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## BOOK REVIEW

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**Vincent Willem Vleugel, *Culture in the State Reporting Procedure of the UN Human Rights Treaty Bodies* (Intersentia, 2020) 378 pp.  
ISBN 978 183970 006 4 (Paperback)**

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Vleugel's book *Culture in the State Reporting Procedure of the UN Human Rights Treaty Bodies* provides a detailed analysis of the work of the United Nations treaty body system and the importance that these institutions have as the vanguard of the promotion and protection of human rights globally. The book focuses specifically on the work of the Human Rights Committee (HRC), the Committee on Economic, Social and Cultural Rights (CESCR), and the Committee on the Elimination of Discrimination Against Women (CEDAWCee). The main argument throughout the book is how human rights are used to protect and promote culture and at the same time, delineates how cultural practices are viewed as harmful and problematic. The author contributes new research on the way the UN treaty bodies deal with both positive and negative aspects of culture and cultural diversity, by shifting the focus from only negative cultural practices and by highlighting two broad principles: flexibility in interpretation and implementation; and transformation

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of rights through internal debate and cross-cultural dialogue. Vleugel analyses the state reporting procedures in detail and demonstrates their importance and limitations in the international arena.

The issue and place of culture within the human rights discourse has been debated for a long time. Important questions such as what can be considered as 'harmful' or 'problematic', or whether what has been 'traditionally' accepted in communities - such as rites of passage and other cultural practices and beliefs [going against the accepted spirit of human rights], and how culture is perceived, understood, and lived are raised in this book. By relying on the previous work of Donders,<sup>1</sup> Donnelly,<sup>2</sup> Petersen<sup>3</sup> as well as the report of the UN Special Rapporteur in the field of cultural rights on the notion of and debate on the universality of human rights (p 31),<sup>4</sup> Vleugel argues that the universality of human rights does not mean uniformity in implementing the treaties.<sup>5</sup> He acknowledges that treaty bodies do face legitimacy challenges and other legal and financial hindrances but posits that they have played a crucial role in reconciling universal human rights values and cultural diversity.

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<sup>1</sup> Five works of Donders are cited: YM Donders, *Human Rights: Eye for cultural diversity* (2012); *Cultural Pluralism in International Human Rights Law: The Role of Reservations* (2013); *Foundations of Collective Cultural Rights in International Human Rights Law* (2016); *Universality, Diversity and Legal Certainty: Cultural Diversity in the dialogue between the CEDAW and State parties* (2016); *Exploring the cultural dimensions of the right to the highest attainable standard of health* (2015).

<sup>2</sup> Four works of Donnelly are cited: J Donnelly, *Human Rights, Individual Rights and Collective Rights; Relative Universality of Human Rights; International Human Rights: Universal, Relative or Relatively Universal? Human Rights in Theory and Practice*.

<sup>3</sup> N Petersen, *International Law, Cultural Diversity and Democratic Rule: Beyond the divide between universalism and relativism*.

<sup>4</sup> Report of the Special Rapporteur in the field of Cultural Rights, *Universality, cultural diversity and cultural rights*, A/73/227, 25 July 2018.

<sup>5</sup> The author here refers to the work of Shany and Legg: A Legg, *The Margin of appreciation in International Human Rights Law: Defence and Proportionality* (OUP 2012); Y Shany, *All roads lead to Strasbourg? Application of the Margin of Appreciation Doctrine by the European Court of Human Rights and the UN Human Rights Committee*, *Journal of International Dispute Settlement* 9:2 (2018) p 198.

Through the seven chapters, the research in this book is detailed with a thorough thematic literature review (and the different schools of thoughts with regards to cultural relativism) and in-depth analysis of the UN treaties, Committees, and their Working Methods. It captures a broad range of issues, which are often issues of contention ranging from civil and political (right to self-determination, right to a cultural life, right to freedom of religion, right to fair trial), socio-economic rights (right to education, health, adequate standard of living, social security) to women's rights (discrimination on the grounds of gender, sexual orientation, and other vulnerable groups (people with disabilities, migrant workers)). This work is embedded in empirical analysis. What is remarkable is that the author managed to capture and present different political discourses and narratives that happen 'behind closed doors' during the reporting procedures where states put up a defensive front when they are being held accountable by these institutions through a summary of plethora of academic commentary, Concluding Observations, UN Reports, General Comments, and news and media sources. This information is crucial for policymakers, academics, and researchers who have limited access to closed-door discussions as they are provided with such a first-hand account of reality of multilateral diplomacy and negotiations.

What grips the reader in Vleugel's book is the balance given to both sides of the coin. Chapter 6, which deals with cultural argumentation, demonstrates the back and forth between the Committee members and state parties. Specifically, it identifies and analyses the different lines of argumentation by state parties, often citing and hiding behind the garb of religion on sensitive or non-consensual issues, and the Committee's Concluding Observations concerning the rights of the individual and the duties and responsibilities of the state party. These arguments are enriched and supported by examples such as dowry, female genital Mutilation (FGM), and polygamy, with frequent reference to the application of Sharia Law in cases submitted by state parties such as Indonesia, Tunisia, and Malawi, among others.

It is noteworthy that the author has analysed both the positive aspects of cultural diversity through the work of the HRC and CESCR, and the harmful

aspects of culture by the CEDAWCee. The author notes that the CEDAWCee is the treaty body that pays (by far) the most attention to the harmful role of culture. The author makes reference to *de facto* discrimination, which is discrimination in practice (cultural practices), and *de jure* discrimination, which is discrimination in law (marriage and family relations, implicitly linked to culture). The author identifies the instances in which the state party is mandated or has an immediate obligation to change the law whether it is grounded in culture or not, thus making the treaty bodies an avenue for safeguarding against unacceptable cultural variations.

However, one element which is missing throughout the arguments is the perception of the recipients of these rights, as enunciated by Brems (2004) that “human rights can be more universal by making more of them more relevant for the people”.<sup>6</sup> For example, do the people practicing polygamy really consider it a human rights violation or do they refute the argument? Even though the book has given a broad ambit to the notion of culture in its desk research, the question of identity, perception and belongingness, both on the personal and collective level has not been adequately covered. Vleugel argues that as long as the element of choice is present, it is difficult for the treaty bodies to pronounce themselves on the matter. Therefore, the question that remains unanswered is that are cultural practices only about one’s personal choice? What about conditioning, belonging, and duress, which have a direct influence on the agency of choice?

Furthermore, the author does not provide enough in-depth analysis to the fine thread of policy-making, implementation, and realisation of these rights. The Arab, Asian, and African perspectives are considered in Chapter 1, but the long-lasting impact of colonisation, especially in the African continent, has been touched upon only lightly. The issue of colonisation and the influence of cultural rights should have been elaborated upon because it forms part of the structural root causes of discrimination and marginalisation and forms the background of the existing international institutions today. Even though the book highlights the sensitivity and complexity of culture and the leeway of

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<sup>6</sup> E Brems, Reconciling Universality and Diversity in International Human Rights Law, Human Rights Review 5:3 (2004) p 12.

state parties to give importance to the historical, cultural, and religious norms in the implementation of these treaties,<sup>7</sup> it is quite silent on the psycho-socio-political reality of state parties. It does not question the issue of state sovereignty and the lack of impunity or the vertical relationship between states that governs international relations. It does not examine the perception of states *vis-a-vis* the treaty bodies. The book only focuses on the role of the treaty bodies to safeguard cultural diversity, but does not address the elephant in the room, that is, state parties (even though the delegations comprise the urban elite) hate to be dictated to and shown that others are superior. State parties also rarely adhere to Concluding Observations unless they want to be seen as compliant and (though often unsaid) there is economic and monetary gains attached.

In addition, while the book is focused on the work of the UN treaty bodies, a parallel could be established with the work of the African Commission on Human and Peoples' Rights<sup>8</sup> based in Banjul, the Gambia, which also provides Concluding Observations to the state parties to the *African Charter on Human and Peoples' Rights*.<sup>9</sup> The book's analysis could have been further enhanced by using the case law of the African Court on Human and Peoples' Rights based in Arusha, Tanzania, which has demonstrated over and over again the importance of culture in the core of the lived reality of African people.<sup>10</sup> Regarding the scope, Vleugel clarifies that the book does not consider the regional human rights systems and the work of their judicial bodies as they reflect regional values and offer a more particular framework and relatively less diverse cultural contexts. Had the author analysed the work of the African Commission, as it is well versed in understanding cultural sensitivity, it would have provided further evidence as to why cultural relativism and diversity are

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<sup>7</sup> UN World Conference on Human Rights, Vienna Declaration and Programme of action, adopted on 25 June 1993.

<sup>8</sup> Reference is made to the European Court of Human Rights regarding the margin of appreciation doctrine on cultural interpretation and implementation, but no mention is made of the institutions of the African Human Rights System.

<sup>9</sup> Organization of African Unity (OAU), African Charter on Human and Peoples' Rights ("Banjul Charter"), 27 June 1981, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

difficult, complex issues. The debate on cultural relativism goes beyond the seemingly apolitical nature of human rights and the work of the treaty bodies.

In a nutshell, this book is very well written and addresses a very important question – how to reconcile and balance universalism and cultural relativism. Despite its minor shortcomings, it provides an excellent overview and analysis on the work of the UN treaty bodies and addresses their shortcomings meandering their way in the complex world of international politics.