

The contribution of international courts and tribunals to the methodology of international law

OC - (ILA-14138) - THE HUMAN RIGHTS COURTS OF THE “GLOBAL SOUTH” AS CREATORS OF INTERNATIONAL LAW

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Abstract

The universality of International Law has been largely debated recently, with voices contesting its seemingly Western values, origins and concepts. For many scholars, international law was exported from a Eurocentric paradigm, and packaged as part of the colonial process as the ‘new universal world order’. However, the post-Colonial era has seen the emergence of new actors in the Global South, with the noteworthy case of the regional courts of human rights, which have taken positions of relevance and preeminence in international law.

If International Law is truly ‘international’ and ‘universal’, then we would expect substantive contents created anywhere in the world could permeate upwards and become ‘universalized’ into the general principles of international law. The Inter-American Court of Human Rights (IACtHR) and the African Court on Human and Peoples' Rights (ACtHPR) are doing so in areas as transitional justice, environmental rights and refugee law, among others. What these systems might be doing is neither embracing international law completely nor fully rejecting it, but rather engaging in a complex task of adapting international legal principles for their purposes, thus ‘indigenizing the universal’, and providing the international law community with a different methodology to approach universal issues.

The focus of the paper is to explore how the Inter-American Court of Human Rights (IACtHR) and the African Court on Human and Peoples' Rights (ACtHPR), as de facto Global South adjudicative bodies, approach international law, and propose alternative positions to those taken, for example, by the European Court of Human Rights (used as proxy for a clearly Euro-centric court by design). Are the concepts they are creating alternative to “western” international law, based on their cultural and geographical contexts? Are their new concepts and approaches being adopted by the international community and added to the *acquis* of Public International Law? A comparative study of this nature seeks to reveal how different non-European courts respond to the challenges of adapting international law for their purposes, while contributing to the larger theory (or theories) of international law.

Palavras-chave : Human Rights, Global South, Methodologies of International Law