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## Remarks on Professor B.S. Chimi's A Just World under Law: A View From the South

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# REMARKS ON PROFESSOR B.S. CHIMNI'S *A JUST WORLD UNDER LAW: A VIEW FROM THE SOUTH*<sup>\*</sup>

PHILIP ALSTON<sup>\*\*</sup>

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<sup>\*</sup> Delivered to the Annual Meeting of the American Society of International Law, Eighth Annual Grotius Lecture Series, Washington, DC, March 29, 2006.

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## INTRODUCTION

Professor Chimni's has long been a voice calling for and making a difference in the study and practice of international law. His Grotius lecture exemplifies his determination to ensure that the normative vision which he has long espoused can equally well be adapted and applied to the rapidly changing circumstances resulting from the complex processes of globalization. He has done a splendid job of highlighting the need for a more just global order and the role of international lawyers in that enterprise. Professor Chimni and I agree in a great many respects, so rather than merely echoing his sentiments this response highlights the areas in which we seem to disagree or to attach a different emphasis.

### I.GROTIUS AS THE FOUNDER OF INTERNATIONAL LAW

In a lecture dedicated to Hugo Grotius, Chimni distinguishes himself from many of the Grotius Lecturers who preceded him by locating his subject matter within the Grotian context.<sup>1</sup> This is especially important because the Grotian legacy is often presented in rather monochromatic and sometimes inaccurate terms. For example, as the so-called father or founder of modern international law, Grotius is often credited with having developed a secular theory which definitively broke with those religious approaches that had preceded his. Thus, for example, one of Chimni's predecessors as the

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1. B.S. Chimni, *A Just World Under Law: A View from the South*, 22 AM. U. INT'L L. REV. 199 (2007).

Grotius Lecturer described Grotius as “a towering intellect” with a vision of the relationship among nations as one “based not on the dogma of religion or the sword of conquest, but on human reason and experience.”<sup>2</sup> But while Grotius certainly wrote within a non-religious framework there is much to be said for the proposition that Grotius’ secularism should be cast in a more qualified way since his approach was so firmly rooted within the traditions established before him by Catholic scholars.<sup>3</sup>

Chimni includes a critical dimension in his assessment of Grotius when he refers to him as being among the architects of early modern colonial rule. This critique becomes clearer when we recall who Grotius was and the context in which he was writing. These details seem particularly pertinent in the context of Chimni’s strong critique of the transnational business or capitalist class. If anyone was a member of it, it was Hugo Grotius, who worked for the biggest transnational corporation of the day, the East India Company, and who worked as a negotiator on behalf of his government. His great work on *The Freedom of the Seas*, was revealingly sub-titled *Or the Right which Belongs to the Dutch to Take Part in the East Indian Trade*. So, at least in its immediate origins, this was hardly a disinterested or neutral way of coming at a system of international law.

But there is one particular element of the Grotian tradition which is of particular importance to the themes addressed in Chimni’s lecture. His theory of rights—placing the emphasis on the moral quality of the individual—has been described as “his most important contribution to modern thought.”<sup>4</sup> While this remains a dimension of his legacy to which international lawyers have paid remarkably little attention, it is one which warrants particular consideration in responding to Professor Chimni.

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2. Christopher Weeramantry, *Opening Tribute to Hugo Grotius*, 14 AM. U. INT’L L. REV. 1515, 1516 (1999).

3. Knud Haakonssen, *Hugo Grotius and the History of Political Thought*, 13 POL. THEORY 239, 247 (1985).

4. *See id.* at 240.

## II. SOME QUESTIONS MISSING FROM PROFESSOR CHIMNI'S LECTURE

### A. WHAT IS THE THIRD WORLD?

Much of Chimni's lecture is based on what he considers the Third World wants and deserves, but at no point does he address the definitional issue of who or what constitutes the Third World? While the concept possessed both emotive and explanatory power during the Cold War years it is not clear how much relevance it retains today.

### B. WHAT IS THE REFERENCE POINT FOR A PLEA FOR A MORE JUST ORDER?

The question concerns not just who or what is the Third World but also on behalf of whom is Chimni making his plea for a more just order? In my view, it no longer makes much sense to divide the globe up into a First, Second and Third World—certainly the Second World of communist states has all but disappeared. What remains of the Third World is increasingly heterogeneous. A significant number of previously Third World states have effectively removed themselves from membership in the group, at least in any meaningful sense, by virtue of their relatively successful incorporation into the global economy. Others have rejected what might once have been considered to be core Third World political positions by aligning themselves with the United States on controversial issues such as the jurisdiction of the International Criminal Court, intellectual property rights, and investment agreements. Let me now turn to consider Professor Chimni's take on some of the most important issues that might still define a country as being a part of the Third World.

#### *1. Rise of the New Transnational Business Class*

Chimni attaches significance to the rise of a new transnational business class.<sup>5</sup> He then attributes to that class of people somewhat

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5. See Chimni, *supra* note 1, at 204 (naming the emerging transnational bourgeoisie as the social class "leading the transformation of international economic law").

nefarious goals. This analysis seems to me to depend, at least in part on updating or transposing a Marxist analysis of the role of the capitalist class in an era when, at least in the developed world, we have significantly transcended such categories through phenomena such as the stock-holding society. This is illustrated by considering elements such as the role of huge pension funds and others, the proportion of individuals in developed countries who own a slice of the capitalist pie, and the number who have a stake in the activities of companies such as Microsoft and Google, or any of the transnational pharmaceutical companies that keep changing their names so often that we can't vilify them—or at least not effectively.<sup>6</sup>

## 2. *The Logic of Global Capitalism*

So the real enemy seems to be the logic of global capitalism rather than the new bourgeoisie.<sup>7</sup> Chimni seems to recognize this but then moves fairly quickly to the role of institutions, and in particular to those occupying what he terms the unified global economic space. They include, most notably, the World Trade Organization (“WTO”), the World Bank, and the International Monetary Fund (“IMF”).<sup>8</sup> In addition, they are supplemented by the transnational governance networks, about which Anne-Marie Slaughter has written extensively.<sup>9</sup> In marked contrast to Slaughter, however, Chimni

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6. See, e.g., U.S. CENSUS BUREAU, UNITED STATES DEPARTMENT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES, at Table 1198 (2006) (reporting 70.5 million mutual fund owners out of the total equity owning population in the United States of 84.3 million); IAN HILL, OFFICE FOR NATIONAL STATISTICS, OWNERSHIP OF UNITED KINGDOM QUOTED COMPANIES AT THE END OF 1997, at Chart 1 (1997), available at [http://www.statistics.gov.uk/articles/economic\\_trends/ownership\\_of\\_UK\\_quoted\\_companies\\_1997.pdf](http://www.statistics.gov.uk/articles/economic_trends/ownership_of_UK_quoted_companies_1997.pdf) (reporting that share ownership by individuals and pension funds was 16% and 22% respectively, at the end of 1997 in the United Kingdom).

7. See Chimni, *supra* note 1, at 200–01 (stating that present international law “has been shaped by an emerging transnational capitalist class to realize its interests”).

8. See *id.*

9. See Anne-Marie Slaughter, *Sovereignty and Power in a Networked World Order*, 40 STAN. J. INT'L L. 283, 288 (2004) (defining transnational governance networks as “networks of national government officials of all kinds operating across borders to regulate individuals and corporations” and arguing that modern states reassert their sovereignty by operating through networks of government regulatory bodies).

paints the role and impact of these groups in consistently negative terms.<sup>10</sup> It is not difficult to argue that the truth lies in between. Many of the networks play a positive role and help to advance the quest for a more just global order. Others, including some of those whose virtues are extolled by Slaughter, have had a much more dubious impact in terms of facilitating equitable participation, social justice, and accountability.

### C. THE EFFECT OF STATE ACTORS ON A PLEA FOR A MORE JUST ORDER?

States are curiously absent from much of Chimni's analysis. Thus, for example, neither the United States nor the European Union make an appearance in the lecture. The result is a tendency to identify culprits in rather abstract terms rather than focusing upon specific roles played by relatively identifiable countries in relation to a great number of these policies. Both the United States and the European Union, albeit to different degrees depending on the issue, have pushed access for their own pharmaceutical companies, have promoted investment climates favorable to their own corporate actors, and have resisted regulations which might well have promoted global justice but imposed costs which they themselves were not prepared to bear, or even share. These governments thus support, not just passively, but aggressively, and very effectively a whole range of policies which facilitates the negative impact made by some of the other actors on whom Chimni's analysis concentrates.

The main role for the state in his view seems to be in developing countries.<sup>11</sup> The Indian case study that he introduces is certainly an interesting one, but it may not be altogether convincing. Professor Chimni concludes, without offering much argument in support of the proposition, that the Indian state is deprived by the emerging global

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10. See Chimni, *supra* note 1, at 208–09 (arguing that global networks create a global bourgeoisie with “elite-class views” and that these networks have the effect of lessening democratic authority and accountability in Third World states).

11. *But see id.* at 209 (describing the need for states to act as mediators between transnational capital, national capital, and subaltern classes). According to Professor Chimni, states also need to act as gatekeepers on issues involving globalization, migration, and asylum, irrespective of whether a state is a Western or Third World state. *Id.*

state of the policy tools necessary to promote economic growth.<sup>12</sup> And it follows that poverty and inequality are in critical ways a product of policies prescribed and enforced by international institutions.

I would challenge this analysis on several grounds. First, many Indian commentators seem to attribute the lion's share of the blame to the Government itself.<sup>13</sup> Second, by the standards of most developing countries India is less in hock to the international community than most. It last took out an IMF loan in 1991. It has notably rejected unacceptable World Bank loan conditions, and told the Bank in no uncertain terms to keep its money. And. More broadly, its dealings with international actors, including corporations and banks, have generally been largely on its own terms. It is certainly constrained by the need to satisfy financial markets as to stability and fiscal restraint, but so are most other countries (perhaps leaving aside the United States). In brief, India has remained fairly independent by comparison with a lot of other developing countries like Ethiopia or Uganda, perhaps Argentina a few years ago, and many others that truly have been dramatically constrained by the policies of international institutions.

### III. FRAMEWORK FOR A MORE JUST ORDER

#### A. NEED FOR BROAD NORMATIVE PROPOSITIONS

In putting forward his prescriptions for moving towards a more just order Professor Chimni adopts the framework put forward by Nancy Fraser, which highlights the importance of redistribution, recognition, and representation.<sup>14</sup> I share his admiration for Fraser's work and he makes effective use of her analytical framework. I see, however, a rather uneasy relationship between the broad normative propositions which flow from Fraser's analysis, and the specifics

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12. See *id.* at 211.

13. See, e.g., Jean Drèze, *Democracy and the Right to Food*, reprinted in HUMAN RIGHTS AND DEVELOPMENT TOWARDS MUTUAL REINFORCEMENT 45 (Philip Alston & Mary Robinson eds., 2005); Pankaj Mishra, *The Myth of the New India*, N.Y. TIMES, July 6, 2006, at A21.

14. See generally Nancy Fraser, *Reframing Justice in a Globalizing World*, 36 NEW LEFT REV. 69–79 (2005).

which Chimni himself puts forward within that framework as the steps which would be most likely to bring about a more just order.<sup>15</sup>

It might have been easier for Professor Chimni to follow Marti Koskenniemi's lead. In the Epilogue to a reprinting of his book *From Apology to Utopia*, Koskenniemi acknowledges that readers looking for policy proposals or, more specifically, suggested institutional reforms that might follow from his analysis had been gravely disappointed. But he characterizes the challenge of addressing such issues as a "poisoned chalice", the avoidance of which "was a matter of intellectual and political life and death."<sup>16</sup> He identifies two reasons for this determination to avoid proposing 'solutions'. First, the overall work would then be judged solely by the persuasiveness of the specific proposals and not on the basis of its deeper analytical and explanatory powers. Second, his broader analysis of indeterminacy makes clear that institutional design itself is somewhat indeterminate and dependent on a wide range of other factors.<sup>17</sup>

Although I suspect that Professor Chimni is much too rooted in the institutional and political dimensions of global social change to be attracted to such an 'escape route', there is much to be said for leaving readers to work out for themselves the specific reforms that might flow from his critique.

## B. PROPOSED ACTION THE INTERNATIONAL COMMUNITY SHOULD TAKE

### 1. *Third World Peoples Should Not Be Denied Policy Options*

But in his Grotius lecture Professor Chimni clearly opts to engage with issues of institutional and policy design and reform. His lecture is replete with specific proposals as to what the international community ought to do.<sup>18</sup> Thus, for example, he follows Nancy

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15. Compare Fraser, *supra* note 14, at 79–88 (discussing the representation dimension of justice), with Chimni, *supra* note 1, at 215–18 (offering specific principles to conceive of claims for recognition, redistribution, and representation).

16. MARTTI KOSKENNIEMI, *FROM APOLOGY TO UTOPIA: THE STRUCTURE OF INTERNATIONAL LEGAL ARGUMENT* 603–04 (Cambridge University Press 2005) (1989).

17. *Id.*

18. See Chimni, *supra* note 1, at 218 (recommending specifically, an increased

Fraser in emphasizing the importance of redistribution, although his proposals are actually rather modest.<sup>19</sup> For example, he first suggests that peoples of the Third World should not be denied policy options which, historically, had previously been exercised by developed countries.<sup>20</sup> It has to be said, however, that this is a rather dubious proposition, at least in areas such as human rights and the environment. And whether it is more compelling in the economic field is at least debatable. It is not difficult to accept his assumption that double standards are often at play when developed countries call upon developing countries to eschew the very policies and practices which contributed significantly to the wealth of the former. But the argument or analogy is unsustainable when it amounts to defending practices now deemed inhumane and unacceptable under international law on the grounds that they were once acceptable in an earlier era. Even leaving aside the issue of the subsequent emergence of universal values, the instrumentalist case itself is generally not very compelling. In other words, there are in fact more efficient and effective approaches available than those that were once employed at the cost of violating human rights.

## 2. *International Human Rights Should Preside over Economic Laws*

Professor Chimni next asserts that there should be primacy of international human rights law over economic laws.<sup>21</sup> Now, in many ways, that goes to the crux of the social justice challenge, but it is only the starting point. Unfortunately, too many of the analyses of global economic issues undertaken by human rights proponents lack analytical rigor, are economically illiterate, and are ultimately unpersuasive except to the human rights faithful. It is essential that we acknowledge the complexity of the challenge of working out

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focus on procedural justice in international cooperation, clear definitions of international institutions' responsibilities in international law, and greater protection for the representation of global populations in international institutions).

19. *See id.* at 216–17.

20. *See id.* (recommending that international trade law permit Third World countries to maintain trade policies that protect their domestic industries similar to trade policies that the United States relied upon during its developmental period).

21. *See id.* at 217 (proposing an auditing practice to determine the impact international economic laws have on the global poor in order to prioritize international human rights law over economic law).

ways in which human rights might be relevant to—let alone transcend or trump—the principles underpinning international regimes such as those dealing with trade, finance, or investment.<sup>22</sup> The real world policy consequences of an appropriate insistence upon giving priority to human rights considerations require careful, informed, systematic, and balanced analysis

In light of his emphasis upon redistribution, Professor Chimni might well have attached considerably greater importance to the broad, but fundamentally important, question of international distributive justice. This is an area which is increasingly attracting the interest of many prominent philosophers,<sup>23</sup> but seems to be curiously anathema to the vast majority of international law scholars and practitioners.<sup>24</sup> Such an aversion is neither defensible nor sustainable given the central importance of questions of distribution and the patent injustice which both generates and flows from existing patterns of distribution. If there is one major challenge to which progressive international lawyers will have to rise in the twenty-first century, this is it.

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22. For an excellent analysis of the complexity of the issues see Robert Howse & Makau Mutua, *PROTECTING HUMAN RIGHTS IN A GLOBAL ECONOMY: CHALLENGES FOR THE WORLD TRADE ORGANIZATION* (2000) available at <http://www.ichrdd.ca/english/commdoc/publications/globalization/wtoRightsGlob.html>; see also Jeffrey Dunoff, *Is the World Trade Organization Fair to Developing States*, 97 AM. SOC'Y INT'L L. PROC. 153 (2003) (discussing the fairness concerns of the trade regime established by GATT and the WTO).

23. See, e.g., Thomas Nagel, *The Problem of Global Justice*, 33 PHIL. & PUB. AFF. 113 (2005); Joshua Cohen & Charles Sabel, *Extra Republicam Nulla Justitia*, 34 PHIL. & PUB. AFF. 147 (2006).

24. For two important exceptions see Allen Buchanan & David Golove, *Philosophy of International Law*, in *OXFORD HANDBOOK ON THE PHILOSOPHY OF LAW* 868 (Jules L. Coleman & Scott Shapiro eds., 2002); and John Tasioulas, *Global Justice Without End*, 36 METAPHILOSOPHY 3 (2005).

## IV. THE ROLE OF INTERNATIONAL LAWYERS IN A JUST ORDER

### A. INTERNATIONAL LAWYERS AND SYSTEMIC QUESTIONS OF INTERNATIONAL JUSTICE

Where are the international lawyers when the major issues of systemic injustice are raised? They take the world as it is, which is one that is determinedly non-redistributive; determinedly unjust in the outcomes that it sanctions. Instead, they are pre-occupied with a much more limited range of issues. Occasionally the gauntlet is thrown down, but all too rarely is it taken up. One example is Hilary Charlesworth's work on the discipline of crisis which illustrates the extent to which ongoing issues of injustice are blocked out by a fascination, some might say an obsession, with crises of intervention, armed attacks, and the like.<sup>25</sup> Another example is the work of Anne Orford in pointing to the fact that while the international community intervenes within states through a great many different techniques, it is the armed intervention aspects that attract the lion's share of the analytical attention of international lawyers.<sup>26</sup> In short, the 'boys' who dominate the profession are indeed preoccupied with weapons and fighting and enemies. Questions of nurturing and sustaining, which are the real stuff of redistributive justice, can be done by others.

A quick glance at the contents of journals such as the *American Journal of International Law*, or the *European Journal of International Law*, reveals how few of the contributors address such issues. Most are instead tinkering with the finer points of the IMF or the WTO, or in my own case, the Human Rights Council.<sup>27</sup> Those

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25. See Hilary Charlesworth, *International Law: A Discipline of Crisis*, 65 MOD. L. REV. 377 (2002) (examining the tendency of international lawyers to focus on crisis to facilitate the development of international law); Sonja B. Starr, *Extraordinary Crimes at Ordinary Times: International Justice Beyond Crisis Situations* (Harvard Public Law Working Paper No. 133), available at <http://ssrn.com/abstract+934470> (last visited Feb. 8, 2007).

26. See ANNE ORFORD, *READING HUMANITARIAN INTERVENTION: HUMAN RIGHTS AND THE USE OF FORCE IN INTERNATIONAL LAW* (2003).

27. See, e.g., Tomer Brode, *Taking "Trade and Culture" Seriously: Geographical Indications and Cultural Protection in WTO Law*, 26 U. PA. J. INT'L ECON. L. 623 (2005) (critiquing WTO jurisprudence on cultural issues and

few who do opt to address the broad brush issues are classified as being more akin to social scientists than international lawyers and are encouraged to publish in 'exotic' places where the mainstream international lawyers won't have to be confronted by their analyses.

#### B. REPRESENTATION AND THE DEMOCRATIC DEFICIT OF INTERNATIONAL INSTITUTIONS

After redistribution, Professor Chimni focuses on issues of representation, and he presents a number of important critiques of the existing system.<sup>28</sup> But I would suggest that there are even more fundamental issues relating to the democracy deficit that afflicts almost all international institutions. If we are going to take the representational dimension of justice seriously, we need to address these issues.

One example, is the fact that most of us take for granted the fact that the voting systems in the IMF and the World Bank cannot be renegotiated. The Governor of the Bank of England, a well-known radical, recently said that the allocation of voting power in the IMF and World Bank is completely unsustainable and unjust.<sup>29</sup> Yet with the exception of Daniel Bradlow,<sup>30</sup> it is hard to identify any international lawyers who have sought to turn this into a major issue.

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specifically, the problem of states promulgating measures that merely fall "within the scope" of a WTO exception rather than achieving the exception's goal).

28. See Chimni, *supra* note 1, at 218.

29. See Mervyn Allister King, Governor of the Bank of England, Speech at the Indian Council for Research on International Economic Relations (ICRIER) in New Delhi, India: Reform of the International Monetary Fund (Feb. 20, 2006) (discussing the ineffectiveness of the current IMF system and proposing ways to improve the system, including re-evaluating the voting system to allow all member countries to feel involved in decision-making processes).

30. Daniel D. Bradlow, *IMF Identity Crisis*, FOREIGN POL'Y IN FOCUS, Dec. 12, 2006, available at <http://www.fpif.org/fpifxt/3777>.

Another important example is the role of 'the Basel Committee,<sup>31</sup> which is one of Anne-Marie Slaughter's poster children of how the new world order should ideally work.<sup>32</sup> It is so fundamentally elitist in its composition and in the ways in which it works that it is puzzling how anyone concerned with a just world order could consider it to be a model of anything other than a small group of rich countries determining universal standards which suit their own needs and interests. It is important to come to grips with the challenge of representation and of democracy, and international institutions at a whole different level than what has been done to date.

## V. ROLE OF HUMAN RIGHTS IN A JUST ORDER

Overall, the place of human rights in Professor Chimni's analysis is a rather subsidiary one, and his approach to the issue is characterized by a certain ambivalence. He recognizes that human rights are important, but he seems resigned to the likelihood that they will inevitably be second or third level considerations. He is conscious of the extent to which human rights have been ineffectual in standing up to international economic power, and accordingly does not accord them a central role in bringing about a future just world order.

### A. ROLE OF HUMAN RIGHTS AT A NATIONAL LEVEL

This raises the question as to what their ideal role is, or should be. I would suggest that no matter how important international human rights mechanisms might be, the most important action remains at the national level. If we take India by way of example, there are few countries in which human rights are so vibrant. While it has been

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31. See Bank for International Settlements: About the Basel Committee, <http://www.bis.org/bcbs/> (last visited Jan. 21, 2007) (describing the Basel Committee as an exclusive forum for thirteen developed nation-members to discuss banking supervision matters and develop supervisory standards); Bank for International Settlements: Basel Committee on Banking Supervision, History of the Basel Committee and its Membership (July 2006), <http://www.bis.org/bcbs/history.pdf> (last visited Jan. 21, 2007) (discussing the evolution of the Basel Committee's efforts to supervise all foreign banking establishments in an adequate manner and efforts the Committee made to work with non-member countries and outside bodies on various banking issues).

32. See Anne-Marie Slaughter, *A NEW WORLD ORDER* (2004).

relatively resistant to international accountability, the domestic human rights movement is thriving. Examples include the nationwide right-to-food campaign,<sup>33</sup> the right-to-work campaign,<sup>34</sup> and the recognition of the right to education in the constitution.<sup>35</sup> Such initiatives serve to underscore the vital importance of domestic initiatives if human rights are to be respected.

## B. ROLE OF HUMAN RIGHTS AT AN INTERNATIONAL LEVEL

By the same token, in a great many situations there is a major role that can only be played by international human rights actors, be they inter-governmental, independent, or civil society based. These actors are far from being prominent in Professor Chimni's lecture. He concludes, however, by asking who are the agents of change and

33. The "Right to Food Campaign" is a network of organizations and individuals that argues that "everyone has a fundamental right to be free from hunger." Right to Food Campaign, A Brief Introduction to the Campaign, <http://www.righttofoodindia.org/index.html>. See FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS, *The State of Food Insecurity in the World 2004: Monitoring Progress Towards the World Food Summit and Millennium Development Goals*, at 24 (2004), available at <http://www.fao.org/docrep/007/y5650e/y5650e00.htm> (last visited Jan. 21, 2007) (reporting that in India, non-governmental organizations have successfully managed to bring the right to food actions to court); Marc J. Cohen & Mary Ashby Brown, *Access to Justice and the Right to Adequate Food: Implementing Millennium Development Goal One*, 6 SUSTAINABLE DEV. L. & POL'Y 54, 55 (2005) (providing that the interim orders in *People's Union for Civil Liberties v. Union of India* elevated public food program benefits to "legal entitlements").

34. See Right to Food Campaign, Plans for Massive Rally in Jaipur to Press for an Employment Guarantee Act (June 13, 2003), <http://righttofoodindia.org/links/updates/update17.html#2> (reporting that a systematic campaign was in effect in 2003 to educate the public about the right to work across the country and also to advocate the passage of the Employment Guarantee Act); Right to Food Campaign, Employment Guarantee Act: Introduction, [http://www.righttofoodindia.org/rtowork/ega\\_intro.html](http://www.righttofoodindia.org/rtowork/ega_intro.html) (last visited Jan. 21, 2007) (reporting that the National Rural Employment Guarantee Act, passed in 2005, guarantees 100 days of employment for rural household adults willing to accept manual labor work at minimum-wage earnings).

35. See C. Raj Kumar, *International Human Rights Perspectives on the Fundamental Right to Education—Integration of Human Rights and Human Development in the Indian Constitution*, 12 TUL. J. INT'L & COMP. L. 237, 268–74 (2004) (discussing the judicial decisions that upheld the fundamental right to education which ultimately led to an amendment of the Constitution of India that prescribed a right to education for children between the ages of six and fourteen years).

where do 'we' fit in?<sup>36</sup> Here he rests his hopes in a complex internationalism that combines local, regional, and international counter-hegemonic movements; in other words, a *mélange* of civil society actors who succeed, whether Seattle-like or in some other way, in undermining the bandwagon of the global state. But it is not clear that this ad hoc collection of actors can effectively perform the functions assigned to them in his lecture.

## CONCLUSION

The bottom line is to ask where international law—and international lawyers—fit into the overall design for achieving a more just order which has been sketched by Professor Chimni. It is clear that what is needed is a grander vision of what international law is really all about and of the deeper challenges that confront its legitimacy. It is regrettable in my view that the most visionary scholars in the present international law scene, at least in the United States, are the so-called neo-conservatives. They have a vision; it is dramatic, it is radical, and it is challenging. In contrast, a great many of the international lawyers to whom Professor Chimni's analysis would appeal have little or no vision worthy of the name<sup>37</sup>

Too many of 'us' are stuck in the mode of tinkering with international law so as to make minor adjustments. We prefer to talk about how many states should be on the Human Rights Council,<sup>38</sup> despite the fact that this was primarily a *canard*, introduced by the

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36. See Chimni, *supra* note 1, at 219.

37. See *id.* ("international lawyers need to avoid being captive of the past in imagining alternative futures").

38. See Ved P. Nanda, *The Global Challenge of Protecting Human Rights: Promising New Developments*, 34 DENV. J. INT'L L. & POL'Y 1, 10–15 (2006) (discussing the recommendation to replace the United Nations Commission on Human Rights with a smaller Human Rights Council, whose members would be elected by a two-thirds vote of the General Assembly, with member states under the censure of the Human Rights Council or Security Council being precluded from serving as a member); Caroline McHale, Note, *The Impact of U.N. Human Rights Commission Reform on the Ground: Investigating Extrajudicial Executions of Honduran Street Children*, 29 FORDHAM INT'L L.J. 812, 837–48 (2006) (discussing competing proposals on reforming the Human Rights Commission composition, including U.N. proposals that advocate for universal membership and the Human Rights Watch proposal).

United States,<sup>39</sup> which is at best marginal to the question of what the Human Rights Council is going to do. The question of whether the Council should itself be accorded significant power is of much greater significance.

Similarly, there are other key issues that arise out of Chimni's excellent analysis that have drawn all too little attention from the international legal profession. A prime example is that fact that several of the permanent five members of the Security Council can argue with a straight face that human rights has no necessary role in their deliberations, that even in relation to sanctions imposed on individuals, the Council is not bound by human rights.<sup>40</sup> Consistent with such analysis is the finding by the former Legal Counsel of the IMF that the Fund is statutorily prohibited from human rights into account in its daily activities.<sup>41</sup>

Professor Chimni has done a superb job in reminding us that there is much wrong with the state of international law insofar as it aspires to bring about some conception of global justice.

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39. See Scott R. Lyons, *The New United Nations Human Rights Council*, AM. SOC'Y INT'L L. INSIGHT, March 27, 2006, available at <http://www.asil.org/insights/2006/03/insights060327.html>.

40. See Ved P. Nanda, *Accountability of International Organizations: Some Observations*, 33 DENV. J. INT'L L. & POL'Y 379, 385 (2005) (noting that the United Nations is not bound by human rights law because it is not a party to any human rights conventions, but arguing that the Security Council should be bound to customary international law that embodies humanitarian law).

41. Press Release, Subcommittee on Promotion and Protection of Human Rights, World Trade Organization, International Monetary Fund Respond to Subcommittee Report on Globalization (Aug. 8, 2001) (providing an IMF representative's statement that the IMF is not mandated to promote human rights nor bound by human rights conventions).