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Alternative visions of a new global order: what should cosmopolitans hope for?

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Abstract

In this essay, I analyze the cosmopolitan project for a new international order that Habermas has articulated in recent publications. I argue that his presentation of the project oscillates between two models. The first is a very ambitious model for a future international order geared to fulfill the peace and human rights goals of the UN Charter. The second is a minimalist model, in which the obligation to protect human rights by the international community is circumscribed to the negative duty of preventing wars of aggression and massive human rights violations due to armed conflicts such as ethnic cleansing or genocide. According to this model, any more ambitious goals should be left to a global domestic politics, which would have to come about through negotiated compromises among domesticated major powers at the transnational level. I defend the ambitious model by arguing that there is no basis for drawing a normatively significant distinction between massive human rights violations due to armed conflicts and those due to regulations of the global economic order. I conclude that the cosmopolitan goals of the Habermasian project can only be achieved if the principles of transnational justice recognized by the international community are ambitious enough to cover economic justice.

Keywords: *cosmopolitanism; distributive justice; global justice; global poverty; habermas; human rights; negative duties; realistic utopias*

Since the end of the Cold War, the genre of ‘realistic utopias’ has become increasingly popular among academics.¹ Given the inflexible confrontation among geopolitical blocks characteristic of the Cold War era, it is not surprising that utopian and realistic visions did not blend easily enough to be in high supply during that time. What could realistically be expected in a situation of permanent threat of annihilation was not particularly utopian, and anything genuinely utopian would have struck anyone at the time as utterly unrealistic. Negative utopias were certainly in higher demand. By contrast, the Heraclitean nature of the current global disorder fuels the impression that change is not only possible but is in fact unavoidable and thus

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projecting ways of improvement that are sufficiently realistic to be implemented seems again to be a worthy task at this particular historical juncture. As Follesdal and Pogge have put it, it is satisfying for philosophers embarked in this task to see that for once the owl of Minerva is spreading its wings well *before* the falling of dusk.²

But as we all know, realistic utopias are risky business. Whereas, in isolation, realistic and utopian visions tend to reach some equilibrium between supporters and critics, realistic utopias are more likely to disappoint everyone. The idealistically minded easily detect and usually resent the tradeoffs made for the sake of descriptive realism, and the realists reliably identify and immediately denounce any utopian traces of the vision no matter how skillfully hidden these may be. The reception of Rawls's *Law of Peoples*³ is a case in point. Not just among the usual suspects, but among Rawlsians and non Rawlsians alike it seemed unable to please anyone. However, it cannot be denied that there is something about realistic utopias that makes them irresistible across the board as well. For the idealistically minded, such a vision represents the promise of possible realization, while for the realistically minded it represents a possibly accurate prediction. But be that as it may, what seems also clear is that by their very nature realistic utopias not only speak to a broader audience than its competitors, but also that their interpretation is extremely complicated, since it requires the extra effort of locating the exact tradeoffs between the normative and realists considerations that it contains in order to evaluate both its feasibility and its desirability.

In a series of recent articles,⁴ Habermas has joined the discussion about realistic utopias by outlining the basic features that a future international order ought to have. Although so far we only have the contours of the model, the combination of normative and realistic considerations that it contains clearly indicates that the project belongs to the genre of realistic utopias. However, since the model has not yet been fully developed, the exact tradeoffs between realist and utopian elements are not easy to assess. So far at least, the way in which Habermas has presented the model is ambiguous. It allows for a normatively robust reading that suggests a very ambitious model for a future international order, but it also oscillates toward a deflated, minimalist reading that may seem more realistic and thus easier to defend but that, in my opinion, it would not be worth defending. Since I am an unabashed partisan of the ambitious reading, in what follows I would like to defend its plausibility and desirability by analyzing and criticizing some considerations and lines of argument that Habermas offers while explaining the model and which seem to lend support to the normatively deflated reading.

The Habermasian model for a future international order is supposed to provide an answer to the bold and difficult question of how to conceive a 'global domestic politics without world government'. This task already reveals two fixed points for any interpretation of the model, namely, its openly cosmopolitan goals and the heterarchical structure of the institutions that should accomplish them. I am entirely sympathetic with both of these features of the model. That is, I agree that the constitutionalization of international law is of normative interest mainly to the extent that it may allow for a 'global domestic politics' geared toward achieving global

justice, solving ecological problems, etc. I also agree that a heterarchical political structure for the world order is in principle more desirable than a world government, since it minimizes the risks of an excessive concentration of political power (in similar ways as the usual mechanisms of division of powers, check and balances, federal structures, etc. do at the level of the states). Moreover, the specific design of a multilevel system with different political units at the supranational, transnational, and national levels seems attractive to me too. Where I begin to sense difficulties is with the assignment of specific tasks and specific means to the different units of the system. Habermas describes them very briefly in the following terms:

A suitably reformed world organization could perform the vital but clearly circumscribed functions of securing peace and promoting human rights at the supranational level . . . At the intermediate, transnational level, the major powers would address the difficult problems of a global domestic politics which are no longer restricted to mere coordination but extend to promoting actively a rebalanced world order. They would have to cope with global economic and ecological problems within the framework of permanent conferences and negotiation systems . . . The multilevel system outlined would fulfill the peace and human rights goals of the UN Charter at the supranational level and address problems of global domestic politics through compromises among domesticated major powers at the transnational level. (Habermas, 'Hat die Konstitutionalisierung des Völkerrechts noch eine Chance?', 136)

As I will try to show in what follows, it is by trying to match the ends and means that are identified in this multilevel system that widely different possibilities of interpretation of the model arise, some of which seem normatively so deflated as to cast serious doubts on its avowed cosmopolitan goals for an international order.

As already mentioned, Habermas rejects an institutional cosmopolitanism that would link the possibility of implementing a global politics with the existence of a world government, but he also rejects the anti-cosmopolitan view of the international order as strictly limited to the voluntary recognition of multilateral treaties among fully sovereign nation states. Here his main argument is empirical. In view of the current process of globalization, nation states are simply not able to solve the problems of regulating the global economy or confronting global ecological threats. But beyond the unquestionable fact of globalization there are normative reasons as well. Although he does not get into much detail, the kind of economic problems that he mentions reveals the normative core of the project. A global domestic politics should not address merely technical problems of coordination that arise with the globalization of the market economy, but genuine 'political' questions such as the need to 'overcome the extreme differential in welfare within a highly stratified world society' through distributive measures (Habermas, 'Eine politische Verfassung für die pluralistische Weltgesellschaft?', 346). The egalitarian goal of overcoming economic inequalities worldwide puts the Habermasian project potentially at odds with critics of egalitarian cosmopolitanism (most notably, Rawls) who reject the legitimacy of global distributive policies beyond individual states.

However, in order to situate the Habermasian model with more precision within the intricate net of cosmopolitan and anti-cosmopolitan views currently available, it is necessary to reconstruct the normative assumptions on which it is based and that Habermas has not yet explicitly spelled out. We need to determine not only the nature and scope, but also, and most importantly, the normative justification for the ‘global domestic politics’ that Habermas proposes in order to know which normative standpoints are compatible with it and which ones it directly opposes. A crucial issue in that regard is to determine whether some of the goals of the global domestic politics that the Habermasian model envisages are called for as a matter of justice under current circumstances, or whether they should be interpreted as merely aspirational political goals that citizens of the world could eventually embrace if and when they see themselves as members of a single political community at the global level. In contradistinction to the former, the latter interpretation would not be opposed to anti-cosmopolitan views on normative grounds, since in that case the disagreement would be basically empirical. In general, critics of cosmopolitanism believe that a global political community of world citizens does not exist and never will. Granted, many also believe that it would be undesirable, but even so, this still says nothing about what would be normatively appropriate to do if, however regrettably, it eventually came into existence. Under these circumstances, it seems that at least those critics of cosmopolitanism who are domestic egalitarians (such as Rawls, Nagel, Freeman, etc.) would have no reason to oppose global distributive policies as a component of a global domestic politics. Now, since Habermas does not address this important question explicitly, we can only follow an indirect path to his answer.

In the contemporary discussion on normative models for a new world order, it is widely agreed that international justice requires guaranteeing peace, security, and the protection of human rights. However, whereas the goals of peace and security are uncontroversial, the same cannot be said as regards the goal of protecting human rights. The scope of human rights recognized in the different models varies widely. However, it would be wrong to infer from this variation that the agreement on the goal is therefore only apparent. The current disagreements on the precise content or scope of human rights should not distract from the widespread agreement on the crucial function that human rights are supposed to play, namely, to set the minimal moral standards for evaluation and criticism of the institutions and social conditions under which human beings live. It is precisely because there is agreement on the key role that human rights play in determining the threshold of tolerance below which some kind of intervention is appropriate, or even required, as a matter of basic justice, that it is hard to reach agreement on what those rights are. In view of the potential consequences, the stakes are very high in letting something count as a human right. But, again, this is precisely where the normative power of human rights lies.⁵ They generate genuine duties, signal the normative limits to inaction, have the power to mobilize anyone, and, at the very least, can ruin reputations through the public ‘shaming and blaming’ of any person, government or institution that violates them. There is no other normative weapon quite like it in the international arena.⁶

Precisely in virtue of the tight connection between human rights and justice, focusing on what different models have to say about human rights is a useful shortcut for situating realistic utopias on the broad continuum between the barbaric and the ideal before a thorough assessment of all its normative consequences is available.⁷ The usual candidates for disagreement are the so-called economic and social rights, followed by political rights to democratic participation. But, sadly enough, even the right to full equality is not unquestioned.⁸ Some authors opt for a minimalist strategy in identifying basic human rights with the hope that it may command universal assent in the international community,⁹ whereas others follow a more generous agenda with the intention of increasing their model's normative bite. But even the wildest among the latter fall short of proposing anything as ambitious as the set of human rights provisions contained in the International Bill of Human Rights¹⁰ that the General Assembly of the UN has adopted over the last decades and that most countries of the world have already endorsed. Among these provisions, the favorite candidate for mockery by critics of maximalist agendas is the right to 'periodic holidays with pay' contained in Article 24 of the Universal Declaration of Human Rights (UDHR). Needless to say, the fact that most countries of the world have ratified many of these human rights treaties does not mean that all or most of these countries also comply with them. But what it does mean is that the normative standards recognized by the international community are in fact far more ambitious than those contained in many of the realistic utopias offered by academics, however astonishing that may be. As often happens, the owl of Minerva may yet again be spreading its wings only after dusk.

Now, if one focuses on the Habermasian model in order to figure out the exact scope of human rights provisions that a future international order should recognize, it turns out that the presentation of his proposal is ambiguous. As it is customary, Habermas claims that a reformed world organization should have the functions of securing peace and protecting human rights. However, he does not spell out in detail what he means by 'protecting human rights'. Sometimes an ultraminimalist reading is offered, according to which, protecting human rights should be understood as 'the clearly circumscribed' function of preventing 'massive human rights violations' such as genocide by mobilizing the military forces of member states against criminal states if necessary (Habermas, 'Hat die Konstitutionalisierung des Völkerrechts noch eine Chance?', 143, 170). At other times, an ultra ambitious reading is offered, according to which implementing human rights is identified with achieving 'the human rights goals of the UN Charter' (ibid., 136). Needless to say, it makes all the difference in the world whether the model is supposed to achieve one goal or the other.

The difficulty here reaches deeper than it may seem, for neither of these readings offers a stable basis for a general interpretation of the overall goals of the model. Under the ambitious interpretation, the function of protecting human rights would require guaranteeing, among other things, the minimal social and economic conditions necessary to achieve the human rights goals of the UN Charter. However, this interpretation is explicitly ruled out by Habermas's contention that the world organization should steer away from any 'political' goals that 'touch on issues of

redistribution' (Habermas, 'Eine politische Verfassung für die pluralistische Weltgesellschaft?', 336). He insists that distributive questions are intrinsically 'political' and claims that for that reason the reformed world organization should be 'exonerated from the immense tasks of a global domestic politics' (ibid., 346). This claim leaves only the ultraminimalist interpretation, according to which the function of protecting human rights consists exclusively in the negative duty of preventing 'massive human rights violations' that are due to armed conflicts such as ethnic cleansing or genocide. Now, once the task of protecting human rights and the task of implementing a global domestic politics are severed in this way, the latter can no longer be interpreted as responsible for guaranteeing the social and economic conditions necessary to achieve the human rights goals of the UN Charter, since the function of protecting human rights (together with securing peace) belongs exclusively to the reformed world organization, according to Habermas. But neither is the world organization in charge of guaranteeing such conditions. So, one way or the other, under the division of labor foreseen in the Habermasian model it turns out that *no one* is in charge of guaranteeing the social and economic conditions necessary to achieve the human rights goals of the UN Charter. It is not only the scope of human rights provisions that is undetermined; their implementation is in a normative limbo.¹¹

I see two major problems with the division of labor that Habermas's model advocates. First of all, it is alarming how minimal the acceptable functions of a reformed world organization have become. The usual complaint about the current world organization is that it does not do enough. However, this proposal for reform contends that it should do even less. So, we need to examine the reasons in favor of 'exonerating' a future world organization from most of the functions that the institutions of the UN currently try to accomplish through a myriad of special organizations and reducing them to those currently ascribed to the Security Council. Now, if the reasons were merely prudential or technical, the discussion would not be of much interest from a normative point of view. As a merely practical question of institutional design, it may well be that some other future institutions could do the job of achieving the human rights goals of the UN Charter better than a world organization. After all, everyone agrees that the current world organization is in urgent need of reform. However, the reasons that Habermas adduces in support of his proposal do not concern merely technical questions about means, but normative questions about the proper understanding of the goals of a future international order. These normative reasons give rise to a second, more worrisome problem. What I find most problematic in this proposal is not so much that it 'exonerates' the institutions in charge of protecting human rights from the immense tasks of a global domestic politics. It is rather that, by the same token, the global domestic politics is 'exonerated' of the function of protecting human rights. As a consequence, the goals of the global domestic politics are no longer conceived as strict obligations of justice, but as merely aspirational goals, that is, as 'political' goals that reflect differences in value orientation and ideals and should therefore be agreed upon through negotiated compromises among the conflicting value preferences and interests of the participants. Under this interpretation, the goal that Habermas

mentions of 'overcoming the extreme differential in welfare within a highly stratified world society' becomes a noble political aspiration along side the protection of coral reefs or the promotion of the arts. Indeed, since the goals of a global domestic politics are no longer geared to fulfill strict obligations of justice, they cannot be determined in advance. Their specific content will in each case depend on the constellation of ethical-political orientations of the major global players involved in determining them. Fulfillment of the most basic human rights worldwide by, say, eradicating severe world poverty, could be a goal of a global domestic politics, but yet again it might not be. It all depends on whether altruistic values happen to triumph over other legitimate interests and value preferences of the major global players, such as the interest in eradicating the differential in welfare within their own countries first, for example. But is it really plausible to think that from a normative point of view all that justice requires of the international community in order to fulfill the function of protecting human rights worldwide is to prevent war and crimes against humanity and any more ambitious goal is ultimately a matter of choice among conflicting political ideals? In order to answer this question we need to examine more carefully the normative reasons that Habermas supplies in favor of the ultraminimalist interpretation of the duties of justice of the international community.

According to the ultraminimalist interpretation of the function of protecting human rights, the international community represented in a reformed world organization is responsible as a matter of duty for preventing massive human rights violations such as ethnic cleansing or genocide and, if necessary, to do this by military intervention. But preventing other kinds of human rights violations are not just the negative duties of justice, but are positive or, as Habermas calls them, 'constructive' political tasks.¹² That is, this concerns ethical-political preferences that are intrinsically plural and ultimately dependent on different conceptions of the good. For this reason, so the argument goes, they must be relegated to a global domestic politics that, similar to what is the case in the domestic politics of individual states,¹³ must come about through negotiated compromises among the different political conceptions and ideals of the major players involved. Habermas explains this view as follows:

If the international community limits itself to securing peace and protecting human rights, *the requisite solidarity among world citizens need not reach the level of the implicit consensus on thick political value-orientations* that is necessary for the familiar kind of civic solidarity among fellow-nationals. Consonance in reactions of moral outrage toward egregious human rights violations and manifest acts of aggression is sufficient. Such agreement in negative affective responses to perceived acts of mass criminality suffices for integrating an abstract community of world citizens. *The clear negative duties of a universalistic morality of justice – the duty not to engage in wars of aggression and not to commit crimes against humanity – ultimately constitute the standard for the verdicts of the international courts and the political decisions of the world organization.* This basis for judgment provided by common cultural dispositions is slender but robust. *It suffices for bundling the worldwide normative reactions into an agenda for the international community and it lends legitimating force to the voices of a global public whose attention is continually directed to specific issues by the*

media. (Habermas, ‘Hat die Konstitutionalisierung des Völkerrechts noch eine Chance?’, 143; my italics)

According to this passage, all it takes for the international community to fulfill the function of protecting human rights is to limit itself to preventing wars of aggression and crimes against humanity. A key element of this ultraminimalist interpretation of the function of protecting human rights is Habermas’s appeal to the problematic distinction between negative and positive duties. This distinction in turn justifies a sharp distinction between types of human rights violations, namely, those that trigger an inescapable universal responsibility to act from the international community and those that do not. Although he does not offer an elaborate justification for the distinction, he hints at two possible interconnected lines of argument. On the one hand, as defenders of the distinction between negative and positive duties usually argue, the suggestion is that negative duties require only *self-restraint*. The agent is required merely to refrain from doing something, and is not forced to act positively in some way or another. For this reason, negative duties can be sufficiently specific and universal in scope, so the argument goes, whereas positive duties are intrinsically vague as regards the question of who is supposed to do what. On the other hand, this vagueness points to a deeper problem, namely, any attempt to specify such duties involves interpretation and thus reflects differences in value orientations. For this reason, it would be much harder to achieve consensus on such duties among groups with different ethical–political conceptions. Consequently, ascribing ‘positive’ duties to the international community would call into question the legitimacy of the decisions of the world organization. Let’s examine both lines of argument in detail.

According to the first line of argument, negative duties that only require self-restraint on the part of the agent are the only ‘clear negative duties of a universalistic morality of justice’. But even if we grant this claim for the sake of the argument, it does not seem very helpful in our context, for what is at issue here is not so much the ‘negative’ duties to refrain from wars of aggression and from committing crimes against humanity, but, above all, the ‘positive’ duties to intervene against such crimes through the use of military force, to provide the means necessary for guaranteeing the security of civilians for as long as it is needed, to put at risk the lives of soldiers and other citizens entirely uninvolved in the conflict at issue, etc. In short, what is in need of justification is precisely the ‘positive’ obligation of the international community to act *instead of refraining from intervening* whenever crimes against humanity or wars of aggression are committed by any country. Self-restraint by the members of the international community is part of the problem, not the solution. Moreover, given that what is ‘positively’ required of the international community in terms of military, economic, and human resources is so remarkably high whenever these types of human rights violations occur, the argument from self-restraint seems particularly unfit to single out these types of human rights violations as the only ones able to trigger universal obligations to act on the part of the international community.¹⁴ But let’s examine the second line of argument.

According to it, what would distinguish this type of human rights violations from all others is not so much the nature of the actions that it calls for, but the scale of the atrocities involved. They are simply the worst possible actions from a moral point of view. Therefore, if there is any chance at all to reach a consensus among the members of the international community on the obligation of preventing any human rights violations whatsoever, these types of violations will be part of it or nothing will. This argument from consensus is hinted at by Habermas when he claims that ‘the negative duties of a universalistic morality of justice – the duty not to engage in wars of aggression and not to commit crimes against humanity – *are rooted in all cultures* and they happily correspond to the legally specified standards which the institutions of the world organization themselves use to justify their decisions’ (Habermas, ‘Eine politische Verfassung für die pluralistische Weltgesellschaft?’, 358; my italics). It can hardly be disputed that wars of aggression and crimes against humanity are human rights violations of the most hideous kind. Indeed, if they could not trigger a universal moral consensus on the obligation to actively prevent them by the members of the international community, nothing would. However, what is at issue here is quite a different claim, namely, that no other type of human rights violation can plausibly trigger the universal moral consensus of the international community. In order to justify this claim, what would need to be shown is that some distinctive feature of this type of human rights violation sets it apart from all others in terms of its moral significance. So, let’s see whether this is the case.

As already mentioned, the scale of the atrocities potentially involved in those cases is one of its most distinctive features. They are ‘massive’ human rights violations. But many natural catastrophes involve massive death and suffering as well. So the moral issue as regards the former is not simply the sheer number of human beings potentially damaged. But neither it is simply that these violations are man-made, since many others are as well. Beyond being man-made and massive in scope, what makes them so horrific from a moral point of view is that they are totally undeserved and unprovoked by the victims and, in addition, that the victims often lack any efficient means for self-defense. This last feature is crucial in our context, since it is what triggers positive obligations to act by unaffected third parties. It is because these massive atrocities could be prevented, in contradistinction to many natural catastrophes, but not by the victims themselves, that not only the perpetrators, but also those uninvolved third parties who have effective means at their disposal are morally obligated to prevent their occurrence as a matter of basic justice.

Now, taking this rough identification of morally significant features as a guideline, it seems to me that there are other types of human rights violations that clearly fit the description. Let’s take the example of the large-scale deaths and suffering of people affected of curable diseases worldwide. According to the WHO, some 18 million human beings die prematurely each year from medical conditions that could easily be cured.¹⁵ They lack access to essential medicines that are widely available simply because they (and in some cases the governments of their countries as well) cannot afford their price. This is, of course, connected to the fact that over 2,800 million people¹⁶ live under conditions of extreme depravation, malnutrition, lack of access to

clean water, etc., since severe poverty is the primary determinant of high morbidity due to curable diseases. Given that the right to life is fortunately not yet under dispute, it seems safe to claim that the most basic human rights of the 18 million people who die yearly of preventable diseases are not protected. Now, astonishing as it may seem to some of us, agreement on this undisputable fact is not sufficient to motivate agreement about there being any specific human rights violations in this case. Although the scale of the atrocity is undisputed and, at least with regard to 2/3 of the victims who are children under five, no minimally reasonable moral conception can deny that it is entirely undeserved, the lack of a specific perpetrator to whom the 'violation' of their human rights can be causally ascribed is often alleged to set these cases apart from the type of human rights violations involved in atrocities such as ethnic cleansing or genocide. Whether this alleged disanalogy suffices to neutralize any obligations to intervene on the part of those who have effective means at their disposal to prevent their occurrence is totally unclear to me, but, in any event, let's focus on a more specific case. As is well known, in the particular case of victims of HIV/AIDS,¹⁷ governments of poor countries are prevented from guaranteeing access to treatment to their citizens not because they lack the means to produce them, but because they are forced to comply with the 1995 agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) reached by the international community under the auspices of the WTO. This agreement grants pharmaceutical companies a monopoly on the production of medicines for a 20-year period, during which they can charge as much as they want for them in order to recover their initial investment in research.¹⁸ Since in this case the massive violation of the basic human right to life can be directly linked to a specific international regulation, there can be no doubt that this atrocity is man-made, if anything is. In this case we find the happy coincidence between perpetrators and those who have the means to prevent it that some may claim is lacking in the case of deaths through severe poverty. But then what specific moral feature could justify a lack of universal moral consensus on the obligation to actively prevent this type of massive human right violation by the members of the international community? In virtue of what argument or reason could a moral conception justify inaction in these cases of large-scale, man-made deaths and not in the others? Granted that it may be difficult to come up with a new regulation that would solve all social, economic, and technical problems involved,¹⁹ but, needless to say, this is even more clearly the case as regards human rights violations due to ethnic conflicts.

In fact, some empirical evidence already suggests that the possibility of universal moral consensus within the international community in this case is very likely. In recent years, relatively weak countries such as Thailand and South Africa have issued compulsory licenses or passed laws to allow the production of generic versions of some antiretroviral AIDS drugs in what the pharmaceutical companies considered a direct violation of the rules of the TRIPS regime. So far, they have been able to get away with this violation without suffering a general trade boycott from the international community precisely because there is an emerging consensus that the current regulation is morally unacceptable. Fortunately, in this case we are already

seeing the kind of reactions of moral outrage toward egregious human rights violations by the emerging global public opinion that Habermas predicts for the other types of violations.²⁰ These reactions have prompted some pharmaceutical companies, companies that originally tried to prosecute the government of these countries, to issue voluntary licenses for them instead.²¹ The fact that in the eyes of public opinion violation of the current regulation is seen as an act of civil disobedience may be a decisive factor in moving the global players involved to establish morally acceptable regulations on patents.²²

Now, in the same way that the rules of the TRIPS regime can give rise to massive human rights violations, many other economic regulations adopted by the WTO are accused of doing so as well by active participants in the emergent global public sphere. According to the United Nations Conference on Trade and Development (UNCTAD), poor countries could export \$700 billion more a year if rich countries were to open their markets as much as poor countries are obligated to under the international trade regulations adopted by the members of the WTO.²³ According to the World Bank, abolishing all current trade barriers could lift 320 million people out of poverty by 2015.²⁴ This policy change would certainly help protecting the basic human rights of citizens of poor countries by reducing considerably the scale of yearly deaths of preventable diseases. Of course, all these regulatory issues are highly complex and therefore bound to be controversial, but fortunately I do not need to defend any particular regulation here. I am simply pointing to examples of current international regulations that can have drastic effects on the possibility of protecting the basic human rights of huge sectors of the world population. More importantly, I am intentionally selecting examples that do not involve in any way the adoption of any redistributive measures geared to 'overcoming the extreme differential in welfare within a highly stratified world society'. Although I disagree that all distributive issues are essentially 'political' in the sense that Habermas alludes to, I do not want my argument to depend on denying that claim at all, since this seems controversial. All I am trying to show is that there is no plausible reason to accept the ultraminimalist interpretation of what constitutes 'massive human rights violations'. It is simply implausible to assume that no matter which horrific effects the regulations of the global economic order may actually have on the possibility of protecting the most basic human rights of the world population, only military or armed actions such as wars or ethnic cleansing fall under the purview of the standard of justice that 'the institutions of the world organization themselves use to justify their decisions' (*ibid.*, 358). In particular, in view of the examples just mentioned, it seems implausible to suggest that any more generous interpretation of the function of protecting human rights necessarily involves 'constructive' political tasks that cannot be justified as a matter of negative duties of justice and therefore must be determined through negotiated compromises. Since these examples 'do not touch on distributive issues' at all, what is the justification for excluding them in principle from the scope of the standards of justice that support the 'political decisions of the world organization' and leaving their prevention to the vagaries of the negotiated compromises among global players seeking their own advantage?

One reason that Habermas indicates to rule out all ‘problems’ of economic origin from the strictly circumscribed and legally specified domain of human rights violations is that ‘these problems cannot be solved by bringing power and law to bear against unwilling or incapable nation states’ (ibid., 346). But I do not see how this is really any different in the case of human right violations due to armed conflicts. It is true that the international community can intervene militarily against an *unwilling* state to prevent such human rights violations, particularly if it is a militarily weak state. But, obviously, this is only possible if and when all other states involved are *willing* to intervene. As we painfully witness these days, a genocide of horrible proportions is taking place in Darfur as we speak and we must sadly recognize that this problem ‘cannot be solved by bringing power and law to bear against unwilling or incapable nation states’. *Nothing* can get done at the international level without the willingness or the consensus of the states involved, but this can hardly distinguish human rights violations of economic origin from those due to armed conflicts. In fact, it seems to me more reasonable to expect member states of the international community to willingly get involved in effecting changes to some current laws (like the TRIPS regime) than it is to expect them to willingly partake in risky and expensive military operations.

I certainly agree that it will be hard to achieve consensus in the international community about changes in law that affect the economic interests of their members, particularly if it affects the interests of the most powerful members. However, I think that a concession to realism at this particular point is not a meaningful tradeoff for a normative model of a future international order, since it deflates the normative goals without making them any more likely to be achieved. In short, the results are neither realistic nor utopian. Setting aside for the moment the goal of solving global ecological threats, let’s concentrate on the other utopian goal of the Habermasian model, namely, to ‘overcome the extreme differential in welfare within the highly stratified world society’.

Now, if it is true that there is no hope for a global consensus on the need to prevent any massive human rights violations of economic origin, then there is no hope for a global domestic politics geared toward these goals, let alone one geared toward the much more ambitious and contested egalitarian goal of ‘overcoming the extreme differential in welfare within the highly stratified world society’. In this regard, it does not make any difference whether the major players for implementing such ‘global domestic politics’ are state governments as members of a transformed world organization at the supranational level or the same governments as members of continental regimes at the transnational level. If there is no hope for a consensus on such goals, they won’t be implemented at any level. Since rich and powerful countries are doing comparatively well under the current regulations of the global economic order (the so-called Washington consensus²⁵), there is no reason to expect them to willingly ‘re-regulate the world economy’ by changing the current policies to their own disadvantage. Given this situation, we need to see what realistic reasons can be offered for ‘exonerating’ the international community (as represented in a future world organization) from any direct involvement in ‘global domestic politics’

and leaving its determination to the negotiated compromises among 'domesticated' global players seeking their own advantage.

One obvious realistic reason would amount to a straightforward skeptical concession, namely, that it will happen this way or it won't happen at all. This may be a realistic assessment, but it could hardly count as a positive feature of a normative model. In other words, after such concession the model could no longer advertise itself as answering the utopian question of how a global domestic politics is possible that is aimed specifically toward global justice and not toward some other goal. However, Habermas's use of the term 'domesticated' to qualify the major global players hints to a realistic reason of a different kind. On the one hand, the use of the term indicates the strategic orientation in pursuing their own advantage that is ascribed to such global players. But on the other, the term suggests also that there is some constraint that can force them to change the current regulations of the global economic order toward more egalitarian ones. Habermas indicates that 'a global domestic politics without a world government would be embedded within the framework of the world organization' (Habermas, 'Hat die Konstitutionalisierung des Völkerrechts noch eine Chance?', 136). So, presumably the major powers are 'domesticated' through the constraints that the supranational system imposes. However, the only constraint that Habermas mentions in that context is 'the fact that, under an effective UN peace and security regime, even global players would be forbidden to resort to war as a legitimate means of resolving conflicts' (ibid., 136). This limitation is certainly in accordance with the ultraminimalist interpretation of the functions of a future world organization, for if the latter were to impose constraints directly related to economic policies it would get entangled in genuinely 'political' decisions and would put its legitimacy at risk. However, it is hard to see how a constraint in the use of military means could be of any help to move the more powerful major powers to change the current laws and regulations of the global economic order toward more fair and egalitarian ones against their own advantage. What is at issue in re-regulating the world economy is not preventing the use of military force by any of the global players but, above all, preventing the inaction of those global players that directly profit from the status quo. For better or for worse, the use of military force is neither a realistic nor a normatively acceptable option for changing the laws and regulations of the global economy. Now, since this is the only constraint that the ultraminimalist interpretation of the functions and mandate of the institutions of a future world organization contemplates, perhaps we could find a more suitable constraint coming from below, that is, from the relationship between the transnational and the national level.

In this context, the reason that Habermas adduces for leaving everything that touches upon the re-regulation of the world economy to the negotiated compromises among global players concerns the legitimacy of this type of political decision. Under the assumption that any economic regulation is (roughly) either technical or political, and the further, more problematic assumption that any political regulation is ultimately a matter of choice or compromise among conflicting value preferences, ideals, and interests of the participants involved, Habermas suggests that economic

regulations that are not merely technical need a kind of democratic legitimacy genuinely different from the standards of justice that can be provided by the international community. As it is already the case at the level of nation states, alternative political goals must be decided through democratic majoritarian decisions, since ultimately they reflect thick value orientations of the participants that are diverse and mutually incompatible. This line of argument is not elaborated in detail, but it seems to involve both realistic and normative considerations.

From a realistic point of view, the optimistic suggestion is that to the extent that some of the most powerful global players or ‘continental regimes’ are themselves democratically constituted, it is plausible to expect pressure coming from below, that is, from their own national constituencies, toward a more democratic determination of the appropriate goals for a ‘global domestic politics’ at the transnational level. Now, that may be true. But it seems to me more likely that citizens of democratic continental regimes would be moved to push their representatives toward establishing more fair and equitable regulations of the economic order if they see their impact as a matter of protection against massive human rights violations than if they see them merely as a matter of political bargaining among members seeking their own advantage. In fact, it is hard to see why in a context understood as the voluntary cooperation for mutual advantage of self-interested members, as the Habermasian model describes it, it would be illegitimate for the citizens of each continental regime to expect that their representatives defend their own national or continental interests as strongly as possible by pushing for the most beneficial regulation. We certainly would like the weakest players to do so. But then why would be unfair for the strongest to do the same?

Precisely from this ‘realistic’ perspective, it seems all the more crucial that the standards of justice and the negative duties of a universalistic morality that a normative model ascribes to the international community are interpreted in the most generous way possible, so that there is no risk that any kind of massive human rights violations, particularly those of economic origin, end up excluded. In fact, the progressive recognition on the part of the international community that some economic regulations bring about massive human rights violations seems to me the only realistic chance that weak countries or continental regimes would ever have to curb the will of the most powerful continental regimes. Such a ‘constraint’ coming from above may ‘domesticate’ the major powers that benefit from the status quo and bring them to accept economic regulations that are less than maximally advantageous for them. An ultraminimalist interpretation of human rights violations that *a priori* limits them to those of armed or military origin offers *no constraint at all* for the economic regulations of a global domestic politics. From this perspective, it matters a lot whether changes in the current economic regulations are called for as a matter of preventing human rights violations or are considered a matter of aspirational political goals that call for compromises among legitimate but incompatible preferences. Consensus on what is right as a matter of justice may be hard to achieve, but it has an irreplaceable feature, namely, it binds the members to the duty of guaranteeing its occurrence, whereas consensus on aspirational political goals does not have the

binding force of an obligation and thus remains forever dependent on the vagaries of political will, and the potential conflict with other equally worthy goals (such as economic growth, national interests, etc.) Worse yet, and precisely for that reason, it provides normative justification for the inaction of those who profit from the status quo. So, from a realistic point of view, the ultraminimalist interpretation of the function of protecting human rights of the international community that leaves all economic regulations of a global domestic politics beyond their purview and at the mercy of the negotiated compromises among global players makes the goal of achieving global justice seem utopian in the worst sense of the term. But perhaps there are some normative reasons to hold to this interpretation.

Habermas's insistence on the 'genuinely political' nature of the goals of a 'global domestic politics' (Habermas, 'Eine politische Verfassung für die pluralistische Weltgesellschaft?', 336) suggest that it would be wrong to overextend the standards of international justice that justify the decisions of the institutions of the world organization to cover the economic regulations of a global domestic politics. To put it bluntly, the problem with a generous reading of the function of protecting human rights from a normative point of view seems to be that it would smuggle into the functions and mandate ascribed to a future world organization a commitment to a social-democratic political agenda of massive redistribution of wealth at the global level under the disguise of 'protecting human rights'. Trying to 'disguise' as a matter of international justice what is at bottom a contested egalitarian political ideal would undermine the legitimacy of the standards and actions of the world organization, whereas if such 'redistributive measures' were agreed upon through the voluntarily negotiated compromises of the global players there would be no deficit of legitimacy. This seems to be the reason behind Habermas's recommendation that 'the pending reform of the United Nations must therefore not only focus on strengthening core institutions, but at the same time to detach that core from the complex of UN-special organizations' (ibid., 334–335), since, as he points out elsewhere, 'many of the more than 60 special and sub-organizations within the UN family ... are concerned with such political tasks ... The mandates of organizations such as the World Bank, the IMF, and above all the WTO extent to political decisions with an immediate impact on the global economy' (ibid., 174–175). According to this view, it would be better if the functions of current UN institutions such as the IMF or the World Bank which have a direct impact on the regulations of the global economy are detached from the function of protecting human rights of the world organization and left to the political decisions of the global players at the transnational level. The function of protecting human rights should be 'depoliticized' if it is to remain legitimate.

Now, there can be no doubt that economic regulations are political. But, by the same token, there should be no doubt that they raise questions of justice and thus may lead to massive human rights violations. In this sense, the problem with many current regulations of the IMF and the WTO is not that they are political in nature (it could hardly be otherwise), but that they are the wrong regulations from the point of view of justice. To the extent that they are, they should be brought in accordance with the human rights standards recognized by the international community.²⁶

However, this becomes impossible if such standards are interpreted in the ultraminimalist sense that only extends to violations that justify military intervention. The crucial role of an international agreement on human rights is to set the boundaries of international toleration and permissible intervention. However, there is no reason to limit the types of possible intervention to the use of military force. If the origin of some human rights violations is political, the means to prevent them will have to be political as well. Political interventions geared to require the change of any current regulations of the global economic order that demonstrably constitute massive human rights violations are *the only way* to fulfill the function of protecting human rights. And, as the examples discussed before suggest, they need not consist of redistributive measures or be motivated by egalitarian political ideals of recalcitrant social democrats. It is one thing to pursue the egalitarian goal of ‘overcoming the differential in welfare within the stratified world society’ for its own sake, so to speak, just for the sake of a more egalitarian world society. It is quite another to pursue the negative duty of avoiding harming others by demanding the revision of any economic regulations that demonstrably bring about massive human rights violations,²⁷ whether or not doing so requires redistributive measures. Whereas the first may be a contested political ideal, the second seems as much an obligation of justice as avoiding ethnic cleansing or genocide. Whether or not fulfilling those obligations requires in the end the adoption of distributive measures will in each case depend on the specific nature of the regulations and their consequences, the most efficient means to improve or avoid them, etc. However, what seems clear is that we cannot make the discussion and agreement of the international community on the standards of justice appropriate for the protection of human rights dependent on whether implementing them may have distributive effects (i.e. may ‘touch on issues of equitable distribution that challenge the deeply rooted interests of the national societies’ (ibid., 336)). The international discussion and determination of what constitutes human rights violations must follow the internal logic of moral discourses within the international community. And only in light of an international consensus on what justice requires, would it be possible to determine which decisions are properly ‘political’ and thus can be legitimately left to the uncertain outcome of the negotiated compromises among conflicting ethical–political ideals and interests of the global players, and which decisions must be ‘depoliticized’ and considered strictly a matter of international justice. Assuming that all economic decisions by their very nature must belong to the former category seems absolutely wrong to me. However, I see no other reason to assume that decisions that call for political intervention in the regulations of the global economic order, instead of calling for military intervention, fall eo ipso outside the legitimate mandate of protecting human rights of a future world organization and thus cannot be seen as a matter of preventing human rights violations in strict sense. As Habermas indicates in a recent article, ‘the General Assembly is the institutional place, among others, for an inclusive opinion and will formation about the principles of transnational justice *that should guide a global domestic politics*’ (‘Kommunikative Rationalität und grenzüberschreitende Politik: eine Replik’, 450). This claim points in the direction

of the ambitious reading that I mentioned at the beginning. According to this reading, the standards of transnational justice will be set at the supranational level by a reformed world organization. These standards would aim to specify the ‘fair value’ of the human rights recognized to world citizens, that is, they will spell out ‘the conditions that need to be guaranteed to world citizens in view of their respective local contexts so that they can make effective use of their formally equal rights’ (ibid., 451). However, as it should be obvious, a process of opinion and will formation geared to establish principles of transnational justice can *guide* a global domestic politics only if it has *some* impact on it. At the very least, it must be able to rule some policies out and others in, and this is tantamount to recognizing that it cannot be as neatly circumscribed as to avoid genuine ‘political’ implications, in Habermas’s sense of the term. Only if the principles of transnational justice recognized by the international community are *ambitious enough to cover economic justice* will they be able to guide a global domestic politics. However difficult this may be, it is the very least that cosmopolitans should hope for.

NOTES

1. For some recent examples, see John Rawls (1999) *The law of peoples*. Cambridge, MA: Harvard University Press; Charles Beitz (1999) *Political theory and international relations*. Princeton, NJ: Princeton University Press; Allen Buchanan (2004) *Justice, legitimacy, and self-determination. Moral foundations for international law*. Oxford, Oxford University Press; Thomas Pogge (2002) *World poverty and human rights*. Cambridge, Polity Press; David Held (2004) *Global covenant. The social democratic alternative to the Washington consensus*. Cambridge, Polity Press; Jürgen Habermas (2004) ‘Hat die Konstitutionalisierung des Völkerrechts noch eine Chance?’, in *Der gespaltene Westen. Kleine politische Schriften X*, 113–193. Frankfurt, Suhrkamp; Jürgen Habermas (2005) ‘Eine politische Verfassung für die pluralistische Weltgesellschaft?’, in *Zwischen Naturalismus und Religion*, 324–365. Frankfurt, Suhrkamp; Jürgen Habermas (2007) ‘Kommunikative Rationalität und grenzüberschreitende Politik: eine Replik’, in: Niesen Peter & Herborth Benjamin (Eds) *Anarchie der kommunikativen Freiheit. J. Habermas und die Theorie der internationalen Politik*, 406–459. Frankfurt, Suhrkamp.
2. See the introduction to Andreas Follesdal and Thomas Pogge (Eds) (2005) *Real world justice. Grounds, principles, human rights, and social institutions*. Dordrecht, Springer.
3. See Rawls, *Law of Peoples*.
4. See Habermas, ‘Hat die Konstitutionalisierung des Völkerrechts noch eine Chance?’, ‘Eine politische Verfassung für die pluralistische Weltgesellschaft?’, and ‘Kommunikative Rationalität und grenzüberschreitende Politik: eine Replik’.
5. See Thomas Risse *et al.* (1999) *The power of human rights. International norms and domestic change*. Cambridge, Cambridge University Press.
6. See James Nickel, ‘Are human rights mainly implemented by intervention?’, in: Rex Martin & David Reidy (Eds) *Rawls’s law of peoples. A realistic utopia?*, 263–277. Oxford, Blackwell Publishing. In this article, Nickel offers the following list of political roles that human rights serve in several international organizations: they provide
 1. ‘Standards for education about good government. The preamble to the Universal Declaration emphasizes that human rights are to be promoted by ‘teaching and education’.

2. Guides to suitable content for bills of rights at the national level.
 3. Guides to domestic aspirations, reform, and criticism.
 4. Guides to when rebellion against a government is permissible.
 5. Guides to when a country's leaders and generals should be prosecuted domestically for human rights crimes.
 6. Standards to be used as reference points in making periodic reports to the committees established by human rights treaties about progress in respecting and implementing human rights.
 7. Standards for considering complaints and adjudicating cases (the European, Inter-American, and United Nations human rights systems have international courts).
 8. Standards for criticisms of governments by their citizens, by people in other countries, and by national and international NGOs. Many NGOs define their missions by reference to human rights.
 9. Standards for actions to promote human rights by the UN High Commissioner for Human Rights, the UN General Assembly, and other international organizations.
 10. Standards for evaluating the suitability of countries for financial aid.
 11. Standards for deciding whether to prosecute or convict the leaders or former leaders of a country within the International Criminal Court.
 12. Standards for international criticism and diplomatic action by governments or international organizations.
 13. Standards for recommending economic sanctions by international organizations and for imposing them by governments.
 14. Standards for military intervention by international organizations or governments' (p. 270)
7. The reception of Rawls's *Law of Peoples* offers a clear example. Although a full assessment of this complex work is not yet available, it has been very revealing for its disappointed critics to realize that in Rawls's utopian world the power of human rights should not be available even if rights to nondiscrimination were denied to some citizens, say, if women's rights to full equality or to an education were not honored, or if the political rights to democratic participation or the freedom of conscience of some citizens were constrained. For a good overview of the recent reception of Rawls's *Law of Peoples*, see Martin and Reidy, *Rawls's Law of Peoples*.
 8. See Rawls, *Law of Peoples*.
 9. See Shue Henry (1996) *Basic rights, subsistence, affluence and U.S. foreign policy* (2nd edn) with an afterword. Princeton, NJ, Princeton University Press.
 10. The International Bill of Human Rights consists of the UDHR, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols.
 11. In a nutshell, the problem is the following. The institutions at the supranational level which are in charge of fulfilling the human rights goals of the UN Charter do not have any legal or political means to do so, since the only means at their disposal, according to this model, is military intervention in cases of wars of aggression or genocide, whereas the institutions at the transnational level which have the legal and political means for implementing a global domestic politics through negotiated compromises are not legally constrained by any institution in charge of monitoring that the policies that result from such compromises do not infringe upon the obligation of protecting the human rights of the UN Charter. Following the analogy at the national level, we would have a constitutional state in which the institution in charge of protecting the constitution would only have the legal powers of

- calling for military intervention in cases of severe civil strife, but no legal means for supervising the constitutionality of ordinary legislation. No institution would be in charge of fulfilling the latter function (see note 13).
12. The term Habermas uses is 'politische Gestaltungsaufgaben'. An example of its use is offered in the following passage: 'Die Vereinten Nationen sind unter der Voraussetzung der souveränen Gleichheit ihrer Mitglieder eher auf normativ geregelte Konsensbildung als auf politisch erkämpften Interessenausgleich zugeschnitten, also für *politische Gestaltungsaufgaben* nicht geeignet' (Habermas, 'Eine politische Verfassung für die pluralistische Weltgesellschaft?', 359; my italics).
 13. As already mentioned in note 11, it should be clear that the analogy with the national level does not hold. In constitutional democracies, the basic rights of citizens are precisely not subject to majoritarian decisions brought about through compromises among different political orientations. To the contrary, the constitutional rights of citizens mark the limits within which ordinary legislation can be legitimate.
 14. If one takes into account Shue's useful distinction between the duty '(1) to avoid depriving' and the duty '(2) to protect from deprivation by enforcing duty (1)' (Shue, *Basic Rights*, 60), it seems clear that the first duty is universal in a sense in which the second is not, since the second type of duty necessarily raises the question of *who in particular* is to be assigned the responsibility to protect in each case. My argument does not aim to deny this distinction. All I am arguing is that duties of protection by the international community are as much at issue in cases of massive human rights violations due to armed conflicts such as ethnic cleansing or genocide as they are in the case of violations of economic origin.
 15. As cited in Thomas Pogge (2005) 'Human rights and global health: a research program', in: Christian Barry Christian & Thomas Pogge (Eds) *Global institutions and responsibilities. achieving global justice*, 190–217, 190. Oxford, Blackwell.
 16. This World Bank's estimate is considered by many people as flawed. For more information on this issue see Pogge Thomas (2004) 'The First UN Millennium Development Goal', *Journal of Human Development*, 5(3), 377–397.
 17. According to the UNAIDS/WHO Aids Epidemic Update from December 2006, in 2006 there were 40 million people living with HIV around the world. Three million people die each year from AIDS-related deaths. For more information, see http://www.unaids.org/en/HIV_data/epi2006/ (accessed June 8, 2007).
 18. According to recent statistics, 75% of adults and 90% of children infected with HIV who urgently need treatment are currently not receiving it. For more information, see <http://www.stopaidscampaign.org.uk/> (accessed June 8, 2007).
 19. For an interesting alternative proposal to the current TRIPS regime, see Pogge, 'Human Rights and Global Health: A Research Program'.
 20. In 2001, 39 major pharmaceutical companies tried to prosecute the South African government for passing a law (which they said was against TRIPS regulations) that allowed easy production and importation of generics. They had to back down after they received immense pressure from the South African government, the European Parliament and 300,000 people from over 130 countries that signed a petition against the action. For more information on this issue, see <http://www.aegis.com/news/re/2001/RE011009.html/> (accessed June 8, 2007). Since then the number of campaigns to demand guarantee HIV treatment for all has increased considerably. For information concerning current campaigns worldwide, see <http://www.stopaidscampaign.org.uk/> (accessed June 8, 2007).
 21. For the decision of GlaxoSmithKline to grant a voluntary license to Aspen, a major South African generics producer, see <http://www.aegis.com/news/re/2001/RE011009.html/> (accessed June 8, 2007). For the current campaign of activists around the world against Abbot's attempts to block Thailand from producing generic versions of current AIDS treatments, see <http://www.abbotsgreed.com/> (accessed June 8, 2007).

22. For evidence in that direction, see the 2001 Doha Declaration on TRIPS agreement and public health in http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm/ (accessed June 8, 2007).
23. This amount is 10 times the annual amount of all official development assistance worldwide. See UNCTAD (United Nations Conference on Trade and Development) (1999) *Trade and development report 1999*. New York, UN Publications.
24. See World Bank (2001) *Global economic prospects 2002: making trade work for the world's poor*. Washington, DC, World Bank.
25. For a brief overview of the narrow economic agenda commonly referred to as the Washington consensus and its major critics, see Held, *Global Covenant*, 55ff.
26. For an interesting and detailed analysis of how this could be achieved as regards the IMF, WTO and World Bank, see Robert Hockett, 'Three (potential) pillars of transnational economic justice: the Bretton Woods Institutions as guarantors of global equal treatment and market completion', in Barry and Pogge, *Global institutions and responsibilities*, 90–123.
27. For a powerful defense along these lines of the negative duty of rich countries to overcome severe poverty, see Pogge, *World Poverty and Human Rights* and 'Human Rights and Global Health: A Research Program'. Some of Pogge's proposals to fulfill this duty involve distributive measures whereas others do not. In any event, these proposals are an additional component of his approach that in no way affects the correctness of his normative analysis.