The Journal of Political Philosophy: Volume 00, Number 00, 2017, pp. 00–00

International Human Rights Obligations within the States System: The Avoidance Account*

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I. INTRODUCTION

WHATEVER one's view of global justice debates, practically all scholars agree that at least human rights obligations, as moral obligations, extend beyond borders. However, what exactly governments owe to people in other states as a matter of their human rights, what priority these obligations have over other responsibilities and aims, whether they are duties of justice or purely humanitarian commitments that allow some discretion for nations on how they may be discharged, are all questions that are not simply answered by accepting the premise that the rights exist. Whether or not one thinks that human rights extend to economic and social entitlements, the question I address is more fundamental: it ask what responsibilities governments have for the human rights of people living under the jurisdiction of other states.

International law offers little guidance on this problem. The Universal Declaration of Human Rights assumes that states have a fundamental responsibility to fulfill the human rights of their residents but is somewhat silent on the nature of international obligations to advance them. Even with basic security rights, the "Doctrine to Protect" recently adopted by the UN only imposes a diffuse and limited commitment on nations to undertake actions aimed at preventing some of the most egregious abuses, such as genocide, war crimes, and crimes against humanity.[1] Similarly, the principle of international cooperation to realize human rights, enshrined in several international documents, is framed in very abstract language, with no clear legal statement about the concrete obligations it generates and whether failure to discharge them would count as a human rights breach, infringement, or violation.[2]

*I am grateful to Marcelo Alegre, Paula Arturo, Samantha Besson, Fran García Gibson, Mariano Garreta Leclercq, Pablo Gilabert, Osvaldo Guariglia, Vicky Inostroza, Cristina Lafont, Guillermo Lariguet, Claudio López Guerra, Eduardo Rivera López, José Luis Martí, Martín Oliveira, Jahel Queralt, Moises Vaca, Lea Ypi, and two anonymous reviewers for their comments on earlier versions of this article. I also want to thank audiences at Di Tella University, Córdoba National University, and Pompeu Fabra University for helpful discussions.

[1]UN 2005. For an insightful analysis of the document, see Glanville 2012.

[2]De Schutter et al. 2012, p. 1094; Buchanan 2013, p. 282. For a careful legal interpretation of what the principle of international cooperation may require, see Salomon 2007, ch. 2.

doi: 10.1111/jopp.12146

In recent literature, many philosophers and political theorists have tried to fill this normative gap with different proposals about the obligations these rights imply across borders. The proposals diverge in at least three key respects: the precise content of international human rights obligations, their normative status, and their justification or moral grounds. In general terms, authors addressing this issue can be divided into two main groups.[3] On the one hand, liberal cosmopolitans argue that there is a duty of justice to maximize the enjoyment of the objects of human rights to the highest extent possible by all the feasible measures at our disposal. While some authors ground this conclusion in humanistic principles of a general duty owed to other human beings, others derive it instead from the existence of an international order that is coercively imposed on human beings across the globe.[4] On the other hand, some social liberals have argued that the international community only has humanitarian duties or duties of beneficence to prevent human rights violations by imposing sanctions on offending governments or aiding those societies which are unable to fulfill the human rights of their residents.[5]

In this article I propose an alternative and distinct account that bridges these two approaches by grounding clear and strict international human rights obligations in international social relations: the avoidance account. This view constructs human rights obligations as high-priority duties or duties of justice rather than as duties of beneficence; and it derives them from the existence of an international political order that confers certain specific prerogatives on its parties: states. Fundamentally, the present states system can only be legitimate if its existence creates no risks for the satisfaction of human rights. When this condition fails to be fulfilled, the international community, acting collectively, must undertake all feasible measures to address the risks that the states system creates. Otherwise, both governments and individuals would be justified in resisting the regulations that threaten the fulfillment of human rights. Under present conditions, this requires the international community to discharge four key human rights duties which emerge from considering the powers that the international community of states, defined in terms of existing institutions, is capable of exercising:

- The Prevention Duty: a duty to prevent states from using their authority to violate the human rights of their residents and to deter outside agents from cooperating with them in abusive activities
- The Protection Duty: a duty to prevent any agent under the authority of the institutions of the international community from illegitimately obstructing the capacity of states to fulfill the human rights of their residents

[3]This taxonomy does not pretend to be exhaustive.

[4]For the humanistic variant, see mainly Buchanan 2004, pp. 86–98; Sen 2004; Nussbaum 2006; Caney 2007, pp. 287–96; Gilabert 2012, pp. 27–63. For the relational argument, see mainly Pogge 2002, pp. 64–8; 2004; 2005.

[5]Rawls 1999a, pp. 91–7, 105–13; Blake 2001; Nagel 2005, pp.132, 143; Beitz 2009, pp. 109, 116–17, 167; Raz 2010, pp. 328–36.

- The Contribution Duty: a duty to contribute to progressively enhancing the capacity of the poorest nations to achieve reasonable levels of human rights fulfillment
- The Asylum Duty: a duty to implement migratory regulations granting immediate asylum to those people whose human rights are at risk

In Section II, I discuss two arguments for the cosmopolitan view that there is a justice-based duty to bring about an international order that advances the maximum possible level of human rights satisfaction. The first attempts to derive this obligation from humanistic principles, whereas the second one aims to ground it in a negative duty not to impose institutions that avoidably undermine the fulfillment of human rights. After explaining why both arguments are problematic, I will use the problems involved to introduce the avoidance account in Sections III–V. To show the benefits of this view, I contrast it in Section VI with alternatives in the literature.

I argue that the avoidance account helps to define the content and priority of international human rights obligations or, at least, provides us with a suitable normative framework for doing so. Importantly, this view proves that it is perfectly possible to justify an ambitious set of international human rights obligations without positing the existence of non-relational positive duties to continuously contribute to advancing the fundamental interests of distant strangers or embracing an implausible theory of international justice. The account also highlights an important and often missed point: the most serious threats to human rights satisfaction globally do not come from trade arrangements, financial institutions, borrowing privileges, or intellectual property regulations.[6] They come from the more structural features of the states system itself and, in a field where disputes are currently and perhaps unproductively focused on whether there is a global basic structure, it may be more fruitful to focus on these structural features quite aside from the basic-structural question.

II. MAXIMALIST VIEWS: HUMANIST AND RELATIONAL COSMOPOLITANISM

Is the international order only morally acceptable when it maximizes the realization of human rights to the highest possible degree? Cosmopolitan authors have provided both humanist and relational arguments for this view. I discuss these in turn.

A. HUMANIST COSMOPOLITANISM

Humanist cosmopolitanism holds that the protection of paramount human interests by human rights places all other agents under an obligation to promote

[6]Pogge 2005; 2004, pp. 47–53; 2002, pp. 15–26, 194–204.

the universal satisfaction of these rights, whenever they can reasonably do so. As one of the main advocates of this view explains, the idea is that "because of the importance of their objects, rights make demands that certain interests of persons be fulfilled. These demands set duties to fulfill them. In the case of human rights, the duty-bearers or respondents are, in theory, all human beings."[7]

The general premise underpinning this conception is that when people have a very important interest in X they have a right to it, and their having that right implies all other agents should contribute to providing that person with secure access to X, according to their capacity.[8] Importantly, this obligation does not depend on the existence of common institutions; it is a duty of justice rather than of beneficence in the sense that it enjoys high priority and correlates with the rights of others;[9] and it can be discharged either by directly assisting those whose human rights are at risk or by working toward bringing about institutional reforms.[10] The only limit placed on this obligation is that the demands it imposes on the duty-bearers must be "reasonable", "not excessive", or "not unduly onerous."[11]

There are three important problems with this proposal. The first problem is that its advocates are reluctant to provide a minimally operative notion of "reasonable costs." Suppose that you could prevent several destitute children from starving by selling your car, your computer, or your philosophy books and donating the money to them. Or suppose that a state, or a group of states, could provide thousands of foreign people with secure access to essential drugs by cutting off programs aimed at the improvement of their infrastructure or the sustenance of public universities. It is difficult to decide whether these costs are reasonable unless we are offered a more precise criterion of what this amounts to.[12] Yet, in the absence of such a criterion the humanist proposal may fail to be action-guiding and many of the obligations it postulates may become vague or purely aspirational.[13]

The second problem with the humanist argument is that bringing about a world in which human rights are even reasonably realized appears to be an onerous task under any plausible conception of what this may mean. Among other things, it would require that we mobilized troops and expensive military

[7]Gewirth 2007, p. 223. See also Shue 1996, p. 17; Nussbaum 2006, pp. 280, 285; Griffin 2008, pp. 96–110; Gilabert 2012, p. 62.

[8]Shue 1996, p. 13; Jones 2004, p. 57; Sen 2004, p. 338; Caney 2007, p. 287; Tasioulas 2007, p. 78; Griffin 2008, pp. 101–10.

[9]Ashford 2007, pp. 206–16; Gilabert 2012, p. 37.

[10]Buchanan 2004, p. 88; Caney 2007, p. 287; Gilabert 2012, p. 40.

[11]Shue 1996, p. 165; Buchanan 2004, p. 92; Caney 2007, p. 296; Griffin 2008, p. 99; Gilabert 2012, p. 51.

[12]Meckled-Garcia 2016, p. 16; 2017, p. 5; 2013, p. 79; Montero 2017.

[13]This point has been raised not only by non-cosmopolitan authors, but also by some cosmopolitan ones; see Pogge 2010, p. 206. Some humanists have engaged in interesting efforts to overcome this difficulty. For instance, Gilabert (2012, pp. 27–40) and Ashford (2003) have tried to offer a decision-making device grounded on Scanlon's contractualism. See also my discussion of these proposals in Montero 2017.

equipment to prevent abuses, that we provided continued assistance to poor societies and permanently contributed to enhancing their capacities, and that we sustained an effective monitoring system supervising the conduct of states and other relevant actors. Of course, I am not denying that the international community may have a collective obligation to do so; to the contrary, these obligations are an integral part of the avoidance account. I am only suggesting that, because these obligations evidently involve heavy burdens, it is more difficult to justify them as purely positive general duties owed by individuals and nations, and to show how duty-bearers can supply their objects at a reasonable cost to all.

A third and perhaps more serious problem with humanist cosmopolitanism is its potential infringement of a crucial deontological principle at the very heart of the liberal tradition: the principle that human beings are separate persons with a fundamental right to lead a self-shaping existence in which they can pursue their own legitimate aims, plans, and projects.[14] To see this, imagine that instead of using your spare time to write poetry, you could devote your efforts to human rights activism or educating poor children. Even if the costs of doing so look prima facie reasonable, this would obviously interfere with your capacity to direct your life, define your priorities, and foster your personal goals. This risks people becoming servants of morality or mere resources for promoting valuable outcomes and achieving desirable goals.[15] In the Kantian tradition this possibility is ameliorated by understanding positive obligations to help others as imperfect duties of beneficence that individuals may decide when, how, and to what extent to discharge by taking into account their priorities, attachments, and commitments.[16]

B. RELATIONAL COSMOPOLITANISM

The relational variant of cosmopolitanism is mainly developed by Thomas Pogge in his influential book *World Poverty and Human Rights*.[17] This view also posits a high-priority obligation to bring about an international setup where human rights are fulfilled to the maximum possible extent—with, however, two relevant differences from the humanist version. First, it sees human rights obligations as triggered by the existence of common coercive institutions and so not as obligations that people have toward the rest of humanity: only people subject to the same coercive regime can claim these obligations against each other.[18] Thus, while individuals interacting in an imaginary state of nature may perhaps have a duty not to infringe the natural rights of others, they would not have human

[14]Nozick 1974, pp. 32–4; Rawls 1999b, p. 26; Ripstein 1999, pp. 751, 765, 769; Meckled-Garcia 2013, pp. 75–6; 2016, pp. 15–16; 2017, p. 10.

[15]Wolf 1982; Meckled-Garcia 2016, p. 8.

[16]Hill 1971; Wood 2008, pp. 168–81. Easy rescue duties may be an exception to this: see Montero 2017.

[17]Pogge 2002.

[18]Ibid., p. 64.

rights-based obligations to advance each other's vital interests or create institutions that do so.[19]

Secondly, relational cosmopolitanism purports to ground international human rights obligations on a purely negative duty not to harm others. This duty is constructed as an obligation to refrain from upholding coercive structures that avoidably deprive people of secure access to the objects of their human rights.[20] Importantly, this duty is not only infringed when a coercive regime *actively* hampers human rights satisfaction, it is also violated when that regime is *avoidably suboptimal* in terms of human rights fulfillment, the baseline of comparison being the best possible arrangement not the current one.[21] On this view, in order to *respect* human rights, an institutional regime "should be designed so that human rights are realized in it as fully as reasonably possible."[22] Therefore, whenever the international order fails to adopt all feasible measures to provide its members with secure access to the objects of their human rights, those upholding it are involved in a massive human rights violation and thereby acquire justice-based *derivate* or *intermediate* duties to compensate the victims either through direct assistance or by working toward an urgent institutional reform.[23]

Relational cosmopolitanism seems to have the advantage of avoiding the main problems of its humanist rival. By constructing human rights obligations as purely negative duties, it appears to respect the principle of separateness between persons: while we must certainly refrain from harming others and compensate them for any harms we have caused them, we have no justice-based obligation to advance their interests, however important, whenever we can easily do so. Likewise, this argument may also circumvent intricate speculations about costs, since the duty not to harm others or to compensate them for the harm we have illegitimately caused them appears to be cost-insensitive in most cases.

Nevertheless, relational cosmopolitanism is vulnerable to an important objection: it presupposes an inflationary conception of harm that in practice collapses the distinction between negative and positive duties.[24] According to this conception, a coercive regime and those who support it harm vulnerable members whenever this regime fails to advance their fundamental interests to the maximum extent possible. To see why this view is controversial, imagine that Mary enjoys secure access to two units of good X—say some essential medication. Imagine now that Robert and Susan impose on Mary a coercive arrangement that unjustifiably deprives her of secure access to one unit of it.[25] It

[19]Ibid., p. 198.
[20]Ibid., p. 64; Pogge 2004, p. 341; 2005, p. 20.
[21]Pogge 2002, p. 66.
[22]Ibid., p. 65; Pogge 2005, p. 4.
[23]Pogge 2002, p. 67; 2004, p. 34; 2005, pp. 3, 20.
[24]Reitberger 2008, p. 387; Gilabert 2012, pp. 95–6.
[25]I add the qualification "unjustifiably" because sometimes people may be justifiably deprived of access to vital goods—for instance, when they have stolen those goods from others or have been convicted of a crime.

is evident that Robert and Susan have infringed a negative duty toward Mary and that, as matter of justice, they must give one unit of medication back to her. However, there is no reason to think that because of this they have also acquired a derivative duty of justice to work toward supplying Mary with as many units of medication as she may need, or to provide her with secure access to other essential goods, such as food, drinkable water, or education. If they have a duty to do so, this must be justified on independent normative grounds, such as the nature of the coercive arrangement they impose beyond its reduction of Mary's access to that medication. As many humanists have pointed out, relational cosmopolitanism appears to lack the conceptual resources to provide this justification without collapsing into the humanist conception.[26]

Two potential responses are worth considering. First, even though the inflated notion of harm may not apply to more specific coercive arrangements such as the one I have just described, it may nevertheless be suitable for wider coercive structures. After all, most human rights scholars would agree that when governments avoidably fail to provide their residents with secure access to the objects of their human rights, this counts as a human rights infringement. If this criterion works for nation-states, then it could also work for the international order.[27] In this vein, in more recent texts Pogge has clarified that his argument constructs the notion of harm in terms of an *independently specified* conception of justice:

> we are harming the global poor if and insofar as we collaborate in imposing an unjust global institutional order upon them. And this institutional order is unjust if and insofar as it foreseeably perpetuates large-scale human rights deficits that would be reasonably avoidable through feasible institutional modifications.[28]

Thus the international order is not unfair because it harms some people; rather, it harms some people because it is unfair in the first place.

The problem with this response is that the idea that we must assess the human rights performance of both states and international institutions by reference to one and the same normative criterion looks deeply contestable. It seems more reasonable to think that the content of human rights obligations should vary according to the kind and degree of authority that distinct coercive agents possess over individuals and the specific ways in which they restrict their freedom and opportunities.[29] Otherwise, the capacity of persons to enter specific arrangements with others to cooperate or advance their interests would be seriously compromised.

If the above is right, it could be argued that the reason why states have an obligation to fulfill the human rights of their residents is that they wield a unique kind of authority over them. This is the authority to make final decisions about

[26]Patten 2005, pp. 24–7; Reitberger 2008, p. 388; Tan 2010, pp. 55–62.
[27]Pogge 2002, p. 109.
[28]Pogge 2010, p. 193.
[29]Ronzoni 2009, pp. 230, 235, 242–9.

the distribution of rights and obligations and to determine how social resources will be allocated. The exercise of such an immense authority obviously activates special responsibilities, both in terms of how states must treat their subjects and in terms of what those living under their purview owe to one another.[30] This classical idea has been concisely expressed by Ronald Dworkin:

> A political community that exercises dominion over its own citizens, and demands from them allegiance and obedience to its laws, must take up an important, objective attitude towards them all, and each of its citizens must vote, and its officials must enact laws and form governmental policies with that responsibility in mind. Equal concern… is the special and indispensable virtue of sovereigns.[31]

On the other hand, there is no convincing account showing that international institutions enjoy this kind of authority over individual human beings. They have no power to assign rights, obligations, and resources to specific groups of persons, as their regulations are only binding for individuals when states incorporate them into their own legislation and can, for the most part, only be enforced through their agency.[32] This is not to deny that international arrangements enjoy some sort of coercive power and that their decisions may indirectly affect the freedom, opportunities, and life prospects of individuals. My sole claim is that because the authority that these arrangements enjoy is *qualitatively* different from that of states in relevant ways concerning the scope and form of their authority, one cannot hold them to exactly the same standards of human rights performance.[33]

The second potential response from relational cosmopolitanism is that it could still justify an expansive set of international human rights obligations without invoking an inflated notion of harm or a controversial account of international justice. This is because of conclusive evidence that the present international order is *actively depriving* some people of the enjoyment of their fundamental interests by, for instance, imposing discriminatory trade regulations on the poorest countries or enabling oppressive regimes to sell their people's resources, contract external loans, and import arms to stay in power. But, on a more conventional notion of harm, this would only activate derivative duties of justice to revisit these particular rules and compensate their victims, not to maximize human rights realization to the greatest extent possible. If we want to justify more expansive international obligations—including obligations to protect people against internal abuses and obligations to provide assistance to the most vulnerable nations—some other argument is required. In the next section I will try to provide

[30]Blake 2001, pp. 266–73; Nagel 2005, pp. 120, 130; Freeman 2006, p. 39; Ronzoni 2009, esp. p. 238; Meckled-Garcia 2016.

[31]Dworkin 2000, p. 6. See also Macedo 2004, p. 1730.

[32]Nagel 2005, p.138; Risse 2005, p. 104; Reitberger 2008, p. 384; Meckled-Garcia 2009, p. 261; 2011, pp. 2078–9.

[33]It is unclear whether Pogge ever offers an articulated argument to back his view in this respect. In fact, his complex considerations about baselines for comparison often look question-begging; see Patten 2005.

such argument based on social relations, which should make it acceptable to social liberals, but also, given its expansive implications for positive obligations, to those motivated by cosmopolitan concern.

III. THE AVOIDANCE ACCOUNT

The avoidance account is an alternative framework for deriving the content and priority of international human rights obligations. Its main tenet is that the coercive imposition of the present international order is legitimate or morally acceptable only if its regulations do not obstruct the enjoyment of human rights. As I have already argued, this does not mean that the international community must maximize human rights realization to the greatest extent possible; rather, it must guarantee that the international regulations it enforces create no risks for their satisfaction. The avoidance account can be summarized in the following two underlying principles:

> The Respect Principle: the coercive imposition of the present international order is morally acceptable only if its regulations do not hamper the enjoyment of human rights.[34]

> The Avoidance Principle: when the coercive imposition of the international order creates risks for the enjoyment of human rights, those who contribute to sustaining it must undertake all feasible measures to avert those risks.

The respect principle articulates a *purely negative* duty to avoid harming others by *unjustifiably* obstructing the satisfaction of their human rights.[35] This is of course a duty of justice. When the international order fulfills the respect principle, those nations sustaining it can pursue their own public goals with no further justice-based obligation to advance the realization of human rights abroad. This does not exempt states from humanitarian or beneficence duties toward others around the globe, even ones that address those persons' enjoyment of human rights. But they must judge when, how, and to what extent to reasonably discharge those duties, given their other reasonable priorities and goals. Otherwise, the principle of separation among persons would be threatened as people's freedom to cooperate with their co-nationals to promote their own interests or pursue their common goals would be seriously compromised.

In turn, the avoidance principle articulates a *derivative* positive obligation that is activated when the international order infringes the respect principle by creating risks for the satisfaction of human rights. In order to fulfill this principle its participants must undertake the actions required to avert those risks.[36]

[34]Lafont 2011, pp. 36–7.

[35]Again, I add this qualification to leave open the possibility that there may be cases in which a coercive agent may legitimately deprive people of access to valuable goods.

[36]We may wonder how many people's interests must be compromised before the avoidance principle is activated. I am under the impression that if one assumes a deontological moral framework, the fact that just one individual's human rights are threatened should be enough. However, this point may merit further consideration.

Because this positive duty results from the infringement of a prior duty of justice, it is not a duty of beneficence; it is a duty of justice and enjoys high priority.[37] Moreover, when the international community fails to reasonably mitigate the risks its regulations bring about for the enjoyment of human rights, neither individuals nor governments have a duty to obey or support those specific regulations.[38] That said, it is important to emphasize that the avoidance account is not a view of the conditions that the international order must fulfill in order to be fair or fully legitimate. It only articulates *necessary* rather than sufficient conditions for international legitimacy. Thus, even if the international order satisfies its requirements, it may nevertheless be unfair or illegitimate for other reasons. The avoidance account remains silent as to the conditions for international justice or complete international legitimacy and simply regards respect for human rights norms as their subset.

Now that the normative principles underlying the avoidance account are clearly stated, let me say a few words about the present international order. Its backbone is constituted by a set of regulations that scholars describe as "the states system." This system sanctions the existence of separate territorial units which are granted a number of prerogatives; and it is coercively imposed in the sense that anyone infringing its regulations may be legitimately penalized either by international institutions or by individual states acting in accordance with international law. Two of the prerogatives that the states system confers upon its members are particularly relevant for my argument:

- The right to rule over their population and to exclude outside agents from interfering with their internal issues.
- The right to control and freely dispose of their resources and to exclude non-residents from entering their jurisdiction or using their assets without their authorization.[39]

While the emergence of this order was of course the result of a contingent historical process, there is a familiar argument that may support its continued existence. This argument claims that states are inhabited by different political communities that have developed distinct political cultures and that their members have a right to determine the exact nature of their institutions, realize their public conceptions of justice, and pursue their own collective goals without interference from others.[40]

[37]I will say more about what this entails in the next section.

[38]This does not mean that individuals and nations are free to do as they wish. Even if some regulations are not binding because they create unmitigated risks for human rights satisfaction, both individuals and governments would still bear a duty to respect other morally justifiable international rules.

[39]Cassese 2005, pp. 41–64; Buchanan 2013, pp. 121–30.

[40]Rawls 1999a, pp. 34–5; Miller 2000, p. 162; Macedo 2004, p. 1724. I am not assuming that political communities necessarily share a common culture, ethnic origin, or language. I am simply thinking of them as sharing a distinct political identity modeled through their continued participation in political institutions. See Stiltz 2011; Banai 2013.

To illustrate the point, imagine that a group of people work together to create a philosophical association. It is reasonable to think that, as long as their activities do not illegitimately undermine the rights of others, members of the group are entitled to autonomously decide what rules will govern the association, who can become a member, and how the benefits the association generates are to be distributed. There is no reason why this principle should not apply to larger groups, such as universities, corporations, or entire political communities.[41] If so, the coercive imposition of the states system is prima facie justifiable: by conferring on states the two prerogatives I have just mentioned, it ultimately serves the right of their inhabitants to collective self-determination or collective self-governance.[42] Most arguments that challenge the rights of political communities to self-determination do so on the basis that something is lost by non-members, whether this is a freedom or an opportunity.[43] However, I am here assuming that human rights are fulfilled, and that a right to self-determination does not require some further more robust standard of redistribution.

This notwithstanding, there is reason to believe that the enforcement of the states system infringes the respect principle. This is so because its rules create three evident risks for the enjoyment of human rights:

- The risk that a government may use the jurisdictional powers it is granted to infringe the human rights of their residents and that when it does so no outside agent can stop it.
- The risk that when a government violates the human rights of their residents, the victims cannot escape from its jurisdiction, either because they are denied the right to leave or because no other nation is willing to accept them as refugees or residents.
- The risk that when a state lacks the resources to fulfill the human rights of its residents, the government cannot use resources belonging to other nations to improve their situation and that its poorest inhabitants cannot move to a more prosperous environment.[44]

To see this, imagine an international order where states had no right to prevent other nations from interfering with their internal issues. People would be able to enlist external help to resist any abuses perpetrated by their governments or by other private agents acting within their jurisdiction, such as armed groups or corporations. Or imagine an international order where states had no right to control their borders and prevent foreigners from entering their jurisdiction or using their resources. In such a setup, individuals would be free to move from one

[41]Miller 2000, p. 164.

[42]This right is explicitly recognized by several international documents.

[43]This is not to deny that the coercive exclusion of non-nationals must be justifiable for those who are excluded. In fact, as we will shortly see, according to the avoidance account, the existence of borders is legitimate only if some specific conditions obtain. For an illuminating debate on this subject-matter, see Abizadeh 2008; Miller 2010. See also Carens 2014, pp. 555–8.

[44]Buchanan 2013, pp. 121–30.

place to another looking for more favorable living conditions, to establish themselves in any region, and to use whatever assets they might find to satisfy their needs.[45]

By contrast, when states enjoy the prerogatives that the states system grants them, this imaginary situation is radically altered: human beings are now confined within the margins of their own states, outside agents cannot come to their aid to resist domestic abuses, and they are excluded from using any holdings that belong to other nations, from trespassing across their boundaries or from settling in their land without permission. I take these considerations to prove that the present international order creates concrete risks for the enjoyment of human rights that would not exist under an alternative configuration of the political space. In summary, then, in order for the international order to be morally acceptable, the international community must undertake all feasible measures to avert the risks the states system creates.[46] In the next section I will make an attempt to clarify what this implies.

IV. FOUR INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

According to the avoidance account, there are at least four duties that the international community must discharge as a collective agent in order to satisfy the avoidance principle. While these obligations are obviously *positive*, they nevertheless derive from the prior and more fundamental negative duty articulated by the respect principle: the duty not to impose coercive regulations that may hamper the enjoyment of human rights. I will sketch the core of each of these obligations in turn.

A. THE PREVENTION DUTY

In its most abstract form, the prevention duty requires that the international community implement all feasible measures to prevent states from using their sovereign powers to infringe the human rights of their residents.

This duty involves two more specific obligations. The first one requires that the international community create and sustain a precautionary apparatus that monitors the conduct of governments and gathers reliable information about their human rights record. When there is evidence that a state is unjustifiably infringing human rights, the international community must hold the government to account and, if necessary, impose proportionate sanctions on it, including diplomatic, economic, and military ones. In case of systematic and massive violation of the most basic human rights, the international community must undertake military operations to protect the victims and dispatch humanitarian interventions.[47]

[45]Ypi 2014, p. 292.

[46]The list of risks I have offered is not meant to be exhaustive. If there are other relevant risks, these may be incorporated into the avoidance account.

[47]It is obvious that humanitarian interventions cannot be justified by systematic violations of any of the rights recognized in present human rights documents. This is why I speak of "the most basic human rights." Unfortunately, I cannot develop here an account of what these rights are.

Importantly, the imposition of sanctions on offending regimes is legitimate if and only if three further conditions obtain. First, the violations must not be attributable to causes beyond the state's control, such as lack of resources, lack of institutional capacities, or natural catastrophes. Secondly, the state must be reluctant to undertake effective actions to stop the violations and provide the victims with reparation. Thirdly, the state must refuse to adopt reasonable measures to prevent similar violations in the future. To illustrate the point, imagine that there are some police officers in Ecuador who torture political dissidents. Imagine also that when the government learns about the situation it initiates a legal process against the relevant functionaries, compensates the victims, and creates a special commission to supervise the behavior of its security forces. If so, there would be no reason to sanction Ecuador or to publicly expose it. After all, no state can be expected to control everything that happens within its jurisdiction all the time and to ensure absolute compliance with human rights standards, so long as the measures that it does take are reasonable.[48]

In recent years the international community has made great efforts to partially honor this obligation. To this end, it has created several international bodies and agencies whose aim is to monitor the conduct of those states subscribing to international instruments, provide them with guidance, and help them improve their human rights record.[49] The avoidance account underscores that, when seen in their best moral light, human rights documents do not just *license* the international community to supervise the conduct of states and undertake remedial actions in case of systematic abuses. Rather, the international community has a high-priority duty both to sustain and improve this precautionary apparatus and to react when human rights are violated. This is not a humanitarian duty or a duty of benefice; it is a duty of justice nations must discharge if they want the states system to be morally acceptable and enjoy the prerogatives it confers upon them.

The second specific obligation entailed by the prevention duty requires the international community to deter outside agents from contributing to the perpetration of human rights violations. So, for instance, it must sanction governments or corporations selling weapons to an oppressive government if there is reason to think that it may use them to kill innocent people or suppress internal political dissent.[50] Similarly, the international community must also make sure that global governance institutions or transnational corporations are not providing abusive regimes with assistance to carry out human rights violating activities, including money, information, or logistical support.

B. THE PROTECTION DUTY

The protection duty is an obligation to prevent outside agents from actively undermining the capacity of states to deliver on the human rights of their

[48]Zylberman 2016, p. 19.
[49]Cassese 2005, p. 59.
[50]De Schutter et al. 2012, p. 1101.

residents. Thus, no state may be permitted to unjustifiably obstruct the capacity of other nations to fulfill human rights by exploiting, boycotting, or subordinating them.[51] When they do so, the international community must proceed to imposing proportionate sanctions on them.[52]

The precise implications of this duty are of course subject to controversy, as there may be reasonable disagreement about what counts as unjustifiably undermining the capacities of a nation. So, for instance, it could be argued that when affluent countries impose tariff barriers to products coming from poorer societies or subsidize their own agricultural sector, they are thereby infringing their human rights obligations. This claim could of course be resisted for a number of reasons which I cannot consider here.[53] However, the unilateral economic embargo imposed on Cuba by the government of the US is a paradigmatic example of conduct prohibited by this duty, given that the harms to human rights imposed by it are disproportionately greater than the rights infringements the embargo claims to address.

The protection duty also requires that the international community makes sure that international organizations and global governance institutions take human rights standards into account when designing their policies, programs, and regulations.[54] Naturally, this does not imply that these institutions have to adopt the goal of promoting the universal realization of human rights. The protection duty only requires that these institutions refrain from interfering with human rights satisfaction. In this vein, the International Monetary Fund must not make access to loans by poor nations conditional on the implementation of structural adjustment programs that leave their most vulnerable members unprotected if other solutions are feasible. Similarly, the World Trade Organization must avoid imposing regulations that are likely to interfere with the capacity of the poorest countries to deliver on human rights.[55]

C. THE CONTRIBUTION DUTY

The contribution duty is an obligation to progressively enhance the capacity of the poorest nations to reasonably satisfy the human rights of their inhabitants both by providing them with resources and by improving their institutional

[51]Miller 2000, p. 175.

[52]The Maastricht Principles have clarified that the Declaration on the Right to Development includes an obligation to "refrain from nullifying or impairing human rights satisfaction in other countries" (De Schutter et al. 2012, p. 1104).

[53]For a careful normative analysis of these sorts of cases, see Meckled-Garcia 2009. For a legal analysis, see De Schutter et al. 2012, pp. 1108–9.

[54]Montero 2014, p. 153; Lafont 2011, pp. 37–43. Principle 15 of the Maastricht Principles imposes on states an obligation to ensure that international organizations honor their human rights obligations, whereas Principle 16 imposes direct obligations on international institutions. See De Schutter et al. 2012, pp. 1118–21. See also Salomon 2007, pp. 106–9.

[55]It is worth noting that not all unfair trade regulations violate the protection duty, as governments often still have the resources to meet their responsibilities in spite of them.

powers.[56] This duty may be discharged in a number of ways. The most direct one is to transfer money, resources, or knowledge to vulnerable societies, and in cases of desperate need this may be the best option. However, in more general terms, this obligation may be better served by the adoption of global regulations that contribute to their development, including, among others, the implementation of trade rules that grant the poorest nations privileged access to markets or that allow them to protect their industrial sector through tariff barriers, the condoning or alleviation of their external debt burden, and the provision of cheap loans.[57] Determining which path to follow will require a case-by-case analysis. Yet, the international community must adopt a reasonable plan of action aimed at progressively reducing global poverty, and guarantee its implementation.

Two remarks are relevant in order to properly understand the practical implications of the contribution duty. First, this duty is only aimed at enhancing the capacities of those nations whose failure to deliver on human rights is attributable to lack of resources or other internally unsolvable problems rather than to unfair or defective distributive policies. Otherwise, it would force some nations to subsidize the privileges of the elites in other countries; this would not only be unfair, but would also create powerful counterincentives for adopting suitable internal measures.[58] Secondly, only those governments genuinely committed to fulfilling human rights are entitled to benefit from the contribution duty. Unfortunately, poor societies are sometimes ruled by governments that are not really concerned with promoting the human rights of their worst-off members. In such cases, international assistance may be delivered through channels that are not under official control or made conditional on the implementation of adequate political reforms. When governments refuse to adopt the suggested measures, the only option available to the international community may be to impose progressive measures to pressure these governments to act justly.[59]

D. THE ASYLUM DUTY

The asylum duty is an obligation to adopt international migratory regulations granting prompt asylum to those whose human rights are at risk.[60] In fact, present international law already contains some clauses of this nature. So, for

[56]According to international law experts, human rights instruments require that the international community act collectively to formulate policies oriented to the creation of favorable conditions for development; see De Schutter et al. 2012, p. 1091.

[57]Salomon 2007, pp. 87–98.

[58]Rawls 1999a, pp. 115–20; Blake 2001, pp. 289–94.

[59]So far, the avoidance account may look similar to Miriam Ronzoni's "background justice approach." According to Ronzoni, the international community bears an obligation to preserve the conditions under which states enjoy "effective sovereignty," meaning the capacity to secure internal socioeconomic justice. There are at least two relevant differences between the views. First, the avoidance account is not concerned about full domestic justice, but rather about human rights satisfaction. Secondly, whereas in the avoidance account international human rights obligations are triggered by the existence of a coercive international order, the background justice approach maintains that nations may have a duty to bring about some sort of global basic structure or other international institutions in order to amend pre-institutional unfair interactions. See Ronzoni 2009.

[60]Blake 2013, pp. 126–30.

instance, according to the Geneva Convention on Refugees, no government is permitted to return refugees to countries where their human rights may be violated. However, this regulation is insufficient: enforcing mechanisms are weak or practically nonexistent, governments have adopted internal tricks to prevent potential asylum seekers from reaching their borders, and only those who can prove that they have suffered actual persecution qualify as real refugees under the Convention.[61] As a result, many individuals who have not been direct victims of abuses are denied asylum, even if their human rights are in grave danger. Furthermore, when those accepted as refugees are unable to return home after a reasonable period of time, they have no guarantee that they will be awarded full membership of the host country, which makes the satisfaction of their human rights more precarious and deprives them of political rights.

This reform may naturally be resisted by prosperous nations. They may protest, for instance, that forcing them to admit anyone whose human rights are threatened could have a negative impact on their economy or obstruct the promotion of important collective goals, including the achievement of internal justice and the preservation of their political traditions.[62] Alternatively, states neighboring human rights-violating regimes may object that the burdens entailed by the reform would disproportionately fall on them, as asylum seekers normally travel by land. These complaints are not completely unreasonable. Yet, they are not enough to prove that states can legitimately stop individuals from escaping a criminal regime when helping them does not threaten the human rights of their own residents. They simply prove that the international community must adopt arrangements for fairly distributing the costs of hosting refugees and that all nations must pay part of the bill.

To illustrate the point, imagine that large numbers of people are escaping from a certain criminal state by entering a neighboring country. The government of the neighboring country must allow them to come in, but it has no obligation to let all of them stay in its territory for good.[63] Some of the victims may be transferred to other nations, according to the same internationally agreed criterion, and, until they are relocated, all nations must contribute to the creation and maintenance of decent refugee camps. However, when reasonable international arrangements for fairly honoring the asylum duty are not undertaken, the states system becomes illegitimate, because the border-control prerogative it confers upon nations creates grave dangers for human rights.

V. SOME IMPORTANT CLARIFICATIONS: PRIORITY, BENEFICENCE, AND INTERNATIONAL JUSTICE

Three important clarifications are in order before concluding. First, as I have indicated, the four international duties outlined here are not humanitarian duties

[61]Carens 2013, pp. 198–202.
[62]Miller 2007, p. 221.
[63]Blake 2013, p. 127.

or duties of beneficence. They are, rather, duties of justice. This is because they derive from a more fundamental negative obligation not to harm others by creating threats to the enjoyment of their human rights. Therefore, they take priority over the promotion of national interests, the realization of internal justice, and the achievement of other valuable collective goals. The only legitimate reason that governments can invoke not to discharge them is that doing so would compromise the human rights of their own inhabitants or seriously undermine their capacity to fulfill them. Moreover, these obligations are prima facie enforceable in the sense that individuals could demand their fulfillment and that third parties, ranging from INGOs and international institutions to coalitions of states, could take reasonable steps to ensure compliance with them.

Secondly, the avoidance account is not meant to deny that there may be further obligations to provide assistance to those who live in economically prosperous settings when their governments refuse to deliver on their human rights or discriminate against them. This may be the case with immigrants, ethnic minorities, or women in many developed countries. My sole claim is that any such duties are not grounded on human rights and that failure to honor them should not be considered a human rights infringement or denounced by resorting to human rights language. While the concept of human rights is one of the most important in our moral repertoire, it is not the only important one. There are other notions we may use to mobilize agents in order to address situations we have moral reason to regret.

Thirdly, it is not part of my conclusion that there is no obligation to implement more demanding distributive criteria among societies. Even though the contribution duty is only aimed at making sure that the right of states to control their territory is not obstructing the satisfaction of human rights, it could be argued that because resources are unevenly disseminated over the surface of the Earth, international justice calls for additional measures compensating nations in less-advantaged geographical areas. Or, alternatively, it may be argued that globalization has created patterns of interdependency and cooperation that activate additional distributive demands across borders.[64] The avoidance account remains silent about this issue. As already explained, it is not a view about international justice or full international legitimacy.

VI. IS THE AVOIDANCE ACCOUNT A SUFFICIENTLY DISTINCT VIEW?

Now that the core of the avoidance account has been expounded, I would like to briefly explain how it differs from three other proposals available in the literature. The first proposal I want to consider is the "political conception" of human rights.[65] According to this approach, human rights constitute "matters of international concern" in the sense that when states fail to satisfy them, the

[64]Beitz 1999, pp. 129–54.

[65]The political conception has been advocated by several authors. I focus here on Charles Beitz's variant of it: Beitz 2009. For other versions, see Sangiovanni 2008; Raz 2010.

international community has a responsibility to undertake remedial actions, such as the imposition of sanctions, the provision of assistance, and the revision of global governance structures.[66] However, on this view, international obligations are constructed as duties of "strong beneficence" which are activated only when the interests involved are "maximally urgent" and when the costs of discharging them "would be only slight or moderate."[67] Instead, the avoidance account understands international obligations as duties of justice, thereby eluding complex considerations about costs and burdens.

The second proposal I want to mention was developed by Ronald Dworkin, who has argued that, from a moral perspective, the fundamental aim of international law is to mitigate two threats created by the traditional states system: the threat that governments degrade into tyranny, and the threat that people in one state fall victim to "the invasions and pillage of other people." Dworkin believes that, under present conditions, this triggers an obligation to facilitate an international regime that allows foreign encroachments on the sovereignty of states to prevent massive crimes and ensures that no nation will be subjugated or invaded by others.[68]

This view has evident similarities to the avoidance account. Yet, Dworkin's approach is silent on whether the duty to mitigate includes an obligation to prevent global governance institutions from obstructing human rights satisfaction, to assist poor nations, or to grant asylum to those whose human rights are in peril. The most likely reason for this is that Dworkin takes present boundaries as a fact that requires no moral justification.[69] Furthermore, Dworkin constructs the duty to mitigate as one of states toward their own residents: "the general obligation of each state to improve its own political legitimacy includes an obligation to try to improve the overall international order in a way that would improve the legitimacy of its own coercive government."[70] This view sounds terribly awkward, however, as it implies that when a state helps a foreign oppressive government, it is wronging its own citizens rather than the victims. If there are any international obligations for human rights, they must be obligations that governments have toward non-nationals.

The third proposal I want to mention was articulated by Allen Buchanan. In his recent book *The Heart of Human Rights*, Buchanan claims that, given the severe dangers the states system creates for the fundamental interests of individuals, its existence is morally unjustifiable unless those dangers can be significantly mitigated. Thus, he argues that states and their governments have an obligation to cooperate to remedy such flaws by sustaining a system of international human rights similar the one we now encounter.[71]

[66]Beitz 2009, pp. 109, 116.
[67]Ibid., p. 167.
[68]Dworkin 2013, p. 17.
[69]Similarly, the extent, priority, and normative status of international obligations are not clearly specified; see Dworkin 2013, p. 19.
[70]Ibid., p. 17.
[71]Buchanan 2013, pp. 125, 278.

There are two important differences between this view and the avoidance account. The first is that Buchanan never explains where the mitigation duty comes from, and he is ambiguous about the specific obligations it entails, what normative status these obligations have, and what would suffice to honor them.[72] The second difference is that, because Buchanan takes the territorial rights of just states for granted, his view may lack the resources to accommodate the contribution and asylum duties as mitigation requirements. In fact, when addressing the issue of assistance to the most vulnerable societies, he gives up the mitigation strategy and invokes instead the principle that all human beings "ought to have the opportunity to lead a minimally good or decent life and to be treated as having equal basic status."[73] As a result, his view is not about mitigating risks any longer; it is just a variant of the humanist argument I have already discussed.

VII. CONCLUDING REMARKS

In this article, I have presented an account of the content and priority of international human rights obligations and argued that this view has important advantages over its main rivals. In particular, the avoidance account derives a wide range of international obligations from a negative duty not to harm, without presupposing the existence of positive duties of justice or invoking a controversial theory of global justice. Importantly, even if some readers disagree with my analysis of the relevant threats and the international obligations that human rights entail, the avoidance account may still offer a reliable framework for thinking about the subject-matter, as anyone can add further duties to the list by describing risks I may have overlooked. Of course, the avoidance account is an ideal theory and, as such, it may face implementation problems under non-ideal circumstances. More concretely, it offers no guidance to those governments willing to comply with their commitments in contexts in which most others refuse to do so. For obvious reasons, I cannot address this important problem here. In any case, international transformations take time and I think it is a good starting point to have a clear road map that helps us understand what our final destination should be.

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[72]So, for instance, he never explains whether the mitigation principle derives from a negative duty not to harm or from the natural duty of justice he postulates in other texts. Similarly, he establishes no clear link between the risks created by the states system and international obligations, and says little about the priority of mitigation duties vis-à-vis national interests or the achievement of domestic justice. See Buchanan 2013, pp. 131–2.

[73]Ibid., p. 285.

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