

Pluralism and Global Justice

Cristina Lafont

Northwestern University
clafont@northwestern.edu

Abstract

A central question in the debate surrounding contemporary proposals for a new international order is whether accepting the fact of global pluralism should lead us to lower our ambitions for global justice. Many participants in that debate answer such a question positively. Even authors such as Rawls and Habermas —both prominent defenders of ambitious conceptions of domestic justice— seem to reach the same pessimistic conclusion with their respective proposals for a new international order. In this paper, I question the plausibility of such a conclusion on the basis of an analysis of the cosmopolitan project that Habermas articulates in recent publications. I argue that his presentation of the project oscillates between two models. The first is an ambitious model for a future international order geared towards fulfilling the human rights goals of the UN Charter. The second is a minimalist model, in which the international community's obligation to protect human rights is limited to the negative duty of preventing wars of aggression and massive human rights violations stemming from 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 plausible basis for drawing a normatively significant distinction between massive human rights violations stemming from armed conflicts and those stemming from regulations of the global economic order. If this is correct, acceptance of the fact of global pluralism does not offer a plausible justification to exclude economic justice from the principles of transnational justice recognized by the international community.

Keywords: cosmopolitanism; global justice; globalization; Habermas; human rights; overlapping consensus; pluralism; Rawls.

Resumen. *Pluralismo y justicia global*

Una cuestión central en el debate en torno a propuestas contemporáneas para un nuevo orden internacional es la de si aceptar el hecho del pluralismo global ha de llevarnos a rebajar nuestras expectativas de justicia global. Muchos de los participantes en este debate responden de modo afirmativo a esta pregunta. Incluso autores como Rawls y Habermas —ambos prominentes defensores de concepciones ambiciosas de justicia doméstica— parecen llegar a dicha conclusión pesimista en sus respectivas propuestas para un nuevo orden internacional. En este artículo, cuestiono la plausibilidad de tal conclusión a partir de un aná-

lisis del proyecto cosmopolita que Habermas ha articulado en publicaciones recientes. Argumento que su presentación del proyecto oscila entre dos modelos. El primero es un modelo ambicioso para un futuro orden internacional dirigido a cumplir los objetivos de derechos humanos contenidos en la Carta de las Naciones Unidas. El segundo es un modelo minimalista donde el deber de proteger los derechos humanos por parte de la comunidad internacional está limitado a la obligación negativa de prevenir guerras de agresión y violaciones masivas de los derechos humanos provenientes de conflictos armados como limpiezas étnicas o genocidio. Según este modelo, cualquier objetivo de justicia más ambicioso quedaría relegado a una política doméstica global acordada mediante la negociación de compromisos entre unas grandes potencias domesticadas. En contra de esta interpretación minimalista y a favor de la interpretación ambiciosa del modelo, argumento que no hay ninguna base normativa plausible para trazar una distinción significativa entre violaciones masivas de los derechos humanos debidas a conflictos armados y violaciones debidas a las regulaciones internacionales del orden económico global. Si esto es cierto, aceptar el hecho del pluralismo global no ofrece una justificación plausible para excluir la justicia económica de los principios de justicia transnacional reconocidos por la comunidad internacional.

Palabras clave: cosmopolitanismo; justicia global; globalización; Habermas; derechos humanos; consenso por solapamiento; pluralismo; Rawls.

Towards the end of the Cold War, two seminal works of political philosophy were published in quick succession: Habermas's *Between Facts and Norms* (1992) and Rawls's *Political Liberalism* (1993). Each work set forth its own approach for making the demands of justice compatible with respect for pluralism in modern democratic societies. The idea of an overlapping consensus was at the center of Rawls's approach and the ideal of a deliberative democracy at the center of Habermas's approach. But, as Hegel had cautioned, so too in this case the proverbial owl of Minerva was spreading its wings only after dusk had fallen. At the precise historical moment when theoretical solutions began to emerge for making justice and pluralism compatible with one another on the domestic level of nation states, the end of the Cold War led to an accelerated process of globalization that has questioned the viability of any merely domestic solution. Seen from this perspective, it is not at all surprising that both authors immediately tried to extend their respective solutions from the domestic to the global context of an emerging international order. Rawls undertook such an extension in *The Law of Peoples* and Habermas has done so in several writings, the most recent of which is entitled «A political constitution for the pluralist world society?»¹ However, the nature of their proposals has surprised many. The hesitancy of their defenses of the priority of the right over pluralism among conceptions of the good is striking —particularly in light of the fact that both have traditionally been adamant defenders of such a priority. In fact, the preoccupation with respecting global pluralism seems to have seriously undermined their confidence in the extended application of their own domestic solutions to the international context.

1. Habermas (2008), 324-366.

In Rawls's case, the discontinuity is clear as soon as one pays attention to the transformation that his conception of an overlapping consensus undergoes when moving from the domestic to the international context. In the domestic context, Rawls's acknowledgement of the fact of pluralism led him to interpret the consensus on a set of constitutional rights that is characteristic of liberal democracies as an overlapping consensus. More specifically, it led him to conceive of it as a consensus on a single set of rights open to a variety of underlying justifications which are drawn from the diverse comprehensive doctrines that different groups of citizens endorse. However, the international consensus that Rawls proposes in the *Law of Peoples* is not merely a consensus based on (potentially) diverse justifications, but a consensus on a different (and less demanding) set of rights. According to Rawls, the constitutional rights that Western liberal democracies grant to their own citizens derive from a commitment to liberalism or, as he puts it, they express «liberal aspirations»² which cannot be legitimately imposed on other societies once we accept the fact of global pluralism³. Consequently, the standards of international human rights must differ and be less demanding than the standards of constitutional rights recognized in liberal democracies.

Interestingly enough, the international agreement expressed in the Universal Declaration of Human Rights from 1948 is considered by many to be a historical example of a Rawlsian overlapping consensus, that is, a consensus on a single set of international rights that leaves its ultimate justification open to a diversity of possible interpretations⁴. However, this point of view is actu-

2. See Rawls (1999), 80, n. 23.

3. This is not one of Rawls's own expressions. However, in using it, I make reference to the way in which the domestic fact of reasonable pluralism is paralleled at the global level, as Rawls himself indicates at the beginning of the *Law of Peoples* (despite the fact that he does not coin a catch expression for such a phenomenon). As Rawls indicates, «In the Society of Peoples, the parallel to reasonable pluralism is the diversity among reasonable peoples with their different cultures and traditions of thought, both religious and nonreligious» (Rawls [1999], 11). According to Rawls, acceptance of the fact of reasonable pluralism at the domestic level is perfectly compatible with holding to one's liberal aspirations, but this is not the case at the global level. In light of this, it seems important to use different expressions to indicate that what is involved at the global level is not just acceptance of the same old fact we thought we had already accepted at home, but something more (acceptance of the existence of a diversity of «peoples» without a shared political culture, of the importance of a people's self-determination, etc.). Needless to say, one may accept Rawls's account of one of these facts without accepting the other, as cosmopolitan critics of Rawls's *Law of Peoples* who are domestic liberals typically do.

4. For an example of this interpretation see Beitz (2004). Beitz offers convincing arguments for a defense of his interpretation of the UDHR as an historical example of a Rawlsian overlapping consensus (i.e., a consensus on a single set of rights, which may be justified on highly divergent grounds). However, he fails to indicate in that context that Rawls's conception of human rights in the *Law of Peoples* not only subscribes to the justificatory minimalism characteristic of the practical view of human rights, but also to a substantive minimalism which is *incompatible* with the view taken by the framers of the UDHR regarding the proper content of human rights.

ally incompatible with the one that Rawls defends in his *Law of Peoples*. The international consensus that Rawls proposes there represents not just a case of justificatory minimalism, but above all of substantive minimalism⁵, since it

5. For the distinction between justificatory and substantive minimalism see J. Cohen (2004). Cohen's distinction is important and useful. However, the argument he offers in his paper seems problematic. Cohen introduces the distinction between justificatory and substantive minimalism in order to show that both are logically independent and thus that a defense of the former does not per se entail a defense of the latter. According to Cohen's argument, the precise determination of the content of human rights should be «left open to an independent argument about conditions of membership that proceeds on the terrain of global public reason» (p. 210). The appropriate determination of the content of human rights should ultimately depend on which argument can win support within different ethical and religious traditions and this determination, as Cohen explains, may require «fresh elaboration of those traditions by their proponents» in order to «provide that tradition with its most compelling statement» (p. 201). Since this process has not taken place yet there is no reason to assume that the justificatory minimalism that it requires will necessarily lead to a substantive minimalism. However, at the end of the article, Cohen takes a puzzling further step and defends the Rawlsian variety of substantive minimalism, according to which «standards of human rights should differ from and be less demanding than standards that we endorse for our own society» (*ibid.*). In making such a claim Cohen seems to directly undermine his own argument for substantive openness (by ruling out two options as possible outcomes of the independent argument, namely, that human rights standards could be coextensive with or even more demanding than domestic standards). Cohen offers a general argument from toleration to justify his endorsement of the Rawlsian variant of substantive minimalism. However, this argument hardly seems compatible with the «principled» justificatory minimalism that he defends in the article. His argument is as follows: «The idea of tolerating reasonable differences suggests that the standards to which all political societies are to be held accountable *will need to be less demanding than the standards of justice one endorses*. This point about toleration does not imply relativism about justice: the point is not that justice is relative to circumstance... The observation here is simply that, once we take into consideration the value of toleration, we will be more inclined to accept differences between what we take to be the correct standards of justice —and the rights ingredient in those standards— and the human rights standards to which all political societies are to be held accountable» (p. 212). Now, in order to assess whether this view is compatible with «principled» justificatory minimalism, the crucial question that needs to be determined is what kind of differences one should be inclined to accept and for what reasons. Since Cohen explicitly rejects relativism, his claim cannot mean that one should accept all those differences that reflect whatever standards other societies happen to endorse, regardless of the quality of the reasons behind such support. It must mean that one should accept only those differences that are supported by good or compelling reasons. Now, this qualification in turn can be understood in a relativistic or in a non-relativistic way: either it means «compelling reasons for them» or it means compelling reasons period, that is, «compelling reasons for anyone». Whereas the first interpretation amounts to the relativistic «blank check» that Cohen rejects, the second seems to lead to the conclusion that we ought to revise our views and recognize that the standards of justice to which we can reasonably hold others accountable are actually less demanding than we took them to be, and thus that there is at least *prima facie* reason to lower our own standards at home to accommodate those reasonable differences (which in light of the fact of reasonable pluralism are likely to be present at home as well), precisely because and to the extent that they are reasonable. It seems that a non-relativist interpretation of toleration leaves us with only two options: either toleration begins at home or it should not begin at all. In other words, either we make the answer to the question of «What differences regarding justice are reasonable to

involves a severe reduction in content and scope of the rights recognized in the UN Charter⁶. Although the Rawlsian idea of an overlapping consensus promises to make the demands of justice compatible with respect for pluralism in the domestic context, this no longer seems possible in the international context. Accepting Rawls's proposal implies an acceptance of the fact that global pluralism imposes severe constraints on demands for global justice.

In the case of Habermas, the situation is more complex, since his proposal for a new international order has not been articulated in all its details. On the one hand, given the markedly procedural character of his discourse model for deliberative democracy, his proposal cannot be expected to spell out the exact content of international human rights standards. According to the institutional design for a new international order that Habermas proposes (and, in perfect congruence with the domestic case) the determination of specific principles of transnational justice is itself dependent on an ongoing process of deliberation by members of the international community in an appropriately transformed world organization. To the extent that this determination ultimately depends on which arguments turn out to be most convincing throughout the process of determining what global justice demands of the international community, there is no reason to suppose, as Rawls does, that these standards must be different and less demanding than those recognized by liberal democracies or by the UN Charter. This cosmopolitan feature of Habermas's model suggests that respect for pluralism does not have to lead to a drastic reduction in aspirations for global justice. In fact, in contrast to Rawls, Habermas considers redistributive measures for the reduction of extreme disparities in worldwide welfare as a legitimate political goal for the international community. On the other hand, this is precisely where a clear discontinuity crops up between the domestic and the international context. Whereas in the domestic case this goal is internally connected to the demands of justice generated by the constitutional rights of citizens, this connection disappears in the international context. According to Habermas's proposal, economic issues must be separated from the international community's obligations of justice and interpreted as political aspirations that reflect differences in value orientations and

tolerate?» dependent on the quality of the best reasons available in an open-ended dialogue, in which case we end up with a single standard of reasonable toleration (namely, the one that tracks the quality of the best reasons available) or we hold on to the claim that the international standard of toleration ought to be different and less demanding than it is at home, but then we cannot propose to determine both standards by the single source of the best reasons available in an open-ended dialogue, as Cohen (rightly in my view) does. In that case, we simply would have decided in advance of any dialogue that «we cannot be both tolerant and ambitious» in our understanding of what human rights demand, contrary to Cohen's own aims.

6. Among the rights included in the UDHR, but excluded from the Rawlsian proposal are the right to full equality and against discrimination based on race, color, sex, language, religion, etc. (Article 1 and 2), freedom of expression and association (Article 19 and 20), as well as political rights to democratic participation (Article 21) or social rights such as the right to education (Article 26).

ideals. As such, these issues should be agreed upon through negotiated compromises among the conflicting value preferences and interests of the major transnational powers. In consequence, the aspirations for justice that stem from applying the deliberative model to those functions that the international community as a whole is supposed to exercise in a transformed world organization are drastically undermined through the application of a pluralist model of negotiation and compromise to those functions ascribed to the major global players at the transnational level. It seems that the same conclusion is drawn in Habermas as well, albeit through a different path. Accepting the argument behind this proposal seems to commit one to accepting that a respect for global pluralism imposes severe constraints on demands for global justice. That the authors of two of the most demanding contemporary conceptions of domestic justice reach the same pessimistic conclusion regarding the international context is certainly disquieting to those who, like me, harbor ambitious aspirations for global justice.

Nonetheless, in what follows I would like to resist this conclusion by critically inspecting the arguments Habermas offers in defense of his proposal that, in my opinion, lead to an ultraminimalist interpretation of the international community's obligations of justice. My ultimate intention, however, is not merely critical. Identifying the weaknesses of these arguments makes it possible to recuperate other valuable elements within the Habermasian model that can be used to defend more ambitious obligations of justice in a pluralist world society. Admittedly, this is something that I will only indicate in closing, but cannot fully defend here⁷.

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 towards 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. Moreover, the specific design of a multilevel system with different political units at the supranational, transnational, and national levels seems attractive to me too. The Habermasian model retains the current system of nation states at the national level and envisages not only a suitably reformed world organization as a single actor at the supranational level, but also the formation of a few regional or continental regimes at the transnational level (US, China, Russia, India,

7. In the analysis that follows I draw from Lafont (2008).

EU, ASEAN, AU, etc.). These continental regimes would fill the role of global players in charge of negotiating and implementing a «global domestic politics» in the transnational arena. Habermas admits that such a system of viable global players does not currently exist, but hopes that the EU could serve as a model for those regions of the world that are not «born» continental regimes such as China or Russia. Where I begin to sense difficulties, however, 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 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 (2005, 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 in 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 reveal 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 (2008, 346). The egalitarian goal of overcoming worldwide economic inequalities 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 more precisely situate the Habermasian model 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 —assumptions 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 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 regarding 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 agreement on the goal is therefore only apparent. The current disagreements on the precise content or scope of human rights should not distract from widespread agreement on the crucial function that human rights are supposed to play, namely, to set the appropriate 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 by the international community 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 lies⁸. They generate genuine duties, signal the normative limits to inaction, have the power to mobi-

8. See Risse, Ropp and Sikkink (1999).

lize anyone, and, at the very least, can ruin reputations through the public «shaming and blaming» of any government or institution that violates them. There is no other normative weapon quite like it in the international arena⁹.

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 available¹⁰. 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 unquestioned¹¹. Some authors opt for a minimalist strategy in identifying basic human rights with the hope that it may command universal assent in the international community¹², whereas others follow a more generous agenda with the intention of increasing their model's normative bite¹³. But even the most utopian

9. Nickel (2006) 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).
10. 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 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 (2006).
11. See Rawls (1999).
12. See Ignatieff (2001).
13. See Shue (1996).

among the latter fall short of proposing anything as ambitious as the set of human rights provisions contained in the International Bill of Human Rights that¹⁴ 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 UDHR¹⁵. 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 legal standards that bind the international community and guide current practice¹⁶ are 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 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 any 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 (2005, 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» (2005, 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

14. The International Bill of Human Rights consists of the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols.

15. For an interesting argument against these criticisms see Waldron (1993), 12ff.

16. For a compelling interpretation of human rights as an emergent political and discursive global practice see Beitz (2009). One of the most attractive features of Beitz's approach is that it offers a plausible basis to resist the tendency towards substantive minimalism that is inherent in most alternative conceptions of human rights. However, this attractive feature of his approach seems unduly curtailed by Beitz's additional commitment to a state-centric interpretation of the practice. Since this commitment seems plainly unmotivated, if not directly undermined by some of Beitz's own arguments, its acceptance does not seem required by any intrinsic feature of the practical approach per se. In fact, the opposite may be the case (see footnote 36).

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» (2008, 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» (2008, 346). This claim leaves only the ultraminimalist interpretation, according to which the function of protecting human rights consists exclusively in the 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 limbo¹⁷.

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

17. 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 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 constitutional rights 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.

differential in welfare within a highly stratified world society» becomes a noble political aspiration alongside 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 more carefully examine 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, as a matter of duty, responsible for preventing massive human rights violations such as ethnic cleansing or genocide and, if necessary, to prevent such violations through military intervention. But preventing other kinds of human rights violations is not part of the negative duties of justice of the international community, but is instead a positive or, as Habermas calls it, «constructive» political task¹⁸. That is, tasks involving the prevention of other kind of human rights violations concern 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, in a similar fashion to the domestic politics of individual states¹⁹, must come about through negotiated compromises among the different political conceptions and ideals of the major players involved. Habermas explains this view as follows:

18. The term Habermas (2005) 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» (359, my italics).

19. As already mentioned in footnote 17, 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.

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 (2005, 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 regarding the question of who is supposed to do what²⁰. 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». That may be true. But even if we grant this

20. For one of the most influential defenses of this line of argument to question the genuine status of positive rights see O'Neill (1996) and (2000). For an interesting critical analysis of the internal difficulties of O'Neill's views see Ashford (2009).

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 community²¹. 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» (2008, 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 a universal moral

21. If one takes into account Shue's (1996) useful distinction between the duty «to avoid depriving» and the duty «to protect from deprivation» (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. Thus if the former type of violations can trigger positive obligations to act by the international community, so can the latter.

consensus of the international community and thus be considered a negative duty of justice. 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 regarding the former is not simply the sheer number of human beings potentially affected. But neither is the issue at hand simply the fact 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 of 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 cured²². 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 the price. This dynamic is, of course, connected to the fact that over 2,800 million people²³ live under conditions of extreme deprivation, malnutrition, lack of access to clean water, etc., as 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, as 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

22. As cited in Pogge (2005), 190.

23. This World Bank's estimate is considered by many people as flawed. For more information on this issue see Pogge (2004).

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/AIDS²⁴, governments of poor countries were prevented from guaranteeing access to treatment to their citizens not because they lack the means to produce them, but because they were 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 WTO²⁵. This agreement grants pharmaceutical companies a monopoly on the production of medicines for a twenty-year period, during which they can charge as much as they want for them, ostensibly to recover their initial investment in research. 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 those responsible for the violation 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 rights 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, it may be difficult to come up with a new regulation on patents that would solve all social, economic, and technical issues involved²⁶, but, needless to say, this is even more clearly the case regarding human rights violations due to ethnic conflicts.

In fact, some empirical evidence suggests that the possibility of universal moral consensus within the international community in this type of cases is very likely. In recent years, the governments of relatively weak countries such as Thailand and South Africa decided to issue compulsory licenses or pass 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, but they were able to get away with this alleged violation without suffering a trade boycott from the international community precisely because of an

24. According to the UNAIDS/WHO Aids Epidemic Update from December 2006, in 2006 there were 40 million people living with HIV around the world. 3 million people die each year from AIDS-related deaths. For more information see: http://www.unaids.org/en/HIV_data/epi2006.

25. 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>.

26. For an interesting alternative proposal to the current TRIPS regime concerning medicines see Hollis and Pogge (2008). This book is available for download at: <http://www.yale.edu/mcmillan/igh/hif.html>.

emerging consensus that the current regulation is morally unacceptable. Fortunately, in this case we already witnessed 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 violations²⁷. These reactions prompted some pharmaceutical companies, companies that originally tried to prosecute the governments of Thailand and South Africa, to issue voluntary licenses to them instead²⁸. Moreover, the high publicity of the conflict eventually led WTO members to amend a core WTO agreement for the first time, implicitly recognizing the organization's responsibility for protecting the right to health²⁹. It remains to be seen whether this process eventually leads the global players involved to establish morally acceptable regulations on patents³⁰. Be that as it may, at the very least this conflict has brought to public light the need to integrate human rights considerations in the crafting and implementing of WTO rules³¹.

27. In 2001, thirty-nine 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>. Since then the number of campaigns to demand guaranteed HIV treatment for all has increased considerably. For information concerning current campaigns worldwide see: <http://www.stopaidscampaign.org.uk>.
28. 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>. For the campaign of activists around the world against Abbot's attempts to block Thailand from producing generic versions of its AIDS treatments see: <http://www.abbotsgreed.com>.
29. In 2003, WTO member governments approved a decision that offered an interim waiver under the TRIPS Agreement allowing a member country to export pharmaceutical products made under compulsory licenses to least-developed and certain other members. At the 2005 Hong Kong Ministerial, members agree to a permanent amendment to incorporate the 2003 decision, which will become effective when it is ratified by two-thirds of the member states. To date, 38 countries have ratified the agreement. For more information see: http://www.wto.org/english/tratop_e/trips_e/implem_para6_e.htm. For an excellent analysis of the human rights obligations of the WTO based on the specific case of TRIPS and the right to health see Herstermeyer (2007).
30. The most obvious and problematic consequence of the TRIPS regime is its devastating impact on the ability of governments of poor countries to provide their citizens with access to essential medicines, but there are many more problematic consequences as well. From its long-term impact on the ability of governments of poor countries to protect their citizen's rights to an education (because of copyright restrictions) to the impact on the ability to protect the most basic subsistence rights of citizens —particularly amidst an anticipated four-fold rise of transfers from developing countries to rich countries due to license payments to transnational companies (according to the World Bank's estimate). As Wolf (2004) indicates, this sum alone would fully offset all development assistance (see Wolf 2004, 217ff).
31. For some 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. For interesting proposals on how to integrate WTO law and international human rights law see Marceau (2002), Cottier, Pauwelyn and Burgi (2005), Zaglin (2005), Herstermeyer (2007). For an interesting analysis of the scope of human rights obligations of non-state actors under international law see Clapham (2006).

Now, in the same way that the rules of the TRIPS regime can lead to human rights violations, many other economic regulations 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 WTO³². According to the World Bank, abolishing all current trade barriers could lift 320 million people out of poverty by 2015³³. This policy change would certainly help protecting the basic human rights of citizens of poor countries by considerably reducing 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 the adoption of redistributive measures geared towards «overcoming the extreme differential in welfare within a highly stratified world society»³⁴. 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 ultra-minimalist 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» (2008, 358). In particular, in light 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

32. This amount is ten times the annual amount of all official development assistance worldwide. See UNCTAD (1999).

33. See World Bank (2001).

34. As the examples suggest, achieving global justice concerning economic issues should not be primarily understood as a matter of redistributing resources, but also (and perhaps even more importantly) as a matter of establishing fair power relations among those affected by economic relations. Ronzoni (2009) offers a similar view as a justification for using the term «socioeconomic justice», instead of «distributive justice», to refer to the obligations of transnational justice concerning economic issues.

organization» and thereby leaving their prevention to the vagaries of the negotiated compromises among global players seeking their own advantage?

One reason that Habermas gives for ruling 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» (2008, 346). But I do not see how this is really any different in the case of human rights 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 witnessed in recent times, genocide of horrible proportions took place in Rwanda and more recently in Darfur 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)³⁵ 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 laws 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 trade-off 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 in fact no hope for a global consensus on the need to prevent any massive human rights violations of economic origin, then

35. For an interesting analysis of different ways in which the WTO could integrate protection of human rights in the settlement of trade disputes see Pauwelyn (2005). The author distinguishes between positive (i.e., protective) and negative (i.e., defensive) uses of human rights standards and, as an example of the later, refers explicitly to the conflict between TRIPs obligations and AIDS protection. In that context, he mentions the following example of a possible solution that could be adopted by the dispute settlement system of the WTO: «With regard to the human rights obligations of WTO members themselves, the most extreme form of defensive or negative human rights usage would be to permit WTO members to deviate from their trade obligations as soon as those obligations hamper the fulfillment of their human rights commitments. Along those lines, one could then permit, for example, Botswana (where 38 per cent of the population is infected with HIV/AIDS) to suspend its TRIPs obligations in order to meet its human rights obligations in the area of public health» (p. 208).

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, then they won't be implemented at any level whatsoever. Especially in times of a global economic crisis, it may be utterly unrealistic to expect rich and powerful countries 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 a concession the model could no longer advertise itself as answering the utopian question of how a global domestic politics is possible that is specifically aimed towards global justice and not towards some other goal (e.g., economic growth of rich countries). 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 also suggests that there is some constraint that can force them to change the current regulations of the global economic order in a more egalitarian direction. Habermas indicates that «a global domestic politics without a world government would be embedded within the framework of the world organization» (2005, 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» (2005, 136). This limitation is certainly in accordance with the ultraminimalist interpretation of the functions of a future world organization, for if the later 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 towards 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 is the case at the level of nation states, alternative political goals must be decided through democratic majoritarian decisions, since they ultimately 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, towards 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 towards 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 it 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 acknowledgement 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 simply taken to be 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 for ever 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, such aspirational consensus 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 simultaneously leaves all economic regulations of a global domestic politics beyond the purview of that community 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» (2008, 336) suggests 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 concerning a 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 in legitimacy. This seems to be the reason behind Haber-

ma'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» (2008, 334-5), 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 extend to political decisions with an immediate impact on the global economy» (2005, 174-75). 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 world organization's function of protecting human rights and instead 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 IMF and WTO regulations 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 community³⁶. But 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. But 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 towards requiring 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 rights³⁷. And, as the examples discussed above suggest, such interventions need not consist in 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

36. For an interesting and detailed analysis of how this could be achieved as regards the IMF, WTO and World Bank see Hockett (2005).

37. For a defense of a similar view see Beitz (2009), 116. Beitz's view is similar to the one defended here insofar as he recognizes that transnational economic regulations may lead to human rights violations by non-state actors, and that the most effective remedy against those violations may be to reform rules and structures at the global level. However, the view defended here is dissimilar to the extent that his model is committed to a state-centric

demonstrably bring about massive human rights violations³⁸, 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 in the end requires 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. But 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» [2008, 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

conception of human rights, according to which states bear the primary responsibility of guaranteeing the human rights of their own citizens and are also the principled guarantors of the human rights performance of other states. As indicated in footnote 16, Beitz's own arguments seem to directly undermine the plausibility of the state-centric view. According to Beitz, his practical conception of human rights offers a normative and not a merely descriptive model of an emergent practice. This allows him to counter the objection that the practical approach, by aiming to reconstruct the features of a given practice, must give too much authority to the status quo. Against this objection, he indicates that a normative model has the resources to criticize the practice it aims to reconstruct, for example when «the practice's norms are ill-suited to advance its aims» (p. 105). Now, Beitz also recognizes that in view of the currently existing structures of global governance states are bound to fail in their ability to protect the human rights of their citizens, whenever the potential violations are due to transnational regulations or are perpetrated by non-state actors. If this is the case, it seems that sticking to the view that states are primarily responsible for the protection of human rights serves no other purpose than releasing non-state actors of the primary obligation to protect human rights, while recognizing that they may be uniquely suited to fulfill this function in some cases. This seems to me to fit exactly Beitz's description of a «practice's norm that is ill-suited to advance its aims». If so, the model should have the resources to adopt a critical stance towards the state-centric norm precisely to the extent that it is ill-suited to advance the practice's own aim of protecting human rights. Beitz argues against this alternative by claiming that the model should be descriptively accurate of current practice and thus should not be changed unless the practice itself changes. However, this seems to undermine any action-guiding function of the model vis-à-vis current practice. In so doing, it opens the model to the objection of giving «too much authority to the status quo by taking an existing practice as given» (*ibid.*), something that Beitz's arguments aimed to challenge. For some evidence against the claim that the current human rights practice is exclusively state-centric see Clapham (2006).

38. For a powerful defense along this lines of the negative duty of rich countries to overcome severe poverty see Pogge (2002) and (2005a). 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.

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 strictly considered a matter of international justice. Assuming that all economic decisions must by their very nature belong to the former category seems absolutely wrong to me. But 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, automatically fall outside the legitimate mandate of protecting human rights of the international community 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*» (2007, 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» (2007, 451). But, as it should be obvious, a process of opinion and will formation geared towards establishing 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.

References

- ASHFORD, E. (2009). «The Alleged Dichotomy Between Positive and Negative Rights and Duties». In: BEITZ and GOODIN (2009), 92-112.
- BARRY, C. and POGGE, T. (eds.) (2005). *Global Institutions and Responsibilities. Achieving Global Justice*. Oxford: Blackwell.
- BEITZ, C. (1999). *Political Theory and International Relations* (with a new afterword by the author). Princeton, New Jersey: Princeton University Press.
- (2004). «Human rights and the Law of Peoples». In: DEEN CHATTERJEE (ed.). *Ethics of Assistance: Morality and the Distant Needy*. Cambridge: Cambridge University Press, 193-216.
- (2009). *The Idea of Human Rights*. Oxford: Oxford University Press.
- BEITZ, C. and GOODIN, R. (eds.) (2009). *Global Basic Rights*. Oxford: Oxford University Press.
- CLAPHAM, A. (2006). *Human Rights Obligations of Non-State Actors*. Oxford: Oxford University Press.

- COHEN, J. (2004). «Minimalism About Human Rights: The Most We Can Hope For?». *The Journal of Political Philosophy*, 12 (2), 190-213.
- COTTIER, T.; PAUWELYN, J. and BÜRGI, E. (eds.) (2005). *Human Rights and International Trade*. Oxford: Oxford University Press.
- HABERMAS, J. (1996). *Between Facts and Norms*. Cambridge, MA: MIT Press.
- (1998). «Die postnationale Konstellation und die Zukunft der Demokratie». In: *Die postnationale Konstellation. Politische Essays*. Frankfurt: Suhrkamp, 91-169.
- (2006). «Does the Constitutionalization of International Law Still Have a Chance?». In: *The Divided West* (Trans. by C. Crorin). Cambridge: Polity Press, 115-210.
- (2008). «A Political Constitution for the Pluralist World Society?». In: *Between Naturalism and Religion*. Cambridge, MA: MIT Press, 312-352.
- (2007). «Kommunikative Rationalität und grenzüberschreitende Politik: eine Replik». In: NIESEN, P. and HERBORTH, B. (eds.). *Anarchie der kommunikativen Freiheit. J. Habermas und die Theorie der internationalen Politik*. Frankfurt: Suhrkamp, 406-459.
- HELD, D. (2004). *Global Covenant. The Social Democratic Alternative to the Washington Consensus*. Cambridge: Polity Press.
- HERSTERMEYER, H. (2007). *Human Rights and the WTO. The Case of Patents and Access to Medicines*. Oxford: Oxford University Press.
- HOLLIS, A. and POGGE, T. (2008). *The Health Impact Fund. Making New Medicines Accessible for All*. Incentives for Global Health.
- HOCKETT, R. (2005). «Three (Potential) Pillars of Transnational Economic Justice: The Bretton Woods Institutions as Guarantors of Global Equal Treatment and Market Completion». In: BARRY and POGGE, 90-123.
- IGNATIEFF, M. (2001). *Human Rights as Politics and as Idolatry*. Princeton, New Jersey: Princeton University Press.
- LAFONT, C. (2008). «Alternative Visions of a New Global Order: What should Cosmopolitans hope for?». *Ethics & Global Politics*, 1 (1-2), 1-20.
- (2009). «Whose Poor are the Global Poor?». Review essay on *World Poverty and Human Rights* (second edition, by Thomas Pogge). *Philosophy & Social Criticism* 35 (8), 1007-1013.
- MARCEAU, G. (2002). «WTO Dispute Settlement and Human Rights». *European Journal of International Law*, 13 (4), 753-814.
- MARTIN, R. and REIDY, D. (eds.) (2006). *Rawls's Law of Peoples. A Realistic Utopia?* Oxford: Blackwell.
- NICKEL, J. (2006). «Are Human Rights Mainly Implemented by Intervention?». In: MARTIN and REIDY, 263-277.
- O'NEILL, O. (1996). *Towards Justice and Virtue*. New York: Cambridge University Press.
- (2000). *Bounds of Justice*. Cambridge: Cambridge University Press.
- PAUWELYN, J. (2005). «Human Rights in WTO Dispute Settlement». In: COTTIER, T.; PAUWELYN, J. and BÜRGI, E. (eds.). *Human Rights and International Trade*. Oxford: Oxford University Press, 205-231.
- POGGE, T. (2002). *World Poverty and Human Rights*. Cambridge: Polity Press.
- (2004). «The First UN Millennium Development Goal». *Journal of Human Development* 5 (3), 377-397.
- (2005a). «Human Rights and Global Health: A Research Program». In: BARRY and POGGE, 190-217.
- (2005b). «A cosmopolitan perspective on the global economic order». In: BROCK, G. and BRIGHOUSE, H. (eds.). *The Political Philosophy of Cosmopolitanism*. Cambridge: Cambridge University Press, 92-109.

- RAWLS, J. (1993). *Political Liberalism*. New York: Columbia University Press.
- (1999). *The Law of Peoples*. Cambridge, MA: Harvard University Press.
- RISSE, Th.; ROPP, S. and SIKKINK, K. (eds.) (1999). *The Power of Human Rights. International Norms and Domestic Change*. Cambridge: Cambridge University Press.
- RONZONI, M. (2009). «The Global Order: A Case of Background Injustice? A Practice-Dependent Account». *Philosophy & Public Affairs*, 37 (3), 229-256.
- SHUE, H. (1996). *Basic Rights. Subsistence, Affluence and U.S. Foreign Policy* (second edition with an afterword). Princeton, New Jersey: Princeton University Press.
- UNCTAD (United Nations Conference on Trade and Development) (1999). *Trade and Development Report 1999*. New York: UN Publications.
- WALDRON, J. (1993). *Liberal Rights*. Cambridge: Cambridge University Press.
- WOLF, M. (2004). *Why Globalization Works*. New Haven: Yale University Press.
- WORLD BANK (2001). *Global Economic Prospects 2002: Making Trade Work for the World's Poor*. Washington DC: World Bank.
- ZAGEL, G. (2005). «WTO and Human Rights: Examining Linkages and Suggesting Convergence». *Voices of Development Jurist Paper Series 2* (2), 1-37.

Cristina Lafont is professor of philosophy at Northwestern University. She is author of *The Linguistic Turn in Hermeneutic Philosophy* (MIT Press, 1999) and *Heidegger, Language, and World-Disclosure* (Cambridge University Press, 2000). Some of her recent articles include: «Alternative Visions of a New Global Order: What should Cosmopolitans hope for?» in *Ethics & Global Politics*, 1/1-2 (2008), 1-20, «Religion and the Public Sphere. What are the Deliberative Obligations of Democratic Citizenship?», in *Philosophy & Social Criticism*, 35/1-2 (2009), 127-50, «Correctness and Legitimacy in the Discourse Theory of Law», in M. Klatt (ed.), *Institutional Reason. The Jurisprudence of Robert Alexy*, Oxford: Oxford University Press, forthcoming.

Cristina Lafont es catedrática de filosofía en la Northwestern University. Es autora de *The Linguistic Turn in Hermeneutic Philosophy* (MIT Press, 1999) y de *Heidegger, Language, and World-disclosure* (Cambridge University Press, 2000). Algunos de sus artículos más recientes son: «Alternative Visions of a New Global Order: What should Cosmopolitans hope for?», *Ethics & Global Politics*, 1/1-2 (2008), 1-20, «Religion and the Public Sphere. What are the Deliberative Obligations of Democratic Citizenship?», *Philosophy & Social Criticism*, 35/1-2 (2009), 127-50, «Correctness and Legitimacy in the Discourse Theory of Law», M. Klatt (ed.), *Institutional Reason. The Jurisprudence of Robert Alexy*, Oxford: Oxford University Press, de próxima aparición.
