**Hybrid Human Rights**

1. **Introduction**

International human rights law represents a broad range of ideologies, norms and cultures.[[1]](#footnote-1) States are the main drivers of the creation and development of human rights. Countries, regional groups and political blocs use the international arena to promote their own norms and values when creating new human rights law. At the international level, human rights develop through ‘soft law’ before becoming codified in treaties or enshrined through customary international law. States actively consent to being bound by obligations contained within treaties or tacitly consent to being bound by customary international law. Soft law is not legally binding but is a crucial part of the process of creating and developing human rights. UN resolutions, decisions and declarations, amongst others, are key sources of soft law. Countries use discussions and votes within UN bodies to promote or resist the development of a particular human right. Global politics, then, plays a significant role in the ideologies, norms and values that are represented through the creation and development of human rights.

The international human rights law system is not static; rights are constantly evolving. At the beginning of the modern era of human rights, ideological battles centred upon the tensions and divisions between Civil and Political Rights and Economic, Social and Cultural Rights. Those categories were promoted, respectively, by the West and the Soviet bloc during the Cold War. The next significant evolution occurred with the advent of ‘Collective’ or ‘Peoples’ Rights,[[2]](#footnote-2) also known as Third Generation Rights. The initial rights in this category, such as to self-determination, are closely linked to decolonised states’ mosaic of imperial experiences. There is another group of rights that has evolved under the broader umbrella of Third Generation Rights. Those rights are not simply a reaction to colonialism but instead promote ideologies and norms of countries that did not have a voice during the initial development of international human rights. Those countries include decolonised states alongside other, formerly weaker, countries from Latin America and Asia. The theory of ‘hybridity’ can be utilised to understand these rights. Hybridity enables understanding of the ideologies upon which they are based, the processes through which they are created, as well as the rights themselves.

Hybridity occurs where there is resistance to domination. Bhabha insists that it occurs within the ‘Third Space’[[3]](#footnote-3) that exists between the dominant and the dominated; the coloniser and the colonised. That space may be a metaphor or a place; it is the ‘contact zone’[[4]](#footnote-4) produced by a power-imbalanced relationship. [[5]](#footnote-5) Resistance comes from the ‘local’,[[6]](#footnote-6) used not in the parochial sense but to mean the space created ‘in which everyday practices are used’. Indeed, the local may exist at the national, transnational or global levels.[[7]](#footnote-7) Hybridity, then, is not based upon the merging of two entities; rather it occurs through the processes of resistance and adaptation on both sides. What emerges is not a mixing of the two, but a third entity that challenges the dominant – substantively or ideologically – whilst simultaneously incorporating norms and values from both. It goes beyond ‘mimicry’ or repetition of the dominant order, instead becoming ‘an uncertainty which fixes the colonial subject as a partial presence’.[[8]](#footnote-8)

Universalists, often advancing a globalisation theory, ‘assume an increasing homogenization of the world’;[[9]](#footnote-9) while cultural relativists, frequently relying on post-colonial discourses, ‘posit notions of difference and resistance’[[10]](#footnote-10) in the relationships between the Global North and South. Hybridity is an alternative both to globalisation and post-colonial discourses,[[11]](#footnote-11) moving away from the binaries that exist in those theories and ‘towards thinking about the multiplicity of outcomes that might occur when two entities meet and interact.’[[12]](#footnote-12) The interaction is key, particularly the different level of resistance within each relationship resulting in challenges to the dominant framework that necessarily incorporate ideas, norms and customs from the local and external entities.

The impact of non-Western constructs on international law has traditionally been explored through post-Marxist discourses, particularly post-colonialism. Hybridity is a relatively new lens through which these issues can be viewed. The theory has roots within classics and the humanities but has only recently been applied within social sciences and legal frameworks, albeit using case studies from the local, national or regional, level. It is clear that ideological, political, and legal discourses are crucial for understanding current changes to, or attempts to change, international human rights law. The shift in global power and politics has underscored the need to represent hybrid constructs within international law. The international legal system is moving in this direction, with peace-building and interventions, for example, beginning to represent heterogeneous norms that incorporate African,[[13]](#footnote-13) Asian[[14]](#footnote-14) and Islamic[[15]](#footnote-15) ideologies and values on responsibilities, communities and social justice.

Significant literature has explored the ideologies underpinning international human rights law in relation to the first two categories, or ‘generations’, of rights. Much has been written on the tensions between Civil and Political Rights and Economic, Social and Cultural Rights. Legal scholarship is yet to address systematically Third Generation Rights. Previous work on that category largely has been confined discussions to substantive rights stemming from post-colonialism,[[16]](#footnote-16) which ignores the many other Third Generation Rights. Development and implementation of hybrid rights are not being discussed within the academy, let alone analysed from an interdisciplinary perspective. There is an obvious need to understand the rights themselves and the ideologies upon which they are based.

1. **Hybridity: A three-part framework**

Hybridity is relatively underused with regard to events occurring at the international level. The theory has been applied to peace-building,[[17]](#footnote-17) interventions,[[18]](#footnote-18) state-building,[[19]](#footnote-19) and international criminal courts,[[20]](#footnote-20) all of which all case studies that demonstrate that nothing is purely local or purely international.[[21]](#footnote-21) Hybridity is raised within the context of specific circumstances, with scholars combining individual case studies to draw broader conclusions about how events at the international level. I have taken this further by developing a framework of three inter-connected elements for understanding hybridity and its role and impact within the international arena.[[22]](#footnote-22)

Firstly, hybridity is a *theory* that enables understanding of identities, providing a lens through which cultures may be viewed. Theories are one input within the international arena, for example when they inform governments’ positions or statements. That occurs within regional groups and political blocs, or within international institutions. Discourses based on hybridity theories are adopted within oral statements and reports at the UN Human Rights Council;[[23]](#footnote-23) within the language of resolutions and decisions; as well as discussions within UN bodies.[[24]](#footnote-24)

Hybridity, or hybridisation, is also a *process* through which identities and cultures are forged, with a ‘multiplicity of outcomes’ that depend on ‘complex and context-specific realities’.[[25]](#footnote-25) Traditionally, that process is viewed as occurring within postcolonial, or other formerly dominated, societies. Yet, the process also takes place within the international arena. International institutions, in terms of formal bodies and the place that they provide for like-minded states to meet within regional groups and political blocs, provide a physical Third Space for the construction of hybrid norms. The process may also be viewed as the way inputs are converted into outputs. Within the international human rights system, conversion takes place through intergovernmental negotiations and coalition-building to form a majority for voting purposes.[[26]](#footnote-26) Countries, groups and blocs use the framework of international institutions to convert their norms, which resist dominant or traditional positions, into hybrid outputs.

Lastly, hybridity is an *entity* in terms of the constructs that emerge based on the theory and resulting from the process. As an entity, hybridity may exist within tangible matters including art, literature, language and, indeed, law. At the international level, hybrid entities based on theories and processes include: certain international criminal courts and tribunals;[[27]](#footnote-27) aspects of some international instruments; and Third Generation Rights.[[28]](#footnote-28) In many respects, it is easier to demonstrate hybridity as an entity owing to its tangible nature, although this third element is not of any greater or lesser importance than hybridity as a theory or as a process.

All three elements – theory, process and entity – are necessary for understanding how hybridity operates at the international level. The elements interconnect and interact with one another, demonstrating that hybridity cannot solely be used as a lens through which matters are viewed or as an abstract concept. Applying this framework to the development of international human rights law, I shall explore how hybridity operates within and impacts upon the international arena.

1. **Hybridity and International Human Rights Law**

Said insists that hybridity is ‘the essential idea for the revolutionary realities today’.[[29]](#footnote-29) Revolutions occur throughout the world, at the local, national, regional and international levels. Throughout modern international law, many states were unable to present their norms and ideologies within international institutions.[[30]](#footnote-30) Since the end of the Cold War, and increasingly since the turn of the Millennium, states from the Non-Aligned Movement (NAM) and the Organisation of Islamic Cooperation (OIC), alongside regional allies from Africa, Asia and Latin America, have sought greater representation of their cultures.[[31]](#footnote-31)

In terms of the substance of human rights, dominant ideologies stemmed initially from the West (Civil and Political Rights), quickly followed by Soviet notions of rights (Economic, Social and Cultural Rights). From the Universal Declaration of Human Rights in 1948,[[32]](#footnote-32) dominant ideologies have been at the fore in international human rights law’s development. Until recently, decolonised and developing states, alongside allies from the Non-Aligned Movement,[[33]](#footnote-33) have promoted a ‘Third Generation’ of rights[[34]](#footnote-34) - terminology first articulated by Vasak in relation to collective rights, or those rights which could only be realised ‘by the combined efforts of individuals, states, public and private associations, and the international community.’[[35]](#footnote-35) Initial efforts focused on ensuring rights directly stemming from colonial experiences [[36]](#footnote-36) - most notably rights to self-determination, development and permanent sovereignty over resources. Those rights stemmed from the process of decolonisation[[37]](#footnote-37) and are rooted in traditional postcolonial discourses that oppose imperialism and further an ‘anticolonial nationalism’.[[38]](#footnote-38) The Fanonian Framework, for example, insists on resistance and rejection of the dominant imperialist – Western – culture, language and identity, amongst others, in order to realise decolonised states’ national interests.[[39]](#footnote-39)

The advent of the right to self-determination being realised and implemented – that right being the oldest and most enshrined Third Generation Right[[40]](#footnote-40) – clearly is a direct reaction to colonialism and occupation. Peoples’ right to determine who governs over them does not represent a local or regional ideology, but rather is a collective response to each country’s experience of imperialism. The right to self-determination, then, represents neither a distinct ideology on human rights nor a hybrid construction of a third human rights identity. Similarly, the right to sovereignty over permanent resources is another response to the collective experience of colonialism and occupation, with the imperial powers having laid claim to the resources within states under their control. Again, this right does not trace its roots to a distinct or a hybrid ideology. States that had been formed in response to, and out of the ashes of, colonisation sought to assert rights to govern over themselves, as well as to economic and social development[[41]](#footnote-41) and to participate in and benefit from the common heritage of mankind.[[42]](#footnote-42) Those rights were crucial to the decolonisation process, enabling newly self-governing states to assert collective rights to matters previously used by colonisers to subjugate and oppress those peoples.[[43]](#footnote-43)

Current legal, political and ideological battles at the UN, where states are seeking to impact and shape international human rights law, demonstrate that traditional postcolonial discourses are being complemented by, or replaced with, hybridity. Those battles are following a markedly different pattern than occurred during the creation of post-colonial collective rights. Hybridity is focused on a less oppositional stance[[44]](#footnote-44) than traditional post-colonial discourses; it recognises a more ‘syncretic dynamic’[[45]](#footnote-45) between the coloniser and the colonised, or the dominant and the dominated. It is a process of ‘engagement with’ rather than ‘opposition to’. That is clearly seen in the way that states from the Global South are using the human rights system, based on the dominant ideology, to further their own constructs and ideologies. Post-colonial rights required the previously individual-centred system radically to change in order to include collective rights. Hybrid rights are less oppositional, because they utilise the existing human rights framework in order to promote norms not previously incorporated within that system.

Hybrid rights are predominantly created and promoted by states from the Global South, particularly from Africa and Asia. Those states’ national ideologies, norms and cultures focus on responsibilities rather than rights[[46]](#footnote-46) - differences clearly illustrated when contrasting the African and European regional human rights treaties and mechanisms.[[47]](#footnote-47) Those states’ use of the international human rights system, with its traditional individual-centred focus, is a stark example of the intertwining of national cultures and norms with the dominant, Western mechanisms and framework. By engaging with the system of ‘rights’, and by seeking to promote their own objectives within that framework, states from the Global South are using hybridity theories to inform their actions and to create processes and constructs that meet and challenge the dominant ideology.

The impact of hybridity – as theory, process and entity – depends on two distinct factors: (1) the impact of states’ hybrid identities, created at the national level, within the international arena; and (2) the construction of hybrid identities through ‘Third Space’ fora within the international arena. States, particularly from Africa, Asia and Latin America, use political blocs and international institutions to further their own ideologies and objectives as well as to construct hybrid identities and aims at the international level. Political blocs and international institutions provide arenas within which states from the Global South can exercise collective power.[[48]](#footnote-48) Whereas such fora previously were used to unite behind postcolonial discourses, they are now utilised to create hybrid objectives that member states then collectively promote and support. Individually or in sub-groups, those same countries lack the power needed to challenge dominant states and ideologies. As a bloc, they are able to pursue collective aims.

The range of heterogeneous identities within such blocs can be seen in the older alliances of the Non-Aligned Movement and the Group of 77[[49]](#footnote-49) – whose allegiances originally stemmed from anti-imperialism and lack of alignment to the dominant powers – as well as in the more recently-created Organisation of Islamic Cooperation and G7+.[[50]](#footnote-50) All of those blocs span at least 3 of the 5 geographic regions, which enables formation of significant cross-regional alliances. Heterogeneity requires objectives to be forged through a hybridity process, resulting in hybrid constructs based on a mosaic of norms, cultures, values and experiences. Those constructs are represented within hybrid human rights.

1. **Hybrid Human Rights**

Hybrid human rights are based on hybrid identities, created through hybrid processes and contain hybrid constructs. They are promoted through ‘soft law’ methods that circumvent the need for custom or treaties to create international law. Soft law methods include political resolutions and decisions, including at the UN General Assembly and the Human Rights Council, through the creation of Special Procedures mandates to monitor and report on these ‘rights’, and through integration of these norms at the international level. They raise a number of problems, not least whether the human rights matrix is the most appropriate for dealing with many of these new ‘rights’; the extent to which hybrid rights are being used by states with poor human rights records who seek to dilute or undermine the international human rights system; and whether new ‘rights’ ought to be developed where they are in clear tension, or even conflict, with traditional understandings of what constitutes a ‘human right’.

Hybrid rights include to a democratic and equitable international order; international solidarity; to a clean and healthy environment; and to peace. They are not representative of a distinct ideology, but rather of the many hybrid national identities and values constructed by states at the local level and then intertwined with one another within the international arena. Each ideological construct underpinning a right depends on the states that create and promote the right. The rights build upon the idea of people’s rights - incorporating collectiveness of people, nations and states. They also develop the subject matter of human rights. Although traditional rights touch upon areas linked to human rights, such as labour and social justice, they are aimed largely at the individual not the collective and so the additional areas are peripheral rather than central to the right. One interesting feature of hybrid rights is that some of them bring into the human rights matrix matters that are linked to human rights but would traditionally have been dealt with through other institutions. In particular, issues that might better be addressed through environmental bodies or financial institutions are being viewed through a human rights prism. This may be owing to hybrid ideologies on human rights, with the use of Bhabha’s ‘Third Space’ to construct new ways of thinking about what constitutes a ‘human right’ and whether such rights can exist within a vacuum. Another, perhaps more realist, perspective is that other institutions are less effective than those within the human rights matrix, and therefore states are using hybrid constructs to enable such matters to be brought within the human rights matrix.

I shall explore the three main ways in which hybrid rights challenge and impact upon the dominant international human rights law framework: in terms of (a) substance, (b) subjects and (c) scope.

***‘Substance’*** refers to the content of a right. Hybrid rights are interdependent on other subject areas that fall outside of the human rights matrix. One example is the right to a clean and healthy environment. That right is not included in the core human rights treaties but is enunciated in: the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights;[[51]](#footnote-51) the African Charter on Human and Peoples' Rights;[[52]](#footnote-52) the United Nations Declaration on the Rights of Indigenous Peoples;[[53]](#footnote-53) and in ‘soft law’ including UN resolutions,[[54]](#footnote-54) reports, and the creation of a Special Procedures mandate on the impact on human rights caused by dumping of toxic and illicit waste.[[55]](#footnote-55) States from the Global South utilise the dominant human rights language and framework in order to bring the environment – a distinct subject area with its own institutions and mechanisms – into the human rights matrix.

Many hybrid rights are framed as human rights owing to their ‘impact on other human rights’; describing them in such a way ensures that the rights are viewed through a human rights prism. However, those rights do not have a distinct or tangible substance that can be protected, nor do they have tangible victims whose ‘rights’ may be violated. They are immeasurable in terms of implementation. Yet, by framing the rights in this way they become part of the human rights discourse. States have utilised the international arena to construct substantively hybrid rights that are informed by and also challenge the dominant ideology.

Another way in which these rights challenge the dominant ideology on the substance of rights is through their increased focus on responsibilities and duties rather than on rights. As with Civil and Political Rights and Economic, Social and Cultural Rights, the substance of post-colonial Collective rights focuses on the rights themselves. The right to self-determination is framed in such a way as to focus upon the substance of the right:

All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.[[56]](#footnote-56)

The substance of that right focuses on the ways in which the right may be realised. However, the substance of hybrid rights moves beyond focusing on granting individuals ‘freedom from’ state interference or even ‘freedom to’ make demands upon a state, both of which enable the substance of the right easily to be identified. Instead, they focus on responsibilities of states, making it more difficult to identify the tangible rights created by those obligations.

The right to a democratic and equitable international order demonstrates hybridity in the right’s substance. The resolution creating a Special Procedures mandate[[57]](#footnote-57) on the right to a democratic and equitable international order sets out 16 substantive aspects of the right.[[58]](#footnote-58) Some of the substantive aspects focus on the right while others focus on states’ responsibilities, including: ‘The shared responsibility of the nations of the world for managing worldwide economic and social issues’;[[59]](#footnote-59) ‘The promotion and consolidation of transparent, democratic, just and accountable international institutions in all areas of cooperation’;[[60]](#footnote-60) and ‘The promotion of equitable access to benefits from the international distribution of wealth through enhanced international cooperation, in particular in international economic, commercial and financial relations’.[[61]](#footnote-61) Hybridity here occurs through the substantive focus oscillating between rights and responsibilities, resulting in a construct that incorporates the polarised, and sometimes competing, ideologies from the Global North and South.

The debate on ‘rights versus responsibilities’ can clearly be seen in the differences between the regional human rights systems. The African Charter on Human and Peoples Rights[[62]](#footnote-62) was the first human rights treaty to set out responsibilities alongside rights.[[63]](#footnote-63) That way of viewing human rights is rooted in Africa’s history and traditions and challenges the dominant, individual-focused ideology. The movement away from substantive focus on rights to the substantive focus on responsibilities shows the impact of hybridity and the construction of ideologies within the international Third Space. As states from the Global South have grown stronger, they have become more able to construct and promote a second wave of Third Generation Rights that better reflects hybrid norms and values that challenge the dominant ideology.

***‘Subjects’*** refers to who is bound by the human rights and to whom those obligations are owed. Third Generation Rights have expanded the subject of human rights both in terms of who, or what, are the rights holders and in terms of who owes the obligations.A main criticism of Third Generation Rights is that, unlike traditional rights, it is difficult to identify who would constitute a victim if one of those rights were to be violated. In many ways, the subjects of these newer rights are unclear, arguably owing to the focus being on responsibilities rather than rights. As such, Third Generation Rights have markedly expanded the subjects of rights.

Third Generation Rights have brought the idea of collective and peoples’ rights to the fore.[[64]](#footnote-64) Whereas previously, almost all rights[[65]](#footnote-65) focused on individuals,[[66]](#footnote-66) Third Generation Rights promote the idea of collective or peoples’ rights. By focusing on rights such as to self-determination, permanent sovereignty over resources, and development, all of which may only be exercised by peoples, Third Generation Rights expanded who or what could be classed as rights holders. Hybrid rights take this idea further, focusing on states as much as the people who collectively make up a nation or a country.

The right to international solidarity and the right to a democratic and equitable order are aimed as much at states as an entity – rather than a group of people – and even at groups of states, as they are at collectives or groups of individuals. The mandate on international solidarity, for example, requires the independent expert ‘to promote and consolidate international assistance to developing countries in their endeavours in development and the promotion of conditions that make the full realization of all human rights possible’.[[67]](#footnote-67) Although that responsibility discusses the individual as the right-holder, it is only in relation to secondary rights rather than to the right of international solidarity. It appears that states are the primary rights-holders and that the realisation of the right to international solidarity will enable those rights-holders – the states – to implement all human rights for individuals under their control. This extends the subjects of rights beyond individuals as rights-holders, bringing states under the umbrella of the subjects to whom obligations are owed.

Expanding the subjects of rights from individuals to peoples and then to states themselves is a radical challenge to the dominant ideology. This is particularly true regarding Western notions of human rights, which focus solely on individuals and where some scholars and states at times still resist the framing of certain rights as ‘people’s rights’. Intertwining states and individuals as subjects and rights-holders demonstrates hybridity – the construction of a new human rights ideology based upon, but that also challenges, the dominant ideology whilst simultaneously incorporating norms and values of states from the Global South.

The second challenge that hybrid rights present to the dominant ideology’s notion of the subjects of human rights is who owes the obligations contained within the rights. The newer rights expand the traditional understandings of who is bound by obligations. Firstly, individuals and communities may be obligated to facilitate the rights of others. For example, the Declaration on the Right to Development says that ‘All human beings have a responsibility for development, individually and collectively’.[[68]](#footnote-68) This is a radical shift away from individuals solely being rights-holders, and is rooted in African human rights ideologies.[[69]](#footnote-69) Secondly, states are made responsible for the behaviour of other states, which uses the traditional human rights framework by building upon foundations laid in the ICESCR[[70]](#footnote-70) whereby parties to that treaty are responsible for ensuring the core minimum obligations within states that have exhausted their maximum available resources.[[71]](#footnote-71) Although African and Asian states have demonstrated that this type of collective responsibility on states for human rights realisation within other states is part of their regional human rights ideology, the idea that states ought to be responsible for rights being realised within other states, as opposed to the narrower responsibility of violations being remedied, challenges the dominant, Western ideology on human rights. Thirdly, other actors may be bound by these obligations. Indeed, expansion of subjects is not just in relation to states and individuals. The right to international solidarity seeks to encourage ‘more international actors [. . .] to take initiatives towards international solidarity, and to practice it in international relations.’[[72]](#footnote-72) This broad objective may lead to a range of international actors being bound by obligations under this right, with the Independent Expert insisting on the need to focus on relationships between states and international actors.[[73]](#footnote-73) Again, the international Third Space has been used to create a hybrid construct that expands the subjects of human rights in order to represent hybrid ideologies.

***‘Scope’*** refers to where the rights apply and the area where a state is bound by the obligations contained within a right. Traditional rights place obligations upon states to respect, protect and fulfil the right.[[74]](#footnote-74) Generally, the scope of those rights exists within territory where a state exercises control, although there are some instances of extraterritorial applicability.[[75]](#footnote-75) Third Generation Rights extend the scope of rights owing to their extension of the substance and subjects of rights. The right to international solidarity, for example, seeks to place responsibility on states for ensuring sufficient redistribution of wealth to enable other states to have sufficient resources for human rights to be realised within their territories. That scope goes beyond traditional territorial and extraterritorial application of human rights obligations. Instead, human rights become a collective responsibility of all states insofar as there is a global responsibility to ensure that all states are able to implement human rights.

Throughout his reports, the Independent Expert on the right to international solidarity sets out that it places a responsibility on states, for example saying:

‘International cooperation and solidarity are based on the concept of shared responsibility. The notion of common but differentiated responsibilities has potential value in the development of a right of peoples and individuals to solidarity.’[[76]](#footnote-76)

The concept of ‘shared responsibility’ for ensuring that rights are able to be realised within other countries’ jurisdiction results in the scope of human rights being extended beyond traditional understanding of where states owe their obligations. The ideology underpinning shared responsibility goes beyond the postcolonial idea that former imperial powers owe duties to former colonies, and instead is rooted in African ideologies on responsibilities for other states and in post-Marxist discourses on global inequalities. Indeed, drawing on what appears to be post-Marxist theories the Independent Expert emphasises that ‘the duty of solidarity [is] an imperative prerequisite of globalization.’[[77]](#footnote-77) Bringing these hybrid ideologies into the human rights system using a human rights framework enables states from the Global South effectively to challenge the dominant understanding of the scope of human rights by requiring states to ensure the primary right beyond their own jurisdiction in order to enable realisation of all other human rights within other states’ territories. The collective responsibility that Third Generation Rights place on states results in the scope extending to the transnational and international levels. The responsibilities placed on states transcend national borders and are dependent on matters occurring at the transnational and international levels.

1. **Concluding Observations**

Hybridity is a useful tool for understanding the latest evolutionary cycle of international human rights law. Whilst many in the Western world criticise the emergence of these new rights, arguing that they dilute the system, it is clear that they are becoming part of the human rights matrix. The lack of understanding of hybrid rights from a theoretical perspective results in practical developments taking place in an *ad hoc* manner. The three-part framework that I have developed provides a mechanism for exploring the ideologies and values underpinning these new rights, the ways in which they are being created and their impact on the human rights system. It is only through a systematic and thorough assessment of these rights, using theoretical frameworks to underpin the exploration of practical developments, that they will fully be understood.

1. Some key passages and themes contained within this chapter first appeared in print in Freedman, R., (2014), ‘Third Generation’ Rights: Is there room for hybrid constructs within International Human Rights Law?’, *Cambridge Journal of International and Comparative Law* 2(4), pp. 1-25. The author is grateful to the editors of that journal for granting permission for parts of that article to be reproduced in this chapter. [↑](#footnote-ref-1)
2. As distinguished from individuals’ rights, cf. Weston, B.H., (1984), ‘Human Rights’, *Human Rights Quarterly* 6(3), pp. 257-283. [↑](#footnote-ref-2)
3. Bhabha, H.K., (1994), *The Location of Culture*, Abingdon, UK and New York, US: Routledge, p.123; and Young, R.C., (1995), *Colonial Desire: Hybridity in Theory, Culture and Race*, Abingdon, UK and New York, US: Routledge, p. 37.S [↑](#footnote-ref-3)
4. **Ashcroft, B., G. Griffiths & H. Tiffin, (2000), *Post-Colonial Studies: The Key Concepts*,** Abingdon, UK and New York, US: Routledge, **p.** 118. [↑](#footnote-ref-4)
5. Kuroti, J. & J. Nyman, (2007) ‘Introduction: Hybridity Today’, J. Kuortti, J. & J. Nyman (eds), *Reconstructing Hybridity: Post-Colonial Studies in Transition*, Amsterdam, The Netherlands and New York, US: Rodopi, p. 2. [↑](#footnote-ref-5)
6. Richmond & Mitchell redefine the word ‘local’ as referring to ‘the terrain in which everyday practices are used within (and in order to create) a local space. In this sense, the local is not to be essentialized or parochialized; it refers to a space that is, in a sense, transversal, transnational and even global, or at least a feature of most human societies. Whilst the local is the realm in which everyday activities emerge and unfold, a locale is a unique local space conditioned by the everyday traditions, practices, values, identities and moral, ethical or “radical” (i.e., root) sources of the groups in question.’ (Richmond O. & A. Mitchell, (2012), ‘Introduction’ in Richmond, O. & A. Mitchell (eds), *Hybrid Forms of Peace: From everyday agency to post-liberalism*, Basingstoke, UK and New York, US: Palgrave MacMillan, p.11). [↑](#footnote-ref-6)
7. Richmond & Mitchell, *id*. [↑](#footnote-ref-7)
8. Bhabha, above n 3. [↑](#footnote-ref-8)
9. Paolini, A.J., (1999), *Navigating Modernity: Postcolonialism, Identity and International Relations*, London, UK and Colorado US: Lynne Rienner Publishers, p. 6. [↑](#footnote-ref-9)
10. *Ibid.*,5. [↑](#footnote-ref-10)
11. See generally Paolini, *ibid*, particularly the methodology contained within pp. 5-8. [↑](#footnote-ref-11)
12. Peterson, J.H., (2012), ‘A Conceptual Unpacking Of Hybridity: Accounting For Notions Of Power, Politics And Progress In Analyses Of Aid-Driven Interfaces’, *Journal of Peacebuilding & Development*, 7(2), p. 12. [↑](#footnote-ref-12)
13. See e.g.Heyns, C., (2004), ‘The African Regional Human Rights System: The African Charter’, *Penn State Law Review* 108, pp. 679-702. [↑](#footnote-ref-13)
14. See e.g. Kausikan, B., (1993), ‘Asia’s Different Standard’, *Foreign Policy* 92, pp. 24-41. [↑](#footnote-ref-14)
15. See e.g.Morgan-Foster, J., (2005), ‘Third Generation Rights: What Islamic Law Can Teach the International Human Rights Movement’, *Yale Human Rights and Development Law Journal* 8, pp. 67-116. [↑](#footnote-ref-15)
16. See e.g. Alston, P., (1982) ‘A Third Generation of Solidarity Rights: Progressive Development or Obfuscation of International Human Rights Law?’, *Netherlands International Law Review* 29, pp. 307-322; Triggs, G., (1988), ‘The Rights of "Peoples" and Individual Rights: Conflict or Harmony?, in Crawford, J., (ed), *The Rights Of Peoples*, Oxford, UK: Clarendon Press. [↑](#footnote-ref-16)
17. See e.g. Richmond & Mitchell, above n6. [↑](#footnote-ref-17)
18. See e.g. Richmond, O., (2010), ‘Hybrid Peace: The Interaction Between Top-Down and Bottom-Up Peace’, *Security Dialogue* 41(4), pp. 391-412. [↑](#footnote-ref-18)
19. See e.g. Clements, K.P., B. Volker, A. Brown, W. Foley, & and A. Nolan, (2007), ‘State Building Reconsidered: The Role of Hybridity in the Formation of Political Order’, *Political Science* 59(1), pp. 45-56. [↑](#footnote-ref-19)
20. See e.g. Martin-Ortega O. & J. Herman, (2012), ‘Hybrid Tribunals: interaction and resistance in Bosnia and Herzegovina and Cambodia’, in Richmond & Mitchell, above n6. [↑](#footnote-ref-20)
21. See generally MacGinty, R., (2011), *International Peacebuilding and Local Resistance: Hybrid forms of peace*, Basingstoke, UK and New York, US: Palgrave MacMillan. [↑](#footnote-ref-21)
22. Freedman, *supra* n 1. [↑](#footnote-ref-22)
23. See Section 4 (below) [↑](#footnote-ref-23)
24. See section 4 (below). [↑](#footnote-ref-24)
25. *Ibid*. [↑](#footnote-ref-25)
26. See generally R. Freedman, (2013), *The United Nations Human Rights Council: A critique and early assessment*, Abingdon, UK and New York, US: Routledge, pp. 114-115. [↑](#footnote-ref-26)
27. Examples include the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia. [↑](#footnote-ref-27)
28. Examples include the right to international solidarity and the right to a democratic and equitable international order. [↑](#footnote-ref-28)
29. Said, E., (1993), *Culture and Imperialism*, London, UK: Vintage, p. 317. [↑](#footnote-ref-29)
30. See generally Anghie, A., (2004), *Imperialism, Sovereignty and the Making of International Law*, Cambridge, UK and New York, US: Cambridge University Press. [↑](#footnote-ref-30)
31. See generally Nowak, M., M. Birk, T. Crittin & J. Kozma, (2011), ‘UN Human Rights Council in Crisis – Proposals to Enhance the Effectiveness of the Council’, in Benedek, W., F. Benoit-Rohmer, W. Karl & M. Nowak (eds), *European Yearbook on Human Rights*, Intersentia,pp. 58-59. [↑](#footnote-ref-31)
32. GA Res 217A (III), ‘Universal Declaration of Human Rights’, 1948, UN Doc. A/810, 71. [↑](#footnote-ref-32)
33. NAM developed from the Asian-African Conference, a political gathering held in Bandung, Indonesia, in April 1955. The conference was convened in part due to frustration by many newly independent countries unable to secure UN membership due to Cold War politics. The two then-superpowers refused to admit states seen as belonging to the other camp. [↑](#footnote-ref-33)
34. See generally Algan, B., (2004), ‘Rethinking “Third Generation” Human Rights’, *Ankara Law Review* 1(1), pp. 121-155. [↑](#footnote-ref-34)
35. See e.g. Vasak K., (1990), ‘Les différentes catégories des droits de l'homme’ in Lapeyre T. de & Vasak, K., (eds), *Les dimensions universelles des droits de l'homme*. Although Donnelly insists that *all* human rights require collective action for realisation - Donnelly, J., (1985), ‘The Theology of the Right to Development: A Reply to Alston’, *California Western International Law Journal* 15, p. 521. [↑](#footnote-ref-35)
36. See e.g. Weston, above n 2. [↑](#footnote-ref-36)
37. Vasak, K., (1982), *The International Dimensions of Human Rights*, Greenwood Press. [↑](#footnote-ref-37)
38. See generally Memmi, A., (2013), *The Colonizer and the Colonized*, Abingdon, UK and New York, US: Taylor & Francis (first published in English in 1957). [↑](#footnote-ref-38)
39. See generally Fanon, F., (1986), *Black Skin, White Masks*, London, UK: Pluto Press, (first published in French in 1952 and in English 1967); and Fanon, F., (1965), *The Wretched of the Earth*, Grove Press. [↑](#footnote-ref-39)
40. With roots in the US and French Declarations of Independence, as well as the UN Charter and core human rights treaties. [↑](#footnote-ref-40)
41. See e.g. GA Res 41/128, ‘Declaration on the Right to Development’, 4 December 1986, UN Doc. A/RES/41/128. [↑](#footnote-ref-41)
42. See e.g. UNESCO 17th Session, ‘Convention Concerning the Protection of World Cultural and Natural Heritage’, 16 November 1972, 1037 UNTS 151. [↑](#footnote-ref-42)
43. See generally Anghie, above n 30. [↑](#footnote-ref-43)
44. See e.g. Bhabha, H.K., (1985), ‘Signs Taken for Wonders: Questions of Ambivalence and Authority Under a Tree Outside Delhi, May 1817’, *Critical Inquiry*, 12, pp. 152-153; and Spivak, G.C., ‘Subaltern Studies: Deconstructing Histiography’ in Guha, R. (ed), *Subaltern Studies IV: Writings on South Asian History and Society*, Oxford, UK: Oxford University Press, p. 5. [↑](#footnote-ref-44)
45. Paolini, above n9, 54. [↑](#footnote-ref-45)
46. See generally Obinna Okere, B., (1984), ‘The Protection of Human Rights and the African Charter on Human and People’s Rights: A Comparative Analysis with the European and American Systems’, *Human Rights Quarterly*, 6(2), pp. 141-159; Kausikan, above n 14. [↑](#footnote-ref-46)
47. See generally Obinna Okere, *Ibid.*  [↑](#footnote-ref-47)
48. See e.g. Heinze, E., (2008), ‘Even Handedness and the Politics of Human Rights’, *Harvard Human Rights Journal* 21(7), pp. 7-46. [↑](#footnote-ref-48)
49. G-77 was named at its creation in 1964, when 77 states jointly prepared for the UN Conference on Trade and Development. It worked in parallel with NAM, focusing on economic issues. On the relationship between NAM and G-77, see for example Weiss, T.G., (2008), *What’s Wrong with the United Nations and How to Fix It*, Wiley, p. 49. [↑](#footnote-ref-49)
50. G7+ was formed by a group of fragile and conflict-affected states in order to provide a mechanism for focusing on and engaging with peacebuilding and statebuilding. The heterogeneous group brings together states and international actors in order to facilitate development and capacity-building. [↑](#footnote-ref-50)
51. Organization of American States, ‘Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador")’, 16 November 1999, A-52, Article 11. [↑](#footnote-ref-51)
52. Organization of African Unity, ‘African Charter on Human and Peoples' Rights ("Banjul Charter")’, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), Article 24.  [↑](#footnote-ref-52)
53. GA Res 61/295, ‘United Nations Declaration on the Rights of Indigenous Peoples’, 2 October 2007, UN Doc. A/RES/61/295, Article 29. [↑](#footnote-ref-53)
54. See e.g. CHR Res 1999/23, ‘Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights’, 26 April 1999, UN Doc. E/CN.4/1999/167, p.100 ; CHR Res 2000/72, ‘Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights’, 26 April 2000, UN Doc. E/CN.4/2000/72. [↑](#footnote-ref-54)
55. CHR Res 1995/81, ‘Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights’, 8 March 1995, UN Doc. E/CN.4/RES/1995/81. [↑](#footnote-ref-55)
56. Common Article 1 GA Res. 2200A (XXI), ‘International Covenant on Economic, Social and Cultural Rights’, 16 December 1966, UN Doc. A/6316, *entered into force* 3 January 1976 and GA Res. 2200A (XXI), ‘International Covenant on Civil and Political Rights’, 16 December 1966, UN Doc. A/6316 (1966), *entered into force* 23 March 1976, Article 1 (1). [↑](#footnote-ref-56)
57. HRC Res 8/5, ‘Promotion of a democratic and equitable international order’, 18 June 2008, UN Doc. A/HRC/RES/8/5. [↑](#footnote-ref-57)
58. *Ibid.*, para.3 (a)-(p). [↑](#footnote-ref-58)
59. *Ibid.*, para.3 (p). [↑](#footnote-ref-59)
60. *Ibid.*, para.3 (g). [↑](#footnote-ref-60)
61. *Ibid.*, para.3 (n). [↑](#footnote-ref-61)
62. Organization of African Unity, ‘African Charter on Human and Peoples' Rights ("Banjul Charter")’, 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982). [↑](#footnote-ref-62)
63. See generally Umozurike, U.O., (1983), ‘The African Charter on Human and People’s Rights’, *American Journal of International Law* 78, p. 902; Heyns, above n 13, p. 679. [↑](#footnote-ref-63)
64. See generally Crawford, *supra* n 15. [↑](#footnote-ref-64)
65. With few exceptions where the right belonged to an individual but could only be exercised within as part of a collective or group. [↑](#footnote-ref-65)
66. For a historical overview of collective, group and peoples’ rights, see generally I. Brownlie, ‘The Rights of Peoples in Modern International Law’, in Crawford (ed), *supra* n 15, pp. 1-16. [↑](#footnote-ref-66)
67. HRC Res 17/6, ‘Mandate of the independent expert on human rights and international solidarity’, 6 July 2011, UN Doc. A/HRC/RES/17/6, para.1(a). [↑](#footnote-ref-67)
68. *Ibid.*, Art. 7. [↑](#footnote-ref-68)
69. Obinna Okere, above n 46. [↑](#footnote-ref-69)
70. International Covenant on Economic, Social and Cultural Rights, above n 56, Article 2(1). [↑](#footnote-ref-70)
71. The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, 8 January, 1987, UN Doc E/CN.4/1987/17, para.30; Committee on Economic, Social and Cultural Rights, ‘General Comment 3 (1990)’, 14 December 1990, UN Doc. E/1991/23, para.14. [↑](#footnote-ref-71)
72. HRC 4th Session, ‘Report of the independent expert on human rights and international solidarity, Rudi Muhammad Rizki’, 7 February 2007, UN Doc. A/HRC/4/8, para.4. [↑](#footnote-ref-72)
73. *Ibid.*, para.11. [↑](#footnote-ref-73)
74. See generally Alston P. & G. Quinn, (1987), ‘The Nature and Scope of States Parties’ Obligations under the International Covenant on Economic, Social and Cultural Rights, *Human Rights Quarterly* 9(2), pp. 156-229. [↑](#footnote-ref-74)
75. See e.g. Human Rights Committee, ‘General Comment No 31 (2004)’, 26 May 2004, UN Doc. CCPR/C/21/Rev.1/Add.13**;** International Court of Justice,*‘*Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory’, 9 July 2004, ICJ Rep 2004. [↑](#footnote-ref-75)
76. HRC 12th Session, ‘Report of the independent expert on human rights and international solidarity, Rudi Muhammad Rizki’, 22 July 2009, UN Doc. A/HRC/12/27, para.42. [↑](#footnote-ref-76)
77. 4th Session Report of Rudi Muhammad Rizki, above n 72, para.48. [↑](#footnote-ref-77)