

10-2017

# The Bandung Ethic and International Human Rights Praxis: Yesterday, Today and Tomorrow

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## Repository Citation

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## The Bandung Ethic and International Human Rights

Practice



Yesterday, Today, and Tomorrow

OBIORA CHINEDU OKAFOR\*

### INTRODUCTION

Between April 18 and 24, 1955, a group of twenty-nine African and Asian states gathered in Bandung, Indonesia, for the very first Afro-Asian summit in recorded human history.<sup>1</sup> Almost every single African and Asian state that was independent at the time was represented at Bandung.<sup>2</sup> It is no wonder then that this moment is widely regarded in the literature as “the foundational moment of the Third World.”<sup>3</sup> Issued on April 24, 1955, the Conference’s Final Communiqué<sup>4</sup> captured what I refer to in this chapter as the Bandung ethic. This conference also inspired a long line of subsequent meetings of the same kind and heralded the emergence of a relatively new political and socioeconomic movement in world affairs<sup>5</sup> – one that eventually included Latin American and the Caribbean states.<sup>6</sup> The nonaligned movement and the Group of 77 states (or the G-77) represent differing (though related) forms, dimensions, and iterations of this broad movement.<sup>7</sup>

\* I am grateful to Herman Gill for his excellent research assistance.

<sup>1</sup> See The Ministry of Foreign Affairs of the Republic of Indonesia (ed.), “Final Communiqué of the Asian-African Conference of Bandung (April 24, 1955),” *Asia-Africa Speak from Bandung*, pp. 161–169.

<sup>2</sup> See G.M. Kahin, *The Afro-Asian Conference: Bandung, Indonesia, April 1955* (Ithaca: Cornell University Press, 1956), p. 1.

<sup>3</sup> See R. Burke, “The Compelling Dialogue of Freedom: Human Rights at the Bandung Conference” 28 *Human Rights Quarterly* 947 (2006), p. 948.

<sup>4</sup> *Ibid.* <sup>5</sup> See Kahin, “The Afro-Asian Conference,” p. 2.

<sup>6</sup> See R. Abdulgani, *The Bandung Connection* (Singapore: Gunung Agung, 1981), pp. v–vi.

<sup>7</sup> *Ibid.* Regarding the Non-Aligned Movement, see the Non-Aligned Movement (NAM), [www.nam.gov.za](http://www.nam.gov.za) (accessed June 26, 2014); and S. Morphet, “Multilateralism and the Non-Aligned Movement: What Is the Global South Doing and Where Is It Going?” 10 *Global Governance* 517 (2004). On the G-77, see [www.g-77.org](http://www.g-77.org) (accessed June 26, 2014); and

Although the Bandung Conference took place several decades ago, some would maintain nevertheless that its spirit is not yet dead – that it remains as relevant as ever today.<sup>8</sup> Not everyone might fully agree, but whether or not the Bandung spirit is now yesterday's affair, it is important to inquire whether the nature of the inspirations and motivations behind the convening of Bandung, the particular modes of struggle favored at that conference, and the specific outcomes of that historic meeting suggest anything to us about the character and orientation of international human rights practice today, as compared to yesterday? Has that practice changed at all since and as a result of Bandung, and if so, to what degree? Has it aligned to any extent with what might be styled the Bandung ethic? From the perspective of what Bandung appears to have represented to the bulk of those who convened that meeting, and from the point of departure of the Bandung ethic, are there any continuities or discontinuities from international human rights practice's past that leap to the eye when one trains one's gaze on that practice today? Has everything remained more or less the same today with international human rights practice in spite of Bandung and the broad ethic it pushed to the fore of global relations? Or has anything changed significantly as a result?

These related questions are especially relevant and important since "human rights" was, so to speak, present at Bandung.<sup>9</sup> Given this fact, it makes sense that a book such as the current one, devoted as it partly is to the relationship between Bandung and international law, pay some attention to the relationship of the Bandung ethic to the character and orientation of international human rights practice today.

It should also be noted that much of the contents of this book does constitute a timely and important addition to the critical Third World approaches to international law (TWAIL) literature on Bandung. For, if Makau Mutua is correct that critical TWAIL scholars like many of the contributors to this book "stand on the shoulders of Bandung,"<sup>10</sup> then it is also appropriate that these scholars reflect systematically and publicly in this way on Bandung, its spirit, and its broad ethic.

In a bid to achieve its objectives, the chapter is organized into five parts, this introduction included. In the second section, the meaning, character,

M. Martin, "The Group of Seventy-seven (G77) and a Third World Secretariat" 75 *Commonwealth Journal of International Affairs* 220 (1986).

<sup>8</sup> See Abdulgani, *Bandung Connection*, pp. 1–8.

<sup>9</sup> See Burke, "Compelling Dialogue," p. 948.

<sup>10</sup> See M. Mutua, "What is TWAIL?" 94 *American Society of International Law* 31 (2004), pp. 33–34.

and orientation of the Bandung ethic are explored in the hopes of arriving at a working understanding of that concept. The third section discusses the continuities that might leap to the trained eye in the character and workings of international human rights, despite the emergence decades before now of the Bandung ethic and its propagation and circulation in international relations since then. In the fourth section, the discontinuities that have characterized international human rights practice since, and (partly) as a result of, the propagation and circulation of the Bandung ethic are examined.<sup>11</sup> The fifth section ends the chapter by offering a few concluding remarks.

#### THE BANDUNG ETHIC

Given the nature of the overarching goals of this chapter, it is important at this juncture to develop a working understanding of the expression “the Bandung ethic.” This is necessary if our discussion, in subsequent sections of the chapter, of the relationship between that concept and contemporary international human right practice is to make sense.

Some insight into aspects of what this expression, as it is used in this chapter, might denote, is offered in Fouad Ajami’s decades-old conclusion that “the men [and women] who met in Bandung were dreamers . . . who wanted their societies to enter the world on more equitable terms.”<sup>12</sup> The key word here is equity, which in turn invokes the concept of equality (all on a global scale).<sup>13</sup> And an aspect of this ethic of global equality that was central to the motivations and outcomes of the Bandung Conference was the insistence on the part of the Afro-Asian states there gathered on the agency of their peoples (whatever the gap between state and society in these countries), on charting their own courses, on finding their own ways, and on the preservation of their newfound autonomy and independence (howsoever porous and illusory these later turned out to be).<sup>14</sup>

It is no wonder then that, as testified to by both its communiqué and studies of its proceedings, in addition to some other issues and concerns that were on

<sup>11</sup> Space constraints do not allow for a full analysis of the relationship between the Bandung ethic and the international human rights practice today. Only systematic and illustrative sketches of some of these relationships are developed.

<sup>12</sup> See F. Ajami, “The Fate of Nonalignment” 59 *Foreign Affairs* 366 (1980–1981), p. 368.

<sup>13</sup> For a discussion of the concept of global (in)equality, see, e.g., T. Pogge, “An Egalitarian Law of Peoples” 23 *Philosophy and Public Affairs* 195 (1994).

<sup>14</sup> See The Ministry of Foreign Affairs, “Final Communiqué.”



the mind of participating delegations,<sup>15</sup> the Conference considered and held vital issues related to imperialism. This included issues such as the following: colonialism (which at the time was still being experienced almost everywhere in its bare-knuckle forms); self-determination (which stood normatively opposed to colonialism); neocolonialism (which even then had begun to trouble not a few of these countries); South-South cooperation (a necessary bulwark against what was considered by many as the socioeconomic and political tyranny of the great powers); sovereignty/nonintervention (seen as a normative defense against undue outside manipulation and control); and respect for fundamental human rights (howsoever differently contemplated by the various delegations there represented).<sup>16</sup>

It is also no wonder then that, as others have noted, “Bandung [also] signaled a refusal to accept the bipolar scheme, to join the superpower competition, or subscribe to either of the mutually exclusive ideologies on which that competition rested.”<sup>17</sup> This was the stance that was later on christened “non-alignment.”<sup>18</sup>

With regard to those aspects of the discussions, deliberations, and consensus at Bandung that were explicitly framed in human rights terms, it is important to underline some of the disagreements that were present at that meeting over questions of the proper conception and practice of human rights. Behind the Communiqué’s broad and “full support of the fundamental principles of human rights as set forth in the Charter of the United Nations”<sup>19</sup> and the fact that it “took note of the universal declaration of Human Rights as a common standard of achievement for all peoples and all nations,”<sup>20</sup> there was some variation in the true attitudes of some delegations to these questions. For example, it is clear that [then] Communist China could hardly have subscribed fully to this very strong universalist approach, at least not at the relevant time, and many other Afro-Asian states (such as Singapore and Malaysia) would later reject this strong universalism, albeit to varying extents. Of course,

<sup>15</sup> As, for example, the shadow that Communist China supposedly set over Asia. See D. Kimche, *The Afro-Asian Movement: Ideology and Foreign Policy of the Third World* (New York: Praeger, 1966), p. 59.

<sup>16</sup> See The Ministry of Foreign Affairs, “Final Communiqué”. See also [http://franke.uchicago.edu/Final\\_Communique\\_Bandung\\_1955.pdf](http://franke.uchicago.edu/Final_Communique_Bandung_1955.pdf) (accessed June 27, 2014); and G.H. Jansen, *Nonalignment and the Afro-Asian States* (New York: Praeger, 1966), Appendix A.4, p. 419. See also Kahin, *The Afro-Asian Conference*, p. 1.

<sup>17</sup> See H.W. Brands, *The Specter of Neutralism: The United States and the Emergence of the Third World, 1947–1960* (New York: Columbia University Press, 1989), p. 3.

<sup>18</sup> See Ajami, “Fate of Nonalignment.”

<sup>19</sup> See The Ministry of Foreign Affairs, “Final Communiqué,” Section C, pp. 5–6.

<sup>20</sup> *Ibid.* See also Burke, “Compelling Dialogue,” p. 952.

almost needless to say, the issue of the actual human rights practice of states has always been a whole other matter, not just in the Third World but the world over as well.<sup>21</sup> And so the tension between the universality and relativity of human rights (in almost all its shades) was present at Bandung, however subtly.

At Bandung, Third World unity and South-South cooperation were conceived in terms of “the ethic of solidarity.”<sup>22</sup> Even since then, these particular notions of unity and cooperation have remained key modes of the anti-imperialist and pro-Third World struggle. This approach was inspired by the work of great anti-imperialist theoreticians such as Amílcar Cabral, who once declared that, “we consider that unity is a means but not an end.”<sup>23</sup> Importantly, such an attempt at forging unity among the generally weaker Third World states did not proceed in ignorance of the fact of great diversity among Afro-Asian peoples and states, let alone in the entire geopolitical South. Indeed, it proceeded precisely because of that diversity. The fact that “Afro-Asia [let alone the entire Third World] provides a vast canvas to paint, so vast, indeed, that individual details tend to blur and become indistinct,”<sup>24</sup> and that the diversity of the Third World was more or less on display at Bandung,<sup>25</sup> should not lead inexorably to the conclusion that there was no political solidarity on display at Bandung.<sup>26</sup> In any case, this should not make us reject the possibility of such solidarity manifesting in undulating fashion, in ebbs and flows, depending on the issue and the context.<sup>27</sup> For, the vast majority of Afro-Asian (and Third World) peoples – and their states – almost always have enough common concerns to almost always ensure that such solidarity is achieved. The overall point here then is that to the extent that the Bandung

<sup>21</sup> See O.C. Okafor and S.C. Agbakwa, “Re-Imagining International Human Rights Education in Our Time: Beyond Three Constitutive Orthodoxies” 14 *Leiden Journal of International Law* 563 (2001), pp. 566–73. See also M. Mutua, “Savages, Victims and Saviors: The Metaphor of Human Rights” 42 *Harvard International Law Journal* 201 (2001); Baxi, *The Future of Human Rights*; U. Baxi, “A Work in Progress?: The United States’ Report to the United Nations’ Human Rights Committee” 35 *Indian Journal of International Law* 34 (1995); U. Baxi, “Random Reflections on the [Im]possibility of Human Rights,” [www.pdhre.org/dialogue/reflections.html](http://www.pdhre.org/dialogue/reflections.html) (accessed October 30, 2013); and P. Houtondji, “The Master’s Voice – Remarks on the Problem of Human Rights in Africa” in UNESCO, *Philosophical Foundations of Human Rights* (Paris: UNESCO, 1986), pp. 320–332.

<sup>22</sup> See Kimche, *Afro-Asian Movement*, p. v.

<sup>23</sup> See A. Cabral, *Unite et Lutte, II* (1975), pp. 226–231, reproduced in P. Braillard and M.-R. Djalili, *The Third World and International Relations* (London: Frances Pinter, 1984), p. 36.

<sup>24</sup> See Kimche, *Afro-Asian Movement*, p. v. <sup>25</sup> *Ibid*, pp. 66–67. <sup>26</sup> *Ibid*, pp. 73–74.

<sup>27</sup> See R. P. Anand, “Attitude of the Asian-African States toward Certain Problems of International Law” 15 *International and Comparative Law Quarterly* 55 (1966).

ethic encompasses an aspect of solidarity, that aspect is not illusory and should factor in some way into any analysis of Bandung and its effects on world affairs.

Thus, in sum, the Bandung ethic weaves together the aspects of anti-imperialism, independence, agency, global equality, respect for fundamental human rights (whatever the diversity in its conception at the Conference), the uplifting of the material, political, and even psychological conditions of Afro-Asian peoples, and Third World solidarity. Yet, the dominant strain within this ethic is one of global equality, Third World independences/agencies, and the improvement of the conditions of Third World peoples.

#### CONTINUITIES

To what extent has international human rights practice remained impervious over time to the dictates of this broad Bandung ethic? To what extent has that discipline resisted successfully the changes that should have occurred if it were to imbibe, internalize, and be firmly oriented toward the Bandung ethic? Have continuities marked (and even marred) the discipline in spite of the circulation and projection since 1955 of the Bandung ethic? While space constraints do not allow a full treatment of these questions here, the consideration of a few examples of the kinds of continuities referred to above will suffice to illustrate the position.

First, international human rights practice is (with ebbs and flows) still as captive today as it was at the time of the Bandung Conference to what might be referred to as the Western (and great power) super-gaze (i.e., the gaze of the dominant elements in the West). With rare exceptions such as apartheid and perhaps the dumping of toxic waste, what even gets to be viewed and named in the dominant discourse as a human right violation, what gets assigned that consequential appellation, has been disproportionately (though not totally) shaped by Western opinion and imprimatur. And even when the struggle to style certain conduct a human rights violation has been initiated or led by one of more Third World states (such as African states in relation to apartheid and the dumping of toxic waste), without the imprimatur of the strongest Western states (who constitute a tiny percentage of the number of states in the world and house a relatively puny number of the world's population), that struggle has tended to face a huge – and sometimes insurmountable – obstacle to its success.<sup>28</sup> In spite of the undulating but persistent projection of the Bandung

<sup>28</sup> See, e.g., A. Klotz, *Norms in International Relations: The Struggle against Apartheid* (Ithaca: Cornell University Press, 1995); and C.U. Gwam, *Toxic Waste and Human Rights* (Bloomington: Authorhouse, 2010).

ethic in global relations by many forces (states, groups such as the G-77, peoples, social movements, NGOs, and so on), little has changed in this regard. In the circumstances, the only reasonable explanation for this kind of relative stasis in the character and orientation of international human rights practice is the vastly disproportionate global power that is wielded by these most powerful Western states, peoples, and groups (where “power” is seen not merely in military, economic, and political terms, but also in ideational and social senses).

A recent demonstration of the ways in which the exertion of such global power has tended to work in the period between Bandung and today to almost pervert our vision of social reality and shape what gets viewed as a human rights violation, is the difference in the ways in which the crushing of protests in Egypt and the Ukraine has been received in the dominant (and especially, the popular) human rights discourse. The Egyptian Army (led by a general considered to be friendly to the West) brutally crushes a peaceful sit-in and in the process kills hundreds of clearly peaceful Islamists who were protesting what is by any reasonable measure a military coup against the freely elected but Islamist Morsi government, and this massacre is followed, at best, by a whimper of protest, and largely by equivocation and ambivalence, in official and mass media circles, as well as within civil society itself, in the most powerful Western countries.<sup>29</sup> But when the Ukrainian police under the Victor Yanukovich government (considered unfriendly to the West) storms a more or less peaceful protest in Kiev, with comparatively far less casualties, a deluge of Western leaders’, civil society and mass media voices is raised in the loudest possible decibels, with very little or no equivocation or ambivalence, against this “outrage on human rights.”<sup>30</sup> To be sure, some in Western and non-Western civil society did condemn both incidents (whatever the differences in their intensity and sincerity),<sup>31</sup> but the more powerful of the Western

<sup>29</sup> See, e.g., “Kerry Says Egypt Military Was ‘Restoring Democracy’ in Ousting Morsi,” *New York Times* (Aug. 1, 2013), [www.nytimes.com/2013/08/02/world/middleeast/egypt-warns-morsi-supporters-to-end-protests.html?\\_r=0](http://www.nytimes.com/2013/08/02/world/middleeast/egypt-warns-morsi-supporters-to-end-protests.html?_r=0) (accessed July 4, 2014); and “Violent Crackdown in Egypt Crushes Hope for Political Reconciliation,” *Globe and Mail* (Aug. 14, 2013), [www.theglobeandmail.com/news/world/violent-crackdown-in-egypt-crushes-hope-for-political-reconciliation/article13778066/](http://www.theglobeandmail.com/news/world/violent-crackdown-in-egypt-crushes-hope-for-political-reconciliation/article13778066/) (accessed July 4, 2014).

<sup>30</sup> See, e.g., “Ukraine Forces Retreat ceding Square to Protests,” *New York Times* (Dec. 11, 2013), [www.nytimes.com/2013/12/12/world/europe/police-storm-kiev-square-as-crisis-grows.html?pagewanted=all](http://www.nytimes.com/2013/12/12/world/europe/police-storm-kiev-square-as-crisis-grows.html?pagewanted=all) (accessed July 4, 2014); and “World Leaders Condemn Ukraine Bloodshed,” *Time* (Feb. 19, 2014), <http://world.time.com/2014/02/19/world-leaders-condemn-ukraine-bloodshed/> (accessed July 4, 2014).

<sup>31</sup> See, e.g., the recent report by Amnesty International on the serious and widespread human rights violations by the new el Sissi regime in Egypt, which is essentially the same regime that

leaders and mass media, and the bulk of civil society, tended to exhibit the kind of bias outlined above. To the discerning mind, this should exemplify the ways in which the Western super gaze plays a disproportionately powerful role in shaping the *living* international human rights discourse and practice. The gaze of the less powerful agents in our largely hierarchical world did not really matter all that much here, and is almost completely displaced by the super gaze of the most powerful Western agents.

A related continuity in the character and orientation of international human rights practice is that, despite the insistence at Bandung (and since then) on global equality, Third World agency and anti-imperialism, that practice is still virtually as unidirectional in flow as it was at the time of Bandung. As has been argued elsewhere, international human rights practice (past and present) has tended to be defined by a one-way traffic paradigm in which human rights knowledge, scrutiny, and supervision tend to flow from those parts of the world, largely the West (which supposedly invented human rights, know almost everything about it already, and observe it almost to the letter), in the direction of those regions of the world, largely the Third World (which apparently did not invent human rights, which tend to know very little – if anything – about it, and which hardly ever observe its tenets).<sup>32</sup> It has also been pointed out in support of this argument that international human rights programs and clinics in North America tend to focus heavily on the Third World and not on their own region;<sup>33</sup> and that the United States – at one extreme – rarely thinks of itself as a proper candidate for human rights scrutiny.<sup>34</sup>

As importantly, it is noteworthy that in spite of the aspect of solidarity that co-constitutes the broad Bandung ethic, South-South (i.e., intra-Third World) human rights cooperation, be it ideational or practical, is still in its youth today, and has not grown nearly as much as might have been expected

crushed the peaceful sit-ins of the Islamists. See “Egypt ‘Failing at Every Level’ of Human Rights,” BBC News (July 3, 2014), [www.bbc.com/news/world-middle-east-28147913](http://www.bbc.com/news/world-middle-east-28147913) (accessed July 4, 2014).

<sup>32</sup> See Okafor, “Re-Imagining International Human Rights.” See also M. Mutua, “Savages, Victims and Saviors: The Metaphor of Human Rights” 42 *Harvard International Law Journal* 201 (2001); U. Baxi, *The Future of Human Rights*; Baxi, “Work in Progress”; Baxi, “Random Reflections”; and Houtondji, “The Master’s Voice,” 320–332.

<sup>33</sup> See T. Ezer and S. Deller Ross, “Fact-Finding as a Lawmaking Tool for Advancing Women’s Human Rights” 7 *Georgetown Journal of Gender & Law* 331 (2006), p. 331; and J. Bond, “Global Classroom: International Human Rights Fact-Finding as Clinical Method,” 28 *William Mitchell Law Review* 317 (2001), pp. 320–324. For a critique of this tendency, see Okafor, “Re-Imagining International Human Rights,” pp. 566–583.

<sup>34</sup> Baxi, “Work in Progress.”

by those who foresaw the imperative and promise of Third World unity at Bandung, as a bulwark against the overall rapaciousness of the global power environment. This is a startling continuity since the Bandung era in the inability of the Third World to muster as common a front as is possible (their main means of effective resistance) against the domination of international human rights practice by the most powerful Western states. To be sure, continuous efforts at South-South human rights cooperation have been made, and have even succeeded at times (e.g., in pushing the anticolonial, anti-apartheid, anti-toxic waste, anti-unilateral sanctions agendas through the UN Human Rights Council).<sup>35</sup> But these efforts are nowhere near their optimal, and are in fact closer to the Bandung baseline for assessment than to their optimal point. While here is not the place to discuss the reasons for the existence of this wide gap, suffice it to note that the propagation and circulation of the Bandung ethic has not, thus far, led to the optimization of the practical forms of human rights solidarity that is possible among Third World countries and their peoples. It is no wonder then that a recent Report of the UN Human Rights Council Advisory Committee has called for much greater efforts to be made in the direction of South-South human rights cooperation.<sup>36</sup>

Another feature (or perhaps orientation) of international human rights practice that has persisted in spite of the Bandung ethic is that to the extent that it sets out to help author the wiping out of global impoverishment and material want, the geographic focus of this aspect of its work has hardly shifted. This is largely because what Upendra Baxi has mellifluously styled the “geographies of injustice”<sup>37</sup> has remained more or less stable in the sixty years or so since the Bandung conference. By this is meant the fact that the vast majority of the extremely “impoverished” and “deprived” peoples of this world still inhabit a broad geographic zone that closely maps onto the territories in which the vast majority of the poor people lived at the time of the Bandung conference. This has been so notwithstanding the huge gains made since Bandung in the area of the alleviation of extreme poverty in countries like China and Brazil, and despite the similar but much less dramatic rising tides in some other Third World countries. This level of geographic continuity in

<sup>35</sup> See, e.g., Klotz, *Norms in International Relations*; and Gwam, *Toxic Waste*.

<sup>36</sup> See *Preliminary Study of the Human Rights Council Advisory Committee on the Enhancement of International Cooperation in the Field of Human Rights*, A/HRC/AC12/CRP.2 (June 2014), section vi.

<sup>37</sup> See U. Baxi, “Operation Enduring Freedom: Toward a New International Law and Order?” in A. Anghie, B. Chimni, K. Mickelson, and O. Okafor (eds.), *The Third World and International Order: Law, Politics and Globalization* (Leiden: Martinus Nijhoff, 2003), p. 46.

the incidence of extreme poverty is simply indisputable. At the very least, such Third World-centered global socioeconomic inequality remains “as acute as ever.”<sup>38</sup>

A related continuity in international human rights practice since Bandung is that economic and social (ES) rights remain more or less marginalized today in the relevant texts, discourses, and practices, in spite of the Bandung ethic’s insistence on global socioeconomic equity and the uplifting of the material conditions of Third World peoples. The fuller enjoyment of ES rights is of course an important, if not minimum, condition for the elimination of extreme poverty. Now, the extent of the marginalization of ES rights has of course lessened in the time between Bandung and today, in part as a result of the struggles of both Third World and like-minded states/activists/peoples.<sup>39</sup> For instance, ES rights are now justiciable within the legal systems of a number of countries, such as South Africa<sup>40</sup>; the African Commission on Human and Peoples’ Rights has issued a number of forward-looking decisions which take ES rights very seriously<sup>41</sup>; the Court of Justice of the Economic Community of West African States has acted similarly<sup>42</sup>; the UN Committee on Economic Social and Cultural Rights has worked assiduously to bridge the conceptual gap between civil/political (CP) rights and ES rights (including through innovations such as the concept of minimum core obligations)<sup>43</sup>; and UN documents now consistently proclaim the equality, indivisibility, and interdependence of all categories of human rights.<sup>44</sup> Yet, even the mere fact that only a relatively small number of countries have thought it fit to place ES rights on the same footing as CP rights in their constitutions is most telling as to the continued marginalization of ES rights in our time.<sup>45</sup>

Lastly, given the strong pro-autonomy/agency and anti-imperialist streak of the Bandung ethic, it is significant that in all-too-many cases (if not in almost all cases), the *framework* (and not necessarily the details) of the socioeconomic and political policies of Third World states still tend to be directed from outside their borders, usually by one or more of the most powerful Western states, or by some institution under their effective collective direction and

<sup>38</sup> See Ajami, “Fate of Nonalignment.”

<sup>39</sup> See P. Alston and R. Goodman, *International Human Rights* (New York: Oxford University Press, 2012).

<sup>40</sup> *Ibid.*

<sup>41</sup> See, e.g., *Social and Economic Rights Action Centre v. Nigeria* (referred to as the Ogoni Case), 15th Activity Report 2001–2002, Annex V.

<sup>42</sup> See, e.g., *SERAP v. Nigeria*, Suit No. ECW/CCJ/APP/0808 (on the right to education).

<sup>43</sup> See Alston, *International Human Rights*. <sup>44</sup> *Ibid.* <sup>45</sup> *Ibid.*

control.<sup>46</sup> This has remained so, with ebbs and flows, since and in spite of Bandung, and despite the flow of much smaller, intra-Third World counter-currents such as the rise of China to a significant measure of global power<sup>47</sup>; Chinese influence across the Third World (especially on the African continent)<sup>48</sup>; a more modest measure of Indian economic influence around the world<sup>49</sup>; the subregional sway of Nigeria in West Africa<sup>50</sup>; the rise of South Africa to a modest measure of regional economic power<sup>51</sup>; and the open resistance of some Third World states (such as Venezuela) to such great power influence at one or more points in their existence.<sup>52</sup> Kwame Nkrumah, one of the great anti-imperialist theorists once wrote that

the essence of neo-colonialism is that the State which is subject to it is, in theory, independent and has all the outward trappings of international sovereignty. In reality its economic system and thus its political policy is directed from the outside . . . Neo-Colonialism is also the worst form of imperialism. For those who practice it, it means power without responsibility and for those who suffer from it, it means exploitation without redress.<sup>53</sup>

Given this time-hallowed and accurate definition, it becomes fairly clear from the above discussion that sixty years or so after Bandung, almost all of the Third World peoples are – to varying degrees – still in the throes of neocolonialism. It is no wonder that former UN Assistant Secretary-General Sashi Tharoor recently warned that it would be most mistaken even today to

<sup>46</sup> See, e.g., O.C. Okafor, “Re-Conceiving ‘Third World’ Legitimate Governance Struggles in Our Time: Emergent Imperatives for Rights Activism” 6 *Buffalo Human Rights Law Review* 1 (2000).

<sup>47</sup> See D. Shambaugh, *China Goes Global: The Partial Power* (New York: Oxford University Press, 2013).

<sup>48</sup> See, e.g., A.C. Alves, “China’s ‘Win-Win’ Cooperation: Unpacking the Impact of Infrastructure for Resources Deals in Africa” 20 *South African Journal of International Affairs* 207 (2013).

<sup>49</sup> See D. Wagner and D. Jackman, “China and India’s Battle for Influence in Asia,” *The Huffington Post*, [www.huffingtonpost.com/daniel-wagner/china-and-indias-battle-f\\_b\\_833371.html](http://www.huffingtonpost.com/daniel-wagner/china-and-indias-battle-f_b_833371.html) (accessed July 4, 2014).

<sup>50</sup> See CNN, “Nigeria: West Africa’s Economic Powerhouse” (Sept. 27, 2010), [www.cnn.com/2010/WORLD/africa/09/17/nigeria.country.profile/](http://www.cnn.com/2010/WORLD/africa/09/17/nigeria.country.profile/); and BBC News, “How Nigeria has Affected the Rest of Africa” (Sept. 20, 2010), [www.bbc.com/news/world-africa-11429067](http://www.bbc.com/news/world-africa-11429067) (accessed July 4, 2014).

<sup>51</sup> See *IMF Survey Magazine* (Oct. 25, 2012), [www.imf.org/external/pubs/ft/survey/so/2012/cario2412a.htm](http://www.imf.org/external/pubs/ft/survey/so/2012/cario2412a.htm) (accessed July 4, 2014).

<sup>52</sup> See, e.g., *The Guardian* (Feb. 18, 2006), [www.theguardian.com/world/2006/feb/18/usa.venezuela](http://www.theguardian.com/world/2006/feb/18/usa.venezuela) (accessed July 4, 2014).

<sup>53</sup> See K. Nkrumah, *Neo-Colonialism: The Last Stage of Imperialism* (London: Thomas Nelson, 1965), p. xi.

discount “the messy afterlife of colonialism” in our study of and reactions to international relations.<sup>54</sup>

These are some of the ways in which international human rights practice has remained impervious to the dictates of the Bandung ethic, and resisted successfully the changes that should have occurred if that practice were to imbibe, internalize, and be firmly oriented toward that ethic.

### DISCONTINUITIES<sup>55</sup>

Having established in the last section that, despite the propagation and circulation of the Bandung ethic over the last sixty or so years, there is a significant measure of continuity even until this day in the nature and orientation of international human rights practice, the question that remains is whether there has been significant changes or alterations in the character or orientation of international human rights practice, or in the major tasks that confront it, since and because of Bandung? While there have, of course, been a number of such alterations, not all of them may be viewed as positive from the point of view of Third World states/peoples. And here again, space constraints dictate that only a number of them will be discussed.

One of the more noticeable changes that have occurred since, and in part because of, Bandung is an important alteration in the nature of the major task that confronts international human rights practice. Formal colonialism has been delegitimized and the blatant forms of that institution have suffered near-total eradication in real life. Except for Palestine, the Western Sahara, and perhaps two or three other places, it would be extremely difficult to find formal colonialism anywhere in the world today. Fouad Ajami was correct in pointing this out in 1981, and Sashi Taroor was even more justified in announcing it about two decades later.<sup>56</sup> In any case, this is now so obviously a truism that its adumbration should not detain us here. Suffice it to say that even mere formal independence has had its benefits for Third World states and peoples, and has helped reshape the list of major tasks that confront international human rights practice. With a few exceptions, formal colonialism – an egregious human rights violation – is no longer one of these tasks.

<sup>54</sup> See S. Tharoor, “The Messy Afterlife of Colonialism” 8 *Global Governance* 1 (2002).

<sup>55</sup> A small portion of this section is taken from O.C. Okafor, “On the Patchiness, Promise and Perils of ‘Global’ Human Rights Law,” *Diaspora Scholars Lecture*, Nigerian Institute of Advanced Legal Studies (2011), pp. 41–43.

<sup>56</sup> See Ajami, “Fate of Nonalignment,” p. 368; and Tharoor, “Messy Afterlife.”

What is more, this huge alteration in the level of unacceptability of formal colonialism has meant that global power (howsoever stable, morphed, or transformed) is today not nearly as free as it was at the time of the Bandung Conference to write international human rights texts or author international human rights practice. Global power must now contend with one or two new Third World power centers,<sup>57</sup> as well as with the emergence into formal international life of nearly two hundred (Third World) states with a tendency to dominate the membership of many (though clearly not all) of the bodies that write the relevant texts and author the related practice.<sup>58</sup> This situation has helped alter the global power matrices within which international human rights practice must circulate and operate, and reorient that practice itself (however modestly) toward greater alignment with the Bandung ethic. Global power must now also contend with the existence and activities of peoples' movements in the Global South and the transnational networks they have sometimes formed to leverage forms of Western civil society influence in the service of Third World goals (e.g., the anti-land mines and anti-dam movements).<sup>59</sup>

Another way in which the global power matrices that help shape the content and orientation of international human rights practice, and against which that practice often operates, have altered significantly in the period between Bandung and the present is through a socioeconomic and political development that is largely internal to the Third World itself.<sup>60</sup> The rise to a measure of global socioeconomic and political influence (however limited) of

<sup>57</sup> For example, the rise of China has altered many global political and socioeconomic calculations. See Shambaugh, *China Goes Global*.

<sup>58</sup> For example, although sponsored by Russia, the study conducted by the Human Rights Council Advisory Committee (HRCAC) on the highly controversial issue of "Promoting Human Rights and Fundamental Freedoms through a Better Understanding of Traditional Values of Humankind," pursuant to Human Rights Council Resolution A/HRC/RES/16/3 of April 8, 2011, was largely pushed through by the large Third World majority on the UN Human Rights Council. While the necessity for this study appeared to make a lot of sense to almost all Third World states and some others, it was opposed to varying degrees by most Western countries and most Western NGOs. The HRCAC's Report on this study is documented as UN Doc. A/HRC/22/71, of Dec. 6, 2012.

<sup>59</sup> See, e.g., B. Rajagopal, *International Law from Below* (Cambridge: Cambridge University Press, 2003); and M. Cameron, *To Walk without Fear: The Global Movement to Ban Landmines* (Don Mills: Oxford University Press, 1998).

<sup>60</sup> This is an internal Third World development for the most part because, aside from Russia, all the countries that are exerting significant power and all the countries against which power is being exerted continue to identify with the Third World (either as part of the Non-Aligned Movement and/or the G-77).

the “BRICS” (i.e., Brazil, Russia, India, China, and South Africa),<sup>61</sup> and the more recent and less robust emergence of the MINTs (i.e., Mexico, Indonesia, Nigeria, and Turkey),<sup>62</sup> has led to the concretization in our time of newer global human rights battlefronts, newer axes of power along which both familiar and unfamiliar human rights axes will increasingly be ground. When the Chinese build factories or mine crude oil in parts of Africa,<sup>63</sup> or Nigerian banks dominate much of the West African and East African markets,<sup>64</sup> labor and other human rights issues are triggered across a power divide that, though not quite as acutely asymmetrical as the North-South one, is still significantly so. While these kinds of relationships have always existed within the Third World, they have never been as acute as they are today or are likely to become in the near to mid-term. So, there is a sense in which the albeit limited success of the project of South-South socioeconomic cooperation that was, understandably, favored so strongly at Bandung has produced its own pathology, created new global fronts in the struggle for human rights, and triggered the shift of some human rights struggles from a predominantly North-South to certain South-South axes. Critical Third World international human rights scholars will do well to pay greater attention to these developments.

Another change that has occurred in international human rights practice since, and in part as a result of, Bandung is the significant augmentation of the capacity of Third World states, civil society groups and peoples to “discipline” global power and influence the behavior of the stronger states that has occurred. Human rights languages are being increasingly harnessed by the weaker Third World states as they have sought, sometimes with significant success, to “discipline” the behavior of the stronger states.<sup>65</sup> They have sought to make the stronger states internalize certain values, and reorient their

<sup>61</sup> See W. Dan, “Common Development Strategies for Asian and Latin American Developing Countries: From the Perspective of Foreign Trade” 4 *Journal of International Commercial Law and Technology* 143 (2009).

<sup>62</sup> See “The Mint Countries: Next Economic Giants?” BBC News (Jan. 5, 2014), [www.bbc.com/news/magazine-25548060](http://www.bbc.com/news/magazine-25548060) (accessed July 4, 2014).

<sup>63</sup> See C. Alessi and S. Hanson, “Expanding China-Africa Oil Tie,” Council of Foreign Relations Backgrounder (Feb. 8, 2012), [www.cfr.org/china/expanding-china-africa-oil-ties/p9557](http://www.cfr.org/china/expanding-china-africa-oil-ties/p9557) (accessed July 4, 2014).

<sup>64</sup> See D. O’Neil, “Nigerian Banks Battle for Pan-African Dominance,” *Euromoney* (Apr. 2013), [www.euromoney.com/Article/3181918/Nigerian-banks-battle-for-pan-african-dominance.htm](http://www.euromoney.com/Article/3181918/Nigerian-banks-battle-for-pan-african-dominance.htm) (accessed July 4, 2014).

<sup>65</sup> Here the word *discipline* is used in a Foucauldian sense. To Foucault, “Discipline ‘makes’ individuals; it is the specific technique of a power that regards individuals both as objects and as instruments of its exercise. It is not a triumphant power...it is a modest, suspicious power, which functions as a calculated, but permanent economy.” See M. Foucault, *Discipline and Punish: The Birth of the Prison* (London: Allen Lane, 1977)

conduct accordingly – even if not completely. Sensing the hold that human rights languages now seem to have over the mentalities of the leaders and peoples of many of these (largely) Western states, Third World states, movements, and NGOs have for long framed and couched in human rights terms many of the issues that are important to them and, many at time, their peoples.<sup>66</sup> They have also placed many of those issues on the human rights agenda of various UN organs, such as the General Assembly, the Human Rights Council, and the Commission on Human Rights (the predecessor of the second body).<sup>67</sup> Thus, this increased capacity of international human rights practice to provide a way in which weaker states, peoples, and NGOs can seek (however modestly) to project their more important ethical, equity, and other concerns is yet another way in which that practice has changed in the intervening years since 1955. While these developments may not be easily or entirely attributable to the circulation and effect of the Bandung ethic, it certainly aligns with the strong desire at Bandung to rein in the stronger states to some degree and enhance Third World agency and global influence. It also promotes the actualization of that ethic.

<sup>66</sup> For example, the issue of controlling their resources and protecting them from colonial-era style dispossession by stronger states has been framed as the peoples' right to permanent sovereignty over resources or the peoples' right to economic self-determination. See Article 1, International Covenant on Civil and Political Rights; Article 1, International Covenant on Economic, Social and Cultural Rights; Article 21, African Charter. Note that although the African Charter is not legally binding on any of the stronger states of the North that have traditionally benefited from the exploitation of the resources of African peoples, the document also functions as a formulation/statement of the ideology of human rights that African states want to project to the world; i.e., their sense of what should and should not be included in the list of human rights. The great concern of the Third World for improvements in their living standards has also been framed as the right of peoples to development. See the UN Declaration on the Right to Development, Dec. 4, 1986, A/RES/41/128; and Article 22, African Charter. See also O.C. Okafor, "Righting' the Right to Development: A Socio-Legal Analysis of Article 22 of the African Charter on Human and Peoples' Rights" in S. Marks (eds.), *Implementing the Right to Development: The Role of International Law* (Geneva and Cambridge: Frederick Ebert Stiftung and Harvard University, 2008).

<sup>67</sup> For example, the concern of the weaker Third World states over the dumping of toxic waste from the industrialized and more powerful states in the territories has been framed as a human rights issue and placed squarely on the agenda of the UN Human Rights Council. See U. Gwam, "Adverse Effects of Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights" 14 *Florida Journal of International Law* 427 (2002), p. 441. And colonialism was delegitimized by a General Assembly resolution. See the Declaration on the Granting of Independence to Colonial Countries and Peoples, UNGA Resolution 1514 (XV), Dec. 14, 1960. Importantly, and definitely not coincidentally, this resolution was passed in the very same year in which the largest number of African states gained their independence and became UN member states.

Similarly, new methodologies and dramaturgies of international human rights struggle have also augmented the capacity of Third World states, civil society, and peoples to reshape our world. The significant success achieved by global social movements in favor of human rights, in partnership with most of the weaker Third World states and some other like-minded states, in reconstructing the normative discourse and realities related to the relationship of intellectual property rights and essential medicines (especially anti-HIV/AIDS drugs), and in securing important concessions from the stronger developed countries, is now very well known.<sup>68</sup> The more recent example of the way in which the Twitter hashtag “bringbackourgirls,” which was conceived by a female Nigerian activist, “forced” many world powers to take some (albeit extremely modest and inadequate) action to better support the efforts of the Nigerian government to rescue about 200 kidnapped Nigerian school girls further illustrates this point.<sup>69</sup> Here, the Bandung ethic’s insistence on Third World agency and on the need to discipline and constrain global power stands vindicated in our time, howsoever modestly.

These are some illustrative examples of the discontinuities that characterize international human rights practice from the perspective of its relationship to the Bandung ethic; of the changes that have occurred since, and in part as a result of, Bandung in the character or orientation of that practice, or in the main list of tasks that it confronts.

#### CONCLUSION

As we have seen, the set of Afro-Asian leaders who gathered at Bandung in April 1955 in the shadows of global power were certainly quite diverse (though not as diverse as the group of Third World leaders of our time). Yet, as diverse as they were in political, social, and economic terms, they were nevertheless inspired, animated, and later united (in large measure) by a set of common concerns, aspirations, and stances. It was this relative commonality that allowed the broad movement that they forged at Bandung to sire what later became known as “the Third World,” and to, among other things, found its nonaligned movement and G-77 expressions. It was also this relative commonality that allowed them and their countries to more or less unify in articulating

<sup>68</sup> See J. Gathii, “Legal Status of the Doha Declaration on TRIPS and Public Health under the Vienna Convention on the Law of Treaties” 15 *Harvard Journal of Law and Technology* 291 (2002).

<sup>69</sup> See BBC News (May 7, 2014), [www.bbc.com/news/blogs-trending-27315124](http://www.bbc.com/news/blogs-trending-27315124) (accessed July 4, 2014).

and propagating what I refer to in this chapter as the Bandung ethic – one that has continued to insist on global equality, Third World independence and agency, Third World solidarity, and the betterment of the conditions of all Third World peoples.

The task this chapter tackled was to assess whether in the sixty or so years since the Bandung Conference, much has really changed in international human rights practice when viewed from the perspective of the orientation of the Bandung ethic and, and exactly to what extent. In any case, to what extent is the Bandung ethic still relevant today? If formal colonialism is now over, and international human rights practice has now been entirely and satisfactorily transformed in line with the Bandung ethic, and that ethic's job is now done – why would it still be relevant in our time? In any case, whatever its relevance today, is the Bandung spirit and the ethic it sired now dead? That spirit/ethic has, of course, gone through ups and downs, and clearly the landscape in which it operates is no longer exactly the same as it was at the time of the Bandung Conference, but assertions of its decline have, in general, been exaggerated. There is still a lot of work for the Bandung ethic to do today.

This is clearly evident from the map and analysis of the continuities and discontinuities in the relationship of the Bandung ethic to international human rights practice that this chapter has provided. At best, there are as many continuities as there are discontinuities in this relationship. Global power (including in its newer forms) continues till this day to exert a highly significant influence on the character of international human rights practice and on its orientation toward almost all of the Third World. Thus, if Amilcar Cabral was correct in the 1970s that the anti-imperialist struggle “is for the building up of our countries . . . a life of happiness, a life in which every [wo]man will have the respect of all [wo]men, where discipline will not be imposed upon us . . . if we do not achieve this, we will have failed in our duty, the objective of our struggle,”<sup>70</sup> then – in this sense at least – the anti-imperialist struggle is clearly far from over. For, while imperialism today – including its workings in relation to international human rights practice – is *more* ideational than bare-knuckled, it still exerts very strong influence in today's world. The power relationships “furniture” in our global sitting room has been rearranged, but we are still largely left with much the same kind of imperialist furniture.

This is a realization that is rendered acute when the story of international human rights takes for its baseline and adopts as its chief referent an alternative (largely) anti-imperialist moment like Bandung.

<sup>70</sup> See Cabral, *Unite et Lutte*.

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