopolitan proposals\textsuperscript{63}, or on natural law theories, as derived by imperatives of adjusting law to the respect of human dignity and the centrality attached to the welfare of human beings\textsuperscript{64}, whereas others may consider that they 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, some may be tempted to say that, analogically, global public goods are socially determined,\textsuperscript{65} or to focus solely on the fact that social movements and several actors may exert pressure towards the enjoyment and recognition of legal common goods in a global landscape, and that this should be decisive in the definition of GLGs.

\begin{footnotes}
\item[60] 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, Articles 98, 99, 100, 101, 102, 103, or 105, 106, 107, or 108
\end{footnotes}
However, I consider that those alternatives are *complementary* to the core one: the protection of human dignity, based on the consideration of human beings as ends in themselves, against the threats posed to them in the global landscape, aiming at continuously increasing this protection, goal whose achievement must ethically be strived for regardless of social agreements to that effect. In any case, I consider that rights and guarantees flowing from human dignity should not be made dependent on agreements of different actors or on the whim of the formal decision-makers, contingencies on which the protection of human dignity cannot be made dependant.

This is so because States and non-state actors alike may act based on private or selfish interests, even detrimental to a proper protection of human dignity, and choosing a philosophical stance protective of human dignity, that takes into account democracy and accountability evidently lest this discourse be manipulated, is unavoidable and ought to have a normative impact. The impact of will on lawmaking is not to be unchecked or almighty. It must be borne in mind that the protection of human dignity cannot be made dependent exclusively on the caprice of social preferences or actions, since it must be ensured that even when majorities or those who hold the official or informal power act contrary to it or deny it, the fairness of law depends nonetheless on the respect of human dignity, as individuals are the final addressees of law.

As has been said above, GLGs rest on the assumption that they bind every potential offender. This is related to several trends: firstly, to the one that considers that the content of human rights can be violated by non-state actors, as can be –inherently-recognized implicitly or expressly by means of different labels (such as destruction or

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66 See Sandra Lavenex, supra, pp. 381, 388; Celestino DEL ARENAL, supra, p. 29; Antonio CASSESE, “Remarks on Scelle’s Theory of “Role Splitting” (dédoublement fonctionnel) in International Law”, European Journal of International Law, Vol. 1, 1990, p. 216; Bob Reinalda, “Private in Form, Public in Purpose: NGOs in International Relations Theory”, pp. 12-15; Daniel Thürer, pp. 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”; on: http://www.chomsky.info/interviews/200105--.htm.

67 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 August Reinisch, supra, p. 61; Eric A. Posner, *The Perils of Global Legalism*, The University of Chicago Press, 2009, p. 204.

68 See Sandra Lavenex, supra, p. 385.

69 See Mario G. Losano, supra, pp. 328-331, 334-335.

abuse, among others, and even that of violations) contained in statements condemning non-state threats, issued by international bodies, NGOs, authors and some authorities, secondly, to the fact that the vicarious responsibility of the State does not guarantee that protection will always be granted to victims; thirdly, to the idea that the nature of States as legal fictions implies that unlawful acts are committed in practice by non-state actors, whose responsibility may be complementary to that of States; fourthly, to the

71 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, par. 46; Ilias Bantekas and Susan Nash, International Criminal Law, Cavendish Publishing Limited, 2003, p. 14; Inter-American Court of Human Rights, Case of Velásquez-Rodríguez v. Honduras, Judgment of July 29, 1988, pars. 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, par. 89; Andrew Clapham, supra, pp. 43-44, 47-53, 56-58, 70-73; Human Rights Committee, Concluding Observations, CCPR/C/UNK/CO/1, 14 August 2006, par. 4; Committee Against Torture, Communication No 120/1998: Australia, CAT/C/22/D/120/1998, 25 May 1999, par. 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; Chris Jochnick, supra; Jordan J. Paust, “The Other Side of Right: Private Duties Under Human Rights Law”, Harvard Human Rights Journal, Vol. 5, 1992; August Reinisch, supra. On the labels of destruction and abuse of human rights, see See BANTEKAS, I. y NASHT, S., International Criminal Law, Cavendish Publishing Limited, 2003, pág. 14; Robert Dufresne, Review of: Liesbeth Zegveld, The Accountability of Armed Opposition Groups in International Law, European Journal of International Law, Vol. 15, 2004, p. 227. Furthermore: as the Special Tribunal for Lebanon considered in a Decision issued by its Appeals Chamber on 10 November 2010 on 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 legal 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 “eviscerates” 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. On the other hand, 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. This declaraction was issued as a Press release of the OHCHR on 10 March 2011 and is available on: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10831&LangID=E

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

73 The International Military Tribunal for the Trial of German Major War Criminals declared, for instance, that “Crimes 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: http://untreaty.un.org/cod/ice/general/overview.htm 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 non-individuals non-state actors to have negative capacities (duties or procedural mechanisms).
duty of the State to ensure the enjoyment of human rights between private parties that requires it to prevent violations from taking place and to deal with those that have been committed by non-state entities properly \((\text{ex post facto} \text{ and potential violations being thus envisaged})\), that contains in itself the acknowledgment that such an enjoyment can be impaired by non-state actors, which is the only logical conclusion coherent with that obligation;\(^{75}\) fifthly, to a general trend that seeks to make all violators of relevant international legal goods accountable; and lastly, the aforementioned assumption is related to the idea that international legal personality is mainly an academic tool\(^{76}\) that may be misleading, and that any actor can have rights and duties as long as a norm says so,\(^{77}\) if it meets requirements that protect addressees, such as those of foreseeability and

\(^{74}\) 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 a state agent and a State simultaneously responsible for breaches of international law caused by one same act. 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, pars. 419-420; Antonio Cassese, “When May Senior State Officials Be Tried for International Crimes? Some Comments on the Congo v. Belgium Case”, *European Journal of International Law (EJIL)*, Vol. 13, 2002, p. 864; 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, par. 56.

\(^{75}\) Regarding the horizontal protection of human rights by States, that are obliged to carry it out, see 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, 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*, Martinus Nijhoff, 2006, at 466-470. The Inter-American Commission on Human Rights has said, in turn, that “In 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 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/VII.134, Doc. 66, 27 March 1999, par. 46.


\(^{77}\) See Andrew Clapham, supra, pp. 70-73.
accessibility in the case of obligations, given the possibility that even international norms may directly address non-state behavior. In fact, concepts such as that of hostis humani generis 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 have those implied powers that they must have in order to be able to achieve their goals and accomplish their missions, the common goals of the global community of respecting certain minimum humanitarian guarantees entails that any actor who harms them is to be responsible. This derives from a general legal principle: that the causation of harm entails responsibility and the obligation to repair. Violating the content of rights and norms that embody GLGs causes injuries that must be repaired.

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”, they must be protected against all threats.

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79 See Theodor Meron, supra, p. 40.
80 See, for example, Claire de Than and Edwin Shorts, supra, p. 257.
83 See Zehra F. Kabasakal Arat, “Looking beyond the State But Not Ignoring It”, supra, p. 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 in their inherent rights everywhere, i.e. regardless of what State they are in or what State exercises authority or power over them –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 articles 2 of the Convention on the Elimination of All Forms of Discrimination against Women and 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,
Up until now, the concept of universality has been traditionally understood in a somewhat geographical or intercultural sense, which must be broadened so as to include universal protection against all potential threats, being this the only way to ensure a comprehensive, integral and thus truly universal protection and recognition of human dignity. After all, human dignity is based on the consideration of men and women as ends in themselves, a condition not dependent upon the accidental nature of potential offenders against such dignity. In connection with this, it is useful to distinguish between universality of recognition and universality of protection of dignity-derived rights, being the former the aspiration that someday all or at least certain human rights norms are binding everywhere—the core of peremptory law already has that feature—, while the latter consists in 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 by 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, and that this violation gives rise to the duty of reparation. In fact, principles of

and in other occasions the human rights discourse endorses ideas that are not really hard law and are argued against reasonable cultural matters, ignoring the need of allocating power in several levels in accordance with democratic ideas, in accordance 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 concerns, evincing how 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 falacy 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, ever since 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 also violators have them. Hence, we have that for universality what matters is a complete protection of dignity in all dimensions: territoriality and 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.

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


See Chris Jochnick, supra, pp. 60-61.
law and soft law can be said to recognize the necessity and importance of non-state actors repairing the wrongs attributable to them.

As a matter of fact, there are some instances in which integral reparation requires the participation of the material offender, not merely the eventual vicarious responsible entity, as happens for instance in situations involving the right of victims to know the truth\(^{87}\) underlying a violation they suffered, being the complete truth known in some cases only to those who directly committed the violation, who are in turn the only ones with the capacity to reveal it to the victims and have respective duties of repairing. Ensuring that no actor will be able to elude its own accountability based on the lack of its formal recognition as a subject will allow powerful actors whose impact in undeniable, such as for instance corporations or the G-7/G-8, among others, to be checked by legal norms and even to be held responsible or to see measures implemented directly against them or at their members and components in case they breach norms protective of human dignity,\(^{88}\) overcoming situations in which the impossibility of tracing a violation to a certain entity 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 \textit{de lege ferenda}. This may help to weaken the impermeability of up until now legally unaccountable “clubs” in the international landscape\(^{89}\). Additionally, violators will know that they may face sanctions or other responses in other legal systems and/or by different actors.

As to preventing legal systems from denying a minimum global protection of human rights, the inclusion or, in better words, acknowledgment of GLGs will counter phenomena of forum shopping or race to the bottom competitions between domestic

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\(^{87}\) 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.

\(^{88}\) 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, Benedict Kingsbury, Nico Krisch, Richard Stewart, \textit{The Emergence of Global Administrative Law}, op. cit., pp. 7-8, 21-22, 28; Inge Kaul, Pedro Conceição, Katell Le Goulven, and Ronald U. Mendoza, “How to Improve the Provision of Global Public Goods”, op. cit., pp. 27, 32, 53-54.

\(^{89}\) See Sandra Lavenex, supra, pp. 373, 387-388.
legislations\textsuperscript{90}, an unfortunate reality in today’s world owed to 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 branches and foundations which exert influence on them and their practice due to socio-legal processes, will make it difficult to sustain a denial of minimum guarantees common to a 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 unlawful already: the principle of equality and non-discrimination belongs to \textit{jus cogens}\textsuperscript{91}, 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 a violation took place is to be deemed disproportionate and unjustified\textsuperscript{92}. For these reasons, GLGs will contribute to the effectiveness of the norms and trends towards the eradication of impunity\textsuperscript{93}. At the same time, GLGs counter the exclusion of participants from the legal realm\textsuperscript{94}.

Another effect of GLGs, hinted above, is that they will help to guide legal practice, because interpretation of law will have to take them into account, for they embody objects and goals of the legal systems and constitute relevant complementary legislation.\textsuperscript{95} After all, norms are to be interpreted, among others, taking into account their purposes and the corpus juris of the legal system in which they are included;\textsuperscript{96} if the protection of human beings as the ultimate addressees of norms is a goal of law as a whole and, in consequence, of its particular norms, this protection exerts influence on

\begin{itemize}
  \item\textsuperscript{90} See August Reinisch, op. cit., pp. 54-55.
  \item\textsuperscript{91} Inter-American Court of Human Rights, Advisory Opinion OC-18/03, \textit{Juridical Condition and Rights of the Undocumented Migrants}, September 17, 2003, pars. 97-101.
  \item\textsuperscript{92} See Jessica Almqvist, \textit{Facing the Victims in the Global Fight Against Terrorism}, Working Paper 18, FRIDE, 2006, pp. 10-17.
  \item\textsuperscript{93} 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; Claire de Than and Edwin Shorts, op. cit., pp. 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 José Manuel Cortés Martín, J., supra, pp. 56-58.
  \item\textsuperscript{94} About the need of inclusion of participants and the definition of what they are, see Math Noortmann, op. cit., pp. 62-63; Theodor Meron, op. cit., p. 317; Janneke Nijman, op. cit., pp. 138-139.
  \item\textsuperscript{95} 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.
  \item\textsuperscript{96} 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, \textit{Juridical Condition and Human Rights of the Child}, August 28, 2002, pars. 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, par. 122.
\end{itemize}
interpretation by being a purpose to consider and because of its being embedded in legal systems.

In consequence, these principles condition the interpretation and coordination of legal systems while at the same time they ensure 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 dignity97, or the principle of effectiveness or *effet utile* of rights, that seeks to make sure that they are protected effectively in practice and in relation to other norms, among others.

Just like some time ago international law relied much on custom given the lack of formality and institutional frameworks98, a situation that changed later with the emergence of institutionalization and the generalization of treaty-making, the current stage of global law is prone to change as legal practice evolves.

This means that while the current nascent phase entails that shared and tacitly agreed upon global norms are minimum, the interactive nature of this reality, in which the tools of one legal system complement and influence each other, permits other legal systems to assimilate the institutions of other legal systems through practice and 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 one99.

This reflects the *complementariness* and *interaction* between different legal levels and their respective agents in order to further and uphold common global principles of mutual concern. Besides, legislative bodies may adopt or give effect to norms from other legal systems, even from non-state legal manifestations\(^{100}\).

Because of this, not only the coinciding values and goals found in the common set of norms and principles common to all international, domestic and transnational law constitute global interests that embody GLGs, but also the purposes and interests of principles and rules expressly or implicitly found in one of those legal systems that are also taken into account somehow by the remaining legal orders, given their influence.

This implies that we have to be careful when analyzing humanitarian legal goods by not forgetting that, for instance, transnational actors have made commitments to uphold and/or to respect human dignity, but also that civil society and the public pressures them to do so; that domestic laws that fail to implement some of those principles are regarded as unfair and illegitimate by a growing global public (opinion),\(^{101}\) and that conversely, on other occasions, domestic norms and local rules give effect to internationally recognized minimum standards through laws dealing with transnational litigation\(^{102}\) or universal jurisdiction\(^{103}\). At the same time, in practice, domestic authorities find a “common” language in international law,\(^{104}\) and this helps to create common understandings.

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101 About (global) public opinion (or civil society), its problems and features, see Andrea Bianchi, op. cit., pp. 200-202; red Halliday, op. cit., p.34.
102 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*”, in Victoria Abellán Honrubia and Jordi Bonet Pérez (Dirs.), *La incidencia de la mundialización en la formación y aplicación del Derecho Internacional Público: los actores no estatales: ponencias y estudios*, Bosch (ed.), 2008, pp. 232-248. About ATCA and other domestic norms that may bind non-state actors or even be applied extraterritorially, see August Reinisch, op. cit., p. 55-58.
103 About this phenomenon, see August Reinisch, op. cit., pp. 55-60; Felipe Gómez Isa, op. cit., pp. 46-47.
104 See Francesco Francioni, supra, pp. 588, 598.
This interaction and confluence of legal institutions and orders may lead to implied agreements and processes of internalization and “acculturation”, complemented by a psychological and moral persuasion 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. 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 to the observance of *jus cogens*, they exert influence over domestic norms by way of legitimizing or delegitimizing them in the international level and depriving them of effects if they are contrary to their *content*. 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 leading to depriving of effects norms that are contrary to *jus cogens* in the domestic level.

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105 About the process of acculturation, see Ryan Goodman and Derek Jinks, supra, at 726-728. On internalization, see Harold Koh, supra, pp. 2645-2646, 2649-2651, 2656-2659.
106 In practice, several factors interact simultaneously and only by taking all of them into account and their respective impact it is possible to understand the motivation and reasons of compliance. See Ryan Goodman and Derek Jinks, supra, pp. 727, 731, Harold Koh, supra.
109 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; Nicolás Carrillo Santarelli, “La inevitable supremacía del *ius cogens* frente a la inmunidad jurisdiccional de los Estados”, supra, pp. 61-63.
110 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
On the other hand, it can be considered that there is an implicit negative duty of every actor that can potentially affect *jus cogens* in a negative way that consists in its obligation to refrain from doing so, and that there is also an obligation to promote and protect peremptory law in some cases for some actors, which is based on the minimum peremptory purposes of the international society. The plausibility of these implied negative and positive effects is confirmed by the fact that peremptory norms are obligatory irrespective of the consent or the will of the actors bound by them.

On the other hand, the implied negative duty of abiding 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 *jus cogens* norms may be expected to be fully and effectively protected.

Notice that I alluded to the content of peremptory international norms: this is so because they operate at the international level. In order to make those effects overcome boundaries of publicness-privateness or of the national, private or international level of a given legal system, besides incorporating their content in another legal system, operation that may have a limited impact, the best way to make sure that they coordinate and prevent gaps, unaccountability and impunity, is by 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 may be achieved by the interaction between legal systems and remissions to international law from other legal systems.

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111 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 José Manuel Cortés Martín, *op. cit.*, p. 30, 37, 132-133; José A. Pastor Ridruelo, *op. it.*, pp. 672-673. On the effects of *jus cogens* regarding their prevalence over possible outcomes contrary to them, see Nicolás Carrillo Santarelli, “La inevitable supremacía del *ius cogens* frente a la inmunidad jurisdiccional de los Estados”, supra.
As to the difficulty of ascertaining which norms belong to peremptory norms,\textsuperscript{112} it must be said that there are mechanisms as to their identification,\textsuperscript{113} and that international bodies have signaled to the international society some of those norms.\textsuperscript{114}

Additionally, the benefits of counting with such norms far outweigh their inconveniencies, ever since the lack of them would risk endorsing dangerous viewpoints according to which the will of addressees of law knows no limits. This is especially important regarding 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 it as a subject or not, can those hierarchical superior norms be deemed to fully spread their effects and strive to assert their effectiveness, in the context of a legal order subject to them that is located in a social context where there is a broad participation of different subjects who interact formally and informally with the law.

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 weak in the current global landscape, such as the sadly large number of persons that suffer from hunger and famine nowadays\textsuperscript{115}, and because of the importance of tackling the roots of the problems faced by human beings around the world (poverty, lack of access to education, etc.).\textsuperscript{116}

Because GLGs are binding in every domestic legal system that interacts in the global space and ever since they highlight positive obligations and mandates of protecting human dignity, they create duties of addressing the aforementioned causes of human suffering leading to rights violations.

As a consequence, it is important that States, international organizations, and any entity with authority or that generates a risk to the enjoyment of human rights, have

\textsuperscript{113} See footnote 107, supra.
\textsuperscript{114} Ibid.
a guarantor position or role in the protection of dignity as a result of expectations placed upon them, their functions or their role in the factual guarantee of the rights, especially of vulnerable individuals.  

This realization, that can be accommodated in legal systems given the legal principles related to the protection of potential victims, must lead to the acknowledgement that non-state actors can be bound by both negative and positive duties, being the underlying rationale of their existence the protection GLGs by means of protecting the global common norms that protect them against all potential entities involved in their violation by action or inaction, and by the obligation of ensuring-supplying their enjoyment (ensuring or making such protection possible), existent under international, global and even some domestic legal systems, based on the fact that 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 and promote human dignity.

On the other hand, in order to heighten the legitimacy of GLGs, taking into account criteria of procedural legitimacy and material justice or fairness,118 accountability and democracy,119 requirements of legal publicness must be taken into account120. After all, if concepts of law entail both political and theoretical dimensions,121 the shaping of a system of law in a global age characterized by interactions among legal systems and actors must ensure the promotion of human dignity protection through public, participatory and transparent mechanisms, which ought to guide governance in the global world.

In spite of the benefits of GLGs, some sort of mechanisms and principles must guide the way in which they are applied, lest chaos and uncertainty rule and threaten the

117 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.
118 About these notions, see Harold Koh, supra, pp. 2641-2644; Thomas M. Franck, Fairness in International Law and Institutions, Clarendon Press – Oxford, 1998, 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, that to my mind may have more ethical aspects.
121 Ibid., p. 57.
legitimacy and plausibility of the concepts defended herein. To these aspects we turn in the next subsection.

2. Determining the scope and functions of the protection of humanitarian global legal goods in a new jus gentium (humanus)

An integral and adequate protection of human beings against all threats cannot be achieved without cooperation, complementarity, coordination and (especially) normative and strategic joint action addressed at constructing beliefs and commitments on the protection of human dignity, which is based on the existence of binding explicit or implied duties.

This is of the utmost importance, because isolated legal tools and initiatives from different legal systems, on their own, may be insufficient and suffer some problems, reason why they must be complemented by other measures from other legal systems and actors interacting in a global legal space in order to reinforce and strengthen the pursuit of the 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 account of them and entitles them to claim the existence of violations against them.

Otherwise, merely voluntary declarations and non-binding codes of conduct may help non-state entities in their public image -as propaganda instruments in some cases- and even to divert attention away from their conduct –even if objectionable from a human rights standpoint-.

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123 See Sandra Lavenex, supra, p. 383.
124 See Sandra Lavenex, supra, pp. 389-391; Fred Halliday, supra, pp. 34-37; Harold Koh, supra, pp. 2633-2644.
125 See August Reinisch, op. cit., p. 53; Alexandra Gatto, op. cit., p. 431.
Even if this proves to not 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 of compliance with regulations – 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 provided by those deficits by means of checking non-state behavior in other ways.\(^\text{126}\)

Likewise, the action of other private entities may reinforce the protection of GLGs through other mechanisms – even non-judicial.\(^\text{127}\) In this regard, it must be borne in mind that codes of conduct and instruments issued by private actors tend to offer no foreseeable safe protection, for the lack of means of complaining and the possibility that the whim of the offender may make it 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 imperatively act consistently with the burdens they ought to have when they unfairly injure others during contacts with them.

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 bias and without attaching importance to a proper philosophy of allocation of powers and law-making capacities in different levels of governance, ignoring legitimate aspirations and beliefs of other levels of governance and individuals or, even if not, they may lack the resources required to properly protect GLGs, reason why they may rely on the indispensable cooperation of domestic authorities, with non-state cooperation being crucial as well.\(^\text{128}\)


\(^{127}\) Ibid., at 4-5.

\(^{128}\) Abstract discussions of issues of resources available to domestic authorities in comparison to those at the disposal of international ones, commented 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 on: http://www.echr.coe.int/NR/rdonlyres/B76DC4F5-5A09-472B-802C-07B4150BF36D/0/20110211_ART_39_Statement_EN.pdf, where the President asks both lawyers and applicants to behave responsibly and diligently, and State authorities to cooperate in the protection of human right, 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, that shows how a global legal space dismisses formal separations as highly artificial in a world of
For this reason, actors and legal systems complement and reinforce other legal systems interacting in the protection of global legal goods based on the common existence of normative elements and contents that protect GLGs for all of them. In this fashion, they all may complement and fill the gaps of the remaining ones—overcoming the shortcomings of each in this dynamic—, in accordance to 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, among legal systems, and among actors, taking advantage of the opportunities offered by the global landscape. The coordinated, joint and orderly action by several actors through the mechanisms available under several interacting legal systems is essential for the protection of common legal interests and values of a global entity (GLGs).

This global context is shaped by and composed of multiple actors, who exert pressure over the content and implementation of law, claiming for a greater inclusion and participation in legal systems. The contribution of those actors is invaluable for an effective application of humanitarian legal goods in the international level. States or International Organizations alone acting on their own cannot be expected to provide a complete and effective protection of human dignity, which explains why the cooperation, contribution or commitment of a variety of other actors, ranging from NGOs to corporations and others, is required to further GLGs. In this context, non-state-

non-state and state-non-state partnerships must be encouraged\textsuperscript{135} 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 in order to fill existing gaps. This is related to tools of multi-level governance,\textsuperscript{136} such as complementarity or subsidiarity, among others, that arrange the interaction and phases in which different legal levels are to 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 and, when their agents 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,\textsuperscript{137} international law is called upon.

However, tough political and other questions underlie the idea of whether mechanisms of subsidiarity should always be applied, i.e. if successive series of steps through different organization levels are necessarily the proper answer, given the debates about –democratic and fair– allocation of power and decision-making, and whether local or international authorities are better suited to deal with certain issues,\textsuperscript{138} because domestic authorities may be unwilling or unable to deal with certain issues or, alternatively, international entities may in practice try to impose the ideology and bias of their officers to other levels of governance and polities in an illegitimate manner.

It is suggested that there is no definitive answer to the previous questions, and that sometimes local authorities are better suited to tackle certain issues, whereas that cannot be said in other situations, in which they could attach greater importance to


\textsuperscript{136} See Anne Peters, op. cit., pp. 535-536.


\textsuperscript{138} See John H. Jackson, \textit{Sovereignty, the WTO, and Changing Fundamentals of International Law}, Cambridge University Press, 2006, pp. 73-76; Rafael Domingo, supra, at 217.
domestic interests over global considerations that may sometimes prove more important. Nonetheless, local decisions may have an impact outside the territory of a State, which makes it necessary to count with a system able to ensure protection to human beings from different countries, by means of making sure that domestic decisions may be revised and additional remedies exist when domestic ones are too burdensome, inadequate, ineffective or non-existent, 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.

Another aspect related to multi-level frameworks, in a global and somewhat “neomonist” context, 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, and the fact that the contribution of domestic authorities pursuing global humanitarian goals is essential in order to provide an effective protection to human dignity, given their closeness to people and the immediacy with which they can address cases to be examined.

Because of the aforementioned greater availability of means and resources to domestic organs, the proposals towards a more encompassing jurisdiction in both civil and criminal cases with the purpose of making available more remedies to victims who have not been properly and effectively repaired under the legal system of a given

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140 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, pars. 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 Concurring Opinion of Judge A.A. Cançado Trindade, Inter-American Court of Human Rights, Case of Castillo-Petruzzi et-al v. Peru, September 4, 1998, par. 35.

141 On these issues, see Rafael Domingo, supra, at 204-208, 217.

142 See Harold Koh, supra, pp. 2646, 2649-2650.


144 See Thomas Buergenthal, supra, pp. 804-806; August Reinisch, supra, pp.88-89; John H. Knox, supra, p. 44; Ibid.
state\textsuperscript{145} will, if implemented, have the consequence that human beings will have more legal resources that can be used to protect their essential rights and, \textit{simultaneously}, offer States the opportunity to remedy the situations they have the duty to examine \textit{before} that case can be supervised in a supranational level by virtue of its being seized by one of its authorities,\textsuperscript{146} highlighting how all levels of decision and action in the protection of human rights are both connected with others and yet are relevant in themselves. Hence, the duty of competent States to investigate violations of dignity-derived rights is to be stressed.

When analyzing domestic remedies, it must be remembered that if a given domestic remedy of the States obliged to provide it proves to be ineffective, inaccessible, or is exhausted and a violation persists, or if urgent action in the international domain is warranted so that the exhaustion of domestic remedies can be temporarily or permanently not required, then victims, both actual and potential, ought to have access to the “last hope” of the international level\textsuperscript{147}.

Note that not every violation of humanitarian global legal goods is to be addressed in the international level.

This is especially so given the few resources available in the international level, which is one where the logic of “cooperation” largely prevails. In this regard, for instance, one could think from the subjective approach to global legal goods that only serious violations (e.g. those violations of \textit{jus cogens}, or of international criminal law, among others) or violations where the non-state violator acts with authority over individuals, replacing or acting in a way similar to the State, warrant international remedies.

Nonetheless, in order to not violate the right to equality and non-discrimination of victims of non-state actors in comparison with those of States, alternative effective remedies must always be granted to those victims. In the end, a disaggregated analysis

\textsuperscript{146} See European Court of Human Rights, Fourth Section, \textit{Case of Hajduová v. Slovakia}, Judgment of 30 November 2010, para. 36.
\textsuperscript{147} See, supra, the content of footnote 139.
shows that the contingent constructs called States ultimately operate through individuals, as other actors do as well.

Yet, the substantive acknowledgment of the violation permits domestic authorities and non-state actors promoting human dignity in accordance with the criterion of simultaneous protection to grant protection, and appeals to them to devise ways in which that protection can be granted, given the legal goal of protecting global legal goods present in their 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—to feel that their interests and dignity are taken into account by law, and to demand their protection, or resorting to activism backed by legal goods, which have an expressive or symbolic function as well.

In any case, in the current global legal space structures based on successive levels 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). Instead of succession, the ideal strategy and framework of relationships

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148 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.”


151 It has been suggested that non-state actors can develop legal norms outside the frameworks of domestic and international law, due to reiterative processes where behaviors are labeled as legal or illegal, during the course of processes of hierarchization, temporalization and externalization. About this, see Gunther Teubner, “‘Global Bukowina’: Legal Pluralism in the World Society”, in Teubner, G. (ed.), Global Law Without a State, Dartmouth (ed.), 1997, pp. 12-19; Benedict Kingsbury, “The Concept of ‘Law’ in Global Administrative Law”, op. cit., pp. 52-55; Rafael Domingo, supra, 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 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, 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.
between non-state global law and international or domestic law is one of *simultaneity* and joint efforts of 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, denounces, calls for behavior modification, or reports, among others. Claims of violations of human dignity issued by actors other than states (such as NGOs, for instance) 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 and also employ *shaming* techniques against non-state actors\(^\text{152}\).

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* count with the contribution of multiple systems and actors, both by adopting *multi-level and simultaneity-based strategies*, and by taking advantage of the strengths and complementariness of each of them.

As a result, for instance, domestic courts and authorities in all levels of governance ought to give effect to common global standards acknowledging a *universal* universal jurisdiction concerning *ratione materiae*, *ratione loci*, and *ratione personae* bases, i.e. a thoroughly universal jurisdiction encompassing: the i) territorial scope of jurisdiction, leaving no place in the world without a common minimum protection of human dignity; the ii) material fields which can be analyzed given their connection with the protection of human dignity; and iii) the offenders whose behavior can be judged, all with the aim of granting a more complete protection to human beings by eliminating the possibility of impunity, when interpreting and applying civil, criminal or other norms, permitting and encouraging non-state actors to denounce existing violations and

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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.

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 (a guiding principle of humanitarian global legal goods), while employing disaggregated approaches when analyzing the State and other group entities, domestic authorities should recognize that they can and ought to act in the name of the global and the international communities. This is the foundation of the extension of the prosecution of violations of GLGs by means of universal civil or criminal jurisdiction, or by mechanisms such as that of the aut dedere aut judicare/aut punire principle, among others.

As 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.

This comprises, besides mechanisms of multi-level and reinforced/complementary protection of GLGs, the principle that any breach of the content of norms that guarantee GLGs which is committed by any material violator engages its responsibility and duty to repair any damages caused as a result, principle that also applies to all those who cooperated or participated in the offense, ever since that participation is an implicit negative capacity of every participant in the global social context, in the light of the common humanitarian foundations and purposes of law.

The aforementioned duty of repair flows from the general principle of law that is found throughout domestic legal systems that calls for the responsibility of the entity to whom the causation of an injury can be attributed. Additionally, this train of thoughts flows from the idea 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 its dimensions, it is possible to identify two features:

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153 Regarding the disaggregated analysis of State behavior, see Eric A. Posner, supra, pp. 40-41, 71.
154 See Antonio Cassese, “Remarks on Scelle’s Theory of “Role Splitting” (dédoublement fonctionnel) in International Law”, supra, pp. 220-221, 225-231.
155 Concerning this rule, see Ilias Bantekas and Susan Nash, supra, pp. 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.
i) First of all, GLGs operate in accordance to several criteria of distribution of competences and allocation of responsibilities, each of which complement each other. That is to say, as has just been explained, GLGs are protected in accordance to considerations of *subsidiarity and simultaneity*—when protected by public and private actors through different means that mutually reinforce the likelihood of protection without overlapping in their philosophy or operation—.

Likewise, GLGs are protected in accordance with the criterion of **specialization**, in the sense that each legal system or actor carries out its functions and has its own mechanisms, that may differ from those of other actors. In this sense, 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 them *ex post facto*, i.e. after a violation has been found, in order to order reparations, or in a preventative fashion, reminding other entities of their incumbent duties and ordering 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 boundaries of legal systems, to further the same common global legal ground, and is consistent with the consideration that cultural and non-judicial mechanisms are important to protect human dignity.\(^\text{156}\) It is, however, complemented by the criterion of **back-up or support**, that sees how one same legal tool or mechanism can be potentially employed by several agents of the protection of GLGs and across several legal systems, so that if one of the latter fails to implement it effectively, the same tool can be employed in another interacting legal system and by another participant, preventing failures to employ a given relevant crucial mechanism of protection.

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

Finally, it must be stressed that the current conception of international law lags behind reality for various reasons: it fails to grasp increasing interactions with multiple actors and legal systems, risking never achieving its goals. 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 has been said that it can be in the hands of human beings to create the “spiritual” or “emotional” basis of a true international society. 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, which are abstractions 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, persons are multidimensional and may be influenced not merely by supposedly internal or domestic interests, especially in an age in which the identities, affiliations and allegiances of individuals and other actors are varied and change. As Antonio Cassese has highlighted, theories according to which national authorities are to implement international law are especially relevant nowadays because those authorities may protect interests that are not limited to those of their States, given their general scope that benefits and reaches individuals beyond the borders of a single State or of some States.

158 See, among others, footnote 6, supra.
159 See Antonio CASSESE, “Remarks on Scelle’s Theory of “Role Splitting” (dédoublement fonctionnel) in International Law”, supra, at 225-231.
That is the case with GLGs, which ought to be protected by the aforementioned authorities, as mandated by their legal systems given their interaction in a global legal space, that makes them be interconnected with other legal systems, giving rise to the possibility of changing the legal culture by acting based on the growing awareness about the protection by law of interests common to humankind, something necessary as long as we are enmeshed in a system that is still to a great extent too based on the idea of territorially separate units that tends to favor selfish parochial concerns over those that are common to all human beings.160

Yet, the protection of GLGs is not limited by the action that States can undertake towards this goal. In fact, such help is insufficient in itself given the loopholes of the State system and the weakness of the State itself before some global phenomena and powerful actors that operate transnationally.

Acknowledging this will make clear how important it is to open up the participation of human beings in the shaping and promotion of global legal goods, because they will become aware of the need to promote them given their chance of impacting on the culture of the entities they participate in and interact with, striving to make them internalize those legal goods.

And so, by endorsing the rights of every human being in every corner of the world, those entities that protect them or learn to do so by example or social pressure will further the protection of global legal goods even if they have no evident direct nexus with the supposedly own interests of the bodies or entities they participate in, leading 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 no longer, as it is no longer already in practice, international but global, with transnational elements and increasing legal and other interactions between various levels and actors, which are a consequence of the need of law to adapt itself to the society it is embedded in for it to be able to manage it. This is reminiscent of the theories of Scelle and Jessup, who opted in favor of other terms, such as transnational law or jus gentium,161 which describe more

160 In the same sense, see Rafael Domingo, op. cit., at 174-181.
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 on the guarantee of human rights both negatively and positively, and social factors entail the fact that States or other actors acting alone are poorly suited to provide a comprehensive protection of human dignity, that if only protected against States will be open to factual attacks attributable to non-state actors. These factual violations have legal relevance given the legal goods violated, which is the cornerstone of the protection framework, rather than a weak focus on the identity of the actors responsible for a given violation. As a result, the legal systems must pay attention to and regulate the potential abuses –or positive actions- of any actor in regard to global legal goods, given their potential factual capacity of accountability.\(^{(162)}\)

In a new legal understanding of the complete protection of human rights, beyond overcoming divisions of the role of relevant actors, it must be understood that the needs of humankind require more than the current understanding of legal systems or actors operating in an isolated fashion\(^{(163)}\). actors and legal systems must contribute and be coordinated with each other for the furtherance of a common goal, something that is possible, as demonstrated by the increasing contacts and interfacing between legal systems, which 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 interests and groups would suggest.

CONCLUSIONS


\(^{(163)}\) 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”, in Victoria Abellán Honrubia and Jordi Bonet Pérez (Dirs.), La incidencia de la mundialización en la formación y aplicación del Derecho Internacional Público, Los actores no estatales: ponencias y estudios, Bosch Editor, 2008, at 337-338, 342-343.
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 current globalization trends and realities, in order to cope with the challenges posed by some actors and take advantage of the initiative 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 that protect human dignity that share the same goals and interests, therefore having the same purpose of protecting humanitarian legal goods in a global legal space.

These goods ought to be respected in every legal order and by every potential perpetrator. At the same time, functions of public bodies and the various manifestations of the possible legal participation of several actors 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 and expressive, ethical and political messages sent by this core of shared legal goods embodied in a minimum global legal landscape, which can have an impact on the mindset of members of the global community and the values they endorse,\(^\text{164}\) 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 to seek their reparation under several legal systems, having thus a reinforced legal protection of the rights that protect the same shared legal goods, as permitted by the links between legal systems when it comes to protecting GLGs and the encouragement of the cooperation of both states and non-state actors, who will consider global legal goods as a legal basis and justification of their operations.

Altogether, the benefits of acknowledging GLGs are twofold: firstly, they may lead to the interpretation of legal systems interacting globally in a way which is better suited to meeting the needs and tackling the problems faced by human beings in the

current global landscape, countering isolated regulations contrary to dignity or insufficiently protecting it in a given legal system of any level of governance and produced by sources in which public entities, or lack thereof, create them.

This will be accomplished by means of the influence of the remaining legal systems participating in a global space and complementing each other, filling their respective gaps. Secondly, by dismissing a state-centered approach, GLGs may pave the way for opening up the number of participants entitled to contribute to their protection, by way of recognizing that their conduct must be legally addressed, being discouraged or encouraged, as decided on a case by case basis, depending on whether in one case they benefit or harm the enjoyment of rights derived from human dignity and of obligations that protect interests, values and goals that constitute GLGs, as 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.165

One same actor may be allowed to perform some activities of promotion and/or protection in favor of the GLGs endorsed by the ethical-socio-legal society while at the same time its conduct is checked by those same legal goods.

The logic of a complete, integral protection of human beings, as flowing from global law, must permeate every legal order, transforming their 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 or private-public law166, and of State-non-state entities, that hinder the practical way in which cooperation is carried out, the nature, pillars and structure of international law itself must change, ceasing to have state-centered remnants and fully becoming human-centered.

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165 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 F. Kabaşakal Arat, "Looking beyond the State But Not Ignoring It", in George Andreopoulos et al., Non-State Actors in the Human Rights Universe, Kumarian Press, Inc., 2006, pp. 4-18; Thomas Buergenthal, supra, 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 Luis Pérez-Prat Durbán, supra, at 35-36; http://www.cidh.oas.org/defenders/Cuestionario-Sociedad-Civil.Seguimiento.eng.htm and http://www.cidh.oas.org/defenders/Cuestionario-Estados.Seguimiento.eng.htm.

As Myres McDougal pointed out, legal systems may have some principles that lead to their self-destruction by virtue of their being contradictory and impeding achievement of some goals.\footnote{167} After all, law ought to address social problems and offer protection to its true and definite addressee: the human person\footnote{168}. Currently, many victims are underprotected because of gaps related to “doctrinal” notions of legal personality (of potential and actual violators and protectors) and due to the lack of coordination and links between legal systems and actors in many respects, a situation that is unbearable.

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, where actors different from the states possess power, both soft and hard, and even systemic\footnote{169}, being some capable of circumventing or diminishing the efficacy of the norms, controls and restrictions of isolated legal orders\footnote{170}.

At the same time, States cannot elude, disregard or ignore their existing duties of respecting and protecting human dignity while misleading others to focus exclusively on non-state obligations, ever since they retain their obligations to ensure and respect dignity-derived rights and other norms that protect GLGs.\footnote{171} Traditional notions that limit the protection granted to human beings can be overcome by the possibilities offered by a global humanitarian interpretation of law. This may ensure that no victim will be unnoticed or underprotected.

\footnote{169}{see Celestino del Arenal, op. cit., pp. 27-28, 34, 52-53, 64-66; Anna Badia Martí, supra, at 319-320, 324, 336, 342; Francisco Galindo Vélez, “Consideraciones sobre la determinación de la condición de refugiado”, in Sandra Namihas (Ed.), Derecho Internacional de los Refugiados, Pontificia Universidad Católica del Perú – Instituto de Estudios Internacionales, Fondo Editorial, 2001, pp. 60-61; Sandra Lavenex, supra, p. 388; Alexandra Gatto, supra.  }
\footnote{170}{see, for instance, Sandra Lavenex, p. 377.  }
\footnote{171}{see Andrew Clapham and Scott Jerbi, supra, p. 339.  }
Furthermore, it must be said that the notion of GLGs can counter the “legitimization” effect of legal norms that are contrary to human dignity. By binding every legal order and participant, irrespective of the degree of its formality or recognition, the global or world 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 have no legal effects given their unacceptability.

Even more: this emergence of GLGs will open up the participation in the legal global sphere to many actors and states without economic, military, or other sort of power or practical influence, and will encourage and even demand such participation, ever since global legal goods are strengthened by the interaction of several legal processes in which many states, actors, polities and populations participate, while making persons aware of their truly universal rights, empowering them in their claims whenever they are or can be injured in their dignity-derived entitlements, be them in the form of rights, or in the form of claims of obeisance of the duties borne by other entities.

Finally, it can be said that if legal participants and actors become aware of the existence of humanitarian global legal goods by noticing their coinciding –inherent, express or implied- presence in different legal systems and as goals of the conduct of several entities, and take into consideration their defense and promotion, the protection of human dignity will in turn be enhanced and reinforced given the comprehensive guarantees offered by joint simultaneous mechanisms and actions that aim to protect GLGs, that will operate with a coordinated legal dynamic that has a global synergy given the fact that GLGs are a link of multiple legal systems and actors interacting globally or, rather, universally: ignoring formalistic borders.

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