

ARE THERE GLOBAL OBLIGATIONS
TO ASSIST IN THE REALIZATION OF
SOCIO-ECONOMIC RIGHTS?

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If two people are starving, why should it matter, to the point of my being bound to aid the one and not bound to aid the other, that the one and not the other is my compatriot?

Henry Shue

We will be judged by the impacts that our collective efforts have on the lives of poor people.

The Accra Agenda for Action, Art. 22

This Article focuses on global obligations to assist in realizing socio-economic rights, which represent a missing fragment in existing international human rights law. These obligations are neither understood correctly in human rights theory and discourse, nor acknowledged and implemented in the international legal order. Contemporary mechanisms for assistance are insufficient, inefficient, and often violate human rights. Global obligations to assist are indispensable for alleviating extreme poverty and inequality, empowering the most vulnerable individuals and societies, and creating a just global order. For this reason, the justification, conceptualization, regulation, and realization of these obligations is of the utmost importance—especially in a time of pandemic. On the basis of normative principles defended in contemporary legal and political philosophy and embedded in human rights law, the Article proposes a coherent and plausible framework for reconstructing international human rights law regulating obligations to

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assist. This Article develops a legal-philosophical justification for, and outlines a legal conception of global human rights obligations to assist. Next, it critically assesses the human rights instruments that govern obligations of assistance, detects gaps therein, and suggests improvements. The Article also examines existing mechanisms used to implement obligations to assist and their critique, formulates recommendations on how current institutions and practices of assistance might be fortified, and identifies some important features of the global institutional design necessary for the realization of global obligations to assist.

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I. INTRODUCTION

Imagine that someone far away is shipwrecked. They send an SOS signal, and we receive it. Who should come to the rescue? According to maritime laws, everyone who gets the signal must do everything in their power to help. Does the obligation to help only lie with passing ships? What if their help is not enough? Should nearby countries equip and send their ships? What if there are many disaster points located in disadvantaged areas throughout the world? Should all members of the

brotherhood of the sea cooperate and create an effective and well-functioning rescue system to ensure timely salvation of victims and fairly distribute the burdens of shared obligations among all members?

The shipwreck metaphor will be used repeatedly in this Article to describe extreme poverty.¹ The current situation of global poverty, which affects millions and kills thousands of children and adults every day,² may indeed be compared to numerous shipwrecks all over the world. The SOS signal coming from someone far away forces us think about our obligations toward the unknown poor. Are we bound by any obligations to assist these distant strangers?

This Article focuses on global obligations to assist in realizing socio-economic rights. In comparison to obligations of international assistance, which are directed to support states in fulfilling their human rights obligations, global obligations to assist are aimed at helping the most vulnerable individuals and social groups in exercising their basic rights. Though global assistance is essential for empowering the poor, global obligations to assist remain a missing element in international human rights law. These obligations are neither correctly un-

1. For the employment of the metaphor in literature, see, *e.g.*, Onora Nell, *Lifeboat Earth*, 4 PHIL. & PUB. AFFS. 273, 280–81 (1975) (comparing the global order to a lifeboat, within which an unfair distribution scheme causes numerous deaths from poverty and violates individuals' right not to be killed); KISHORE MAHBUBANI, *CAN ASIANS THINK?* 69 (4th ed. 2009) (comparing "Third World citizens" to "hungry and diseased passengers on a leaky, overcrowded boat that is about to drift").

2. See MARCUS MANUEL ET AL., *FINANCING THE END OF EXTREME POVERTY* 9 (2018) ("[T]here are still 800 million people living in extreme poverty today."); Thomas Pogge & Mitu Sengupta, *Assessing the Sustainable Development Goals from a Human Rights Perspective*, 32 J. INT'L & COMPAR. SOC. POL'Y 83, 86 (2016) (noting poverty causes approximately one third of all human deaths); U.N. INTER-AGENCY GRP. FOR CHILD MORTALITY ESTIMATION, *LEVELS & TRENDS IN CHILD MORTALITY* 12 (2021), <https://perma.cc/46EG-5J7B> (reporting that in 2020, 7.2 million children and young people under 25 years old, including 5 million children under five, died mainly from preventable or treatable poverty-related causes, meaning one child/youth dies every five seconds, even without adjustments relating to mortality attributable to COVID-19) (last visited Feb. 2, 2022). According to World Bank estimations, the pandemic should push 150 million people into extreme poverty by 2021. Press Release, World Bank, *COVID-19 To Add As Many As 150 Million Extreme Poor by 2021* (Oct. 7, 2020), <https://perma.cc/CT48-Z25N> (last visited Sept. 21, 2021).

derstood in human rights theory and discourse, nor acknowledged and implemented in the international legal order. Contemporary extraterritorial assistance is state-centered, i.e., addressed predominantly to the state. Assistance mechanisms are insufficient, inefficient, and often violate human rights. Accountability bodies capable of holding various actors responsible for breaching obligations to assist are still lacking. Since global obligations to assist are indispensable for protecting people from extreme poverty and inequality and enabling them to lead a decent life, justifying, conceptualizing, and furthering such obligations is a task of paramount importance.

In a time of pandemic, an efficient global system of assistance is more important than ever. This global crisis has shown remarkable examples of the (global and local) community's solidarity and readiness to assist those suffering around the world.³ At the same time, the crisis has revealed the extreme inadequacy of international aid institutions. It has become a crisis of globalism and a time of increasing glocalization when many states and non-state actors (NSAs) disregard their extraterritorial obligations to assist. Many essential and urgent assistance programs have been cancelled or deprioritized because they are not considered a "lifesaving" help.⁴

3. See, e.g., Obiora Chinedu Okafor (Independent Expert on human rights and international solidarity) *Rep. on International Solidarity in Aid of the Realization of Human Rights During and After the Coronavirus Disease (COVID-19) Pandemic*, U.N. Doc. A/HRC/47/31 (Apr. 13, 2021) (explicating best practices and gaps in expressing solidarity with respect to international assistance by states and non-state actors during the pandemic); see also PANDEMIC SOLIDARITY, at xvii–xix (Marina Sitrin & Colectiva Sembrar eds., 2020) (re-marking of the world's response to COVID-19 that, on the basis of interviews conducted in April 2020, "the sense is that this is the largest, most diverse, mobilization of people—regular people—helping one another, under capitalism, that has ever happened."); Solidarity and Care During the COVID-19 Pandemic, SOLIDARITYANDCARE.ORG, <https://perma.cc/KS8W-RF4R> (last visited Sept. 16, 2021) (a public platform documenting and reporting "on the lived experiences, caring strategies and solidarity initiatives of diverse people and groups across the globe during the COVID-19 pandemic.").

4. See, e.g., Gender Hub for the Gender in Humanitarian Action Working Grp., *Urgent Call for Gender Actions in the COVID-19 Response in Cox's Bazar*, GIHA WG 3 (Apr. 6, 2020), <https://perma.cc/78DB-K9R9> (last visited Sept. 21, 2021) (showing how during the COVID-19 pandemic "gender issues have been often deprioritized or not seen as lifesaving"); Priti Patnaik, *Yes, COVID-19. But What About Other Infectious Diseases?*, THE NEW HUMANITARIAN (May 6, 2020), <https://perma.cc/HRV5-PZ5E> (last visited Sept. 21, 2021) (exploring

This Article intends to contribute to finding solutions to widely debated, controversial issues surrounding global obligations to assist: Should global obligations to assist be interpreted as duties of solidarity or human rights obligations? What do we owe to the global poor: voluntary philanthropy or obligatory support or compensation for violations of their human rights? Do global obligations require only direct assistance to those in need, or do they also call for reshaping international institutional schemes for realizing them? Are they moral or legal, conditional or unconditional, consequent or simultaneous, primary or secondary, immediate or progressive obligations? Do poor people have the right to assistance, and who is entitled to make a legitimate request for assistance? What agents should provide assistance to the global poor? What is the role of developing societies in implementing obligations to assist? How should the content and scope of global obligations to assist be defined? Which institutions are necessary for implementing global obligations to assist?

These questions compose the three main objectives of the Article: first, to develop a justificatory basis for global obligations to assist in the realization of socio-economic rights universally; second, to determine the nature, status, content, scope, right-holders, and duty-bearers of global obligations to assist; and third, to examine contemporary mechanisms used for the realization of obligations to assist and to propose some measures for their improvement. This Article intends to suggest a plausible framework for the justification and interpretation of, as well as ways of implementing, global obligations to assist. The specification of the exact content and scope of obligations to assist in the realization of *certain* socio-economic rights, as well as principles and strategies of attributing them to *particular* global actors, goes beyond its scope.

Studies on global obligations to assist are in their infancy. There is no systematic legal research on the theme. Some legal studies address important aspects of the theme, such as obliga-

how shifting resources to address the COVID-19 pandemic has led to the underfunding of programs to fight other diseases). For examples of cancelled or reduced assistance programs, see also *COVID-19 Pandemic Cuts Access to Sexual and Reproductive Healthcare for Women Around the World*, INT'L PLANNED PARENTHOOD FED'N (Apr. 9, 2020), <https://perma.cc/89CS-R8KW> (last visited Sept. 21, 2021).

tions to assist in the realization of specific socio-economic rights,⁵ obligations to assist presupposed by particular international human rights instruments (first and foremost, by the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of the Child (CRC)),⁶ methods of attributing them to multiple global actors,⁷ and obligations of development assistance.⁸ Non-legal studies pay much greater attention to various aspects of inter-

5. See Olivier De Schutter (Special Rapporteur on the Right to Food), *Rep. on the Role of Development Cooperation and Food Aid in Realizing the Right to Adequate Food: Moving from Charity to Obligation*, U.N. Doc. A/HRC/10/5 (Feb. 11, 2009) (interpreting “foreign aid as a means to fulfil the human right to adequate food”); Judith Bueno de Mesquita et al., *The Human Rights Responsibility of International Assistance and Cooperation in Health*, in UNIVERSAL HUMAN RIGHTS AND EXTRATERRITORIAL OBLIGATIONS 104, 109–29 (Mark Gibney & Sigrun Skogly eds., 2010) (analyzing legal foundations, the meaning, legal status, and scope of the human rights responsibility of international assistance and cooperation in the realization of the right to the highest attainable standard of health as well as practices of their implementation); Rachel Hammonds & Gorik J. Ooms, *National Foreign Assistance Programs*, in HUMAN RIGHTS IN GLOBAL HEALTH: RIGHTS-BASED GOVERNANCE FOR A GLOBALIZING WORLD 397 (Benjamin Mason Meier & Lawrence O. Gostin eds., 2018) (examining shared international obligations to assist in the implementation of health-related human rights and the role of the Organisation for Economic Co-operation and Development’s Development Assistance Committee in coordinating bilateral development assistance).

6. See the following works: Magdalena Sepúlveda, *Obligations of ‘International Assistance and Cooperation’ in an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, 24 NETH. Q. HUM. RTS. 271 (2006); Wouter Vandenhoe, *Economic, Social and Cultural Rights in the CRC: Is There a Legal Obligation To Cooperate Internationally for Development?*, 17 INT’L J. CHILD.’S RTS. 23, 26 (2009) (arguing that although the U.N. Committee on the Rights of the Child specifies shared obligations of development assistance, “no *general* legal obligation exists under the CRC to cooperate internationally for development, or to provide development assistance for the realisation of economic, social and cultural rights of children in developing countries, commensurate with need.”); Michael Wabwile, *Implementing the Social and Economic Rights of Children in Developing Countries: The Place of International Assistance and Cooperation*, 18 INT’L J. CHILD.’S RTS. 355 (2010); and Takhmina Karimova, *The Nature and Meaning of ‘International Assistance and Cooperation’ Under the International Covenant on Economic, Social and Cultural Rights*, in ECONOMIC, SOCIAL, AND CULTURAL RIGHTS IN INTERNATIONAL LAW 163 (Eibe Riedel et al. eds., 2014).

7. For examples, see the following studies: Philipp Dann, *Accountability in Development Aid Law: The World Bank, UNDP and Emerging Structures of Transnational Oversight*, 44 ARCHIV DES VÖLKERRECHTS 381, 387–97 (2006); David Bilchitz, *Do Corporations Have Positive Fundamental Rights Obligations?* 57

national assistance: its moral justification in philosophical works,⁹ its impact on the economies of developing countries in economic literature,¹⁰ its role in the embodiment of the sus-

THEORIA 1, 7–26 (2010); and ARNE VANDENBOGAERDE, TOWARDS SHARED ACCOUNTABILITY IN INTERNATIONAL HUMAN RIGHTS LAW 211–98 (2016).

8. See, e.g., MARGOT E. SALOMON, GLOBAL RESPONSIBILITY FOR HUMAN RIGHTS: WORLD POVERTY AND THE DEVELOPMENT OF INTERNATIONAL LAW 50–60, 85–98, 112–59, 180–204 (2007) (conceptualizing shared global obligations of cooperation and assistance derived from the right to development); Lilian Chenwi, *Extraterritorial Human Rights Obligations in the Context of Development Assistance to African States*, in EXTRATERRITORIAL HUMAN RIGHTS OBLIGATIONS FROM AN AFRICAN PERSPECTIVE 87 (Lilian Chenwi & Takele Soboka Bulto eds., 2018) (exploring obligations of donor states and institutions to provide inclusive and efficient assistance as well as obligations of African countries to seek, receive, and effectively use development assistance); Wouter Vandenhoe, *Towards a Division of Labour for Sustainable Development: Extraterritorial Human Rights Obligations*, in INTERDISCIPLINARY STUDIES IN HUMAN RIGHTS: SUSTAINABLE DEVELOPMENT GOALS AND HUMAN RIGHTS 221 (Markus Kaltenborn et al. eds., 2019) (reflecting on the legal status, “distributive allocation,” “triggers,” and the scope of obligations of development cooperation and assistance relating to an “external dimension of the right to development”).

9. See, e.g., David Miller, *Distributing Responsibilities*, 9 J. POL. PHIL. 453 (2001) (advancing several principles, such as causal responsibility, moral responsibility, capacity, and communal relationship, for allocating positive obligations to provide assistance and suggesting strategies to create a multi-principle theory connecting them); THE ETHICS OF ASSISTANCE: MORALITY AND THE DISTANT NEEDY (Deen K. Chatterjee ed., 2004) (collecting outstanding essays that provide various moral arguments for obligations of transnational non-interventionist assistance); Stefan Gosepath, *Deprivation and Institutionally Based Duties to Aid*, in DOMINATION AND GLOBAL POLITICAL JUSTICE: CONCEPTUAL, HISTORICAL AND INSTITUTIONAL PERSPECTIVES 251 (Barbara Buckinx et al. eds., 2015) (developing an institutional approach and rationalizing universal individual and shared moral duties to help the deprived); ONORA O’NEILL, JUSTICE ACROSS BOUNDARIES: WHOSE OBLIGATIONS? chs. 1–2, 9–12 (2016) (justifying global obligations to fairly distribute means of subsistence to eradicate poverty, as a guarantee of the right not to be killed, and suggesting ways to assign them to various actors).

10. See, e.g., JOSEPH E. STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS chs. 1–5, 9 (2002) (analyzing damaging effects of assistance programs implemented by international economic institutions, including the IMF and the World Bank); WILLIAM EASTERLY, THE WHITE MAN’S BURDEN: WHY THE WEST’S EFFORTS TO AID THE REST HAVE DONE SO MUCH ILL AND SO LITTLE GOOD 4–5 (2006) (criticizing “the mistaken approach that traditional Western assistance takes toward world poverty”); PAUL COLLIER, THE BOTTOM BILLION: WHY THE POOREST COUNTRIES ARE FAILING AND WHAT CAN BE DONE ABOUT IT ch. 7 (2007) (exploring how development aid affects four poverty traps, i.e., the conflict trap, the natural resource trap, the trap of being land-

tainable development agenda in development studies,¹¹ as well as practices of using assistance as a means of political influence in political and international relations research.¹² Additionally, some interdisciplinary analyses address important aspects of the topic.¹³ Taking into account these studies, this Article

locked and the trap of bad governance, and concluding that although aid has serious limitations, is alone insufficient “to turn the societies of the bottom billion around,” and its contemporary allocations are “very far from being poverty-efficient,” aid still represents an important instrument for lifting many people out of poverty); DAMBISA MOYO, *DEAD AID: WHY AID IS NOT WORKING AND HOW THERE IS A BETTER WAY FOR AFRICA* 44–47, 60–68 (2009) (blaming contemporary mechanisms of foreign aid as detrimental to the development of poor countries); *LESSONS ON FOREIGN AID AND ECONOMIC DEVELOPMENT: MICRO AND MACRO PERSPECTIVES* (Nabamita Dutta & Claudia R. Williamson eds., 2019) (combining studies on impacts of international aid on development outcomes and stressing “the complex relationship between aid and its aftereffects”).

11. *See, e.g.*, OLAV STOKKE, *THE UN AND DEVELOPMENT: FROM AID TO COOPERATION* (2009) (discussing the past and present role of development assistance in meeting development goals and the contribution of the U.N. system to the institutionalization and implementation of assistance); STEPHAN KLINGEBIEL, *DEVELOPMENT COOPERATION: CHALLENGES OF THE NEW AID ARCHITECTURE* (2014) (situating international assistance in a discussion of sustainable development cooperation); Sachin Chaturvedi, *The Development Compact: A Theoretical Construct for South-South Cooperation* (Rsch. & Info. Sys. for Developing Countries, Discussion Paper No. 203, 2016) (scrutinizing a development compact as an instrument for creating and realizing mutual obligations of assistance, which are premised on the right to development, between actors from the South); JEFFREY SACHS ET AL., *MOVE HUMANITY, CLOSING THE SDG BUDGET GAP* (2018) (suggesting budgetary revenues to increase international development assistance and meet the Sustainable Development Goals).

12. *See, e.g.*, MAHBUBANI, *supra* note 1, at 63–70 (showing how Western states are using their power to selectively (when it suits their own interests) promote “democracy *before* economic development” and stressing inadequacy of this approach for creating long lasting democracies); Elham Seyed-sayamdost, *A World Without Poverty: Negotiating the Global Development Agenda* 8–19, 35–61, 76–126, 145–208 (2015) (Ph.D. dissertation, Columbia University) (on file with Columbia University Libraries) (demonstrating how unequal power relations between the Global North and the Global South have impacted the international development agenda, including standards of development assistance); Niheer Dasandi & Lior Erez, *The Donor’s Dilemma: International Aid and Human Rights Violations*, 49 *BRIT. J. POL. SCI.* 1431 (2019) (examining various aspects of political influence of development assistance in the context of complicity, double effect, and dirty hands dilemmas faced in providing assistance to states abusing human rights).

13. *See, e.g.*, *THE REALITY OF AID, AID AND DEVELOPMENT EFFECTIVENESS: TOWARDS HUMAN RIGHTS, SOCIAL JUSTICE AND DEMOCRACY* (Alex Wilks ed.,

aims to elaborate a legal conception of global obligations to assist.

This Article reveals basic misconceptions about global obligations to assist. They concern the most debated questions listed earlier. First, most often, obligations of assistance are interpreted as voluntary self-obligations of benevolent actors. The Article argues that global obligations to assist are binding human rights obligations that should receive legal recognition at international, regional, and local levels. Second, there is a tendency to treat obligations to assist as remedial obligations. This Article advocates for drawing a line between the two types of duties and shows that, in comparison to remedial extraterritorial obligations, obligations to assist are not connected to previous violations of socio-economic rights. Third, though they are frequently regarded as interactional duties of ethics, this Article demonstrates that global obligations to assist also embrace institutional duties of justice. Fourth, obligations to assist are usually seen as moral, conditional, secondary, consequent, and progressive obligations. This Article shows, however, that some global obligations to assist are unconditional, primary, simultaneous, and immediate obligations that call for concordant legal regulation and implementation.

Fifth, although in the contemporary state-centered order, states are believed to be the only addressees and subjects of a legitimate request for international assistance, the Article argues that individuals are primary holders of the right to assistance and should be provided with an opportunity to make a direct request for global assistance. Sixth, while states are traditionally considered to be the main agents of justice and duty-bearers, this study puts forward arguments that shared global obligations to assist bind all global actors—states, intergovern-

2010) (assessing effectiveness of North-South and South-South development cooperation and suggesting avenues to promote the transition to a poor-centered development assistance architecture); *THE DONORS' DILEMMA: EMERGENCE, CONVERGENCE AND THE FUTURE OF FOREIGN AID* (Andy Sumner & Tom Kirk eds., 2014) [hereinafter *THE DONORS' DILEMMA*] (collecting reports that explore and criticize the existing system of development assistance and propose ways for its substantial improvement); Wade M. Cole & Megan M. Reynolds, *We Comply with a Little Help from Our Friends: Human Rights, Development Aid, and Well-Being*, 97 *SOC. FORCES* 1631 (2019) (drawing on “data on more than 100 developing countries over a 20- to 40-year period” and analyzing the effects of development aid on health outcomes).

mental organizations (IGOs), NSAs, and individuals. Seventh, whereas obligations of assistance are often seen as duties of developed states toward residents of poor countries, this research shifts the discussion to the rights of poor individuals and developing societies to take part in and to contribute to the realization of shared global obligations to assist. Eighth, obligations to assist are usually determined with references to the “position to assist,” “maximum available resources,” “progressive realization,” and “minimum core obligations” clauses.¹⁴ While applying the principles of sufficiency and a decent minimum sacrifice, this investigation contributes to rethinking the scope of global obligations to assist. Finally, since the existing mechanisms for extraterritorial assistance are inadequate and frequently abuse human rights, this Article suggests measures to improve them and also discusses some projects of an alternative global institutional structure required for the implementation of global obligations to assist.

This Article represents a prolegomenon that proposes—on the basis of normative principles that are justified in contemporary philosophy and embedded in international human rights law, as well as on persuasive empirical studies—a coherent and plausible framework for a reconstruction of international human rights law regulating global obligations to assist. It examines global obligations to assist from the point of view of theories of justice and human rights law and indicates a double foundation for reforming international law norms, institutions, and practices. On the one hand, contemporary legal and political philosophy conceptions, which justify and determine our moral obligations toward non-compatriots, may serve as guidelines for filling gaps in human rights standards and institutions. In view of them, the Article intends to suggest a compelling reinterpretation of some core human rights instruments governing obligations to assist. On the other hand, the existing international soft and hard law instruments, customary international law, and human rights practice give an important framework for the legal acknowledgment, specification, and attribution of global obligations to assist to various actors.

In this respect, this Article analyzes interpretations of global obligations to assist on three levels: first, in philosophi-

14. See discussion *infra* Section III.D.

cal, political, and legal discourse; second, in human rights instruments; and finally, in existing legal and political institutions and practices. This analysis includes normative, legal-dochtrinal, empirical, and comparative components and contributes to an interdisciplinary exchange in moral, legal, and political philosophy, human rights law, and public international law.

This Article consists of three parts. Part II develops a legal-philosophical justification of global human rights obligations to assist. While elaborating a justificatory basis for global obligations to assist,¹⁵ it addresses the debates between cosmopolitans and statists on the necessity to assist the global poor.¹⁶ It also explores the recognition of obligations to assist in international human rights law as well as their relationship with obligations to cooperate¹⁷ and remedial extraterritorial obligations.¹⁸ On this basis, Part III critically assesses the international legal framework that regulates global obligations to assist, detects gaps, and proposes significant improvements. It explores the content of various types of obligations to assist,¹⁹ their right-holders,²⁰ duty-bearers,²¹ and scope.²² Part IV examines existing mechanisms used to implement obligations to assist²³ and their critique.²⁴ This Part also recommends ways to improve contemporary institutions and practices of assistance²⁵ and sketches some important features of the global institutional design necessary for the realization of global obligations to assist.²⁶

15. *See infra* Section II.B.

16. *See infra* Section II.C.

17. *See infra* Section II.A.

18. *See infra* Section II.D.

19. *See infra* Section III.A.

20. *See infra* Section III.B.

21. *See infra* Section III.C.

22. *See infra* Section III.D.

23. *See infra* Section IV.A.

24. *See infra* Section IV.B.

25. *See infra* Section IV.C.

26. *See infra* Section IV.D.

II. WHY SHOULD WE ASSIST THE GLOBAL POOR?

A. Normative Bases for Obligations to Assist

Assistance may be defined as the action of helping someone with something. One can classify several types of assistance.²⁷ First, based on the number of actors involved, one differentiates between *individual* and *shared* assistance. Second, depending on the use of intermediaries, it is possible to distinguish between *direct* and *indirect* assistance. Third, spheres of assistance include technical, informational, scientific, legal, social, educational, and economic assistance, as well as the provision of support and protection of interests in the global arena and the sharing of valuable experience on efficient strategies for the eradication of poverty.

Extraterritorial assistance is an essential means for reducing poverty and extreme inequality, as well as realizing human rights universally.²⁸ Assistance is not, however, valuable by itself and may lead to human rights abuses.²⁹ Inappropriate assistance practices, actions or omissions of agents providing assistance cause terrible damages and human rights violations.³⁰ To be valuable, assistance should meet the criteria of substantive and procedural justice—setting good goals, such as the realization of socio-economic rights and promotion of sustainable development universally, and employing the proper means for their achievement.³¹

27. For a classification of obligations to assist, see *infra* Section III.A.

28. See ETO CONSORTIUM, THE MAASTRICHT PRINCIPLES ON EXTRATERRITORIAL OBLIGATIONS OF STATES IN THE AREA OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS pmbl., princ. 8 (2013) (stressing the role of extraterritorial obligations, including global obligations, in the implementation of human rights and the alleviation of poverty and socio-economic and gender inequality universally); Comm. on Econ., Soc. & Cultural Rts., General Comment 3 (Art. 2(1)) ¶ 14, U.N. Doc. E/1991/23 (Dec. 14, 1990) [hereinafter CESCR GC3] (emphasizing that without an efficient program of international assistance and cooperation, “the full realization of economic, social and cultural rights will remain an unfulfilled aspiration in many countries.”).

29. See SIGRUN I. SKOGLY, BEYOND NATIONAL BORDERS: STATES’ HUMAN RIGHTS OBLIGATIONS IN INTERNATIONAL COOPERATION 95 (2006) (noting several hypotheticals where international cooperation could be harmful to people’s scientific and cultural life).

30. For particular examples, see *infra* Section IV.B.

31. See *infra* Section IV.C.

It is important to distinguish assistance from cooperation. The latter may be defined as a mutual action by several actors aimed at achieving a certain goal. Assistance and cooperation are closely interrelated: effective assistance requires cooperative efforts from multiple actors, while the very opportunity to be a full-fledged member of (global) cooperation is sometimes conditional on (international or global) assistance. International human rights instruments prefer the language of cooperation to the language of assistance.³² It is not always obvious whether a certain human rights instrument intends obligations of cooperation to incorporate obligations of assistance. In human rights theory and practice, there are two approaches determining the relationship between the two types of obligations. Under the first approach, obligations to assist are not incorporated into obligations to cooperate.³³ According to the second approach, obligations to assist are an integral part of more general obligations to cooperate.³⁴ The second position

32. For instance, neither the Charter of the United Nations (U.N. Charter) nor the Universal Declaration of Human Rights (UDHR) nor many other international human rights instruments, such as the CRC and the Declaration on the Right to Development (DRD), mention obligations to assist, yet they acknowledge obligations to cooperate. U.N. Charter art. 1, ¶ 3, arts. 55 & 56; G.A. Res. 217 (III) A, Universal Declaration of Human Rights art. 22, (Dec. 10, 1948) [hereinafter UDHR]; Convention on the Rights of the Child art. 4, Nov. 20, 1989, 1577 U.N.T.S. 3; G.A. Res. 41/128, Declaration on the Right to Development arts. 3(3), 4(2) & 6(1) (Dec. 4, 1986) [hereinafter DRD]. See SALOMON, *supra* note 8, at 77–78 (analyzing why various human rights instruments give preference to the language of cooperation, which often presupposes assistance).

33. This approach may express the reluctance of developed states to treat obligations to assist as human rights obligations. See, e.g., Catarina de Albuquerque (Chairperson-Rapporteur of the Open-Ended Working Group to the U.N. Comm'n on Hum. Rts.), *Rep. of the Open-Ended Working Group to Consider Options Regarding the Elaboration of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights on Its Second Session*, ¶ 76, U.N. Doc. E/CN.4/2005/52 (Feb. 10, 2005) [hereinafter *Rep. of the OEWG*] (describing the position of the U.K., Czech Republic, Canada, France, and Portugal that international cooperation and assistance is a moral, but not a legal, obligation).

34. See, e.g., G.A. Res. 61/106, Convention on the Rights of Persons with Disabilities art. 32(1) (Jan. 24, 2007) [hereinafter CRPD] (recognizing that measures of the promotion of international cooperation could involve the provision of technical and economic assistance). The CESCR and the Committee on the Rights of the Child (U.N. CRC) similarly interpret obligations to assist as part of obligations to cooperate, even if it is not explicitly stated in

appears to be quite well-grounded. For the purposes of this Article, however, obligations to assist are analyzed separately from obligations to cooperate, though their interrelation is stressed.

Contemporary international human rights law regulating extraterritorial obligations to assist is state-centered. This means that it recognizes obligations of *international* assistance addressed to states and aimed at supporting them in fulfilling their obligations, rather than obligations of *global* assistance targeted directly at the most vulnerable individuals and social groups to ensure their enjoyment of human rights.

The ICESCR explicitly recognizes human rights obligations of international assistance.³⁵ Furthermore, the ICESCR acknowledges “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions” and corresponding obligations of states to “take appropriate steps to ensure the realization of this right, recognizing to this effect the *essential importance of international co-operation based on free consent*.”³⁶ This shows that the right to an adequate standard of living was initially conceived as a basis for corresponding obligations of international cooperation and assistance. The Committee on Economic, Social and Cultural Rights (CESCR) interprets international cooperation and

the ICESCR and the CRC. *See, e.g.*, CESCR GC3, *supra* note 28, ¶¶ 13–14 (suggesting that cooperation and assistance, as its important means, are crucial for realizing socio-economic rights); Comm. Rts. of the Child, General Comment 15 (Art. 24) ¶ 88, U.N. Doc. CRC/C/GC/15 (Apr. 17, 2013) [hereinafter CRC GC15] (stating that obligation to cooperate implies individual and joint responsibility to provide “disaster relief and humanitarian assistance in times of emergency”). *See also* Olivier De Schutter et al., *Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, 34 HUMAN RIGHTS Q. 1084, 1104 (2012) (“International cooperation includes, but is not limited to, international assistance.”).

35. G.A. Res. 2200A (XXI), International Covenant on Economic, Social and Cultural Rights art. 2(1), Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR] (“Each State Party to the present Covenant undertakes to take steps, individually and *through international assistance and co-operation, especially economic and technical*, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” (emphasis added)).

36. *Id.* art. 11(1) (emphasis added).

assistance in the realization of socio-economic rights embedded in the ICESCR as legal obligations of states.³⁷

The question of whether obligations to assist are a part of customary international law is widely debated. Custom is conventionally determined by two components: states' frequent and consistent practice and *opinio juris*—a belief (expressed, for instance, in international hard and soft law instruments) that this practice embodies legal obligations.³⁸ To what extent

37. In particular, the CESCR determines that key components of the right to an adequate standard of living—the rights to adequate food, water, sanitation, housing, and health—give rise to international obligations to assist. *See, e.g.*, Comm. on Econ., Soc. & Cultural Rts., General Comment 4 (Art. 11(1)) ¶¶ 10, 13, 19, U.N. Doc. E/1992/23 (Dec. 13, 1991) (specifying obligations to assist corresponding to the right to adequate housing); Comm. on Econ., Soc. & Cultural Rts., General Comment 12 (Art. 11) ¶¶ 36, 38, 40, U.N. Doc. E/C.12/1999/5 (May 12, 1999) [hereinafter CESCR GC12] (the obligations corresponding to the right to adequate food); Comm. on Econ., Soc. & Cultural Rts., General Comment 14 (Art. 12) ¶¶ 38–40, U.N. Doc. E/C.12/2000/4 (Aug. 11, 2000) [hereinafter CESCR GC14] (the obligations corresponding to the right to the highest attainable standard of health); Comm. on Econ., Soc. & Cultural Rts., General Comment 15 (Arts. 11 & 12) ¶¶ 30, 34, U.N. Doc. E/C.12/2002/11 (Jan. 20, 2003) [hereinafter CESCR GC15] (the obligations corresponding to the rights to adequate water and sanitation). *Cf.* Comm. Rts. of the Child, General Comment 5 (Arts. 4, 42 & 44(6)) ¶ 61, U.N. Doc. CRC/GC/2003/5 (Nov. 27, 2003) [hereinafter CRC GC5] (advising that the CRC “should form the framework for international development assistance related directly or indirectly to children” and that international aid programs should be rights-based and encourage states receiving assistance to allocate its substantial part specifically to children); Comm. Rts. of the Child, General Comment 16 (Arts. 2, 3(1), 6 & 12) ¶ 41, U.N. Doc. CRC/C/GC/16 (Apr. 17, 2013) [hereinafter CRC GC16] (asserting that states “have obligations to engage in international cooperation for the realization of children’s rights beyond their territorial boundaries.”).

38. *See* ANDREW CLAPHAM, HUMAN RIGHTS OBLIGATIONS OF NON-STATE ACTORS 85–87 (2006) (explaining that “[r]ules of customary law emerge when two essential criteria are met:” state practice and *opinio juris*). Traditional and modern approaches to customary international law place emphasis upon different elements: if the former give priority to the practice of states, the latter stress the importance of *opinio juris*. *See* Anthea Elizabeth Roberts, *Traditional and Modern Approaches to Customary International Law: A Reconciliation*, 95 AM. J. INT’L L. 757, 757–58 (2001). *See also* Frederic L. Kirgis, *Custom on a Sliding Scale*, 81 AM. J. INT’L L. 146, 149 (1987) (visualizing these two elements at different ends of a sliding scale and concluding that the more consistent and frequent is the practice, the less evidence of *opinio juris* is required for the creation of a custom, and the other way around).

do international obligations to assist comply with these two components of customary international law?

Contemporary *opinio juris* reflects an ideological rift between the so-called Global North and Global South countries. Many developed states of the Global North explicitly assert that they do not view the “right” to assistance as a human right. Although they acknowledge their obligations to assist developing countries, they believe that these obligations are not grounded in internationally recognized human rights, but rather in global solidarity.³⁹ For example, while discussing the Optional Protocol to the ICESCR (OP-ICESCR), representatives of the United Kingdom, the Czech Republic, Canada, France, and Portugal claimed that, although providing international assistance is an important moral duty, the ICESCR does not “impose a legal obligation to provide development assistance or give a legal title to receive such aid.”⁴⁰

39. See SALOMON, *supra* note 8, at 99 & nn.203–04 (discussing how developed states refuse viewing their obligations to assist developing countries as legal obligations); Philip Alston & Gerard Quinn, *The Nature and Scope of States Parties’ Obligations Under the International Covenant on Economic, Social and Cultural Rights*, 9 HUM. RTS. Q. 156, 186–92 (1987) (analyzing various arguments developed states brought *contra* the idea of the legal nature of obligations to assist implied by the ICESCR).

40. *Rep. of the OEWG*, *supra* note 33, ¶ 76. See also Michael H. Posner, Assistant Sec’y, U.S. Dep’t of State, Bureau of Democracy, Hum. Rts., & Lab., Address to the American Society of International Law: The Four Freedoms Turn 70 (Mar. 24, 2011) (arguing that “[h]uman rights law doesn’t create an obligation to any particular level of foreign assistance. The U.S. is a leading contributor to global efforts to alleviate poverty and promote development—not because we have an *obligation* to but because it is in our interest”). Worries that the recognition of socio-economic rights will create obligations of foreign assistance are considered to be among the reasons the United States did not ratify the ICESCR. While discussing the ratification, the U.S. administration even proposed a reservation that articles 2 and 11 of the ICESCR do not “import” any legal obligations of international assistance. See Alston & Quinn, *supra* note 39, at 187. Otherwise, the U.S. claimed that the right to food, as a core component of the right to a decent standard of living, “does not give rise to international obligations or domestic legal entitlements, nor does it diminish the responsibilities of national governments toward their citizens.” See Smita Narula, *The Right to Food: Holding Global Actors Accountable Under International Law*, 44 COLUM. J. TRANSNAT’L L. 691, 737 & n.225 (2006) (quoting Jeffrey de Laurentis, Remarks to the 60th U.N. Commission on Human Rights: Explanation of Vote on the Resolution on the Right to Food (Apr. 16, 2004)). Though the United States is the biggest donor “in absolute terms,” which spent \$31 billion for international assistance in 2018, its share of ODA/GNI (0.17%) is one of the most negligible.

Global South countries, on the contrary, insist on the legal recognition, clarification, and institutionalization of the right to assistance and the corresponding obligations of the international community. For instance, at the same debates on the OP-ICESCR, the African Group, represented by Ethiopia, suggested that the Protocol should “address and incorporate the issue of international assistance and cooperation, in a well-defined and measurable framework” and create complaint mechanisms to hold global actors accountable for their breaches of obligations to assist.⁴¹

Despite the often expressed reluctance of developed states to bind themselves with legal obligations of international assistance, they have repeatedly demonstrated their intention to assist poor societies within the framework of both human rights and development agendas.⁴² These international obligations to assist are, however, seen more as expressions of solidarity rather than human rights-based obligations.⁴³

The practice of the realization of international obligations to assist, implemented by developed states predominantly in the form of the Official Development Assistance (ODA), is relatively consistent. Additionally, the current practice of developed states’ reporting on their fulfillment of international obligations to assist within the CESCR and the Committee on the Rights of the Child (U.N. CRC) periodic reporting procedure may be interpreted as a recognition of their obligations.⁴⁴

If the United States met the U.N. 0.7% threshold, overall ODA would increase by \$100 billion annually. See *MOVE HUMANITY*, *supra* note 11, at 23.

41. *Rep. of the OEWG*, *supra* note 33, ¶ 9. The African Group also proposed the creation of “a fund to assist states in implementing” their human rights obligations and guaranteeing remedies. *Id.* ¶ 105.

42. For an analysis of international soft law instruments that form the law of international assistance, see *infra* Section IV.C.

43. See, e.g., Samantha Besson, *The Bearers of Human Rights’ Duties and Responsibilities for Human Rights: A Quiet (R)evolution?*, 32 *SOC. PHIL. & POL’Y* 244, 244, 246 (2015) (distinguishing between human rights duties that are owed to human right-holders and moral responsibilities for human rights that are not owed to them).

44. See, e.g., Comm. on Econ., Soc., & Cultural Rts., Fourth Periodic Report Submitted by Switzerland Under Articles 16 and 17 of the Covenant, ¶ 45, U.N. Doc. E/C.12/CHE/4 (Feb. 21, 2018) (reporting the Swiss level of ODA between 2008 and 2016); Comm. on Econ., Soc., & Cultural Rts., Fourth Periodic Report Submitted by Israel Under Articles 16 and 17 of the Covenant, ¶ 10, U.N. Doc. E/C.12/ISR/4 (July 30, 2018) (referencing Israel’s international economic and technical assistance and engagement in

However, since international assistance is seen as voluntary, its quality and scope rarely meets existing standards. Therefore, such assistance brings very little positive effect and frequently abuses the human rights of vulnerable individuals and social groups. The mechanisms for holding states accountable for violations of their obligations of international assistance are lacking.⁴⁵ This implies that the statement that international obligations to assist have already been “crystalized” into customary international law is correct only with respect to developed states’ self-obligations of solidarity toward developing countries.⁴⁶

Thus, international obligations of assistance are recognized in international human rights law, which, however, leaves open questions surrounding the nature and status of these obligations. These questions are discussed in the following Sections.

B. *Are We Bound by Obligations to Assist the Distant Poor?*

An enduring legacy of contemporary theories of justice is the justification of global obligations to assist the poor. These obligations are conceptualized, first, not just as acts of charity,⁴⁷ but as moral duties⁴⁸ and, second, as obligations corre-

development cooperation); Comm. Rts. of the Child, Combined Fourth and Fifth Reports Submitted by Singapore Under Article 44 of the Convention, ¶ 29, U.N. Doc. CRC/C/SGP/4-5 (Nov. 3, 2017) (detailing Singapore’s actions to assist developing countries in the achievement of development goals); Comm. Rts. of the Child, Combined Fifth and Sixth Periodic Reports Submitted by Australia Under Article 44 of the Convention, ¶¶ 41–43, U.N. Doc. CRC/C/AUS/5-6 (Jan. 15, 2018) (specifying Australian strategy for foreign aid).

45. See *infra* Part IV.

46. See Philip Alston, *Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen Through the Lens of the Millennium Development Goals*, 27 HUM. RTS. Q. 755, 778 (2005) (arguing that numerous commitments of states “provide a strong argument” that some obligations of development assistance have crystallized into customary law and suggesting that these obligations “must also be proved through the actual practice of donor countries.”).

47. In legal and political philosophy, the virtue of charity has various interpretations. For instance, in the Kantian tradition, it is recognized as a moral value, but not a moral duty. See, e.g., Gosepath, *supra* note 9, at 254. In Schopenhauer’s legal-philosophical heritage, the virtue of charity, on the contrary, is treated as a moral duty, whereas duties of justice are viewed as legal obligations. See Arthur Schopenhauer, *Prize Essay on the Basis of Morals*,

sponding to human rights.⁴⁹ Referencing the distinction between the imperfect ‘duties of virtue’ (duties of ethics) and the perfect ‘duties of right’ (duties of justice) formulated by philosopher, Immanuel Kant,⁵⁰ we can differentiate between two legal-philosophical approaches to the justification of global obligations to assist.

The first approach interprets global obligations to assist as duties of virtue and does not pretend to justify them as human rights obligations. According to this approach, global obligations to assist those in poverty do not correspond to any particular human right and are not owed to any particular right-holders. Instead, they are aimed at establishing a normative framework giving various potential duty-bearers reasons to assist.⁵¹ However, in comparison to acts of charity, imperfect du-

in THE TWO FUNDAMENTAL PROBLEMS OF ETHICS §§17–18, at 203 (Christopher Janaway ed. and trans., 2009).

48. See Peter Singer, *Famine, Affluence, and Morality*, 1 PHIL. & PUB. AFFS. 229, 231, 235–37 (1972) (arguing that obligations to assist the global poor are moral duties if they do not require “sacrificing anything of comparable moral importance”); JOHN RAWLS, A THEORY OF JUSTICE 98, 297–98 (rev. ed. 1999) (justifying the duties of mutual aid as natural duties of individuals); ONORA O’NEILL, BOUNDS OF JUSTICE ch. 10 (2000) (providing grounds for moral duties toward distant strangers); Gosepath, *supra* note 9, at 254 (“[H]elping the needy should morally not be regarded as a voluntary affair, but as a duty.”).

49. See HENRY SHUE, BASIC RIGHTS: SUBSISTENCE, AFFLUENCE, AND U.S. FOREIGN POLICY ch. 6 (2nd ed. 1996) (defending transnational duties to aid correlative to human rights, including subsistence rights); THOMAS POGGE, WORLD POVERTY AND HUMAN RIGHTS, at chs. 1, 2, 5, 7 (2nd ed. 2008) (conceptualizing remedial institutional human rights-based obligations toward the global poor).

50. IMMANUEL KANT, THE METAPHYSICS OF MORALS 35–37 (Lara Denis ed., Mary Gregor trans., 2nd ed. 2018) (“All duties are either *duties of right* (*officia iuris*), that is, duties for which external lawgiving is possible, or *duties of virtue* (*officia virtutis s. ethica*), for which external lawgiving is not possible.”).

51. See ONORA O’NEILL, CONSTRUCTIONS OF REASON: EXPLORATIONS OF KANT’S PRACTICAL PHILOSOPHY 199 (1989) (maintaining that obligations to help are imperfect obligations, which “cannot be identified with any counterpart set of fundamental rights” and, “unless and until they are institutionalized,” are not allocated to particular right-holders and duty-bearers); KOK-CHOR TAN, JUSTICE WITHOUT BORDERS: COSMOPOLITANISM, NATIONALISM AND PATRIOTISM 49–53 (2004) (analyzing the interrelation between rights-based and duty-based approaches and contending that a duty-based approach also offers “conceptual groundings” for obligations of global justice); Gosepath, *supra* note 9, at 254–55 (asserting that the duty to aid, as a kind of imperfect

ties to assist are not optional.⁵² For instance, political philosopher, John Rawls, stresses the necessity of “mutual assistance among peoples in times of famine and drought” and interprets duties to assist as duties of ethics.⁵³

Another outstanding advocate of this approach is political theorist, Charles Beitz, who treats obligations to assist as imperfect duties of beneficence. Beitz develops an idea of “strong beneficence” as a response to doubts that the reasons for beneficence are not serious enough to help unknown strangers, as well as doubts that costs of assistance are overly high. The duty of “strong beneficence” has three pre-conditions: first, maximum urgency of the interest, which is to be protected by assistance; second, availability of actors capable of assisting; and third, slight or moderate sacrifice required from these actors.⁵⁴ To what extent do global obligations of assistance meet the pre-conditions of strong beneficence commitments? First, the basic needs and fundamental interests of those in extreme poverty, without doubt, satisfy the maximum urgency requirement. Second, many global actors are capable of providing assistance. Indeed, there is strong reason to believe that the combined capacities of the international community are sufficient for effective assistance to the poor and the complete eradication of poverty worldwide,⁵⁵ provided that the systematic causes of poverty—relational and distributive injustice—

duty, only establishes a normative framework, which various actors interpret according to their non-moral preferences).

52. See Gosepath, *supra* note 9, at 254–57 (arguing that helping the needy is not a voluntary action but an obligation that is mandatory); O’NEILL, *supra* note 51, at 191 (emphasizing that the fulfillment of imperfect obligations is not optional even though they lack corresponding rights); CHARLES R. BEITZ, *THE IDEA OF HUMAN RIGHTS* 167–69 (2009) (formulating conditions under which imperfect duties of beneficence imply strong moral reasons to act); RAWLS, *supra* note 48, at 297–301 (defending imperfect duties to assist and remarking that it is “in general false that imperfect obligations (for example, that of beneficence) should always give way to perfect ones (for example, that of fidelity)”).

53. JOHN RAWLS, *THE LAW OF PEOPLES* 38 (1999).

54. BEITZ, *supra* note 52, at 167.

55. See, e.g., *MOVE HUMANITY*, *supra* note 11, at 1–2 (suggesting ways to substantially increase the level of development assistance and insisting that this endeavor is “within reach,” since it requires only a small share of actors’ incomes); MANUEL ET AL., *supra* note 2, at 42–43 (concluding that ending extreme poverty “can be within reach if donors and their partners focus their aid efforts on the counties that are projected to need the most support,

are eliminated. Third, being fairly distributed, the costs of actors' individual contributions to the fulfillment of shared global obligations to assist are quite modest.⁵⁶ In this respect, reasons of strong beneficence may be sufficient for motivating multiple actors to provide global assistance.⁵⁷

There are some drawbacks of the first approach, however. Without being rooted in human rights, assistance remains entirely within the discretion of global actors and depends on an arbitrary assessment of their capabilities and the seriousness of the reasons to assist. Without being right-holders, individuals in need lack control over global actors' behavior relating to their obligations to assist and cannot demand their fulfillment or hold these actors accountable for non-compliance. Realizing these shortcomings, proponents of obligations to assist argue that "incomplete" moral duties may become "complete" shared obligations through their legal recognition and institutional guarantees.⁵⁸ In this case, individuals may claim global obligations to assist be performed not because they have the right to assistance, but because existing international law demands this.

The second approach, in contrast, seeks to justify global obligations to assist as perfect duties of justice, which are specified, assigned, claimable, and enforceable human rights obligations, i.e., obligations grounded in, and corresponding to, human rights. The UDHR acknowledges that "all human be-

and on the sectors that are known to lift people out of poverty in the long term" and formulating appropriate recommendations).

56. See Pogge & Sengupta, *supra* note 2, at 86 ("Never in human history has severe poverty been so easily and completely eradicable as in the present period."). See also MAX LAWSON ET AL., OXFAM INT'L, PUBLIC GOOD OR PRIVATE WEALTH? 60–71 (2019), <https://perma.cc/Q5R6-85K4> (last visited Sept. 21, 2021) (explaining how fair taxing "those most able to pay," including corporations and rich people, would improve universal public services and social protection and emphasizing the significance of international aid).

57. BEITZ, *supra* note 52, at 169.

58. See O'NEILL, *supra* note 51, at 191 (asserting that imperfect obligations to assist may become enforceable if they are institutionalized by international law and specify for whom and by whom they should be implemented); see also BEITZ, *supra* note 52, at 161–74 (noting the importance of institutionalizing imperfect duties of beneficence); Gosepath, *supra* note 9, at 285 ("[D]uties to help, which precede any institutions, cannot be properly implemented without institutions identifying, in legitimate and efficient ways, duty-bearers and right-holders instantiating their demands.").

ings are born free and equal in dignity and rights.”⁵⁹ This norm reflects an idea of human-centricity: a person is the ultimate unit of both moral and legal concern,⁶⁰ and an absolute value and supreme goal of social, economic, legal, and political development at local and global levels. This norm embraces three significant components: first, a *special moral and legal status* of a person as a bearer of inalienable dignity and human rights; second, *basic equality*, which requires treating and regarding individuals as equals in a certain fundamental sense, as holders of dignity and human rights; and third, *membership in humanity*, which means that dignity and human rights belong to people as members of human society and not because of their special political ties with any state.⁶¹

These three components of the principle of human-centricity are essential for justifying global obligations to assist. A special moral and legal status of a person is incompatible with extreme poverty and inequality, which is characterized by individuals’ severe material deprivation, social exclusion, and powerlessness. This special status underpins, therefore, the right of the poor to assistance and the correlative obligations to assist those in poverty. The right to assistance is conditional on an individuals’ inability to get out of poverty and realize their basic rights by themselves, which is almost always the case in situations of extreme poverty.⁶²

Basic equality, which aims to prevent the division of people into first- and second-class humans, both within and across national borders, calls for territorial and extraterritorial guarantees of relational and distributive justice. It serves as a normative foundation for obligations to assist not only to compatriots in need but also to the distant poor. The right of the poor to assistance is primarily addressed to their state and sec-

59. UDHR, *supra* note 32, art. 1.

60. The term an “ultimate unit of moral concern” is suggested by Thomas Pogge and Kok-Chor Tan. Thomas W. Pogge, *Cosmopolitanism and Sovereignty*, 103 ETHICS 48, 48–49 (1992); TAN, *supra* note 51, at 1. This Article focuses on both the moral and legal status of a person. It proceeds from the assumption that human-centrism, in its genuine understanding, acknowledges value and rights of the other species and is compatible with eco-centrism.

61. Elena Pribytkova, *What Global Human Rights Obligations Do We Have?*, 20 CHI. J. INT’L L. 384, 392–95 (2020).

62. *See infra* Section III.A.iv.

ondarily to the global community. As argued in the previous Section, socio-economic rights were, from their origin, conceived as exercisable not only against a home state but also against global actors and the international community as a whole. The inability or unwillingness of the state to guarantee the enjoyment of socio-economic rights, indispensable for leading a life in dignity, gives rise to the right to global assistance.⁶³

Membership in humanity provides the rationale for the human right to a just global order, in which human rights and corresponding obligations of members of the international community are realized. Obligations to create and maintain a just global order necessary for helping individuals and social groups in need form an institutional aspect of global obligations to assist.⁶⁴ In this context, the right to global assistance contains an entitlement to a global institutional structure required for the implementation of the right. These institutional arrangements at the supranational level are essential since, for the majority of the global poor, global assistance is the only guarantee of their enjoyment of human dignity and human rights.

The principles of basic equality and membership in humanity, which yield justification strategies for global obligations to assist, underlie two fundamental entitlements enshrined in the UDHR: first, an individual's entitlement "to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for [the individual's] dignity and the free development of [the individual's] personality;"⁶⁵ second, the entitlement "to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized."⁶⁶ The two entitlements are interconnected and ex-

63. See *infra* Sections III.A.v and III.B.

64. Cf., e.g., OLIVIER DE SCHUTTER & MAGDALENA SEPÚLVEDA, UNDERWRITING THE POOR: A GLOBAL FUND FOR SOCIAL PROTECTION (2012), <https://perma.cc/ZD8Y-JQFS> (proposing the creation of a Global Fund for Social Protection as a way to institutionalize obligations of international assistance).

65. UDHR, *supra* note 32, art. 22.

66. *Id.* art. 28. Cf. G.A. Res. 53/144, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

plain the dual nature of global obligations to assist. These obligations include both interactional obligations to assist the poor in the realization of their socio-economic rights, and institutional obligations to develop a global institutional design that is indispensable for providing assistance universally.⁶⁷

According to a tripartite theory of human rights obligations, three types of obligations—to respect, protect, and fulfill (comprising obligations to facilitate, provide, and promote)—correspond to all human rights, including socio-economic rights.⁶⁸ Obligations to provide require guaranteeing access to resources and services necessary for the enjoyment of human rights for those who are unable to obtain access on their own. In other words, obligations to provide presuppose assistance (meaning both territorial social support and extraterritorial assistance) in the realization of human rights.⁶⁹ In this sense,

art. 18(3), U.N. Doc. A/RES/53/144 (Dec. 9, 1998) [hereinafter Declaration on the Right and Responsibility] (“Individuals, groups, institutions and non-governmental organizations also have an important role and a responsibility in contributing, as appropriate, to the promotion of the right of everyone to a social and international order in which the rights and freedoms set forth in the Universal Declaration of Human Rights and other human rights instruments can be fully realized.”). Though the right to a just global order is not explicitly enshrined in the ICESCR and CRC, the CESCR and U.N. CRC assert that their goals are to promote a fair global structure necessary for ensuring socio-economic rights. *See, e.g.*, CESCR GC3, *supra* note 28, ¶¶ 13–14 (stressing the necessity to institutionalize obligations of international cooperation and assistance for the full realization of socio-economic rights); CRC GC5, *supra* note 37, ¶ 61 (stating that the CRC should form a rights-based framework for international development assistance); CRC GC15, *supra* note 34, pt. VI (specifying obligations to create and maintain a regulatory and institutional framework for the implementation of the right of the child to the enjoyment of the highest attainable standard of health and holding actors accountable for violation of the right).

67. *See infra* Section III.A.i.

68. *See, e.g.*, SHUE, *supra* note 49, at 35–64 (suggesting that each human right gives rise to obligations to avoid depriving, to protect from deprivation, and to aid the deprived); M. MAGDALENA SEPÚLVEDA, THE NATURE OF THE OBLIGATIONS UNDER THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS 157–247 (2003) (discussing the evolution and application of the tripartite theory of human rights obligations imposed by the ICESCR).

69. *See* CESCR GC12, *supra* note 37, ¶¶ 15, 36 (delineating the obligations to provide corresponding to the right to adequate food, including obligations to provide international aid); CESCR GC14, *supra* note 37, ¶¶ 33, 37, 39, 45 (explaining the active assistance—both territorial and extraterritorial—required of states in certain cases as part of their obligations to provide

internationally recognized human rights, including socio-economic rights, give rise to the corresponding obligations to assist.

Thus, global obligations to assist are human rights obligations that bind members of the international community. Should they be interpreted as moral or legal obligations? According to legal philosopher, Joseph Raz, human rights are “moral rights that call for legal-political protection.”⁷⁰ Human rights are, therefore, moral rights in the sense that their existence is independent of their legal recognition, but at the same time, they require and have the capacity to receive legal recognition and enforcement. The problem of the moral justification of obligations to assist the global poor is the subject of discussions between cosmopolitans and statist, to which this Article now turns.

C. *Global Assistance: Pro et Contra*

The question of whether global obligations to assist are justified is in the spotlight of debates between adherents of cosmopolitanism and statism.⁷¹ This Section concentrates on statist’s arguments against the moral justifiability of global obligations to assist the distant poor, such as: (1) local causes of poverty; (2) the injustice of global assistance; (3) harm to nations’ self-determination; (4) principle of reciprocity; and (5) the high costs of global assistance. The Section also suggests some counter-arguments from the standpoint of a human rights-based cosmopolitan concept of justice.⁷²

correlating to the right to the highest attainable standard of health); CESCR GC15, *supra* note 37, ¶¶ 25, 34 (explicating that the obligations to provide encompass obligations to provide assistance in the realization of the right to water domestically and abroad).

70. Joseph Raz, *Human Rights in the Emerging World Order*, 1 *TRANSNAT’L LEGAL THEORY* 31, 36, 42–43 (2010).

71. For an analysis of discrepancies between cosmopolitan and statist approaches to interpreting general global duties toward non-compatriots, see Pribytkova, *supra* note 61, at 395–99.

72. Arguments developed in points (2), (4), and (5) are similar to those usually brought in relation to territorial human rights obligations to provide social support to the poor compatriots.

i. *Local Causes of Poverty?*

Adherents of cosmopolitanism and statism agree that poverty is a multicausal and multidimensional phenomenon. At the same time, statist focus on *local causes of poverty* and *inequality* and argue that the correction of the latter requires predominantly national efforts.⁷³ Cosmopolitans, on the contrary, refer to past and present global injustice and human rights abuses caused by global actors. Advocates of cosmopolitanism demonstrate the extraordinary significance of *global factors leading to and perpetuating poverty*—such as colonial and neocolonial policies, non-transparent and unfair international decision-making, norm-setting and institution-designing processes, unjust trade and investment practices, illicit financial flows, human rights-violating development aid projects, etc.—and emphasize the remedial responsibilities of global actors. Obligations of global actors are therefore based on two grounds: first, these actors collectively impose a harm-causing global order on poor societies throughout the world;⁷⁴ and second, they are (collectively) capable of changing the global institutional structure and eradicating poverty.⁷⁵

Arguments of cosmopolitans and statist are reproduced in debates between the Global North and the Global South. While Global North countries draw attention to local causes of

73. See, e.g., RAWLS, *supra* note 48, at 7–10 (within his theory of social justice, focusing on unfair domestic institutional structure and injustices internal to a society, as a “closed system isolated from other societies.”); MICHAEL WALZER, SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY, at 31–63 (1983) (similarly addressing the problems of poverty and inequality within the structure of domestic society).

74. See POGGE, *supra* note 49, at 121 (asserting that the international system imposes an unfair institutional order on the global poor); O’NEILL, *supra* note 9, at 17–24 (stressing the technological and economic interdependence of all members of the international community and contending that some global actors, especially affluent states, are involved in causing deaths of people in distance); TAN, *supra* note 51, at 25–26 (analyzing “institutional and structural bases of global poverty and inequality” and arguing that existing international law has maximized the interests of the rich while disadvantaged the poor); cf. Bilchitz, *supra* note 7, at 15 (showing that corporate owners are both active contributors to, and beneficiaries of, the unfair international system).

75. See Pogge, *supra* note 60, at 53 (maintaining that “the existing global institutional framework” is “imposed by human beings who are collectively quite capable of changing it”).

poverty, Global South states emphasize the injustice of the global order.⁷⁶

The facts are on the side of cosmopolitans: there is ample empirical evidence that the contemporary global institutional order is structurally unfair and persistently causes violations of human rights of the poor.⁷⁷

This Article develops an argument that goes still further: the origin of the causes of poverty is irrelevant to justifying global obligations to assist. In comparison to remedial extra-territorial obligations, global obligations to assist do not presuppose any causal link between acts or omissions of global actors and individuals' inability to enjoy their socio-economic rights.⁷⁸ As shown in Section II.B, the right to global assistance belongs to individuals as members of humanity and is conditional on their inability to help themselves or receive support from their state. Thus, even in cases where the causes of poverty are exclusively local, individuals and social groups in need have the right to assistance, to which global obligations of members of the international community correspond. In

76. See Seyedsayamdost, *supra* note 12, at 13–17 (noting that whereas the Global South has advocated for a more transparent and equitable global order, the Global North has stressed the necessity to improve domestic institutions in developing states).

77. See POGGE, *supra* note 49, at 1–32 (discussing ways in which the international order imposes structural disadvantages on the global poor); THOMAS W. POGGE, *POLITICS AS USUAL: WHAT LIES BEHIND THE PRO-POOR RHETORIC* chs. 1–2, 5 (2010) (providing numerous examples of how the present global institutional system massively violates human rights and contributes to extreme poverty and inequality); STIGLITZ, *supra* note 10, at 214 (scrutinizing detrimental effects of globalization on those in poverty and remarking that part of the blame lies with international economic institutions, which have often “served the interests of the more advanced industrialized countries—and particular interests within those countries—rather than those of the developing world.”); JEFFREY SACHS, *THE END OF POVERTY: ECONOMIC POSSIBILITIES FOR OUR TIME* (2005) (analyzing multiple cases of poverty and inequality around the globe as well as the role of rich states in exacerbating them); BRANKO MILANOVIC, *GLOBAL INEQUALITY: A NEW APPROACH FOR THE AGE OF GLOBALIZATION* 5, 131–143 (2016) (exploring global income inequality and distinguishing between “a ‘citizenship premium’ for those who are born in the right places (countries), and a ‘citizenship penalty’ for those born in the wrong places (countries)” that determine as much as two-thirds of lifetime income as well as opportunities and life prospects generally); MAX LAWSON ET AL., *supra* note 56 (examining the growing global inequality, including gender and tax inequality).

78. See discussion *infra* Section II.D.

many cases, even a nationally rooted situation of severe socio-economic deprivation may be substantially improved through efficient global assistance.⁷⁹ The following two statist arguments are closely connected with the “local causes of poverty” thesis.

ii. *Injustice of Global Assistance?*

Supporters of statism argue that compensating for peoples’ own wrongdoing is unjust and criticize global obligations to assist as distributive guarantees that aggravate injustices. In this respect, the burden of global assistance is seen as both an ill-founded punishment of the more hard-working and well-handled peoples and the unjustified abetting of the lazy and less-organized.⁸⁰

This position is vulnerable to a twofold critique. First, even if they were responsible for their own socio-economic deprivation, those in poverty (since they cannot escape poverty independently or with the help of their state) have the right to global assistance. Second, local factors of poverty and human rights violations do not necessarily imply the responsibility of those suffering from poverty. In the current state-centered global order, the principle of responsibility for one’s own bad choice applies individually on the national level and collectively on the global level. However, equating individual responsibility for one’s own wrong choices and collective responsibility for the bad politics of their state governments contradicts the idea of human-centricity, which sees individuals as ultimate units of moral and legal concerns.⁸¹ This approach is also unfair because it may impose responsibility on people for decisions and actions beyond their control. Individuals from

79. Cf. BEITZ, *supra* note 52, at 168–69 (“it is a mistake to conclude from the fact that the primary causes of a deprivation are local that the only agents which are in a position to prevent or compensate for the deprivation, or to reduce the chances of its recurring, are indigenous.”).

80. See TAN, *supra* note 51, at 72 (deliberating about explanatory nationalism, according to which “some countries are doing well because of their careful policies and sacrifices and others are doing badly because of their careless policies and unwillingness to make economic sacrifices”).

81. For the discussion of the idea of human-centricity, see *supra* Section II.B.

poor countries, many of which are undemocratic,⁸² have very little influence on the politics of their governments. Even in democratic countries, poor people are socially excluded, marginalized, and powerless. This prompted Beitz to compare the global poor—frequently accused of being responsible for the domestic politics of their governments that bring about their poverty—to children who are blamed for the bad choices of their parents.⁸³ This justifies the claim of supporters of choice-sensitive cosmopolitanism for the individualization of responsibility.⁸⁴

iii. *Harm to Nations' Self-Determination?*

According to the “self-determination” argument, extraterritorial assistance undermines the right of societies to self-determination since it inhibits their accountability for political decisions.⁸⁵ Thus, the principle of self-determination should warn against helping those who are responsible for their own conditions of poverty.

82. There are clear trends toward authoritarianism in developing states. See THE ECONOMIST INTEL. UNIT, DEMOCRACY INDEX 2020: IN SICKNESS AND IN HEALTH? 3–4 (2020), <https://perma.cc/DJG6-GKY8> (last visited Sept. 21, 2021) (finding that out of 167 analyzed countries (the Index excludes micro-states), fifty-seven have authoritarian regimes, thirty-five have hybrid regimes, and more than one third of the global population is currently living “under authoritarian rule”).

83. Charles Beitz, *Social and Cosmopolitan Liberalism*, 75(3) INTERNATIONAL AFFAIRS 515, 527 (1999). This argument should not be taken as equating the poor to *de jure* underage and not responsible for their own fate. It is rather about their *de facto* exclusion from meaningful decisions that impact their lives and about the injustice of punishing the poor—by refusing to help—for others’ decisions.

84. See Beitz, *supra* note 83, at 526–28 (from perspectives of cosmopolitan liberalism and individualist egalitarianism, criticizing social liberalism and in particular the idea that societies have “responsibility for their own conditions in the same way as individual persons do”); TAN, *supra* note 51, at 72–73 (contending that frequently disadvantages of poor individuals “are due more to circumstance than choice” and that global justice satisfying the principles of egalitarian individualism should be both choice-sensitive and circumstance-sensitive).

85. See, e.g., DAVID MILLER, ON NATIONALITY 108 (1995) (“To respect the autonomy of other nations also involves treating them as responsible for decisions they may make about resource use, economic growth, environmental protection, and so forth.”).

Along with the above-mentioned request for the individualization of responsibility, a cosmopolitan answer to the self-determination argument points to a just global order as an important precondition for the universal enjoyment of the right to self-determination. As political philosopher, Kok-Chor Tan, claims, the statist position “simply overlooks this fact of the vulnerability of poor nations to the decisions of more powerful ones.”⁸⁶ It is unfair to blame poor societies for their poverty until global actors are co-responsible for it. Thus, global obligations to assist do not contradict the right to self-determination; on the contrary, they are aimed at promoting its enjoyment, while empowering individuals’ and societies’ full-fledged membership in the global community.

iv. *Principle of Reciprocity*

The principle of reciprocity presumes that only those contributing to the well-being of a certain community may enjoy the benefits provided by that community. For instance, on the local level, the right to social support enabling a person to lead a decent life gives rise to their “obligation to perform a decent minimum of contributive activity.”⁸⁷ Advocates of this principle believe that, since non-compatriots do not bear the tax burden in any particular donor-state (they participate in the maintenance of the other, often ineffective and harmful, political entities), they cannot lay claims to assistance from this state.

The reciprocity argument (as formulated above) is contradictory in several respects. First, being correctly understood, the principle of *fair reciprocity* calls not for actual contributing, but for passing the willingness-to-contribute test. The scope of contributive activity should be determined according to the individual capacities of a person. In this sense, all individuals unable to support themselves through their work and to pay taxes (such as the elderly, children, persons with disabilities) and receive social support on a national level, satisfy the will-

86. TAN, *supra* note 51, at 102.

87. Stuart White, *Liberal Equality, Exploitation, and the Case for an Unconditional Basic Income*, 45 POL. STUD. 312, 319 (1997) (developing the conception of “baseline reciprocity” implying that each recipient of a decent minimum income should carry out a “decent minimum of contributive activity,” which size varies “with degree of productive handicap.”).

ingness-to-contribute condition and, therefore, accord with the principle of fair reciprocity. For the same reason as the local poor, the global poor also satisfy the willingness-to-contribute condition: they are not unwilling, but rather unable to contribute. Since the former are entitled to support, there is no reason to withhold assistance for the latter.

Second, global institutional obligations to assist are aimed at promoting the implementation of the principle of fair reciprocity at the global level. Global obligations to assist should not be seen as unilateral obligations of developed states toward residents of poor countries, but rather as *mutual* obligations that all societies and individuals have toward each other.⁸⁸ Advocates of both local support and global assistance proceed from the correct assumption that socio-economic status is changeable. Every person and every society (the current global crisis has convincingly proved this) may, at certain points, reach a level of deprivation and vulnerability that will force them to depend on the help of others.⁸⁹

In accordance with the principle of fair reciprocity, a just system of global assistance should enable poor individuals and developing societies to contribute to implementing shared global obligations to eradicate poverty. Global assistance should not be interpreted as a transfer of certain material goods from one actor to another. As demonstrated in Section II.A, assistance involves a variety of forms, many of which can also be offered by developing societies and poor communities. In this respect, it is necessary to shift from donor-recipient re-

88. See Gosepath, *supra* note 9 at 258, 263 (defending an obligation to assist as a “universal and mutual duty to aid the deprived”).

89. See SHUE, *supra* note 49, at 64 (“No one is assured of living permanently on one side of the rights/duties coin.”). Cf. AVISHAI MARGALIT, *THE DECENT SOCIETY* 234 (Naomi Goldblum trans., 1996) (distinguishing between an asymmetric relation of pity, which “does not leave room for the possibility that the pitier herself might need pity some day,” and a “symmetric relation” of compassion). Presuming that socio-economic status is inconstant, some projects connected to the global institutional design for international assistance include an insurance component. See, e.g., DE SCHUTTER & SEPÚLVEDA, *supra* note 64, at 15–19 (discussing the reinsurance mechanism of a proposed Global Fund for Social Protection); Olivier De Schutter (Special Rapporteur on Extreme Poverty and Human Rights), *Global Fund for Social Protection: International Solidarity in the Service of Poverty Eradication*, ¶¶ 15, 45–52, U.N. Doc. A/HRC/47/36 (Apr. 22, 2021) (proposing ways to institutionalize the Global Fund’s reinsurance branch).

lations to those where the rights of individuals and developing societies to participate in creating a new regulatory framework and shaping a global institutional order that is indispensable for the realization of shared global obligations to assist are recognized.⁹⁰ Thus, global obligations to assist do not violate the principle of fair reciprocity, but rather are fully consistent with it.

v. *High Costs of Global Assistance?*

Global assistance is believed to be too costly, placing an enormous burden on the agents of assistance and harming the human rights of compatriots, including the local poor. There are several positions in debates about how burdensome global assistance may be in order to be justified and adequate.⁹¹

According to the first position, assistance is justified when it involves either no cost at all or only a “negligible loss.”⁹² This vision is incompatible with the task of eradicating global poverty since the latter requires considerable sacrifice. If we take human rights, including socio-economic rights, seriously, we must accept that their realization imposes some burdens on the duty-bearers.

The second position stands for the maximum possible assistance. Perhaps the most famous supporter of this approach is moral philosopher, Peter Singer, who believes that there is no “moral difference” between helping a poor neighbor and assisting the distant poor.⁹³ As a principle for determining a morally justified scope of assistance, Singer suggests the “level of marginal utility.”⁹⁴ According to the strong version of this principle, “if it is in our power to prevent something bad from

90. See *infra* Section IV.C.iv.

91. See, e.g., SHUE, *supra* note 49, at 131–52 (explicating whether and to what extent global actors are obligated to provide assistance in the realization of basic rights); Jeremy Waldron, *On the Road: Good Samaritans and Compelling Duties*, 40 SANTA CLARA L. REV. 1053, 1068–78 (2000) (analyzing what sacrifice imperfect moral and perfect legal duties imply); Christian Barry & Gerhard Overland, *How Much for the Child?*, 16 ETHICAL THEORY & MORAL PRAC. 189 (2013) (exploring “the amount of cost that the affluent are morally required to bear to assist others in great need”).

92. See Barry & Overland, *supra* note 91, at 195–96 (discussing theories justifying assistance only when it involves low costs).

93. Singer, *supra* note 48, at 231–32, 234.

94. *Id.* at 234, 241.

happening, without thereby sacrificing anything of comparable moral importance, we ought, morally, to do it.”⁹⁵ This principle proposed by Singer certainly inspires the individual choices of many, but it can hardly claim universal legal recognition, as it is too demanding.⁹⁶ There are two concerns in this respect. First, excessive demands for assistance are morally questionable because they allow the instrumentalization of the providers of assistance, that is, treating the providers of assistance only as a means for somebody’s ends, but not as ends in themselves.⁹⁷ Second, the requirement to devote one’s life to assisting others leaves very little opportunity for the enjoyment of the right to one’s own dignified life. Thus, using Kant’s language, Singer’s principle is not universalizable, i.e., it cannot be a universal moral rule and may rely only on the voluntary commitments of individuals. Since it requires heroism from the giver, it cannot become a legal principle.⁹⁸

The third position, which this Article develops, claims that only a decent minimum sacrifice is expected from global actors who provide assistance. The burden of global assistance should allow actors to pursue their goals and realize their rights and obligations. For individuals, the costs of assistance should be compatible with their enjoyment of a decent life as well as their moral and intellectual flourishing.⁹⁹ Burdens of global assistance should not prevent collective actors from at-

95. *Id.* at 231, 235. Singer also suggests a moderate formula which aims to “ensure that the consumer society, dependent as it is on people spending on trivia rather than giving to famine relief, would slow down and perhaps disappear entirely.” *Id.* at 241.

96. *See id.* at 235 (asserting that it is not a sacrifice to wear old clothes while giving our money to the poor). This position is highly disputable if we take into account person’s needs to “appear in public without shame.” Amartya Sen, *Human Rights and Capabilities*, 6 J. HUM. DEV. 151, 154 (2005) (developing of the Adam Smith’s idea).

97. *See* KANT, *supra* note 50, at 32, 168 (proposing the Formula of the End in Itself of the categorical imperative); Gosepath, *supra* note 9, at 271 (attacking Singer’s conception of the duty to assist for “the instrumentalization of the helper’s life it entails” and asserting that it is necessary to determine a threshold “beyond which no more help is owed.”).

98. *See* PITIRIM A. SOROKIN, *PRESTUPLENIE I KARA, POBBIG I NAGRADA* [CRIME AND PUNISHMENT, SERVICE AND REWARD] ch. 3, §2 (1914).

99. *See also* CÉCILE FABRE, *WHOSE BODY IS IT ANYWAY?: JUSTICE AND THE INTEGRITY OF THE PERSON* 11–39 (2006) (arguing that the better-off bear duties to assist “if, and only if, they would not jeopardize their own prospects for a minimally flourishing life”).

taining their goals—gaining profit for transnational corporations (TNCs), pursuing their political, social, and cultural aims, implementing other territorial and extraterritorial obligations for states and IGOs, etc. Better-off global actors are not legally bound to provide more assistance than required by a fair distribution of the burdens of assistance.¹⁰⁰ Everything beyond this minimum decent level of sacrifice is not a human rights-based obligation, but a duty of beneficence.¹⁰¹ In this respect, if obligations are distributed fairly among all global actors and in accordance with the principle of a decent minimum sacrifice, the costs of their individual contributions to global assistance would be quite moderate.

Thus, the above-discussed statist arguments against the moral justifiability of global obligations to assist the distant poor are unsound. Based on this and the previous Sections, it is possible to draw a conclusion that global obligations to assist are *morally justified human rights obligations that require their legal recognition* at international, regional, and local levels.

D. Assistance or Compensation?

Political philosophers and human rights activists have succeeded in showing that some duties that are often considered to be duties to assist are actually remedial responsibilities to compensate for human rights violations.¹⁰² The relevant

100. This forms the basis of another critique of the “position to assist” clause. See *infra* Section III.D.

101. For a discussion of duties of beneficence, see *supra* Section II.B.

102. See POGGE, *supra* note 49, at chs. 1.5–.7 (asserting that global actors imposing the human rights-violating international order should not assist but compensate for the caused violations); O’NEILL, *supra* note 9, at 44–57, (distinguishing remedial obligations to compensate for the past wrongs from obligations to aid, and justifying the “legal and fundamental rights to compensation”); TAN, *supra* note 51, at 26–27 (elaborating an “institutional focus” of a theory of global justice, according to which “we will no longer say that rich countries are required to assist poorer ones by giving away some of their resources but that such transfers are required to restore an antecedently unjust resource allocation.”); Jason Hickel, *Aid in Reverse: How Poor Countries Develop Rich Countries*, in THE DONORS’ DILEMMA, *supra* note 13, at ch. 13 (claiming that “we need to completely discard the aid paradigm” because wealthy states bear duties of reparation for past injustices rather than duties to assist poor countries); see also CHRISTIAN BARRY & GERHARD OVERLAND, RESPONDING TO GLOBAL POVERTY: HARM, RESPONSIBILITY, AND AGENCY 1–2 (2016) (contrasting assistance-based and contribution-based responsibilities).

ground for the distinction between the two types of obligations is the possibility of establishing a causal link between acts and omissions of various actors and individuals' inability to exercise their human rights.¹⁰³ Since human rights deficits "can be traced back to unjust conditions or actions," they call not for global obligations to assist that are aimed at guaranteeing relational and distributive justice, but rather for remedial responsibilities that embody corrective justice.¹⁰⁴

The concept of "remedial responsibilities" is frequently used in two different contexts. It is interpreted as a duty to compensate: first, for "natural injustice"¹⁰⁵ or "bad luck" (no causal links) and, second, for man-made injustice, that is, harm caused by somebody's action or omission (causal links). Within man-made injustice, one may distinguish relational injustice, i.e., a failure to respect and treat individuals and societies as equals, or distributive injustice, i.e., the unfair distribution of significant social goods or resources.

Both natural and man-made injustices call for compensation, but only certain types of the latter are usually considered to give rise to remedial human rights responsibilities. Theories of justice and international law recognize the duty to compensate for actual or past human rights violations. Compensation for natural injustice or bad luck is generally qualified by law as assistance.¹⁰⁶ The necessity to compensate for bad luck in certain cases—such as social support for persons with disabilities

103. Applying this criterion, the Maastricht Principles distinguish between two types of extraterritorial obligations: first, remedial "obligations relating to the acts and omissions of a State, within or beyond its territory, that have effects on the enjoyment of human rights outside of that State's territory;" and, second, "obligations of a global character that are set out in the Charter of the United Nations and human rights instruments to take action, separately, and jointly through international cooperation, to realize human rights universally." ETO CONSORTIUM, *supra* note 28, princ. 8.

104. See Gosepath, *supra* note 9, at 260–61 ("If [deprivation] can be traced back to unjust conditions or actions, we are not dealing with a positive duty to help, but with a case of corrective and commutative justice.").

105. For inadmissibility of the term, see *id.* at 268 ("Justice reacts to injustice between people," including harm that "people could have prevented without excessive morally relevant costs Natural harm that people could not have prevented or eliminated is in any case irrelevant from the point of view of a theory of justice.").

106. See World Conference on Human Rights, *Vienna Declaration and Programme of Action*, ¶ 23, U.N. Doc. A/CONF.157/23 (June 25, 1993) [hereinafter *Vienna Declaration*] (calling for "humanitarian assistance to victims of all

or assistance to refugees—is recognized in international law and many national legal orders as a human rights obligation.

A human rights-based approach presumes that poverty, as both a man-made and natural injustice, makes the enjoyment of human rights impossible.¹⁰⁷ Human rights lawyers specify that poverty constitutes a human rights violation only if it is the result of a failure of responsible actors to fulfill their obligations, in particular obligations to assist those in need.¹⁰⁸ In this case, remedial obligations should be assigned to the responsible actors. While some researchers and practitioners believe that remedial obligations derive only from violations of negative obligations not to harm,¹⁰⁹ this Article argues that they also arise from breaches of global obligations to assist.¹¹⁰

natural and man-made disasters.”). The nature and status of obligations to assist victims of natural injustice are, however, highly debated.

107. *See id.* ¶ 14 (“The existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights”); Comm. on Econ. Soc. & Cultural Rts., *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: Poverty and the International Covenant on Economic Social and Cultural Rights*, ¶ 1, U.N. Doc. A/CONF.191/BP/7 (May 4, 2001) [hereinafter CESCR Statement (2001)] (noting poverty had been recognized as a human rights issue since the UDHR).

108. Alston, *supra* note 46, at 786–87; CTR. FOR ECON. AND SOC. RTS., *Human Rights and Poverty: Is Poverty a Violation of Human Rights?* 1–4 (2009), <https://perma.cc/HN4W-96UY> (last visited Sept. 21, 2021) (maintaining that poverty is not *per se* a violation of human rights, but often reflects human rights violations and may be caused by a failure to act where human rights obligations to alleviate poverty exist).

109. *See* POGGE, *supra* note 49, at ch. 1.6 (claiming that violations of negative duties not to harm others unduly give rise to obligations to compensate for the contribution to the caused harm through protecting victims or reforming the unjust institutional order); Bilchitz, *supra* note 7, at 14–16 (following Pogge and justifying corporations’ remedial obligations to compensate individuals harmed by the unfair trade system). According to this approach, all obligations of global actors relating to poverty eradication are actually remedial responsibilities based on corrective justice. Pogge stipulates, however, that he does not deny that global actors also have positive obligations. POGGE, *supra* note 77, at 28 (“While some passionately reject such human-rights-imposed positive duties and others passionately endorse them, I simply leave them aside here, without prejudice. To keep my argument widely acceptable, I conceive human rights narrowly as imposing only negative duties.”).

110. The working group engaged in elaborating the OP-ICESCR discussed difficulties in determining a causal link between the non-fulfillment of obli-

As shown, obligations to assist are a kind of obligation of a “global character” and do not imply any causal links between the actions or omissions of duty-bearers and right-holders’ inability to enjoy their human rights. Duty-bearers of these obligations are, therefore, those who cannot be blamed (and held accountable) for the deprivation of human rights experienced by the poor. It is important to note that whereas global obligations to assist do not depend on causality, remedial responsibilities to compensate do not necessarily presuppose a severe socio-economic deprivation of the victims.¹¹¹

The right sequence of attributing the two types of extra-territorial obligations is widely debated by scholars and practitioners. Some believe that those involved in establishing, maintaining, and exploiting conditions of deprivation bear primary obligations to improve the situation and provide compensation to the victims.¹¹² Others, however, prioritize global obligations aimed at eliminating basic socio-economic rights deprivations, irrespective of their origins. They argue that in situations where it is difficult to determine which actors are responsible for severe human rights violations, it is right to focus on protecting and assisting the victims rather than on finding the perpetrators.¹¹³

The correct sequence of attributing obligations should give priority to the remedial responsibility of actors involved in human rights violations (directly or through their contribu-

gations to assist and human rights violations. *Rep. Of the OEWG, supra* note 33, ¶ 80.

111. See Gosepath, *supra* note 9, at 262 (“[T]he demands of corrective and commutative justice must be met regardless of whether the victims are deprived or not.”).

112. See *id.* at 257, 272–73; POGGE, *supra* note 49, at chs. 1.6, 4.9 (contending that wealthy societies, authoritarian rulers, and corrupt elites, who have “substantially contributed to the persistence of severe poverty,” share primary responsibility for it and, therefore, have obligations to improve the unfair institutional order and protect its victims); TAN, *supra* note 51, at 26–27 (stating that international organizations and rich countries perpetuating global poverty and inequality bear obligations to reform the unjust global institutional scheme and restore the unfair distribution of resources).

113. See O’NEILL, *supra* note 9, at 52 (“If it is impossible to determine who suffered as a result of whose wrongdoing, the advantages of a compensatory approach are limited.”); Miller, *supra* note 9, at 466–68 (outlining a “forward-looking” theory to “assign responsibility in whatever way will best achieve our aim of reliving victims”).

tion to designing and/or maintaining the unjust global institutional structure) over the global obligations to assist shared by members of the international community. Holding perpetrators accountable should prevent them (and others) from further abuses and guarantee compensation to the victims, thereby promoting justice and human rights. In cases where victims of extraterritorial human rights violations are initially assisted by third parties not involved in human rights violations, holding the perpetrators accountable allows for both compensation to the third parties and channeling aid to other individuals and social groups in need.

At the same time, the necessity of urgent assistance may be the basis for changing the order of implementing extraterritorial obligations. A transition from remedial responsibilities to global obligations to assist is justified when: (a) urgent actions in relation to the most vulnerable victims of human rights violations (for example, those suffering from extreme poverty or famine) are necessary; (b) the responsible actors are unable to correct human rights abuses and compensate for the harm caused; (c) the compensation provided by the responsible actors is not sufficient to guarantee freedom from poverty and the minimum socio-economic conditions necessary for leading a decent life. In these cases, assistance may be performed by third parties (directly or through the system of international institutions) before the realization of remedial extraterritorial obligations. Expenses of assistance incurred by the third parties should, however, be compensated by the perpetrators responsible for the human rights violations.

Changing the order of implementing extraterritorial obligations is, however, not aimed at substituting remedial responsibilities with obligations to assist. Actors individually or collectively responsible for human rights violations and/or the creation and maintenance of the unfair global institutional order are not obliged to assist, but to compensate for the human rights deprivations resulting from their activity and/or the unjust global institutional structure.¹¹⁴

114. Gosepath, *supra* note 9, at 272; see Thomas Pogge, "Assisting" the Global Poor, in *THE ETHICS OF ASSISTANCE: MORALITY AND THE DISTANT NEEDY*, *supra* note 9, at 260, 278 (claiming that we must compensate the global poor "if we (and third world elites) are imposing global rules that are unfair to the global poor, thus contributing to and profiting from social factors that

In the context of globalization, almost all global actors (especially the most powerful) are directly or indirectly involved in human rights abuses experienced by the global poor.¹¹⁵ This position received an outstanding expression in Baroness Onora O'Neill's philosophical conception. She argues that global distribution patterns resulting in a huge part of the population dying from poverty, in fact, violate not just the right not to be allowed to die, but the right not to be killed. To explain the difference between the two rights, she resorts to the shipwreck metaphor mentioned above. We infringe the right of individuals not to be allowed to die if we leave them in the water to drown even if we are not the ones who caused the shipwreck. In contrast, we violate the right of those already in our boat not to be killed if our institutional schemes distributing the means of subsistence lead to their deaths from hunger, dehydration, or preventable diseases.¹¹⁶

This logic, at first sight, should inspire our concentration on local, but not global, obligations not to kill. O'Neill, however, believes that we all are on board one "lifeboat Earth."¹¹⁷ She claims that in the contemporary world, numerous causal chains bring about thousands of unjustifiable deaths daily. These causal chains are extremely complex and link all individuals on Earth. That is why only absolutely isolated and self-sufficient agents may soundly argue that they are not part of global "death-producing" distribution schemes.¹¹⁸ For instance, O'Neill demonstrates that famine is not just a natural disaster, but also a result of pre-famine and famine policies that may cause, increase, postpone, diminish, stop, or even prevent it. She asserts that "[w]e cannot stoically regard particular famine deaths as unavoidable if we have contributed to

exacerbate severe poverty abroad And insofar as we do compensate, we are not merely "assisting" the poor abroad, but mitigating the effects of unfair rules that bring us unjust gains at their expense."); TAN, *supra* note 51, at 26–27 (asserting that under an "institutional focus," wealthy countries are required to compensate those in poverty for past wrongs rather than assist them).

115. See Gosepath, *supra* note 9, at 281 (arguing that collective liability creates an institutional duty to cooperate).

116. See O'Neill, *supra* note 1, at 281 ("Aboard a well-equipped lifeboat any distribution of food and water which leads to a death is a killing and not just a case of permitting a death.").

117. *Id.*

118. *Id.* at 286.

the emergence and extent of famine.”¹¹⁹ Hence, she justifies duties to assist those in poverty as part of the obligation to avoid killing.¹²⁰

An invaluable contribution of O’Neill’s theory is the justification that extreme poverty is a violation of the right not to be killed, as well as the persuasive argument that certain causal relations link all subjects within the global order. Though her “lifeboat Earth” metaphor proceeds from a cosmopolitan hypothesis that the existing global institutional scheme is unfair and violates human rights,¹²¹ it does not adequately describe it. This is not only because the global institutional scheme is much less elaborated and structured than local ones. The fact of the matter is that the global institutional order is not (and not aimed at developing into) a world state that may be compared to the one lifeboat. Presenting the contemporary world metaphorically, there are a lot of magnificent sailboats and smaller ships and some are sinking or close to sinking, while many individuals are dying, being thrown overboard. The largest, most luxurious ships—those taking all the fish, producing ecocatastrophes and polluting the drinking water, framing the

119. *Id.* at 287–88 (“For even though we (a) do not kill single-handedly those who die of famine; (b) do not kill instantaneously those who die of famine; (c) do not know which individuals will die as the result of the pre-famine and famine policies we support (unless we support something like a genocidal famine policy); (d) do not intend any famine deaths we nonetheless kill and do not merely allow to die. For as the result of our actions in concert with others, some will die who might have survived had we either acted otherwise or had no causal influence.”).

120. This line of argumentation is similar to Pogge’s. O’Neill, however, calls for concentrating not on retrospective remedial duties, but on prospective global obligations, i.e., adopting “prefamine policies which ensure that famine is postponed as long as possible and is minimized.” *Id.* at 290.

121. See CHARLES BEITZ, *POLITICAL THEORY AND INTERNATIONAL RELATIONS* 143–53 (1979) (analyzing how the international economic, political, and legal institutions have exacerbated global poverty and inequality); POGGE, *supra* note 49, at 121 (arguing that the current global system “contributes substantially to the persistence of severe poverty”); TAN, *supra* note 51, at 26–28 (emphasizing the structural and “pervasive inequalities in the basic global structure.”); Allen Buchanan, *Rawls’s Law of Peoples: Rules for a Vanished Westphalian World*, 110 *ETHICS* 697, 705–09 (2000) (discussing the effects of the global basic structure, as a set of economic and political institutions, on the “distribution of burdens and benefits among peoples and individuals around the world.”); Rainer Forst, *Towards a Critical Theory of Transnational Justice*, 32 *METAPHILOSOPHY* 160, 166–67 (2001) (suggesting that the current global system is based on domination and exploitation).

maritime laws along with unfair trade rules and distribution patterns, as well as providing harmful aid to those in need—are directly related to the numerous shipwrecks that kill thousands and affect millions each day worldwide. These largest ships are, therefore, bound by obligations to correct the injustice of the existing global institutional scheme and to compensate for the harm they have caused. Although a single cruise ship alone cannot compensate and help all the sinking boats or those on the brink, large and small ships jointly possess sufficient resources to provide adequate compensation and systematic and timely assistance to those in trouble. Their obligations, however, include not only rescuing individuals after shipwrecks but also preventing shipwrecks as such.

It is important to point to challenges of attributing remedial responsibilities to concrete global actors. Though it is much easier to justify remedial obligations to compensate than global obligations to assist, it is difficult to prove the existence of a causal relationship between the activities of specific actors and certain human rights violations.¹²² Human rights deprivations often have multiple, systematic, long-standing, unclear, and controversial causes. Both victims and perpetrators are hard to identify.¹²³ Human rights law still needs to develop effective legal instruments to overcome all these difficulties.

Human rights impact assessments (HRIAs)—for states, IGOs, and most NSAs—and human rights due diligence (HRDD) for TNCs are significant legal tools to identify and evaluate the negative effect of multiple actors' acts and omissions on the enjoyment of human rights.¹²⁴ Since both mechanisms are largely similar, this Section will briefly analyze HRIAs. They may be used to assess potential (*ex ante* HRIAs) and actual (*ex post* HRIAs) effects. As will be shown in Section IV.C.i, *ex ante* HRIAs are necessary prior to the implementation of any assistance program or policy. The need to detect existing human rights violations and to assign remedial responsibilities to those involved in them requires undertaking

122. Gosepath, *supra* note 9, at 261–62.

123. See O'NEILL, *supra* note 9, at 52–53 (exploring difficulties in tracing causal pathways).

124. Undertaking HRDD is required by the U.N. Guiding Principles on Business and Human Rights. Off. of U.N. High Comm'r for Hum. Rts., *U.N. Guiding Principles on Bus. and Hum. Rts.*, princs. 15, 17, 18, 19, 20 & 21, U.N. Doc. HR/PUB/11/04 (2011) [hereinafter *U.N. Guiding Principles*].

ex post HRIAs.¹²⁵ Both (potential) victims abroad and residents of a home state have the right to demand that HRIAs be conducted and the right to participate in them. The institutionalization of both *ex ante* and *ex post* HRIAs should reduce human rights violations and increase the accountability of global actors. Both public and private entities, including civil society and NGOs, may implement HRIAs.

On the basis of the HRIAs' conclusions, certain measures to correct extraterritorial human rights violations should be adopted—such as the cessation of the violations and reforming the unfair institutional order, ensuring particular remedies for victims, including restitution, compensation, rehabilitation, and satisfaction, as well as guarantees of non-repetition¹²⁶—and perpetrators should be held accountable. Even when perpetrators cannot be identified, the international community should provide compensation to victims. This is one more argument for the institutionalization of extraterritorial obligations.¹²⁷

E. Summary

This Part concentrated on the legal-philosophical justification of obligations to assist and their recognition in international human rights law. First, it demonstrated that obligations of international assistance are presupposed by core human rights instruments and customary international law, which, however, do not clarify the nature and status of the obligations.¹²⁸ Second, it offered a rationale for global obligations to assist as human rights obligations, which derive from and correspond to basic socio-economic rights and bind members of the international community.¹²⁹ Third, it contested some stat-

125. See Alexandra Eberhard et al., Human Rights Impact Assessments 8–58 (Dec. 11, 2015), <https://perma.cc/MMW2-AWZ8> (last visited Sept. 21, 2021) (examining ways to define and institutionalize *ex ante* and *ex post* HRIAs).

126. See *Maastricht Guidelines on Violations of Economic, Social and Cultural Rights*, 20 HUM. RTS. Q. 691, ¶¶ 16, 23 (1998) [hereinafter *Maastricht Guidelines*] (outlining the obligations of states to “establish mechanisms to correct” human rights violations and secure victims’ right to adequate reparation).

127. See *infra* Part IV.

128. See *supra* Section II.A.

129. See *supra* Section II.B.

ists' arguments against global obligations to assist the distant poor and concluded that those global obligations represent morally justified human rights obligations that call for their legal recognition.¹³⁰ Finally, it argued for distinguishing global obligations to assist from remedial responsibilities to compensate for socio-economic rights abuses that relate to corrective justice.¹³¹ This reasoning is significant for conceptualizing global human rights obligations to assist, which is the task of the next Part.

III. GLOBAL OBLIGATIONS TO ASSIST IN THE REALIZATION OF SOCIO-ECONOMIC RIGHTS

A. *What Obligations?*

The concept of obligations to assist is challenged in contemporary political and legal discourse and practice. As Section II.B showed, obligations to assist are not just duties of solidarity but human rights obligations. There is still, however, no consensus on what kind of obligations they are: (1) interactional or institutional? (2) international or global? (3) individual or shared? (4) conditional or unconditional? (5) primary or secondary? (6) consequent or simultaneous? (7) relational or distributive? Addressing these issues, this Section seeks to clarify the nature, status, and content of obligations to assist.

i. *Interactional and Institutional Obligations*

There is a tradition of distinguishing between *interactional duties of global ethics* and *institutional duties of global justice*. Whereas duties of ethics are direct, interpersonal, and usually short-term commitments toward concrete subjects (for instance, assistance projects or emergency aid), duties of justice are systematic and ongoing commitments to create and maintain a global institutional structure (for example, a global taxation system, mechanisms for distributing means of assistance to poor individuals and societies, international monitoring and accountability bodies).¹³² Obligations to assist are often

130. See *supra* Section II.C.

131. See *supra* Section II.D.

132. See TAN, *supra* note 51, at 23 (distinguishing duties of assistance and duties of justice); RAWLS, *supra* note 48, at 4, 98–99 (separating institutional duties of justice relating to “the appropriate distribution of benefits and bur-

defined as interactional duties of global ethics.¹³³ However, internationally recognized socio-economic rights give rise to both interactional and institutional global obligations to assist.¹³⁴

Global interactional obligations to assist represent individual and shared human rights obligations of global actors toward particular individuals or societies in need that should be implemented directly or through the existing system of international institutions. The normative principles defended above underlie several types of interactional global obligations to assist. First, the obligation of the international community and its members to support individuals and societies in their search for global assistance, including the provision of technical and legal assistance in preparing and submitting requests for assistance. Second, the obligation to consider a legitimate request for assistance and to give a timely response.¹³⁵ If a certain actor cannot provide assistance, it must forward the request further and make sure that assistance will be provided by other members of the international community.¹³⁶ Third, the

dens of social cooperation” from interactional interpersonal duties having no necessary links with social institutions).

133. See TAN, *supra* note 51, at 21–23 (“[A] theory of global *ethics* has an interactional focus while a theory of global *justice* has an institutional focus.”); see also RAWLS, *supra* note 48, at 98–99 (interpreting duties of mutual aid as interactional natural duties, which “hold between persons irrespective of their institutional relationships,” and contrasting them with institutional natural duty of justice requiring “to support and to comply with just institutions that exist and apply to us.”).

134. See Comm’n on Hum. Rts., Rep. of the Permanent Mission of the Netherlands to the United Nations Office at Geneva on its Forty-Third Session, Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, princ. 30, U.N. Doc. E/CN.4/1987/17, annex (Jan. 8, 1987) [hereinafter Limburg Principles] (determining the goal of international cooperation and assistance as establishing an international order within which human rights recognized in the CESCRC can be realized to the full extent); UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 2000, at 73 (2000) (stating that socio-economic rights represent “claims to a set of social arrangements—norms, institutions, laws, an enabling economic environment—that can best secure the enjoyment of these rights.”).

135. ETO CONSORTIUM, *supra* note 28, princ. 35.

136. See Alston, *supra* note 46, at 778 (arguing that a developing country failing to meet its obligations under the MDGs due to a lack of financial resources “would have a plausible claim against the wealthy countries as a group” and “each of the latter would at least have an obligation to ensure

obligation of the international community to provide assistance once all necessary requirements are present. In case of an emergency, global actors should immediately respond to the request for assistance and provide adequate support. Following that, the burdens of assistance should be fairly distributed among members of the global community and assistance costs should be compensated to the actors that have provided it.

Global institutional obligations to assist are individual and shared obligations of global actors to develop a global system of institutions indispensable for providing assistance in the realization of socio-economic rights universally. It is necessary to establish a global system of mechanisms to facilitate legitimate requests for assistance and timely responses on behalf of the international community, to fairly distribute the burdens of assistance among global actors, and to hold actors who ignore their global obligations accountable. Institutional obligations are not just of instrumental value to interactional obligations to assist. They are valuable *per se* as an essential part of obligations to create and maintain a just global order, to which individuals are entitled as members of humanity.¹³⁷ In this respect, institutions of global assistance constitute a crucial element of a just global order, the right to which is recognized by the UDHR.¹³⁸

The core components of global institutional obligations to assist are as follows. First, obligations to elaborate a normative legal framework regulating global obligations of multiple actors to assist in the realization of socio-economic rights. Second, obligations to create and maintain an institutional structure necessary for the implementation of global obligations to assist, including institutions for mobilizing resources and distributing them among those in need. Third, obligations to develop monitoring and accountability bodies, especially individual complaint mechanisms, at regional and international levels

that the assistance required is forthcoming” from one or group of countries, or a special fund).

137. See *supra* Section II.B.

138. See UDHR, *supra* note 32, art. 28 (enshrining the right to an “international order in which the rights and freedoms set forth in this Declaration can be fully realized.”).

for holding various actors responsible for breaches of their global obligations to assist.¹³⁹

ii. *International and Global Obligations*

Depending on the recipients of extraterritorial assistance, it is possible to differentiate between *global duties* to help individuals and groups in need, and *international duties* to assist states (or NSAs) bearing human rights obligations toward these individuals and groups.¹⁴⁰ Thus, *global assistance* (even if it is provided through states) is addressed to vulnerable individuals and communities. The actual recipient of *international assistance* is the state, and it is aimed at enabling states to fulfill their territorial human rights obligations. As demonstrated in Section II.A, contemporary international human rights law is state-centered and recognizes only obligations of international assistance. This Article argues for reconceptualizing *international assistance* and supplementing it with *global assistance*.¹⁴¹

iii. *Individual and Shared Obligations*

Global actors possess both *individual* and *shared obligations to assist* the world poor. Whereas individual interactional assistance is implemented through bilateral relations, shared interactional obligations to assist are realized through multilateral relations which involve special IGOs, NGOs, and foundations.¹⁴² A basis for individual human rights obligations to assist may be contracts comprising mutual commitments of assistance.¹⁴³ Global actors also possess individual and shared institutional obligations to create and maintain a just global structure indispensable for providing assistance. The fulfillment of shared global obligations to assist does not exempt

139. For an analysis of the institutionalization of global obligations to assist, see *infra* Part IV.

140. This classification should not be confused with the distinction between direct and indirect assistance, where individuals are major addressees of assistance.

141. See *infra* Sections III.B and IV.C.iv.

142. On forms of assistance, see *infra* Section IV.A.

143. One of the institutional solutions for implementing obligations of development assistance is a development compact. See Arjun Sengupta, *Aid and Development Policy in the 1990s*, 28 *ECON. & POL. WKLY.* 453, 458–59 (1993) (discussing development compacts in the context of institutionalizing development aid).

actors from their individual obligations and *vice versa*. Internationally recognized human rights also give rise to shared obligations of the international community to assist that require a well-functioning global institutional scheme for their implementation.

iv. *Conditional and Unconditional Obligations*

Experts often debate whether global obligations to assist are *conditional* or *unconditional*. Some believe that assistance depends on two conditions: first, that its recipients bear no responsibility for their severe socio-economic deprivation; and second, that they cannot help themselves.¹⁴⁴ These conditions need to be considered while taking into account both international and global assistance.

Supporters of the first condition proceed from the premise that all individuals have the “right and the duty to live a life of personal responsibility and self-determination.”¹⁴⁵ Consequently, global assistance is aimed at compensating individuals only for unchosen bad circumstance, not for their poor choices. This condition appears to be problematic. First of all, as shown in Section II.C.ii, even if individuals were responsible for their poverty, they still have the right to assistance. As bearers of human dignity and human rights, individuals enjoy a special inalienable moral and legal status. Assistance seeks to embody this fundamental entitlement. Every person should, therefore, be given a chance to improve the socio-economic conditions of their life, irrespective of their cause.¹⁴⁶ The idea

144. See Gosepath, *supra* note 9, at 272 (“There is, primarily, an obligation to aid the deprived if they bear no responsibility for their situation and if they cannot extricate themselves from their situation without external help or excessive personal sacrifices.”); TAN, *supra* note 51, at 70–75 (situating the first condition in a discussion of choice/circumstance-sensitive cosmopolitanism and noting that “the aim of global justice is not to compensate people for their bad choices but to mitigate the unfairness in global conditions under which choices are made”).

145. Gosepath, *supra* note 9, at 272; see Miller, *supra* note 9, at 453 (proceeding from the premise that individuals have a right to “live minimally decent lives”).

146. This principle underlies many national social security systems. See, e.g., CONSTITUTION FÉDÉRALE [CST] [CONSTITUTION], Apr. 18, 1999, RO 101, art. 12 (Switz.) (recognizing the right to assistance when in need that individuals unable to provide for themselves possess regardless of why they found themselves in that position); SOZIALGESETZBUCH [SGB] [SOCIAL CODE],

of human-centrism calls for elevating this principle to the global level. Additionally, as demonstrated earlier, equating individual responsibility for their own wrong-doing with collective responsibility for states' wrong policies is unfair and contradicts the very idea of human-centricity. Thus, the first condition is unjust and must be rejected. Severe human rights deprivation of those in poverty, regardless of its reason, is sufficient ground for invoking their right to assistance and claiming the fulfillment of corresponding global obligations to assist.

According to the second condition, individuals have a primary duty to help themselves. In other words, exercising their right to assistance depends on their inability to get out of poverty by themselves. That is why an obligation to assist those who can help themselves without undue serious sacrifices cannot be justified. Thus, the CESCR states that obligations to provide assistance arise “when individuals or a group are unable, for reasons beyond their control, to realize [the human] right themselves by the means at their disposal.”¹⁴⁷ This condition seems to be inherently met in situations of extreme poverty, which is characterized by the inability of the poor to escape poverty independently.¹⁴⁸

There is, however, a problem of applying this condition to the global order. State-centered international assistance is conditional on the inability of the state to fulfill socio-economic rights using the maximum of its available resources. At the same time, the principle capacity of the state to realize its obligations toward the local poor excludes it from being a recipient of international assistance. The idea of human-centrism implies that not states but individuals, as holders of socio-economic

Bk. I, § 9, <https://perma.cc/P7HF-V7PN> (Ger.) (similarly acknowledging the right to social help irrespective of the causes of poverty).

147. CESCR GC15, *supra* note 37, ¶ 25 (specifying obligations to provide assistance when individuals are unable to enjoy the right to water). *See, e.g.*, CESCR GC12, *supra* note 37, ¶ 15 (obligations to assist in the realization of the right to adequate food); CESCR GC14, *supra* note 37, ¶ 37 (obligations to assist when unable to enjoy the right to the highest attainable standard of health); Comm. on Econ., Soc. & Cultural Rts., General Comment 19 (Art. 9) ¶ 50, U.N. Doc. E/C.12/GC/19 (Feb. 4, 2008) [hereinafter CESCR GC19] (obligations to assist in the realization of the right to social security).

148. *See* POGGE, *supra* note 49, at 204 (arguing that radical inequality, along with extreme poverty, is “impervious: it is difficult or impossible for the worse-off substantially to improve their lot.”).

conomic rights, have the right to global assistance.¹⁴⁹ This condition should, therefore, apply individually and concern the inability of particular persons to assist themselves.

Global obligations to assist may, however, be conditional on an individuals' initial request for social support from their own state.¹⁵⁰ If the state is unable to provide this support or evades doing so, global assistance must be provided by the international community. In the event of an emergency, the requirement to initially apply for national assistance must be abolished, and parallel requests for state social support and global assistance must be allowed.

v. *Primary and Secondary Obligations*

International human rights law has established a two-level system of obligations to assist in the realization of socio-economic rights: the *primary national obligations of social support* to individuals in need and *secondary international obligations of assistance* to developing states.¹⁵¹ This means that the international community and its members are deemed responsible for assisting the state in the realization of its socio-economic rights obligations at the national level only if the state is unable to do this independently. Points (ii) and (iv) demonstrated that international assistance to states should be supplemented with global assistance to individuals, and the latter may be conditional on individuals' initial requests for social support from their own state. In this sense, interactional global obligations to assist are secondary, or subsidiary, to states' territorial obligations of social support.¹⁵²

149. See discussion *supra* Section II.B and *infra* Section III.B.

150. Conditionality of the right to assistance and corresponding global obligations to assist should not be confused with conditionality of assistance. The latter is discussed *infra* Sections IV.B.v and IV.C.v.

151. See ICESCR, *supra* note 35, arts. 2(1) & 11 (enshrining both obligations to provide domestic support and obligations to extraterritorially assist developing states in the realization of ICESCR rights, including the right to an adequate standard of living).

152. See, e.g., CESCR GC3, *supra* note 28, ¶¶ 10, 13, 14 (stating that every state has a primary "minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights," while the state's inability to meet its minimum core obligations gives rise to obligations of international assistance); CRC GC16, *supra* note 37, ¶ 42 (asserting that states are primarily responsible for respecting, protecting and fulfilling children's rights within their jurisdiction).

This conclusion relates, however, only to interactional obligations to assist. As human beings, individuals are entitled to enjoy full-fledged membership in humanity and have the right to a just global order in which their human rights may be realized. Corresponding global institutional obligations, including obligations to assist, should promote the embodiment of the fundamental entitlement. A just global institutional order should enable individuals to enjoy their socio-economic rights in cases when their state is incapable, or unwilling, to guarantee them. That is why global obligations to create and maintain a just institutional system indispensable for providing adequate global assistance are *primary* obligations of members of the international community.

vi. *Consequent and Simultaneous Obligations*

Extraterritorial obligations to assist are often interpreted as *consequent* obligations, i.e., obligations that should be realized only after the territorial obligations of the state are fulfilled. This Article demonstrates that *global obligations to assist run simultaneously* with domestic obligations. Institutional obligations to assist are always simultaneous, that is, they should be implemented in parallel with territorial institutional obligations. Territorial and extraterritorial interactional obligations to assist are also simultaneous obligations: states are not exempt from obligations to provide extraterritorial assistance because their domestic obligations of social support are not fully realized.¹⁵³ The CESCR shares this vision, since it requires states to provide international assistance even if they do not have sufficient resources to fulfill all of their territorial obligations.¹⁵⁴

vii. *Relational and Distributive Obligations*

It is necessary to distinguish between *global obligations of relational justice* that require treating and regarding individuals

153. See discussion *infra* Section III.D.

154. See Comm. on Econ., Soc. & Cultural Rts., Consideration of Reports by States Parties Under Articles 16 and 17 of the Covenant, ¶ 10, U.N. Doc. E/C.12/ESP/CO/5 (June 6, 2012) (recommending that Spain “redouble its efforts to increase official development assistance to at least 0.7 per cent of GDP, in line with the goals assumed at the international level” despite austerity measures adopted by the state).

as equals, i.e., with equal concern and respect regardless of their place of origin, citizenship, or social status, and *global obligations of distributive justice* that call for a fair allocation of certain social goods or resources indispensable for leading a decent life.¹⁵⁵ As obligations of conduct, global obligations to assist are instrumental for the realization of both relational and distributive justice: efficient assistance enables individuals and societies to be full-fledged members in the global community and ensures distributive fairness between and within societies, while providing support to those in need.

Based on this analysis, it is possible to conclude that individual and shared global obligations to assist embrace both secondary interactional obligations of assistance and primary institutional obligations to create and maintain a global scheme indispensable for promoting both relational and distributive justice. Global obligations to assist run simultaneously with territorial obligations. Duties of international assistance should be supplemented with duties of global assistance that are conditional on individuals' inability to exercise socio-economic rights independently and to obtain their state's support. Seeking help from their own state should precede requesting global assistance, aside from cases of emergency assistance, when a parallel request is possible. If individuals cannot get support from their state, they are entitled to assistance from the international community.

B. *Right-Holders and a Legitimate Request for Assistance*

The right to global assistance implies the right to seek this assistance. Individuals should, therefore, be able to initiate—directly or through their representatives (states, IGOs, and NGOs)—a request for global assistance. In other words, they should be recognized as independent subjects in diagonal extraterritorial relations between them and (members of) the international community. In this context, states and other actors may act solely as agents of individuals rather than sovereign claimants, recipients, or administrators of assistance.

Who has the right to seek assistance, according to international human rights law? Contemporary extraterritorial assis-

¹⁵⁵ For more details on this classification, see Pribytkova, *supra* note 61, at 441–48.

tance is state-centered, i.e., only states are recognized as addressees of assistance and subjects of a legitimate request for international assistance.¹⁵⁶ Human rights law tends to use traditional horizontal and vertical frameworks to regulate extraterritorial legal relations of assistance. International aid, including the ODA provided by the Organization for Economic Co-operation and Development (OECD) donor countries, is directed not to poor individuals and communities in order to ensure their access to objects of basic socio-economic rights, but to states (horizontal relations) in order to enable the latter to realize their territorial obligations toward their residents (vertical relations). In case states demonstrate their inability to realize their socio-economic rights obligations to the full extent, they are entitled to seek international assistance.¹⁵⁷

This is normatively wrong since, as this Article argues, the actual holders of the right to assistance are individuals. In addition, the state-centered character of assistance raises problems in finding ways to help people living in countries where governments are corrupt, often change, or have priorities other than ensuring socio-economic rights. State abuses of its representational functions and misuses of funds directed to social assistance are common and quite well-known.¹⁵⁸ There are numerous examples of assistance being used against the poorest and most vulnerable individuals and violating their human rights, which does not solve, but only exacerbates the problems of global poverty and inequality.¹⁵⁹

156. See, e.g., Dann, *supra* note 7, at 381, 394–401 (determining “development aid law as the legal regime regulating the transfer of official development assistance” and focusing only on governmental recipients of assistance).

157. See CESCR GC19, *supra* note 147, ¶ 41 (commenting that, if necessary, states “should avail themselves of international cooperation and technical assistance”). The Maastricht Principles also recognize states, not individuals, as subjects of a legitimate request for international assistance. ETO CONSORTIUM, *supra* note 28, princs. 33, 34 & 35.

158. See Organization for Economic Co-operation and Development [OECD], *Paris Declaration on Aid Effectiveness*, ¶ 4(v) (2005) [hereinafter *Paris Declaration*] (stating that corruption and lack of transparency are challenges that impede efficient development assistance and require concrete and effective actions); Moyó, *supra* note 10, at 48–57 (discussing the problem of providing development aid to corrupt governments and suggesting that aid generally contributes to corruption).

159. See *infra* Section IV.B.

Citizens of developing countries, many of which are undemocratic, cannot effectively control their government's administration and the distribution of funds provided through international assistance. Instead of solving social problems, corrupt governments push their people into multimillion debts, which successor governments are compelled to repay.¹⁶⁰ In democracies, the most vulnerable, socially excluded, and marginalized poor individuals often do not enjoy access to important decision-making processes concerning the distribution of international assistance. Therefore, state-centered international assistance often does not reach its fundamental goals.

Since individuals are unable to apply for public international assistance, the only means available to them is private assistance provided by NGOs and foundations, which is insufficient, usually short-term, and not always effective.¹⁶¹ In addition, international law allows only developing states and states in need to make a request for assistance.¹⁶² This restriction does not allow poor individuals from developed countries to count on the assistance of the international community, although, at present, most of the poor live in middle-income countries.¹⁶³

Overcoming the state-centrism of international assistance as well as the realization of individuals' right to seek assistance require serious institutional transformations, taking into account the fact that currently, approximately 800 million people are living in extreme poverty. Two measures are necessary in this respect. First, states should be recognized as bearers of obligations to facilitate their people's right to seek international assistance rather than as the holders of the right.¹⁶⁴ En-

160. See POGGE, *supra* note 77, at 49 (noting that successor governments "are compelled to pay the debts of their ever so awful predecessors" due to fear of punishment from banks and governments of other states).

161. See *infra* Sections IV.B.vi-vii.

162. See VANDENBOGAERDE, *supra* note 7, at 66-67 (contrasting CESCRC with U.N. CRC, with the latter urging even developed states in need to seek international assistance).

163. Approximately 60% of the extreme poor live today in middle-income states. MANUEL ET AL., *supra* note 2, at 42; Myles Wickstead, *The Future of Aid and Beyond*, in THE DONORS' DILEMMA, *supra* note 13, at ch. 2 ("[T]he majority of poor people live in middle income countries.").

164. See SALOMON, *supra* note 8, at 114-21 (developing this argument with respect to the right to development: "While individuals remain the rights-holders and intended beneficiaries of the right to development, in its exter-

sureing individuals' participation throughout the process of decision-making regarding international assistance given to their states is necessary. Control over a government's administration of international assistance is also a significant means for enhancing individuals' general political control over their state.¹⁶⁵

Since an initial request for social support of their home state is a precondition for the realization of the right to international assistance, the inability of a certain state to provide this support promptly and in full should give rise to the obligation of the state to seek international assistance, in accordance with the ICESCR.¹⁶⁶ In the role of a facilitator of the right to international assistance, the state would *per se* "redirect" a request of its residents for social support to the international level if it is not able to satisfy it. Though international human rights law has not yet acknowledged this obligation, the CESCR often encourages states to seek international assistance.¹⁶⁷ The recognition of these obligations would require

nal dimension it is a right claimed by the state on behalf of the people; states acting within the existing inter-state system are the entity through which the international component of the right is asserted. The role of developing states in seeking to invoke the right to development of their people internationally does not, however, render the right to development a right of states . . .").

165. For an analysis of how the idea that the realization of socio-economic rights promotes the enjoyment of civil and political rights in developing countries, see, e.g., Ioana Cismas, *The Intersection of Economic, Social, and Cultural Rights and Civil and Political Rights*, in *ECONOMIC, SOCIAL, AND CULTURAL RIGHTS IN INTERNATIONAL LAW* 448 (Eibe Riedel et al. eds., 2014) and Phillip Alston (Special Rapporteur on Extreme Poverty and Human Rights), *Rep. on the Enjoyment of Civil and Political Rights by Persons Living in Poverty*, U.N. Doc. A/72/502 (Oct. 4, 2017).

166. See ICESCR, *supra* note 35, arts. 2(1) & 11 (recognizing states' obligations to fully realize ICESCR rights, including the right to an adequate standard of living, "individually and through international assistance and co-operation"). In this vein, the Maastricht Principles insist on the recognition of the obligations of states to seek international assistance. ETO CONSORTIUM, *supra* note 28, princ. 34.

167. See, e.g., Comm. on Econ., Soc. & Cultural Rts., Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant, Concluding observations of the Committee on Economic, Social and Cultural Rights: Yemen ¶ 4, U.N. Doc. E/C.12/YEM/CO/2 (June 22, 2011) (encouraging Yemen to "ensure the widest possible enjoyment" of socio-economic rights, especially their minimum essential levels, including by resorting to international cooperation and assistance); Comm. on Econ., Soc. &

the creation of mechanisms that allow individuals to claim the implementation of the obligation to seek international assistance by their home state and to call the latter to account for its failure to fulfill the obligation.

A second significant measure would be developing the existing, and elaborating new, private and public channels of direct global assistance to poor individuals and their democratically representative communities as well as coordinating the efforts of multiple actors at international, regional, and local levels.¹⁶⁸ Appropriate non-state, non-bureaucratic, and inclusive mechanisms are necessary to enable individuals and communities to submit a request for assistance at various levels. In addition, it is important to recognize the right of NSAs (primarily NGOs and human rights activists) to request assistance on behalf of poor individuals and communities.

The idea of direct assistance to individuals necessarily raises the question of the role of the state. Some commentators and state officials consider the participation of a home state government—through its request for assistance or at least its permission to provide it—as a necessary precondition for extraterritorial assistance. They assert that direct assistance to individuals, without their state’s consent, is a violation of the sovereignty of the state.¹⁶⁹ This position cannot be accepted

Cultural Rts., Concluding Observations on the Initial Report of Guinea, ¶ 13, U.N. Doc. E/C.12/GIN/CO/1 (Mar. 30, 2020) (recommending Guinea to mobilize its resources to implement the Covenant rights and seek international assistance and cooperation where necessary).

168. Importantly, the U.N. Committee on the Rights of Persons with Disabilities (U.N. CRPD) urges states to ensure direct access of persons with disabilities and NGOs representing them to foreign development aid, i.e., promote their right to seek and receive (independently from their state) assistance from “international sources, including private individuals and companies, civil society organizations, States parties and international organizations.” Comm. on the Rts. of Persons with Disabilities, General Comment 7 (Arts. 4(3) & 33(3)) ¶¶ 64, 94(b), (p), U.N. Doc. CRPD/C/GC/7 (Nov. 9, 2018). This may be interpreted as an expression of the awareness that state-centered international assistance is insufficient and the recognition of the right of disadvantaged individuals and social groups to direct global assistance. See also *infra* Section IV.C.iv.

169. Ashfaq Khalfan, *Division of Responsibility Amongst States*, in GLOBAL JUSTICE, STATE DUTIES: THE EXTRATERRITORIAL SCOPE OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS IN INTERNATIONAL LAW 299, 319 (Malcolm Langford et al. eds., 2013); see VANDENBOGAERDE, *supra* note 7 at 251 & n.869 (“Without the request [for assistance]—and thus the consent or acquiescence of the do-

for several reasons. First, the real carriers of sovereignty are not governments, but people.¹⁷⁰ The UDHR states that “the will of the people shall be the basis of the authority of government.”¹⁷¹ Governments representing their people must act in their people’s interests, not their own. In this respect, global assistance, which is aimed at high-priority interests of people protected by human rights, does not violate their sovereignty.¹⁷²

Second, according to Raz’s persuasive argument, human rights are sufficient grounds for limiting sovereignty delegated by people to their state’s government, i.e., taking international action against the state that fails to realize its territorial human rights obligations.¹⁷³ Serious deprivation of socio-economic rights justifies, therefore, state sovereignty-limiting programs

mestic State—the foreign State would arguably be in violation of the non-intervention principle.”).

170. On popular sovereignty, see JEAN-JACQUES ROUSSEAU, *THE SOCIAL CONTRACT AND THE FIRST AND SECOND DISCOURSES* 149, 170–76 (Susan Dunn ed. and trans., 2002) (1762) (grounding a discussion of sovereignty in the “general will” of the people).

171. UDHR, *supra* note 32, art. 21(3).

172. See ANNE PETERS, *Membership in the Global Constitutional Community*, in JAN KLABBERS ET AL., *THE CONSTITUTIONALIZATION OF INTERNATIONAL LAW* 153, 155 (2009) (asserting that “the ultimate normative source of international law is—from a constitutionalist perspective—humanity, not sovereignty”); see also Louis Henkin, *Human Rights and State “Sovereignty,”* 25 GA. J. INT’L & COMPAR. L. 31, 43–44 (1996) (“Human rights have revolutionized the international system and international law. The law now reflects human values in addition to state values, or allows human values to modify state values.”). For an interpretation of sovereignty as a fiduciary relationship, see EVAN J. CRIDDLE & EVAN FOX-DECENT, *FIDUCIARIES OF HUMANITY: HOW INTERNATIONAL LAW CONSTITUTES AUTHORITY* 1–43 (2016); see also Eyal Benvenisti, *Sovereigns as Trustees of Humanity: On the Accountability of States to Foreign Stakeholders*, 107 AM. J. INT’L L. 295, 313 (2013) (defending the concept of trustee sovereignty and maintaining that this concept respects and enhances the right to individual and collective self-determination, which sets “limitations on the exclusive rights of sovereign peoples. States should therefore render an account to foreign interests and allow foreign participation in their decision-making processes in ways that effectively remedy the democratic deficits that inhere in the current state system.”).

173. Joseph Raz, *Human Rights Without Foundations*, 9–10 (Oxford Legal Studies Res. Paper Series, Working Paper No. 14, 2007) (asserting that states lose their immunity from international interference not only in case of their violation of human rights, but also in case of their failure to perform their duties to respect and promote human rights); Raz, *supra* note 70, at 42.

of direct global assistance.¹⁷⁴ Additionally, individuals' fundamental entitlements to basic equality and membership in humanity, which underlie the right to global assistance,¹⁷⁵ serve as a legitimate bases for restricting the sovereignty of the government. Being members of both their state and of human society, individuals possess the rights to social support and global assistance. Their inability to enjoy the right to social support from their state enables them to claim the realization of their right to global assistance.

The recognition of individuals as major holders of the right to global assistance also implies their ability to control the behavior of obliged global agents and to make claims in cases of their breaches of obligations to assist, such as the untimely and inappropriate consideration of the request for assistance, unreasonable denial of assistance, provision of inadequate, inefficient or human rights-violating assistance.

Thus, the recognition of individuals as holders of the right to extraterritorial assistance also presupposes their right to formulate a legitimate request for assistance. The current practices of state-centered international assistance must, therefore, be changed in light of the individuals' right to assistance and be supplemented with instruments of human-centered global assistance. The next Section continues the discussion of measures to overcome state-centrism of contemporary assistance while examining the bearers of global obligations to assist.

C. *Duty-Bearers of Obligations to Assist*

In recent years, the role of global actors in shaping the world order and influencing the enjoyment of human rights universally has grown significantly. Multiple IGOs and NSAs have stepped forward in framing today's global political discourse, norms, institutions, and practices. The contemporary accountability regime for these entities does not, however, correspond to the capacities, freedoms, and power they enjoy. Despite the fact that core international human rights instruments recognize that not only states, but also other entities, i.e., individuals, social groups, IGOs, and NSAs, are bound by obliga-

174. See BEITZ, *supra* note 52, at 169.

175. See *infra* Section II.B.

tions corresponding to human rights,¹⁷⁶ there are still no binding international law instruments regulating direct human rights obligations of NSAs and IGOs. The latter can rarely be held responsible for their human rights violations through existing state-centered accountability mechanisms. IGOs and NSAs are often considered to be bound only by negative duties to respect human rights and by limited positive responsibilities to protect. Obligations to fulfill socio-economic rights, especially obligations to assist in their realization, are, however, seen to be beyond their concern.

The accountability regime of IGOs is the subject of lively discussions. Although it is frequently believed to be exhausted

176. See *UDHR*, *supra* note 32, pmb1 (acknowledging that “every individual and that every organ of society” should promote “universal and effective recognition and observance” of human rights); *Vienna Declaration*, *supra* note 106, ¶ 13 (“There is a need for States and international organizations, in cooperation with non-governmental organizations, to create favourable conditions at the national, regional and international levels to ensure the full and effective enjoyment of human rights.”); Declaration on the Right and Responsibility, *supra* note 66, art. 18(2)–(3) (stressing an important role, and responsibility, of individuals, groups, and NGOs in contributing to the promotion of human rights); CRPD, *supra* note 34, art. 32(1) (recognizing the significance of international cooperation among states, international and regional organizations, and civil society for the realization of the rights of persons with disabilities). Although only states are bearers of obligations to cooperate and assist according to the ICESCR, the CESCR extends these obligations to other entities, both IGOs and NSAs. See, e.g., CESCR GC12, *supra* note 37, ¶¶ 36, 38, 40 (highlighting the role of states and several specific international organizations in realizing the right to adequate food); CESCR GC14, *supra* note 37, ¶¶ 45, 63 (demanding that states, U.N. agencies, especially WHO and UNICEF, and “other actors in a position to assist” cooperate and provide international assistance regarding the realization of the right to health); CESCR GC15, *supra* note 37, ¶ 38 (explaining that obligations of international assistance and cooperation with respect to the right to water bind both states and non-state actors in position to assist); Comm. on Econ., Soc. & Cultural Rts., General Comment 17 (Art. 15(1)(c)) ¶ 57, U.N. Doc. E/C.12/GC/17 (Jan. 12, 2006) (requiring U.N. organs and agencies to contribute, within their competence, to the realization of the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author); Comm. on Econ., Soc. & Cultural Rts., General Comment 18 (Art. 6) ¶¶ 52–54, U.N. Doc. E/C.12/GC/18 (Feb. 6, 2006) (stating that “all members of society” have obligations regarding the realization of the right to work); CESCR GC19, *supra* note 147, ¶ 61 (commenting that it is incumbent on both states and “other actors in a position to assist” to provide international assistance in implementing the right to social security).

by negative obligations,¹⁷⁷ some experts assert that IGOs should also bear positive duties, including obligations to assist.¹⁷⁸ Since IGOs consist of member-states and are endowed with a portion of their power and authority, they should also be bound by states' human rights obligations. This logic guides the Maastricht Principles that claim their applicability to both states and IGOs and therefore imply that IGOs, as states, possess international obligations to assist.¹⁷⁹

Among the most debatable is currently the issue of whether NSAs, especially TNCs, are connected merely by duties of solidarity or also by human rights obligations to assist. Though NSAs include many other types of actors (religious groups, media organizations, paramilitary and armed resistance groups), the objectives and scope of this Article limit its focus on TNCs and NGOs.

Opposite views regarding the obligations of TNCs are embedded in two important international soft law instruments. The U.N. Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (U.N. Norms) state that TNCs, "as organs of society," have both negative and positive obligations.¹⁸⁰ The

177. See *Tilburg Guiding Principles on the World Bank, IMF and Human Rights*, in *WORLD BANK, IMF AND HUMAN RIGHTS* 247, 248 (Willem van Genugten et al. eds., 2003) (expressing, in princ. 5, drafters' belief that Bretton Woods Institutions have only negative obligations with respect to human rights); see also SIGRUN I. SKOGLY, *THE HUMAN RIGHTS OBLIGATIONS OF THE WORLD BANK AND THE INTERNATIONAL MONETARY FUND* 193 (2001) (maintaining that the World Bank and IMF hold obligations to respect human rights; only in limited circumstances they might be under obligations to protect (i.e. ensuring that their sub-contractors do not violate human rights); and "the obligation to fulfil human rights also lies beyond the legal obligations of the two institutions.").

178. See CLAPHAM, *supra* note 38, at 151 (arguing that the international financial institutions "have obligations, not only to respect human rights, but also to protect and even fulfil human rights in appropriate circumstances."); VANDENBOGAERDE, *supra* note 7, at 292 (asserting that positive obligations, including obligations to assist, can be attributed to IGOs when they have "legal capacity" or "competences").

179. See ETO CONSORTIUM, *supra* note 28, princ. 16 ("The present Principles apply to States without excluding their applicability to the human rights obligations of international organisations under, *inter alia*, general international law and international agreements to which they are parties.").

180. Comm'n on Human Rts., Rep. of the Sub-Comm'n on the Promotion and Prot. of Hum. Rts. on Its Fifty-Fifth Session, art. 1, U.N. Doc. E/CN.4/

U.N. Norms, however, did not receive wide recognition, were opposed by many states, corporations, and scholars,¹⁸¹ and were replaced by a less demanding and more convenient document for dominant global players, the U.N. Guiding Principles on Business and Human Rights (U.N. Guiding Principles).¹⁸² According to this instrument, TNCs bear solely negative obligations to respect human rights, while all positive obligations should be implemented by the state.¹⁸³ The U.N. Guiding Principles' extremely minimalistic interpretation of obligations of TNCs, including their failure to recognize TNCs' obligations to assist in the realization of socio-economic rights, are rightly and powerfully criticized by researchers.¹⁸⁴

Sub.2/2003/12/Rev.2 (2003) [hereinafter U.N. Norms] (Obligations “to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognized in international as well as national law, including the rights and interests of indigenous peoples and other vulnerable groups.” (emphasis added)).

181. For a comparative analysis of the U.N. Norms and the U.N. Guiding Principles, see Wouter Vandenhoe, *Emerging Normative Frameworks on Transnational Human Rights Obligations* 10–16 (European Univ. Inst., Robert Schuman Ctr. for Advanced Stud., Working Paper 2012/17, 2012), <https://perma.cc/BGV9-592Y> (last visited Sept. 21, 2021).

182. John Ruggie, who was the U.N. Secretary-General's Special Representative for Business and Human Rights responsible for drafting the U.N. Guiding Principles, claimed that TNCs' “responsibilities cannot and should not simply mirror the duties of States.” John Ruggie (Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises), *Protect, Respect and Remedy: A Framework for Business and Human Rights*, ¶ 53, U.N. Doc A/HRC/8/5 (Apr. 7, 2008); see also *Promotion and Protection of Human Rights: Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, ¶ 66, U.N. Doc E/CN.4/2006/97 (Feb. 22, 2006) (“By their very nature, therefore, corporations do not have a general role in relation to human rights as do States; they have a specialized one.”).

183. *U.N. Guiding Principles*, *supra* note 124, princ. 13 (outlining obligations of businesses to respect human rights). For states' obligations, see *id.*, prins. 1-10.

184. See, e.g., Bilchitz, *supra* note 7, at 4–7 (analyzing criticisms leveled by others, including John Ruggie, against corporations' positive human rights obligations); see also FLORIAN WETTSTEIN, *MULTINATIONAL CORPORATIONS AND GLOBAL JUSTICE: HUMAN RIGHTS OBLIGATIONS OF A QUASI-GOVERNMENTAL INSTITUTION* 261–347 (2009) (examining and criticizing the limitations of approaches focusing exclusively on corporations' negative obligations); Florian Wettstein, *CSR and the Debate on Business and Human Rights: Bridging the Great Divide*, 22 *BUS. ETHICS Q.* 739, 741–59 (2012) (discussing the shortcomings of Ruggie's “human rights minimalism”).

These debates over whether TNCs bear global obligations to assist are particularly relevant in the current process of elaborating a legally binding international instrument on business enterprises and human rights.¹⁸⁵ One may bring several arguments in support of the position that TNCs bear global obligations to assist. First, as other social entities or “organs of society,” TNCs share global social obligations. Legal scholar, David Bilchitz, correctly points to the dual nature of corporations that simultaneously embody individual and societal goals which should be brought to harmony.¹⁸⁶ Bringing TNCs’ obligations in line with their freedoms and power and strengthening their social responsibility does not, however, imply expanding their rights or privatization.¹⁸⁷ What is needed is a rethinking of the social function of TNCs based on an understanding that their resources and capacities have come from society and they must, therefore, fulfill their social mission.¹⁸⁸

Second, thanks to resources at their disposal, corporations have the greatest potential to assist those in poverty. To illustrate, out of the world’s richest 100 entities in 2018, only 31 were countries, and 69 were TNCs.¹⁸⁹ Moreover, according

185. See *Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights*, U.N. HUM. RTS. COUNCIL, <https://perma.cc/RN57-G925> (last visited Sept. 21, 2021) (describing the mandate and work of the Working Group regarding the creation of the international legally binding instrument).

186. Bilchitz defines the corporation as “a complex vehicle,” i.e., both “an enabling structure for the commercial interests of individuals” and a “complex social actor with both positive and negative obligations to realize the rights of individuals in the society in which it operates.” Bilchitz, *supra* note 7, at 26.

187. For a critique of privatization, see Philip Alston (Special Rapporteur on Extreme Poverty and Human Rights), *Rep. on Privatization and Human Rights*, U.N. Doc. A/73/396 (Sept. 26, 2018); Philip Alston, *Rep. on the Parlous State of Poverty Eradication*, ¶¶ 49, 62, 84, U.N. Doc. A/HRC/44/40 (Jul. 2, 2020).

188. For an analysis of TNCs’ positive obligations, see *generally* HUMAN RIGHTS OBLIGATIONS OF BUSINESS: BEYOND THE CORPORATE RESPONSIBILITY TO RESPECT? (Surya Deva & David Bilchitz eds., 2013) and BUILDING A TREATY ON BUSINESS AND HUMAN RIGHTS 1–24, 185–215 (Surya Deva & David Bilchitz eds., 2017).

189. *69 of the Richest 100 Entities on the Planet Are Corporations, Not Governments, Figures Show*, GLOB. JUST. NOW (Oct. 17, 2018), <https://perma.cc/7R2N-TFD4> (last visited Sept. 21, 2021). Many of the largest TNCs have been prospering during the pandemic and have significant capacities to help the most vulnerable individuals and social groups. *Prosper-*

to their specialization, TNCs are capable of ensuring access to objects of basic socio-economic rights. For instance, food and beverage, pharmaceutical, publishing, and IT companies are able to assist the poor in receiving access to food, water, medication, educational materials, and new technologies. In addition, thanks to their significant role in global decision-making, norm-setting, and institution-designing processes,¹⁹⁰ TNCs can contribute to creating and maintaining a just international order indispensable for the implementation of global obligations to assist. Therefore, corporations should be among duty-bearers sharing global obligations to assist.¹⁹¹

In a human-centered and rights-based global order, individuals should play a key role not only as right-holders but also as duty-bearers. Both the UDHR and the DRD recognize

ing in the Pandemic: Winners and Losers of the Covid Era, FIN. TIMES (Jan. 3, 2022), <https://www.ft.com/content/8075a9c5-3c43-48a5-b507-5b8f5904f443> (last visited Feb. 2, 2022); see Blake Morgan, *50 Ways Companies Are Giving Back During The Coronavirus Pandemic*, FORBES (Mar. 17, 2020, 2:58 PM), <https://www.forbes.com/sites/blakemorgan/2020/03/17/50-ways-companies-are-giving-back-during-the-corona-pandemic/> (last visited Sept. 21, 2021) (listing ways in which companies are providing for people during the pandemic).

190. See generally STEPHEN TULLY, *CORPORATIONS AND INTERNATIONAL LAW-MAKING* (2007) (discussing corporations' involvement in global governance and contribution to the creation and realization of international law norms, as well as to dispute settlement); NON-STATE ACTORS AS STANDARD SETTERS (Anne Peters et al. eds., 2009) (illustrating, based on numerous examples from various contexts, non-state actors' high-degree of integration into global normative and institutional reforms and examining whether they are legitimate, efficient, and accountable in this role); see also WETTSTEIN, *supra* note 184, at 167–258 (analyzing TNCs' power to influence global economic, political, and social structures, set norms, and govern people).

191. The Third Revised Draft of the *Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises* incorporates only negative obligations of TNCs to respect human rights. See OPEN-ENDED INTERGOVERNMENTAL WORKING GRP., HUM. RTS. COUNCIL, *LEGALLY BINDING INSTRUMENT TO REGULATE, IN INTERNATIONAL HUMAN RIGHTS LAW, THE ACTIVITIES OF TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES* pmbl. (Aug. 17, 2021), <https://perma.cc/EKB7-ED5D> (last visited Sept. 21, 2021). The legal recognition of TNCs' obligations to assist in the realization of socio-economic rights remains, therefore, a challenge for the future generations of human rights lawyers. Simultaneously, TNCs are bound by remedial obligations to compensate for harm caused by their activities, see *supra* Section II.D, a more detailed analysis of which is beyond the scope of this Article.

human rights obligations of individuals.¹⁹² As bearers of obligations to assist, individuals may use two major mediums: their states (for public assistance) and global civil society, in particular, NGOs and foundations (for private assistance). Since Section III.B discussed the first medium, this Section now turns to the second.

An emerging global civil society is a very powerful actor and an important channel through which human rights and obligations of individuals are realized. Private assistance plays a significant role in the eradication of global poverty. There are approximately ten million NGOs worldwide that involve a quarter of the world's population as volunteers and gain donations from one-third of them.¹⁹³ Providing various types of assistance to the most vulnerable individuals and societies is the fundamental goal of the majority of NGOs. Therefore, their obligations of, and significant contribution to, global assistance are beyond doubt. The most problematic issues in the context of NGOs' obligations are ways to guarantee effective, sufficient, and empowering assistance that will be analyzed in Sections IV.B and IV.C.

Hence, all global actors (states, IGOs, NSAs, and individuals) should be recognized as bearers of shared global obligations to assist in the realization of socio-economic rights. It is important to stress that obligations to contribute to the realization of these shared global obligations do not mean that all actors have individual duties to assist all those asking for help. The realization of shared obligations requires mechanisms for fair distribution and specification of individual obligations to assist.

D. *Scope of Global Obligations to Assist*

Specifying the scope of global obligations to assist is a difficult task. The scope of international obligations to assist is usually determined with references to "position to assist," "maximum of available resources," "progressive realization," and "minimum core obligations" clauses. This Section discusses the relevance and adequacy of these standards.

192. UDHR, *supra* note 32, pmbl.; DRD, *supra* note 32, arts. 1 & 2.

193. Prahalathan KK, *25 Facts and Stats about NGOs Worldwide*, VOLUNTEERS.ORG (June 15, 2016), <https://perma.cc/HZ3Y-PNQD> (last visited Sept. 21, 2021).

The “*position to assist*” clause links human rights obligations with various actors’ capabilities. According to the CESCR, obligations to assist in the realization of socio-economic rights are “particularly incumbent” on actors that are in a “position to assist.”¹⁹⁴ In this sense, only developed states, which are in a “position to assist” and united in the OECD donor’s club, bear international obligations to help developing countries.¹⁹⁵ The role of the “position to assist” clause is in the spotlight of contemporary discussions among both researchers and practitioners. A central question is whether it serves as a condition for allocating obligations to assist to particular global actors or a criterion to determine the scope of these obligations. Let us briefly discuss these options.

The CESCR defines a “position to assist” as a condition for assigning international obligations of assistance to global actors.¹⁹⁶ Some scholars share the idea that various actors’ obligations to assist depend on their capacities.¹⁹⁷ This Article op-

194. See, e.g., CESCR GC19, *supra* note 147, ¶ 61 (emphasizing that it is incumbent on actors, “in a position to assist, to provide international assistance and cooperation”); CESCR GC3, *supra* note 28, ¶ 14 (similarly highlighting that international cooperation and assistance are legal obligations of states, particularly those in a position to assist); CESCR GC14, *supra* note 37, ¶ 45 (explaining that both states and “other actors in a position to assist” should provide assistance aimed at enabling developing countries to fulfil their CESCR obligations); CESCR GC15, *supra* note 37, ¶ 34 (not using “position to assist” terminology, but suggesting that “depending on the availability of resources, States should facilitate realization of the right to water in other countries” and that developed states “have a special responsibility and interest” to provide assistance); CESCR GC17, *supra* note 176, ¶ 37 (recalling that all states have obligations to cooperate, but especially states in a position to assist).

195. CESCR Statement (2001), *supra* note 107, ¶ 16 (commenting that international obligations to assist in the realization of minimum core obligations are only applicable to developed nations “in a position to assist”). The Maastricht Principles connect obligations to provide international assistance with actors’ “position to do so.” See ETO CONSORTIUM, *supra* note 28, princ. 33. This instrument also links states’ extraterritorial obligations to their “position to regulate,” “position to exercise decisive influence” or position “to take measures to realize economic, social, and cultural rights extraterritorially.” *Id.*, princs. 9, 24 & 26.

196. De Schutter et al., *supra* note 34, at 1152–53.

197. See, e.g., O’NEILL, *supra* note 9, at 169 (“[L]ack of capability always counts against an ascription of obligations, except where the lack is chosen.”); see also *id.* at 169–70, (arguing that weak states and IGOs should not be assigned obligations that exceed their capabilities and should not be

poses this position. As shown, all global actors as “social entities” should contribute to the global social mission. In this sense, the actors’ agency in the global community is the ground for assigning them individual and shared global obligations to assist. Whether the actors’ resources are large or small does not affect the presence or absence of their human rights obligations.¹⁹⁸ Hence, the “position to assist” clause in no way exempts actors without significant resources from their global obligations to assist.¹⁹⁹

The amount of resources at the disposal of global actors may influence the scope of assistance they are actually able to provide. But it does not change the normative scope of their global obligations to assist. Members of the international community, lacking sufficient resources, are obliged to cooperate in order to find and multiply available means and resources. Additionally, even in the absence of financial resources, global actors have an opportunity to provide other forms of assistance. Taking into account the range of forms in which obligations to assist may be provided,²⁰⁰ there is no country (even among the poorest) that is absolutely incapable of contributing to the realization of shared obligations to assist.

blamed for their non-fulfillment); Khalfan, *supra* note 169, at 331 (asserting that extraterritorial obligations to fulfil are limited by whether a state is in a position to assist); Wouter Vandenhole & Wolfgang Benedek, *Extraterritorial Human Rights Obligations and the North-South Divide*, in GLOBAL JUSTICE, STATE DUTIES: THE EXTRATERRITORIAL SCOPE OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS IN INTERNATIONAL LAW 332, 338–39 (Malcolm Langford et al. eds., 2013) (observing that extraterritorial obligations to fulfil are not immediate but “qualified by time and resources”); Miller, *supra* note 9, at 460–62 (weighing the advantages and disadvantages of the principle of capacity as a justificatory basis for obligations to assist). Arne Vandebogaerde argues that actual capacity is a foundation for attributing remedial responsibilities, but not global obligations. VANDENBOGAERDE, *supra* note 7, at 218–19, 296.

198. See also Limburg Principles, *supra* note 134, princ. 23 (“The obligation of progressive achievement exists independently of the increase in resources; it requires effective use of resources available.”); Arjun K. Sengupta (Independent Expert on the Right to Development), *Study on the Current State of Progress in the Implementation of the Right to Development*, ¶ 25, U.N. Doc. E/CN.4/1999/WG.18/2 (July 27, 1999) (stating that the existence of human rights “should not depend on the methods of realizing them”; instead, human rights should “guide the determination of methods of their realization,” including appropriate allocation of limited resources).

199. See also *supra* Section III.A.vi.

200. See *supra* Section II.A and *infra* Section IV.A.

Perhaps the most serious drawback of the “position to assist” clause is that it does not take into account the rights of developing societies to take part in and to contribute to the development²⁰¹ and promotion of socio-economic rights worldwide. While stressing the international obligations of developed states, the “position to assist” clause only deepens the gap between powerful and rich countries, imposing a global order on other parts of the world,²⁰² on the one hand, and poor and weak societies that have no influence whatsoever and are not responsible for essential features of the global order, on the other hand.²⁰³

For these reasons, the “position to assist” clause is inappropriate in these two roles, as a condition for allocating global obligations of assistance to particular global actors and as a criterion for determining their scope.

The concept of “*maximum available resources*” used in the ICESCR is not adequately specified, especially in relation to obligations to assist.²⁰⁴ According to the CESCR, the “maximum available resources” clause refers “to both the resources existing within a State and those available from the international community through international cooperation and assistance.”²⁰⁵ This “maximum available resources” clause

201. See DRD, *supra* note 32, art. 1 (“The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.”).

202. See POGGE, *supra* note 49, at 121 (demonstrating that governments and citizens of wealthy countries establish unfair global institutional scheme which contributes to the destitution of the poor); *cf.* Bilchitz, *supra* note 7, at 12–15 (developing Pogge’s argument with respect to unfair global trade system maintained by public and private actors benefiting from it and leaving poor individuals in “a position where all resources necessary to meet their basic needs are owned and they have insufficient income to acquire such resources.”).

203. See discussion *infra* Sections IV.B and IV.C.

204. See ICESCR, *supra* note 35, art. 2(1) (recognizing an obligation of each state to take efforts “to the maximum of its available resources” to realize Covenant rights without defining what constitutes the “maximum”). See SALOMON, *supra* note 8, at 101–02 (analyzing the ambiguity of the “maximum available resources” clause in the context of obligations to assist and cooperate).

205. CESCR GC3, *supra* note 28, ¶ 13; see Comm. on Soc., Econ. & Cultural Rts., *An Evaluation of the Obligation to Take Steps to the “Maximum of Avail-*

should be applicable in realizing both territorial and extraterritorial obligations relating to socio-economic rights.²⁰⁶ The common denominator of contemporary human rights law is the recognition of global actors' obligations to cooperate in order to find and multiply means for the realization of socio-economic rights, both territorially and globally.

At the same time, neither the ICESCR nor the CESCR nor the Maastricht Principles provide any directives on the proportions for allocating resources for the realization of territorial and extraterritorial obligations. Commentators have correctly noticed that global actors should not enjoy "absolute discretion to prioritise territorial obligations over extraterritorial obligations" in relation to socio-economic rights; otherwise, obligations to assist "would be close to meaningless."²⁰⁷ As argued in Section III.A.vi, interactional and institutional global obligations to assist are not consequent, but rather simultaneous obligations, i.e., global obligations should be implemented in parallel with territorial obligations. How should an adequate proportion of resource allocation for implementing territorial and global obligations be determined? In this regard, two criteria may be formulated—external (relating to the standard of living of right-holders) and internal (relating to the fundamental interests or the standard of living of duty-bearers).

This Article develops a sufficientist human rights-based approach and suggests the principle of sufficiency as the external criterion for determining the scope of global obligations to assist. While minimalist theories extract global obligations to

able Resources" Under an Optional Protocol to the Covenant, ¶ 5, U.N. Doc. E/C.12/2007/1 (May 10, 2007).

206. In the meantime, the Maastricht Principles reserve the principle of maximum available national resources for the implementation of states' territorial obligations corresponding to socio-economic rights, while obliging states to "cooperate to mobilize the maximum of available resources for the universal fulfilment of economic, social and cultural rights." ETO CONSORTIUM, *supra* note 28, princ. 31.

207. Khalfan, *supra* note 169, at 329. See also Alston & Quinn, *supra* note 39, at 178–81 (describing several critiques of the "maximum available resources" clause stressing "the non-absolute nature of states' discretion in the allocation of sufficient resources to meet their obligations under the Covenant.").

assist from the right to life,²⁰⁸ sufficientist conceptions appeal to the right to a dignified existence as a basis for global obligations to assist.²⁰⁹ In this sense, the scope of global assistance cannot be confined to guarantees necessary for mere survival and freedom from extreme poverty. It also embraces guarantees that enable individuals to enjoy a decent, or dignified, life and ensure their involvement and full-fledged participation in all core social, political, and cultural institutions and practices on local and global levels, including important decision-making processes, as well as access to shared material and intellectual values, and an opportunity for their moral and intellectual flourishing.

The principle of sufficiency specifies not only the minimum necessary level of global assistance, but also the maximum limits, above which no assistance is owed as a human rights obligation. The principle of sufficiency determines several important features of the scope of global obligations to assist. On the one hand, the demand for global assistance is a non-derogable demand that should be fulfilled to the full extent. On the other hand, the scope of global obligations corresponds to what Raz calls a “diminishing” principle, according to which the demand decreases in the process of its realization.²¹⁰ Global assistance intends to promote not a happy or good life, but a certain minimum level sufficient for enjoying a decent standard of living universally. When this task is met, there is no requirement to satisfy it to a higher degree.

The principle of sufficiency externally limits global actors’ discretion to set priorities for the allocation of funds at their disposal. Global actors should satisfy a universal sufficiency

208. See, e.g., O’Neill, *supra* note 1, at 281–82 (appealing to the right to life while justifying obligations to fairly distribute basic resources indispensable for survival, such as food and water).

209. See generally Elena Pribytkova, *The Human Right to a Dignified Existence: The Ethical Foundations of the Contemporary Legal Order*, in 137 ARCHIV FÜR RECHTS- UND SOZIALPHILOSOPHIE, HUMAN DIGNITY AS A FOUNDATION OF LAW 117 (Winfried Brugger & Stephan Kirste eds., 2013) (showing that human dignity calls for the recognition and implementation of the right to a dignified existence).

210. See JOSEPH RAZ, *THE MORALITY OF FREEDOM* 235–40 (1986) (contrasting diminishing principles, in line with which “the more G an F has the weaker becomes the reason to give him more G” (i.e. “feed the hungry”) and non-diminishing principles, according to which a demand does not change in the process of its fulfillment (i.e. “maximize wealth”).

threshold and subordinate their interests to concerns for a minimally just international order,²¹¹ which implies guarantees of global assistance. In this context, a state's intention to provide territorial socio-economic guarantees above a decent social minimum is justified only if it has already fulfilled its global obligations to a sufficient degree. The principle of sufficiency calls for global actors' obligations to cooperate in accumulating enough resources for the universal realization of basic socio-economic rights indispensable for leading a decent life.

The principle of a decent minimum sacrifice should serve as the internal criterion of the scope of global obligations to assist. As specified in Section II.B, the costs of global assistance should be compatible with the fundamental interests and human rights of global actors. For instance, individuals should be able to enjoy a decent standard of living, and collective global actors should not be forced to sacrifice their goals or their territorial/extraterritorial obligations. Requests for assistance that go beyond this decent minimum level of sacrifice (along with requests exceeding the sufficiency threshold) cannot be justified as human rights obligations and are at the absolute discretion of global actors.²¹²

Thus, instead of appealing to the ill-defined—if not empty—concept of “maximum available resources,” the scope of global obligations to assist should be determined by the principles of sufficiency and a decent minimum sacrifice. How can one harmonize these external and internal criteria? This is achievable by a fair distribution of the burdens of assistance among all members of the international community, which would in turn limit the costs of their individual contributions.

Various attempts to quantify the scope of obligations to assist and to bring it in accordance with what suffices to end global poverty, while demanding only a minimum sacrifice, have resulted in the formulation of the U.N. target for ODA. It amounts to 0.7% of gross national income (GNI),²¹³ which is

211. Cf. POGGE, *supra* note 49, at 130, 133 (interpreting human rights as “minimum conditions that any institutional order must meet for it to be considered minimally fair.”).

212. See *supra* Section II.C.v.

213. *The 0.7% ODA/GNI Target – a History*, OECD, <https://perma.cc/X2QS-BNKF> (last visited Sept. 21, 2021).

considered to be both sufficient for progressive eradication of poverty (coupled with contributions of other public and private actors²¹⁴) and not too burdensome for states.²¹⁵ There are also proposals to increase this target gradually to 1% of GNI.²¹⁶ The CESCR tends to use the U.N. target for ODA to determine the scope of obligations to assist.²¹⁷ A fair distribution of shared obligations to assist among all global actors implies quantification of their scope not only for states but also for IGOs and NSAs, including TNCs. The precise definition of the scope of shared obligations of the international community, as well as obligations of various actors, requires serious interdisciplinary investigation and recognition within both human rights and sustainable development frameworks.

The CESCR differentiates between *immediate* and *progressive obligations* to provide assistance in the realization of socio-economic rights. According to the CESCR, the “progressive re-

214. See MOVE HUMANITY, *supra* note 11, at 1–2 (proposing a combination of public and private sources of funds to meet the Sustainable Development Goals).

215. See Anup Shah, *Foreign Aid for Development Assistance*, GLOB. ISSUES (Sep. 28, 2014), <https://perma.cc/2QR5-DDBU> (last visited Sept. 21, 2021) (demonstrating that internationally recognized ODA target of 0.7% of GNI is not burdensome for global actors investing much larger amounts in other projects, such as military companies, subsidies to local corporations and agricultural producers, etc.); see also MOVE HUMANITY, *supra* note 11, at 25–26 (applying the same rationale in proposing a 1% wealth tax for the world’s billionaires and “ultra-high-net worth individuals”).

216. Org. FOR ECON. COOP. & DEV., THE ONE PER CENT TARGET (1999), <https://perma.cc/85H9-M7MF> (last visited Sept. 21, 2021) (explicating the history of proposals to increase the ODA to 1% of GNI that have since been “largely forgotten”).

217. See, e.g., Comm. on Econ., Soc. & Cultural Rts., Concluding Observations on the Fourth Periodic Report of France, ¶¶ 7–8, U.N. Doc. E/C.12/FRA/CO/4 (July 13, 2016) (chastising France for failing to meet the “internationally agreed target of 0.7 per cent of gross national product (GNP)” and recommending to redouble efforts to meet the target); Comm. on Econ., Soc. & Cultural Rts., Concluding Observations on the Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland, ¶ 14, U.N. Doc. E/C.12/GBR/CO/6 (July 14, 2016) [hereinafter CESCR CO: United Kingdom] (commending the United Kingdom for “allocating 0.7 per cent of its gross national product [sic] for official development assistance.”). For a similar practice of the CRC, see CRC GC5, *supra* note 37, ¶ 61 and CRC GC15, *supra* note 37, ¶ 89 (reminding states “to meet the United Nations target of allocating 0.7 per cent of gross national income to international development assistance”).

alization” clause “should not be misinterpreted as depriving the obligation of all meaningful content.”²¹⁸ The Maastricht Guidelines on Violations of Economic, Social, and Cultural Rights reaffirm that the “progressive realization” clause cannot be used as a pretext for non-compliance with human rights obligations.²¹⁹ Global actors have an obligation “to move as expeditiously and effectively as possible” toward the goal of full realization of socio-economic rights and to strive to ensure their “widest possible enjoyment” in a particular context. Any retrogressive measures, without a special justification, are forbidden.²²⁰ In addition, some global obligations to assist are obligations with immediate effect.²²¹

The CESCR appeals to the “*minimum core obligations*” clause to stress that a certain minimum scope of obligations (in regard to essential foodstuffs, primary health care, basic shelter, the most basic forms of education, etc.) should be secured immediately as a matter of priority both nationally and internationally.²²² This minimum core content of socio-economic rights is aimed at protecting individuals from extreme poverty

218. CESCR GC3, *supra* note 28, ¶ 9.

219. *Maastricht Guidelines*, *supra* note 126, ¶ 8.

220. *Id.* ¶¶ 9, 11.

221. Though the CESCR focuses predominately on territorial obligations, its comments may be used as guidelines for determining global obligations to assist as well. Thus, besides obligations of emergency assistance, global obligations to assist with immediate effect include the following: assistance aimed at eliminating discrimination; obligations to “take steps,” for instance, to cooperate for accumulating means for global assistance; assistance in realizing minimum core obligations; relatively low-cost assistance programs targeted at vulnerable individuals; assistance in the implementation of socio-economic rights that are not subject to progressive realization. *Id.* ¶¶ 1–2, 5, 10, 12.

222. CESCR GC3, *supra* note 28, ¶ 10; *see, e.g.*, CESCR GC12, *supra* note 37, ¶¶ 14, 17 (commenting that states unable for reasons beyond their control to secure “access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger,” should prove that they have “unsuccessfully sought to obtain international support to ensure the availability and accessibility of the necessary food.”); Comm. On Econ., Soc. & Cultural Rts., General Comment 13 (Art. 13) ¶ 57, U.N. Doc. E/C.12/1999/10 (Dec. 8, 1999) (specifying minimum core obligations regarding the right to education); CESCR GC14, *supra* note 37, ¶¶ 43, 45 (defining minimum core obligations corresponding to the right to the highest attainable standard of health and emphasizing obligations of international assistance that should enable developing states to implement these core obligations).

and is sufficient merely for their survival. The CESCR states that a set of the core human rights obligations form “an international minimum threshold that all developmental policies should be designed to respect.”²²³

However, as argued above, the scope of global obligations to assist goes beyond the minimum core content and should be determined according to the principle of sufficiency. Global human rights obligations to assist should ensure guarantees sufficient for leading a decent life and full-fledged participation in local and global society. They are aimed at furthering the equal and full realization of socio-economic rights universally. In this context, the “minimum core obligations” clause should be accepted only as a standard for emergency assistance.

Human rights lawyers, Philip Alston and Gerard Quinn, have shown that states parties, which debated the draft of the ICESCR, initially understood that the “maximum available resources” and “progressive realization” clauses would be interpreted as “escape clauses” by actors unwilling to allocate adequate resources and implement their socio-economic rights obligations.²²⁴ The practice of modern states concerning socio-economic rights over the last 30 years has confirmed the relevance of the fears expressed by opponents of these provisions. Alston and Quinn draw our attention to how those states parties, who insisted on including these clauses in the ICESCR, “are now often among those that cite the weakness of the obligation as evidence of the secondary, non-legal, or non-binding nature of economic, social, and cultural rights.”²²⁵ Appealing to these clauses further is an indication that the lesson has not been learned.

The very fact that the concepts “position to assist,” “maximum available resources,” “progressive realization,” and “minimum core obligations” require additional explanations and may be used by various actors as a pretext for the non-fulfillment of their global obligations is a sign that they should be reconsidered. Proceeding from the principle of sufficiency (along with the principle of a decent minimum sacrifice), this Section suggests that global obligations to assist are aimed at

223. CESCR Statement (2001), *supra* note 107, ¶ 17.

224. Alston & Quinn, *supra* note 39, at 172–81.

225. *Id.* at 177.

promoting the universal realization of socio-economic rights indispensable for leading a decent life, while global obligations of urgent assistance should realize the minimum core content of socio-economic rights.

E. *Summary*

This Part presented an outline of the conception of global obligations to assist while examining their nature, status, content, scope, right-holders, and duty-bearers. Based on this analysis, it concluded that individuals should be recognized as major holders of the right to global assistance,²²⁶ to which shared human rights obligations of all members of the international community—states, IGOs, NSAs, and individuals—correspond.²²⁷ In this sense, state-centered assistance should transform into human-centered assistance, i.e., international assistance should be reconceptualized and supplemented with global assistance. Individual and shared global obligations to assist are simultaneous to territorial obligations and embrace both secondary and conditional interactional obligations to provide assistance as well as primary and unconditional institutional obligations to create and maintain a global institutional scheme indispensable for promoting both relational and distributive justice.²²⁸ This Part also proposed applying the principles of sufficiency and a decent minimum sacrifice to determine the scope of global obligations to assist and called for rethinking the “position to assist,” “maximum available resources,” “progressive realization,” and “minimum core obligations,” clauses that are traditionally used for this goal.²²⁹

IV. INSTITUTIONAL GUARANTEES OF GLOBAL ASSISTANCE

A. *Forms of International Assistance*

As demonstrated, contemporary international human rights law recognizes and regulates only obligations of international assistance that is directed to states and aimed at helping

226. *See supra* Section III.B.

227. *See supra* Section III.C.

228. *See supra* Section III.A.

229. *See supra* Section III.D.

them realize their human rights obligations.²³⁰ Modern international assistance is carried out in the form of public and private assistance. Public assistance is provided by states and IGOs, such as U.N. agencies,²³¹ and international financial institutions (IFIs), in particular the World Bank, the International Monetary Fund (IMF), and the OECD. Within public assistance, one can distinguish between so-called “official” and “non-official” assistance.

ODA is provided by the OECD.²³² The OECD Development Assistance Committee (DAC) is “the venue and voice” of the major global donors of the ODA²³³ and has the mandate to promote development cooperation to contribute to “a future in which no country will depend on aid.”²³⁴ The DAC’s functions include monitoring, assessing, reporting, and furthering development assistance. It also collects data on ODA and other public and private assistance.²³⁵ As noted, the U.N. target for ODA amounts to 0.7% of GNI, which is supposed to

230. For measures of reshaping state-centered international assistance and supplementing it with a global one, see *infra* Section IV.C.

231. For examples of U.N. agencies that provide public assistance, see the UNDP, the UNICEF, and the UNAIDS.

232. ODA is defined as financial flows that satisfy several criteria: (a) they are provided to states and territories from the DAC List of ODA Recipients as well as to multilateral institutions; (b) they are given by the OECD donor countries’ official agencies; (c) they are aimed at promoting the “economic development and welfare of developing countries”; and (d) they are “concessional in character” and include “a grant element of at least 25 per cent (calculated at a rate of discount of 10 per cent).” *Official Development Assistance—Definition and Coverage*, OECD, <https://perma.cc/67V9-T573> (last visited Sept. 21, 2021); see ORG. FOR ECON. COOP. & DEV., DAC LIST OF ODA RECIPIENTS, <https://perma.cc/U4SR-AB7U> (last visited Sept. 21, 2021). ODA should not embrace military aid and peacekeeping expenditures. *Supra Official Development Assistance—Definition and Coverage*.

233. ORG. FOR ECON. COOP. & DEV., DAC IN DATES: THE HISTORY OF OECD’S DEVELOPMENT ASSISTANCE COMMITTEE 3 (2006), <https://perma.cc/3SSC-DU42> (last visited Sept. 21, 2021). The DAC includes the OECD’s thirty largest donors—twenty-nine member states and the European Union—while the World Bank, IMF, UNDP, the African Development Bank, the Asian Development Bank, and the Inter-American Development Bank take part in the DAC meetings as observers. *Development Assistance Committee (DAC)*, OECD, <https://perma.cc/D5YN-SGKJ> (last visited Sept. 21, 2021).

234. *The Development Assistance Committee’s Mandate*, OECD, <https://perma.cc/739M-RG48> (last visited Sept. 21, 2021).

235. *Id.*

progressively reach 1% of GNI. In 2020, the average ODA was only 0.32% of GNI, estimated at U.S. \$161.2 billion, which was less than half the U.N. 0.7% of GNI threshold. Of this amount, only U.S. \$34 billion was directed to the least developed countries.²³⁶ It is also not clear what portion of it was used for promoting basic socio-economic rights. Such a serious deficit was not due to the lack of available funds, but rather due to the fact that assistance is seen as a purely voluntary commitment, and donors have other priorities. ODA is significantly limited because it is a state-centered, non-obligatory, conditional, and unilateral commitment of a developed state within donor-recipient relations. ODA is rightly criticized for its insufficiency and inefficiency.²³⁷ Additionally, since ODA is provided mainly in the form of loans, instead of grants, it has a tendency to cause debt crises in developing countries.²³⁸

Other important mechanisms for international assistance are represented by the Bretton Woods Institutions, the World

236. Only six states—Luxembourg, Norway, Sweden, Denmark, Germany, and the U.K.—achieved the U.N. target in 2020. ORG. FOR ECON. COOP. & DEV., COVID-19 SPENDING HELPED TO LIFT FOREIGN AID TO AN ALL-TIME HIGH IN 2020 2 (Apr. 13, 2021), <https://perma.cc/XKQ5-UC9S> (last visited Sept. 21, 2021). If all OECD countries were to reach the U.N. target and direct aid of just \$77.9 billion, including \$41.8 billion for health system, to low-income countries, this would be sufficient to guarantee income security to the whole population of low-income states (711 million people). De Schutter, *supra* note 89, ¶ 19.

237. See MOYO, *supra* note 10, at 44–47, 60–68 (attacking current systems of development assistance not just as insufficient but as counterproductive and detrimental to the development of impoverished societies); THE DONORS' DILEMMA, *supra* note 13, at chs. 1, 5, 12, 15, 18, 25 (criticizing “traditional” ODA as having no future and suggesting avenues for its “fundamental recast”); MOVE HUMANITY, *supra* note 11, at 22–23 (demonstrating extreme insufficiency of the current ODA which should be urgently increased); Shah, *supra* note 215 (“[B]oth the quantity and quality of aid have been poor and donor nations have not been held to account.”); see also *infra* Sections IV.B.vi–vii.

238. Bilateral ODA loans have risen significantly between 2010 and 2018. Amy Dodd et al., *Covid-19 and Financing Projections for Developing Countries*, DEV. INITIATIVES (June 4, 2020), <https://perma.cc/SC4Y-WZVD> (last visited Sept. 21, 2021). In comparison to grants which grew by only 13%, loans increased by 50%. *Id.* In the least developed countries, ODA grants were cut by 10%, whereas ODA loans rose by almost 400%. *Id.* See also *infra* Section IV.B.i.

Bank and the IMF.²³⁹ Their harmful assistance policies were heavily criticized during the *Fifty Years is Enough* campaign, which suggested that the Bretton Woods Institutions be abolished.²⁴⁰ The Bretton Woods Institutions, representing predominantly states from the Global North, have been denounced for being neo-colonial institutions deaf to the voices of developing countries²⁴¹ and for their limited commitment to, and frequent violations of, human rights.²⁴²

“Non-official” public assistance embraces all forms of public support that do not qualify as ODA, such as assistance provided by developing countries and the IGOs formed by them

239. The World Bank, whose fundamental goals are reducing poverty, increasing shared prosperity, and promoting sustainable development, funds development projects through traditional loans, interest-free credits, and grants. See *Poverty: Overview*, WORLD BANK, <https://perma.cc/R487-BFX9> (last updated Apr. 15, 2021) (the “goal to end poverty works hand in hand with World Bank Group’s goal to promote shared property”). The IMF’s goal is to “foster global monetary cooperation, secure financial stability, facilitate international trade, promote high employment and sustainable economic growth, and reduce poverty around the world.” *About the IMF*, INT’L MONETARY FUND, <https://www.imf.org/en/About> (last visited Sept. 21, 2021).

240. See STIGLITZ, *supra* note 10, at chs. 1-2 (analyzing how and why the IMF and the World Bank driven by the G-7 have failed in their missions); see also William Easterly, *What Did Structural Adjustment Adjust? The Association of Policies and Growth with Repeated IMF and World Bank Adjustment Loans*, 76 J. DEV. ECON. 1, 1 (2005) (critiquing the loan practices of the World Bank and IMF).

241. See Linah K. Mohohlo, *A Change in Mind-Set Is Needed if Aid Is to Remain Relevant*, in THE DONORS’ DILEMMA, *supra* note 13, ch. 18 (“[T]he failure to make progress in rebalancing the relative voice of member countries of the IMF and World Bank is not only a disgrace, but continues to undermine the effectiveness and even the legitimacy of those institutions.”); see also ISSA G. SHIVJI, SILENCES IN NGO DISCOURSE: THE ROLE AND FUTURE OF NGOs IN AFRICA 14, 20–21 (2007) (“[T]he Bretton Woods institutions, together with the so-called ‘donor community’ and the multinationals, used the African state to serve its own interests while turning a blind eye to mismanagement and corruption.”).

242. See generally Philip Alston, *Rep. on the World Bank and Human Rights*, U.N. Doc. A/70/274 (Aug. 4, 2015) (criticizing the World Bank as “a human rights-free zone” treating “human rights more like an infectious disease than universal values and obligations”); Philip Alston, *Rep. on the Role of the International Monetary Fund (IMF) in Relation to Social Protection*, ¶ 18, U.N. Doc. A/HRC/38/33 (May 8, 2018) (demonstrating that “human rights taboo” is characteristic to IMF, which “has not adopted an official legal opinion in relation to human rights” and sees itself as unbound by them).

within so-called South-South cooperation. “Non-official” assistance programs impose, as a rule, fewer conditions than ODA, are based on equal partnership among developing states and the co-authorship in designing assistance programs, and are more attentive to the actual needs of the poor. For these reasons, non-official assistance is often considered to be more efficient than ODA, and is expected to complement the latter.²⁴³

Private assistance is provided by NGOs, foundations, and TNCs. Approximately ten million NGOs around the globe compose the world’s fifth-largest economy.²⁴⁴ Major NGOs and foundations provide assistance that is comparable to that of the biggest donor states.²⁴⁵ Private actors also often work in collaboration with public entities. For instance, NGOs can receive both private and public support for implementing assistance programs and projects.²⁴⁶

243. See Rhea Kumar, *China in Africa: The Role of “Non-Official Development Assistance” in Emerging Economies*, 5 YALE REV. INT’L STUD., no. 3, 2015, at 25 (arguing that non-official assistance’s “emphasis on soft-power, local involvement and specific targeted agendas has made it more effective than ODA in establishing benefits to recipients.”); Chaturvedi, *supra* note 11, at 39 (showing that South-South cooperation in the form of development compact has a number of important advantages over North-South cooperation, such as mutual gain, non-interference, collective growth opportunities, and absence of conditionalities); Shailly Nigam, *The Challenges Faced Across South-South Cooperation*, 4 J. WORLD ECON. RES. (SPECIAL ISSUE) 27, 27 (2015) (suggesting that South-South cooperation “has broadly the distinctive features of ensuring capacity development; providing a broader choice of support, leading to horizontal partnerships; guaranteeing cost effectiveness; being demand-driven in nature; providing highly-adapted and relevant solutions and last, but not the least, diversifying knowledge and expertise beyond industrialized models.”); *infra* Section IV.C.ii.

244. Prahalathan KK, *supra* note 193.

245. From 2013 to 2015, philanthropic assistance amounted to \$23.9 billion, while 81% of it came from 20 foundations. ORG. FOR ECON. COOP. & DEV., THE DEVELOPMENT DIMENSION, PRIVATE PHILANTHROPY FOR DEVELOPMENT 15–16, 30 (2018), <https://perma.cc/9X9A-HNEC> (last visited Sept. 21, 2021) [hereinafter PRIVATE PHILANTHROPY]. The Bill & Melinda Gates Foundation, the world’s largest private charitable organization, provides almost half of total philanthropic funding. ORG. FOR ECON. COOP. & DEV., *Bill & Melinda Gates Foundation*, OECDiLIBRARY: DEVELOPMENT CO-OPERATION PROFILES, <https://perma.cc/6DXT-WG54> (last visited Sept. 21, 2021). In 2019, the Foundation’s spending of \$4.1 billion on assistance exceeded the ODA of many DAC countries. *Id.*

246. NGOs act as channels for approximately 16% of bilateral ODA, which may be under the overall control of OECD donor states or may be at the full disposal of NGOs. PRIVATE PHILANTHROPY, *supra* note 245.

International assistance is being distributed through bilateral (ca. 60%), multilateral (ca. 25%), and hybrid multi-bilateral (ca. 15%) relations.²⁴⁷ Actors provide assistance in a variety of forms: conditional and unconditional cash and in-kind grants, duty-free trade regimes and market access, debt forgiveness or cost-sharing projects, investment, macro and microfinance, technology transfer and knowledge exchange.²⁴⁸ The effectiveness of each is widely debated.

B. *Critique of Contemporary Practices of Assistance*

Contemporary practices of implementing obligations to assist are the target of strong and justified criticism. While Section II.C analyzed the statist critiques of the moral justifiability of obligations to assist the distant poor, this Section deals with the problems surrounding the dominant patterns of the realization of these obligations by various public and private actors. The critiques expressed by researchers and practitioners may be divided into several major categories: (1) human rights violations through acts of assistance and/or by actors providing assistance and the lack of accountability mechanisms; (2) the failure to take into account the actual needs of those in poverty; (3) the use of assistance as a means for colonial domination of developing societies; (4) the state-centered character of assistance; (5) the unjustified conditionality of assistance; (6) the lack of sufficient funding for assistance; and (7) the inefficiency and poor coordination of assistance programs.²⁴⁹ Let us consider them in more detail.

247. For arguments *pro et contra* multilateral and bilateral assistance, see Nilima Gulrajani, *Bilateral Versus Multilateral Aid Channels: Strategic Choices for Donors*, ODI REP. 10–16. (March 2016), <https://perma.cc/6FPE-8HWL> (last visited Sept. 21, 2021).

248. Cf. G.A. Res. 70/1, Transforming our World: The 2030 Agenda for Sustainable Development, ¶¶ 17.1–17.19 (Sept. 25, 2015) [hereinafter 2030 Agenda] (specifying targets for international development assistance within global partnership guarantees).

249. This Article analyzes the critique most relevant to human rights obligations to assist. For other types of critique, see generally THE DONORS' DILEMMA, *supra* note 13 (examining and critiquing the existing system of international assistance over the course of two dozens of essays) and Shah, *supra* note 215 (developing a number of arguments against the present quality and quantity of foreign aid).

i. *Human Rights Violations through Assistance and the Lack of Accountability Mechanisms*

Human rights defenders point to numerous examples of human rights violations in the process of realizing obligations to assist. Assistance programs are usually carried out without *ex ante* HRIAs designed to prevent human rights abuses. They damage countries' economies and impede individuals' access to the objects of their socio-economic rights, especially the right to an adequate standard of living and its particular key elements (the right to adequate food, water, sanitation, housing, clothing, and health) as well as other socio-economic rights (the right to education, work, social security, etc.).²⁵⁰

The politics of "assistance" in recent decades has caused a serious debt crisis in developing states.²⁵¹ Particularly, it has made them unable to respond to the pandemic effectively. In 2019, sixty-four severely indebted developing states were compelled to spend more on servicing their debt than on their health systems.²⁵² Multilateral financial institutions are providing extremely modest assistance to combat the COVID-19 pan-

250. For instance, the CESCR notes that international assistance often causes violations of socio-economic rights in recipient countries. Comm. on Econ., Soc. & Cultural Rts., Concluding Observations on the Second Periodic Report of China, including Hong Kong, China and Macao, China, ¶ 12, U.N. Doc. E/C.12/CHN/CO/2 (June 13, 2014) [hereinafter CESCR CO: China] and CESCR CO: United Kingdom, *supra* note 217, ¶ 14. See also CASES AND CONCEPTS ON EXTRATERRITORIAL OBLIGATIONS IN THE AREA OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS chs. 3, 4.2, 4.4 (Fons Coomans & Rolf Künnemann eds., 2012) (providing several examples of violations of socio-economic rights in the context of implementing international aid projects).

251. In 2020, low and middle-income countries' total external debt amounted \$8.687 billion and they should pay \$886 billion of principal repayments and \$207 billion of interest payments. WORLD BANK, INTERNATIONAL DEBT STATISTICS 2022, at 33 (2020), <https://perma.cc/W9Q8-AKPV> (last visited Feb. 2, 2022).

252. The debt service payments of 19 developing countries amounted more than a fifth of their government revenue. Dodd et al., *supra* note 255. As ActionAid has demonstrated, African health systems have been left substantially underfunded and unprepared for the pandemic because of years of austerity measures and an expanding debt crisis. "Congo Brazzaville is spending five times as much (\$1.4bn) on foreign debt repayments as on health (\$259m). Kenya, Ghana and the Gambia, are spending more than three times more on external debt repayments than on health. Ghana has one of the highest debt servicing costs in the world, at 59% of GDP, spending \$4.1 billion on foreign debt payments compared to \$1.3 billion on

demic, predominantly in the form of loans.²⁵³ This only exacerbates the debt crisis in poor countries.

Many experts draw attention to the fact that members of the international community, especially Western actors, are still reluctant to acknowledge that unfair and inefficient economic policies, infringing on distributive justice, lead to severe human rights violations.²⁵⁴ In addition, there are no effective mechanisms, especially individual complaint mechanisms, for bringing various public and private global actors to account for their breaches of obligations to assist and extraterritorial violations of socio-economic rights in the process of assistance.²⁵⁵

ii. *Failure to Take into Account the Actual Needs of the Poor*

Extraterritorial assistance programs often do not take into account the actual interests and needs of those in poverty and instead proceed from a misconception of those interests and needs. Assistance programs frequently reveal the “self-image” of Western donors rather than the reality of the Third World

health.” Soren Ambrose, *IMF Meetings Fail to Agree Support to Protect Developing Countries from COVID19*, ACTIONAID INT’L (Apr. 20, 2020), <https://perma.cc/7FLQ-5CQE> (last visited Sept. 21, 2021).

253. See generally Thomas Stubbs et al., *Whatever it Takes? The Global Financial Safety Net, Covid-19, and Developing Countries*, 137 *WORLD DEV.* 1 (2021) (“[A]s of July 31, 2020, [multilateral financial] institutions had committed \$89.56 billion in loans and \$550 million in currency swaps, totaling \$90.11 billion—just 12.6% of their current capacity.”).

254. See, e.g., T. Jeffrey Scott, *Evaluating Development-Oriented NGOs*, in *NGOs AND HUMAN RIGHTS: PROMISE AND PERFORMANCE* 204, 204 (Claude E. Welch, Jr. ed., 2001) (criticizing “the international community’s reluctance to recognize that omissions concerning distributive justice result in human rights violations.”); POGGE, *supra* note 77, at 26–57 (asserting that global actors contributing to extreme poverty “act with willful indifference to the enormous harms they cause in the course of advancing their own ends, while going to great lengths to deceive the world (and often themselves) about the impact of their conduct.”).

255. See Dann, *supra* note 7, at 387–404 (analyzing deficits of the existing mechanisms for holding donor institutions and recipient governments accountable). The CESCER inter-state complaints mechanism, which is in principle available for claiming breaches of international obligations to assist, is extremely ineffective: states do not exercise their right to make claims to other states because this is considered to be an “unfriendly act.” VANDENBOGAERDE, *supra* note 7, at 184–85.

recipients of assistance.²⁵⁶ International aid programs repeatedly impose developed countries' visions of the problem of global poverty as well as (often inefficient and harmful) means for solving it. A large portion of assistance is spent on "monstrous" development projects, which are not only incapable of helping the most vulnerable individuals and societies but also violate their human rights.²⁵⁷ At the same time, those in poverty are presumed to be helpless, irresponsible, and incapable of being agents of change and full-fledged subjects in extraterritorial legal relations, both right-holders and duty-bearers. Their voices are, therefore, often not heard or misrepresented.

Public and private assistance programs are designed and carried out by Western states, IGOs, and NGOs,²⁵⁸ without involving poor individuals or their representatives. Partly for this reason, Western donors' programs of assistance still disproportionately focus on, and prioritize, civil and political rights, while neglecting developing societies' needs for assistance with economic development and the realization of socio-economic rights.²⁵⁹

256. See, e.g., Ralph Wilde, *Dilemmas in Promoting Global Economic Justice Through Human Rights Law*, in *THE FRONTIERS OF HUMAN RIGHTS: EXTRATERRITORIALITY AND ITS CHALLENGES* 127, 148 (Nehal Bhuta ed., 2016) (exploring difficulties of adopting a perspective outside of "personal circumstances or national identities" and questioning legitimacy of the "efforts by the predominantly globally privileged to articulate an agenda for the globally underprivileged."); MAHBUBANI, *supra* note 1, at 67, 69 (using a shipwreck metaphor to demonstrate how Western societies misread the actual needs of impoverished Third World citizens); see also *infra* note 259. This is also a widely debated issue in human rights discourse and practice.

257. See, e.g., *Dams & the World Bank*, THE WHIRLED BANK GRP., <https://perma.cc/WL2M-JVUN> (last visited Sept. 21, 2021) (noting that the World Bank has funded the construction of more than 500 dams in 92 states that caused severe violations of human rights and serious environmental damages); Shah, *supra* note 215 (documenting a number of damaging development assistance projects).

258. For a discussion of the elitism of assistance agents unable to "connect their mission to the struggles and dreams" of poor people, see Gay J. McDougall, *A Decade of NGO Struggle*, 11 *HUM. RTS. BRIEF* 12, 15 (2004) and MAKAU MUTUA, *Human Rights International NGOs: A Critical Evaluation*, in *NGOs AND HUMAN RIGHTS: PROMISE AND PERFORMANCE*, *supra* note 254, at 151, 151–53.

259. McDougall, *supra* note 258, at 15; see André Frankovits, *Rejoinder: The Rights Way to Development. A National Human Rights NGO Speaks on Donor Aid Policy*, 21 *FOOD POL'Y.* 123, 125 (1996) (arguing that the focus exclusively on civil and political rights is insufficient to and stressing "the importance of

iii. *Use of Assistance as a Means for Colonial Domination*

Researchers and practitioners point (with good reason) to many cases in which assistance reinforces colonialism and the unfair domination of developed states over developing societies.²⁶⁰ This direction of critique relates to the previous one and stresses the lack of guarantees of the full-fledged participation of developing countries in assistance programs, especially in decision-making processes that make them vulnerable to donor dominance.

As an instrument of domination, international assistance programs are often implemented in the political, ideological, and economic interests of donors, instead of empowering the poor.²⁶¹ Researchers demonstrate that aid programs provided

economic and social rights in the development process.”). Diplomat and scholar Kishore Mahbubani illustrates this thesis through a telling metaphor:

[F]rom the viewpoint of many Third World citizens, human rights campaigns often have a bizarre quality. For many of them it looks something like this: They are like hungry and diseased passengers on a leaky, overcrowded boat that is about to drift into treacherous waters, in which many of them will perish. The captain of the boat is often harsh, sometimes fairly and sometimes not. On the river banks stand a group of affluent, well-fed and well-intentioned onlookers. As soon as those onlookers witness a passenger being flogged or imprisoned or even deprived of his right to speak, they board the ship to intervene, protecting the passengers from the captain. But those passengers remain hungry and diseased. As soon as they try to swim to the banks into the arms of their benefactors, they are firmly returned to the boat, their primary sufferings unabated.

Mahbubani, *supra* note 1, at 69.

260. See, e.g., Dhananjayan Sriskandarajah, *From Charity to Social Justice*, in *THE DONORS' DILEMMA*, *supra* note 13, at ch. 15 (criticizing the current foreign aid system as “antiquated, if not outright neo-colonial”); Wilde, *supra* note 256, at 143–45 (“contemporary initiatives of advocacy for norms to promote economic justice across borders, from the rich to the poor, can be traced directly to colonial-era ideas of trusteeship over people and the civilizing mission.”).

261. See, e.g., Deborah Eade, *Capacity Building: Who Builds Whose Capacity?*, 17 DEV. IN PRAC. 630, 630–31 (2007) (“many NGO practices are ultimately about holding on to their own power, rather than empowering others.”); Shah, *supra* note 215 (documenting the ways in which public and private donors use development aid to reach their political and economic goals); ERIC POSNER, *THE TWILIGHT OF HUMAN RIGHTS LAW* 59–63 (2014) (discussing how Western states use international assistance to press poor or dependent countries to ratify human rights treaties); Nancy Qian, *Making Progress on Foreign Aid*, 7 ANN. REV. ECON. 277, 294–300 (2015) (employing descrip-

in exchange for loyalty represent a serious means of manipulating the decisions of developing countries' governments. Governments of developing countries "cannot afford to say no" and are pushed to make domestic and foreign policy decisions that do not serve the interests of their citizens, or even violate their human rights, as a precondition for international assistance.²⁶² In part, this is due to the fact that assistance is unjustifiably reduced to a one-way transfer of resources from rich societies to poor ones.²⁶³ In this context, developing societies are seen merely as passive recipients of assistance and excluded from the articulation of their needs, making important decisions, and the contribution to international assistance and global poverty eradication. These imbalanced relations increase the vulnerability and disempowerment of developing societies and deepen both relational and distributive injustice. Though the contemporary (soft) law of international assistance insists on the recognition of developing states as partners and leaders in assistance relations, it still proceeds from the traditional division between donors and recipients.²⁶⁴

Additionally, under the pretense of assistance, the Global North states retain the Global South countries as their resource base. The rhetoric of assistance is often called upon to mask the fact that much greater resources are extracted from

tive statistics to demonstrate that "foreign aid is often determined by the objectives of donor countries rather than the needs of recipient countries."). Private flows from TNCs and investment funds often reflect the interests of investors. See Hickel, *supra* note 102 (showing that both multinational corporations and financial institutions, including the World Bank, have benefited tremendously from resources extraction, cheap labor, tax holidays, "lucrative market in foreign debt," and privatization of assets in developing countries).

262. POSNER, *supra* note 261, at 61.

263. See, e.g., Wilde, *supra* note 256, at 160 (interpreting obligations to assist in the realization of socio-economic rights as a "financial, technological and resource transfer across borders from the economically privileged to the economically disadvantaged in order to combat poverty and reduce economic inequality.").

264. See, e.g., *Paris Declaration*, *supra* note 168, *passim* (distinguishing "donors" and "partner countries"); Org. for Econ. Coop. & Dev. [OECD], *The Accra Agenda for Action* (2008) [hereinafter AAA], <https://perma.cc/9E74-DB4N> (last visited Sept. 21, 2021); 2030 Agenda, *supra* note 248.

developing countries by developed states and affiliated TNCs than is given or invested in the former.²⁶⁵

iv. *State-Centered Character of Assistance*

As discussed in Section III.B, modern international law recognizes that only states demonstrating their inability to fulfill their territorial socio-economic rights obligations possess the right to request international assistance. Thus, international assistance does not aim to directly help individuals in exercising their socio-economic rights, but rather to support the state in implementing the corresponding obligations. A state-centered character of assistance does not, therefore, allow poor individuals and their non-state representatives to submit a legitimate request for global assistance and control the behavior of global actors. As shown, people in poor undemocratic countries cannot effectively control their state government's activities related to seeking, receiving, and distributing assistance.

The lack of mechanisms for direct global assistance and for effective control in cases of international assistance enables states to abuse their representational functions.²⁶⁶ This does not allow individuals to prevent and resist corruption, the misuse of funds directed to social assistance, and human rights violations.²⁶⁷ International assistance funds are often ulti-

265. Economic anthropologist Jason Hickel, for instance, claims that “not only does aid serve as a powerful rhetorical device that cloaks takers in the guise of givers, it also operates as a powerful tool in the global wealth extraction system.” Hickel, *supra* note 102.

266. The CESCR has indicated many cases of “mismanagement of international cooperation aid,” “unbalanced budgetary allocations,” including “low budgetary allocations to the social sectors,” and “the limited effectiveness of the use of foreign funds” that constitute “serious breaches” of states’ territorial obligations under Art. 2 of the ICESCR. Comm. on Econ., Soc. & Cultural Rts., *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Georgia*, ¶ 11, U.N. Doc. E/C.12/1/Add.83 (Dec. 19, 2002); Comm. on Econ., Soc. & Cultural Rts., *Consideration of Reports Submitted by States Parties Under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights: Democratic Republic of the Congo*, ¶ 16, U.N. Doc. E/C.12/COD/CO/4 (Dec. 16, 2009).

267. The *Paris Declaration* indicates these problems as those to be solved for enhancing aid effectiveness. *Paris Declaration*, *supra* note 158, art. 4(v) (“Corruption and the lack of transparency, which erode public support, impede effective resource mobilisation and allocation and divert resources

mately deposited in private overseas accounts.²⁶⁸ Too often, instead of using assistance to fulfill socio-economic rights and support the local poor, corrupt recipient governments only drive their population into debt.²⁶⁹

v. *Unjustified Conditionality of Assistance*

The unjustified conditions placed on assistance are widely criticized.²⁷⁰ As mentioned, international assistance is often subject to the political and ideological loyalty of recipients, as well as to the acceptance of alien standards and undertaking (often ineffective and harmful) institutional reforms. Western liberal and democratic values are frequently incorporated in the conditions attached to international assistance and imposed through it.²⁷¹ Developing societies that do not meet the requirements of democratization and the realization of civil and political rights may be deprived of assistance. The economic conditions of assistance often include requirements to spend a portion of the assistance on non-competitively costly

away from activities that are vital for poverty reduction and sustainable economic development. Where corruption exists, it inhibits donors from relying on partner country systems.”); see also OECD, *Busan Partnership for Effective Development Cooperation*, art. 33 (Dec. 1, 2011) [hereinafter *Busan Partnership*] (“Corruption is a plague that seriously undermines development globally, diverting resources that could be harnessed to finance development, damaging the quality of governance institutions, and threatening human security.”); Moyo, *supra* note 10, at 48–68 (providing a number of examples where funds earmarked for social assistance and development facilitated corruption and were spent improperly).

268. Kofi Annan, *Development Funds Moving from Poor Countries to Rich Ones, Annan Says*, U.N. NEWS (Oct. 30, 2003), <https://perma.cc/XAM4-9HPP> (last visited Sept. 21, 2021).

269. See POGGE, *supra* note 77, at 49 (remarking that corrupt governments impose “huge debt service burdens on their countries” without making effective investments in such areas as education or infrastructure, while using much of the aid to fill private accounts or to increase military forces).

270. On conditionality of obligations to assist, see *supra* Section III.A.iv.

271. For instance, Makau Mutua claims that many international NGOs have strong ideological commitment since their support comes from the “liberal establishment” in developed countries and they represent “ideological analogues, both in theory and in method” or “brainchildren” of traditional civil rights organizations based in the West. MUTUA, *supra* note 258, at 151–53, 156. See also MAHBUBANI, *supra* note 1, at 64–65 (noting that “the West is encouraging and sometimes demanding” the promotion of “democracy before economic development.”).

goods and services produced by the donors.²⁷² Being in the interests of the donors, rather than the developing societies and poor individuals, the imposed conditions often cause serious human rights violations. Some assistance programs apply double standards, that is to say, impose conditions that citizens of developed countries would never allow to be implemented at home.

Perhaps the most striking example of the unjustified conditionality of assistance is the Structural Adjustment Programmes implemented by the IMF and the World Bank, which have been the subject of ample critique. These Programmes provided loans under strict conditions, such as budget cuts for social services or the privatization of critical state-owned resources that allowed foreign investors, especially TNCs, and oligarchs to become their owners.²⁷³ Structural Adjustment Programmes caused many serious human rights violations, including violations of basic socio-economic rights, and the impoverishment of individuals in developing countries.²⁷⁴ The

272. Economic conditions of assistance cut amounts of aid to ca. 15-40%. EDWARD J. CLAY ET AL., THE DEVELOPMENTAL EFFECTIVENESS OF UNTIED AID: EVALUATION OF THE IMPLEMENTATION OF THE PARIS DECLARATION AND OF THE 2001 DAC RECOMMENDATION ON UNTYING ODA TO THE LDCs (2008). For instance, the tied aid to combat HIV/AIDS in Africa requires spending annually ca. \$15,000 for U.S. companies' drugs instead of \$350 for drugs produced in other countries. Shah, *supra* note 215; *see also* JEAN-BERTRAND ARISTIDE, EYES OF THE HEART: SEEKING A PATH FOR THE POOR IN THE AGE OF GLOBALIZATION 13 (Laura Flynn ed., 2000) ("In 1995, the director of the U.S. aid agency defended his agency by testifying to his congress that 84 cents of every dollar of aid goes back into the U.S. economy in goods and services purchased. For every dollar the United States puts into the World Bank, an estimated \$2 actually goes into the U.S. economy in goods and services purchased."). In 2018, 40% of U.S. bilateral aid was conditional on purchasing U.S. goods (the highest rate among the OECD donors), while ca. 67% of aid were obligated to U.S.-based implementers. Thus, a substantial part of foreign aid funds remains in the country. MARIAN L. LAWSON & EMILY M. MORGENSTERN, CONG. RSCH. SERV., R40213, FOREIGN ASSISTANCE: AN INTRODUCTION TO U.S. PROGRAMS AND POLICY 24 (2020).

273. *See, e.g.*, STIGLITZ, *supra* note 10, at chs.1-3, 5 (providing numerous examples where international assistance was made conditional on austerity measures and privatization); Frederic Mousseau & Olena Borodina, *International Monetary Fund Leverages COVID-19 Economic Fallout to Create a Land Market in Ukraine Despite Widespread Opposition*, OAKLAND INST. (May 21, 2020), <https://perma.cc/4T6X-58WR> (last visited Sept. 21, 2021).

274. *See* Seyedsayamdost, *supra* note 12, at 86-94 (explicating that "there was widespread acknowledgement that SAPs had been trying to adjust the

conditions they imposed on developing countries “often proved to have more adverse consequences than the initial problem itself.”²⁷⁵

vi. *Lack of Sufficient Funding for Assistance*

There is a significant funding deficit for public and private international assistance. It is caused not by the lack of resources,²⁷⁶ but by other priorities of the funders and the lack of institutional guarantees of assistance. As shown, assistance is still considered a voluntary commitment of global actors, and there are no universal mechanisms for accumulating and distributing the means for global assistance. Grave deficiencies of ODA are due to the fact that most OECD donor states fall short of meeting the target of 0.7% of GNI.²⁷⁷

The shortage of funding has several serious consequences. First, the lack of sufficient resources pushes global actors, instead of implementing systematic long-term assistance programs, to focus on short-term projects of assistance aimed at eliminating symptoms, rather than the multiple causes of poverty.²⁷⁸ Unstable and scarce funding leads to ir-

economies of recipient countries without paying attention to society effects” and have caused a lot of damage to developing societies); SHIVJI, *supra* note 241, at 14, 20–21 (blaming the Bretton Woods Institutions for imposing harmful Structural Adjustment Programs on African countries: “[t]he results of structural adjustment have been devastating, as many studies have shown. Social indicators show that education, medical care, health, nutrition, rates of literacy and life expectancy have all declined.”).

275. Chaturvedi, *supra* note 11, at 4. *See also* Easterly, *supra* note 240, at 20 (concluding from empirical analysis that, although “structural adjustment loans were repeated many times to the same country,” “[t]here is no evidence in any of the statistical exercises that per capita growth improved with increased intensity of structural adjustment lending”).

276. *See, e.g.*, Shah, *supra* note 215 (showing that developed countries’ failure to reach the ODA target is political rather than economic issue).

277. EMMA SEERY, OXFAM INT’L, 50 YEARS OF BROKEN PROMISES: THE \$5.7 TRILLION DEBT OWED TO THE POOREST PEOPLE 4 (2020), <https://perma.cc/7N3U-MML6> (reporting that “in the 50 years since the 0.7% promise was made, donor countries have failed to deliver a total of \$5.7 trillion in aid.”) (last visited Sept. 21, 2021); *see also* Paris Declaration, *supra* note 158, art. 4(ii) (“Failure to provide more predictable and multi-year commitments on aid flows to committed partner countries” is among important challenges to be solved).

278. *See* Eade, *supra* note 261, at 632–33 (contending long-term projects are a more effective way of creating “sustainable changes” but less utilized

regular assistance initiatives.²⁷⁹ Even successful projects may be terminated before reaching their goals.²⁸⁰ Second, weak resource provisions lead to shortfalls in institutional capacity, with the result that local NGOs are completely accountable to their foreign donors. Third, the “cutthroat competition for funding” creates “an uncertain environment” and prevents NGOs from coordinating their assistance programs and cooperating in sharing the results of their work and the lessons learned.²⁸¹ Fourth, the lack of funds significantly reduces the chances of implementing high-cost HRIAs, since they diminish the budget available for assistance projects.²⁸²

because of NGOs’ dependency on Northern “partners”); Scott, *supra* note 254, at 213 (explaining how competition for funding risks undercutting public understanding of development work unrelated to emergencies and preventing NGOs from focusing on long-term programs). Mahbubani is of the opinion that the focus of Western countries exclusively on promoting political and civil rights and democracy in the Third World is partly due to the fact that this task requires less “costs or sacrifices” than promoting socio-economic rights and development. MAHBUBANI, *supra* note 1, at 70.

279. Susan Dicklitch, *Action for Development in Uganda*, in *NGOS AND HUMAN RIGHTS: PROMISE AND PERFORMANCE*, *supra* note 254, at 182, 186.

280. See, e.g., *The Zambian Social Cash Transfers Case: The Duty to Cooperate with Zambia to Guarantee Freedom from Hunger through Social Programmes. Germany, Zambia*, in *CASES AND CONCEPTS ON EXTRATERRITORIAL OBLIGATIONS IN THE AREA OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS*, *supra* note 250, at 180–91 (analyzing the German Development Cooperation’s decision to discontinue support of Zambian cash programs). The global pandemic has exacerbated the problem of funding deficit and has led to cancellations or substantial reductions of important assistance programs, including vaccination campaigns, reproductive healthcare projects, provision of aid to various vulnerable groups, etc. See, e.g., Patnaik, *supra* note 4 (exploring ways in which the COVID-19 pandemic has led to the underfunding of programs to fight other diseases); INT’L PLANNED PARENTHOOD, *supra* note 4 (reporting, based on a survey conducted by the International Planned Parenthood Federation, “closures of clinics and/or community-based service outlets” and cuts of sexual and reproductive healthcare services all over the world because of COVID-19 restrictions).

281. Dicklitch, *supra* note 279, at 186, 196; see also Scott, *supra* note 254, at 213 (showing that the scarcity of available funding can reduce cooperation and mutual assistance among NGOs).

282. See Scott, *supra* note 254, at 217 (discussing how the high cost of NGOs’ internal and external evaluations of their work may impact funding available for development projects).

vii. *Inefficiency and Poor Coordination of Assistance Programs*

Research confirms the problem of aid ineffectiveness and the lack of cooperation among global actors for the efficient coordination of assistance programs.²⁸³ According to Action-Aid “two thirds of donor money is ‘phantom’ aid”—overpriced administration costs, expensive and ineffective technical assistance, assistance tied to goods and services from donor countries, aid not aimed at poverty elimination, debt relief and immigration service costs, ill-coordinated and ineffective assistance. This phantom aid is, therefore, “not genuinely available for poverty reduction in developing countries.”²⁸⁴

The Paris Declaration stresses the problem of the “excessive fragmentation of aid at global, country or sector level,” which largely “impairs aid effectiveness.”²⁸⁵ As shown, poor coordination is partly due to the lack of sufficient funding, which forces assistance providers to compete. The main underlying reason is, however, the lack of a global institutional structure indispensable for systematic, well-coordinated, and efficient assistance.

Numerous aid programs not only fail to achieve their fundamental goal of eradicating poverty, but are harmful to developing societies, weakening their economies and, paradoxically, making their populations even more dependent on for-

283. See, e.g., EASTERLY, *supra* note 10, at 4 (“This is the tragedy in which the West spent \$2.3 trillion on foreign aid over the last five decades and still had not managed to get twelve-cent medicines to children to prevent half of all malaria deaths. The West spent \$2.3 trillion and still had not managed to get four-dollar bed nets to poor families. The West spent \$2.3 trillion and still had not managed to get three dollars to each new mother to prevent five million child deaths.”); see also Kumar, *supra* note 243, at 18–19 (examining multiple reasons why ODA is “both unpopular and ineffective among recipient nations,” including “poor co-ordination between donors” which exacerbates other problems).

284. Two of the world’s largest donors—the U.S. and France—spent almost 90% of their international assistance on “phantom aid.” ACTIONAID, REAL AID: AN AGENDA FOR MAKING AID WORK 3, 17 (2005); see also ACTIONAID, REAL AID 2: MAKING TECHNICAL ASSISTANCE WORK 3 (2006) (“This year we estimate that \$37 billion—roughly half of global aid—is ‘phantom aid.’”).

285. *Paris Declaration*, *supra* note 158, art. 33. See also THE FRAGMENTATION OF AID: CONCEPTS, MEASUREMENTS AND IMPLICATIONS FOR DEVELOPMENT CO-OPERATION (Stephan Klingebiel et al. eds., 2016).

eign aid.²⁸⁶ For many critics, international assistance allows “States to excuse non-performance of their domestic obligations and to delegate responsibility to other States.”²⁸⁷ A more radical stance suggests that international assistance cannot be efficient because it makes poor individuals and societies passive recipients of aid, rather than stimulating their development, and therefore sustains their social, economic, and political stagnation.²⁸⁸ Thus, instead of being a means of poverty alleviation, assistance lures its recipients into a poverty trap.

In addition to the critique of the dominant patterns of public and private assistance discussed above, serious and justified criticism has been launched by human rights activists against the practices of the realization of obligations to assist by certain actors, in particular the Bretton Woods Institutions, the United Nations, and certain international NGOs. A detailed analysis of this criticism is beyond the scope of this Article.

C. *From International to Global: Ways to Improve Assistance*

This Section suggests some legal measures that should be introduced to solve problems—set forth in the previous Section—surrounding contemporary practices of implementing extraterritorial obligations to assist: (1) applying a human rights-based approach in the design and implementation of assistance programs, as well as ensuring the accountability of global actors providing assistance; (2) guaranteeing the involvement of all stakeholders, especially poor individuals, in creating and realizing assistance programs; (3) transiting from donor-recipient to global partnership relations; (4) shifting from state-centered to human-centered assistance; (5) abolishing unjustified conditionality of assistance; (6) mobilizing sufficient resources for assistance; and (7) increasing aid efficiency and coordination. Some of these measures found support in the most important international soft law instruments—such as the Paris Declaration (2005), the AAA (2008), the Busan Partnership (2012), and the 2030 Agenda

286. Moyo, *supra* note 10, at 48–76.

287. Khalfan, *supra* note 169, at 299–300.

288. See Moyo, *supra* note 10, at 59 (“[A]id guarantees that in the most aid-dependent regimes social capital remains weak and the countries themselves poor.”).

(2015)—that compose the law of international assistance. These measures are elaborated in the following analysis.

i. *Applying a Human Rights-Based Approach to Assistance and Ensuring the Accountability of Actors Providing Assistance*

A human rights-based approach should be applied while designing and implementing assistance programs. This means that assistance policies and projects should be anchored in a system of internationally recognized human rights. This is possible through empowering individuals as fundamental right-holders, assigning global human rights obligations to assist to multiple actors, undertaking the independent, objective, and publicly available *ex ante* and *ex post* HRIAs and HRDD while elaborating and realizing assistance programs, and holding the multiple actors who provide assistance accountable for their human rights violations.²⁸⁹ Both addressees of assistance and donor state citizens should be empowered to demand the conducting of HRIAs and HRDD and to participate in them. If the assessment indicates that the proposed assistance programs, projects, or policies may have a negative impact on the enjoyment of human rights, they should be substantially revised.²⁹⁰

In addition, a human rights-based approach presupposes the creation and maintenance of a system of global institutions for the realization of human rights obligations to assist, includ-

289. For the U.N. conception of a human rights-based approach, see U.N. SUSTAINABLE DEV. GRP., *THE HUMAN RIGHTS-BASED APPROACH TO DEVELOPMENT COOPERATION: TOWARDS A COMMON UNDERSTANDING AMONG THE UNITED NATIONS AGENCIES* (2003). The CESCR requires applying a human rights-based approach to international cooperation and assistance policies that implies creating efficient monitoring mechanisms for systematic, independent and participatory HRIAs, taking remedial measures when necessary, and guaranteeing accessible complaint mechanisms. See CESCR CO: China, *supra* note 250, ¶ 12 (urging China to apply a “human rights-based approach to its policies of international cooperation.”); CESCR CO: United Kingdom, *supra* note 217, ¶ 15 (similarly calling on the United Kingdom to “adopt a human rights-based approach in its international development cooperation.”).

290. See Olivier De Schutter (Special Rapporteur on the Right to Food), *Guiding Principles on Hum. Rts. Impact Assessments of Trade and Inv. Agreements*, ¶ 3(2), U.N. Doc. A/HRC/19/59/Add.5 (Dec. 19, 2011); Off. of U.N. High Comm’r for Hum. Rts., *Principles and Guidelines for a Hum. Rts. Approach to Poverty Reduction Strategies*, ¶ 105(b), U.N. Doc. HR/PUB/06/12 (2012); Scott, *supra* note 254, at 217; see also *supra* Section II.D.

ing monitoring and accountability mechanisms guaranteeing the right of individuals to remedies.²⁹¹ Engaging civil society organizations into a multi-stakeholder process of global assistance presupposes enhancing their accountability. As developed in Section III.C, (global) civil society organizations should conduct their activities in accordance with international human rights law and the law of international assistance.²⁹²

ii. *Guaranteeing the Involvement of All Stakeholders, Especially the Poor, in Creating and Realizing Assistance Programs*

The principle of “*leaving no one behind*” calls for ensuring the inclusion, fair participation, and adequate representation of all stakeholders, especially the global poor. All assistance programs should be designed and realized in partnership with poor communities and agents acting in their interests, in order to ensure that the voices of the poor are heard. Global actors, especially NGOs, should help communities formulate their actual demands relating to assistance, understand their human rights, develop capacities to defend themselves and hold global actors accountable.²⁹³

Filling a so-called “participation gap” requires empowering poor individuals to be agents of change, involved in all important decision-making processes concerning assistance. Individuals should be recognized as full-fledged subjects in diagonal legal relations, both right-holders and duty-bearers, capable of bringing global actors to account for breaches of their obligations to assist. This includes the recognition of individuals’ rights to a legitimate request for assistance,²⁹⁴ and to demand implementing and taking part in HRIAs and HRDD.

291. See generally Dann, *supra* note 7 (stressing that the evolution of development aid law presupposes strengthening global accountability mechanisms).

292. For example, the AAA and the *Busan Partnership* encourage CSOs to bring their work in line with the *Paris Declaration*, as well as the *Istanbul CSO Development Effectiveness Principles* and the *International Framework for CSO Development Effectiveness*. AAA, *supra* note 264, art. 20 and *Busan Partnership*, *supra* note 267, art. 22.

293. McDougall, *supra* note 258, at 15; Meena Jagannath et al., *A Rights-Based Approach to Lawyering: Legal Empowerment as an Alternative to Legal Aid in Post-Disaster Haiti*, 10 NW. J. INT’L HUM. RTS. 7 (2011).

294. See *supra* Section III.B.

Further, the recognition of the equal significance and interdependence of civil, political, economic, social, and cultural rights should be embedded in all the standards and processes of assistance.²⁹⁵

iii. *Transiting from Donor-Recipient to Global Partnership Relations*

Relations in assistance programs must be changed from the traditional donor-recipient pattern to a cooperative partnership among multiple global stakeholders.²⁹⁶ It proceeds from the assumption that *all* states have the right and obligation to contribute to extraterritorial assistance and may (under certain conditions) also be its recipients. In agreement with the principle of the “ownership of development priorities by developing countries,” these countries should be empowered as equal partners and co-authors of both their territorial and extraterritorial assistance agendas, as well as empowered to contribute to their implementation.²⁹⁷ This will also prevent the extraction of resources from developing countries under the guise of assistance.

Developing countries share global obligations to design, through cooperation and assistance, a just global order. Important steps in this context are the democratization of international institutions, as well as guarantees of non-discrimination, non-domination, and full-fledged participation of developing states in global decision-making, norm-setting, and institution-designing processes concerning assistance. This includes a fair representation of developing states in IGOs, especially international financial institutions (IMF, World Bank, WTO).²⁹⁸

295. See McDougall, *supra* note 258, at 15 (claiming that NGOs’ “struggle for human rights must be balanced” and equally embrace civil and political rights and socio-economic rights).

296. See Jonathan Glennie, *A Manifesto for International Public Finance in the 21st Century*, in *THE DONORS’ DILEMMA*, *supra* note 13, at ch. 3 (proposing a transition of the current system of aid to a “more horizontal” system where all countries, including the poor ones, contribute according to their ability).

297. See *Busan Partnership*, *supra* note 267, art. 11(a); 2030 Agenda, *supra* note 248, ¶¶ 46, 66, 74, 76.

298. See SALOMON, *supra* note 8, at 46 (listing calls to democratize international institutions); Mohohlo, *supra* note 241 (asserting that developing

Full-fledged participation by developing societies in the formulation of the international assistance agenda will ensure that this agenda is truly global, cross-culturally legitimate, and pro-poor. It will also guarantee the realization of their right to contribute to poverty eradication. Since assistance is not limited to economic support, each developing community is able to contribute to the implementation of shared obligations to assist. This is confirmed by the fact that in recent years many middle-income and even low-income countries have been involved in various assistance programs through South-South and triangular cooperation.²⁹⁹ While preserving their right to receive international assistance, developing states often assume obligations to contribute to it and to share their valuable experience on efficient strategies for eradicating poverty.³⁰⁰

iv. *Shifting from State-Centered to Human-Centered Assistance*

This Article, to reiterate, rests on the view that a just global order requires the shift from a state-centered to a human-centered approach to assistance. This shift does not demand abolishing *international assistance*, which is aimed at enabling states to fulfill their territorial human rights obligations, but only improving and supplementing it with *global assistance*, which is addressed to individuals and social groups in need (even if it is provided through states or other actors). Thus, double measures are necessary: the creation of mechanisms for individuals' participation in, and control over, the process of the implementation of international assistance, as well as the development of programs and mechanisms of direct global assistance to individuals in need.³⁰¹

countries should "demand to be treated as partners" having a voice in the IMF's and World Bank's decision-making processes).

299. Some developing states (such as Argentina, Brazil, India, Qatar, Singapore, South Africa, and Thailand) provide significant aid to other developing countries. See Chaturvedi, *supra* note 11, at 9–13 (bringing examples of South-South cooperation projects, while exploring Indian external assistance); Milindo Chakrabarti, *Development Compact—The Cornerstone of India's Development Cooperation: An 'Externalities' Perspective*, 53 INT'L STUD. 2 (2017); Nigam, *supra* note 243, at 29 (analyzing data of various South-South cooperation programs); THE DONORS' DILEMMA, *supra* note 13, at chs. 1, 3, 12, 14 (providing examples of effective South-South development cooperation).

300. AAA, *supra* note 264, arts. 5 & 19(b); *Busan Partnership*, *supra* note 267, art. 14.

301. See *supra* Section III.B.

v. *Abolishing Unjustified Conditionality of Assistance*

Unjustified conditions attached to assistance should be eliminated. They include, in particular, conditions of political and ideological loyalty, human rights-violating reforms, as well as tied aid, which requires a proportion of assistance to be spent on goods and services produced by the donors. In 2001, the DAC High Level Meeting adopted the Recommendation on Untying Official Development Assistance to the Least Developed Countries, which was followed by some DAC donor states. In the Paris Declaration and the AAA, state parties reaffirmed their commitment to untying assistance.³⁰²

However, certain general and special conditions of assistance are justified and should be preserved. As shown in Sections II.C.i–ii, the extreme need of individuals and their inability to exercise their rights independently are general conditions for obligations to assist. Assistance programs may also attach additional conditions determining special goals of assistance programs, such as demands to realize certain types of human rights (the right to food, water, sanitation, housing, health, etc.) or to achieve certain social goals (reducing illiteracy, enhancing school attendance or improving the average height-for-age of children). This practice, in particular, is widely used by conditional cash transfer programs that have proven to be effective measures of immediate help to the poorest individuals and communities.³⁰³ It is important that all conditions attached to assistance programs be justified and made public.³⁰⁴

vi. *Mobilizing Sufficient Resources for Assistance*

Ensuring the realization of obligations to assist, demands not only improving the quality but also increasing the quantity of assistance, which in turn requires mobilizing sufficient fi-

302. *Paris Declaration*, *supra* note 158, art. 31 (“untying aid generally increases aid effectiveness by reducing transaction costs for partner countries and improving country ownership and alignment.”); *see also AAA*, *supra* note 264, art. 17 (discussing how better coordination of aid efforts can reduce transaction costs).

303. For more details on successful conditional cash transfer programs, see Elena Pribytkova, *Unconditional Basic Income or a Decent Social Minimum?*, 4 RPHZ 377, 390–91 (2015).

304. *AAA*, *supra* note 264, art. 25.

nancial resources. This task involves several important measures: first, the creation of a global mechanism for resource mobilization, e.g., a system of international taxation for global assistance;³⁰⁵ second, the involvement of all global actors, including individuals,³⁰⁶ civil society organizations, and TNCs, in raising funds as well as a clear distribution of individual obligations among them within shared obligations of the international community;³⁰⁷ third, the realization of obligations to meet the target of 0.7% of GNI by OECD states, in order to fill the ODA deficit, while progressively increasing the target to 1% of GNI; fourth, ensuring “reliable indicative commitments of aid over a multi-year framework and [disbursement of] aid in a timely and predictable fashion according to an agreed schedule.”³⁰⁸ Making assistance more predictable will enable its recipients to “effectively plan and manage their development programmes over the short and medium term.”³⁰⁹ And finally, it involves the recognition of actors’ responsibility for their failure to fulfill global obligations to assist.

vii. *Increasing Aid Efficiency and Coordination*

A fair global order presupposes a well-coordinated and efficient system of extraterritorial assistance. Legal measures to increase aid effectiveness include: (a) eliminating inefficient “phantom aid” while counting assistance not specially aimed at poverty alleviation separately; (b) rationalizing the “excessive

305. Some proposals are discussed in Section IV.D.

306. According to *Move Humanity*, a 1% wealth tax imposed on the world’s billionaires and “ultra-high-net worth individuals” would collect \$420 billion per year. *MOVE HUMANITY*, *supra* note 11, at 26. That amount would be approximately 2.6 times more than current ODA. *See* *ORG. FOR ECON. COOP. & DEV. supra* note 236, at 1 (estimating current ODA is \$161.2 billion). Oxfam International asserts that “[t]axing an additional 0.5% of the wealth of the richest 1% over the next 10 years is equal to investments needed to create 117 million jobs in education, health and elderly care and other sectors, and to close care deficits.” CLARE COFFEY ET AL., *OXFAM INT’L, TIME TO CARE: UNPAID AND UNDERPAID CARE WORK AND THE GLOBAL INEQUALITY CRISIS 10* (2020), <https://perma.cc/DFP2-LZ95> (last visited Sept. 21, 2021).

307. *See Paris Declaration, supra* note 158, art. 14 (committing partner countries to inclusive leadership policies and collaborating with various global actors); *AAA, supra* note 264, arts. 19–20; *Busan Partnership, supra* note 267, arts. 14, 22 & 32.

308. *Paris Declaration, supra* note 158, art. 26.

309. *AAA, supra* note 264, arts. 25 & 26.

fragmentation of donor activities,” excluding the duplication of assistance efforts and making support “as cost-effective as possible;”³¹⁰ (c) developing objective and measurable criteria and indicators for the evaluation of assistance programs with a view to determining their correspondence to human rights and evaluating their effectiveness;³¹¹ (d) increasing the transparency of assistance and ensuring the accountability of both global actors and home states;³¹² and (e) emphasizing the role of assistance as a help to self-help. In accordance with the latter principle, assistance should be similar to the help of a good doctor: it should aim at eliminating the need for help. In this sense, efficient global assistance programs should not turn individuals into passive recipients, but rather stimulate the development of their independent activity and increase their capacities to self-help.³¹³ In addition to improving existing mechanisms aimed at assisting the global poor, the task of realizing global obligations to assist requires the creation of new institutions, which is the topic of the next Section.

310. *Paris Declaration*, *supra* note 158, arts. 3(iv), 6 & 39; *see also AAA*, *supra* note 264, art. 17 (recognizing the goal of reducing “costly fragmentation of aid”); *Busan Partnership*, *supra* note 267, art. 24–25.

311. *See Paris Declaration*, *supra* note 158, arts. 3(vi) & 10 (providing for periodic assessment of country-level performance regarding development aid). This, in particular, will help to make an objective picture of the progress of the global anti-poverty agenda and to prevent incorrect reports on the success of international assistance programs. *See also POGGE*, *supra* note 77, at 90–92 (criticizing current indices that measure development, poverty, and gender equality and suggesting that new indices holistically measure individual deprivation and serve within various “aggregation exercises”).

312. *See Paris Declaration*, *supra* note 158, art. 47 (stating that a “major priority” for donors and recipient states “is to enhance mutual accountability and transparency in the use of development resources.”); *AAA*, *supra* note 264, art. 24; *Busan Partnership*, *supra* note 267, art. 11(d) & 23.

313. There are already numerous examples of effective assistance programs, such as the conditional and unconditional cash transfers programs implemented in Namibia and India that had positive effects on poverty alleviation. *See, e.g., Pilot Project*, BASIC INCOME GRANT COAL., <https://perma.cc/HS9M-8DEL> (last visited Sept. 21, 2021) (reporting the results of the basic income grant project implemented in Otjivero-Omitara, Namibia, from January 2008 to December 2009); SARATH DAVALA ET AL., BASIC INCOME: A TRANSFORMATIVE POLICY FOR INDIA (2015) (evaluating the realization of the basic income program in Madhya Pradesh, India, from April 2011 to September 2012).

D. *Projects of Institutionalization of Global Obligations to Assist*

Global institutional reforms, indispensable for the realization of global obligations to assist, should include three general mechanisms: (1) a global taxation system to accumulate means for assistance; (2) global mechanisms for distributing these means among poor individuals and societies; and (3) international monitoring and accountability bodies for holding multiple actors responsible for breaches of their global obligations to assist.

A number of global mechanisms that fulfill one or more of these functions have been proposed. This Section provides a brief overview of the most relevant and promising proposals, though a more detailed analysis of them is beyond the scope of this Article.³¹⁴ This Section is not aimed at suggesting a new institutional design necessary for the realization of global obligations to assist but rather at summarizing some important features that this institutional design should embody.

One of the most famous proposals for a universal taxation system was suggested in the Brandt Commission Report of 1980. This report was elaborated by an Independent Commission with the lead of former Chancellor of the Federal Republic of Germany, Willy Brandt.³¹⁵ The report suggested establishing a World Development Fund as a new global financial institution to supplement existing international financial institutions. It followed the principles of “global responsibility” and “co-management” of the global economy and proposed that

314. For an overview of additional proposals on development assistance, see generally José Antonio Alonso, *From Aid to Global Development Policy* (U.N. Dep’t of Econ. & Soc. Affs., Working Paper No. 121, 2012) and MOVE HUMANITY, *supra* note 11. Some suggestions in philosophical literature regarding the institutionalization of obligations to assist deserve special attention: (1) the Global Resources Dividend, see POGGE, *supra* note 49, at ch. 8 (advancing the Global Resources Dividend); (2) the Health Impact Fund, AIDAN HOLLIS & THOMAS POGGE, *THE HEALTH IMPACT FUND: MAKING NEW MEDICINES ACCESSIBLE FOR ALL* (2008); (3) the Unconditional Basic Income, PHILIPPE VAN PARIJS, *REAL FREEDOM FOR ALL: WHAT (IF ANYTHING) CAN JUSTIFY CAPITALISM?* (1995); PHILIPPE VAN PARIJS & YANNICK VANDERBORGH, *BASIC INCOME: A RADICAL PROPOSAL FOR A FREE SOCIETY AND A SANE ECONOMY* (2017); and (4) the Just Linkage proposal, CHRISTIAN BARRY & SANJAY G. REDDY, *INTERNATIONAL TRADE AND LABOR STANDARDS: A PROPOSAL FOR LINKAGE* (2008).

315. *A PROGRAMME FOR SURVIVAL: REPORT OF THE INDEPENDENT COMMISSION ON INTERNATIONAL DEVELOPMENT ISSUES* (1980).

the World Development Fund be not just a new “donors’ club,” but guarantee universal membership and the equal and full-fledged participation of developing countries.³¹⁶ The World Development Fund “must be recognized as a responsibility of the whole world community and placed on a predictable and long term basis.”³¹⁷ The proposed universal taxation system presupposed a tax paid by all but the poorest states, the scope of which would be dependent on their national income. Hence, developed countries would be required to meet the existing 0.7% of GNI target and reach a new threshold of 1% of GNI by 2000. Additionally, the universal taxation system would introduce charges on world trade and war expenditures and arms exports, as well as accumulate income from the “global commons.”³¹⁸

In 1995, the Report of the U.N. Commission on Global Governance set forth further proposals for universal taxation.³¹⁹ The U.N. Commission paid special attention to the necessity to impose global taxes on TNCs and enhance co-financing between states and NGOs. In particular, it suggested levies “for the use of common global resources such as flight lanes, sea-lanes, and ocean fishing areas.”³²⁰ It also supported the European Union’s proposal of a tax on carbon emissions³²¹ and the idea of an international tax on foreign currency transactions, as suggested by Nobel Prize laureate, James Tobin (the

316. *The Brandt Report: A Summary*, SHARE THE WORLD’S RES. (Jan. 31, 2006), <https://perma.cc/R9M6-WHSA> (last visited Sept. 21, 2021).

317. *Id.*

318. *Id.*

319. COMM. ON GLOB. GOVERNANCE, OUR GLOBAL NEIGHBORHOOD ch. 7 (1995).

320. *Id.*

321. Thirty carbon taxes initiatives have been already implemented or scheduled for implementation, which (combined with 31 emissions trading systems) cover about 22% of the world’s greenhouse gas emissions. WORLD BANK GRP., STATE AND TRENDS OF CARBON PRICING 2020 9 (2020), <https://perma.cc/M7Q5-73T8>. According to *Move Humanity* estimates, taxing developed countries, who account for approximately 40% of global CO₂ emissions, by just \$10 per ton—much less than the true social cost of carbon, \$40 per ton—would collect about \$140 billion annually, close to “the current level of all ODA flows.” MOVE HUMANITY, *supra* note 11, at 24; see also *The True Cost of Carbon Pollution*, ENV’T DEF. FUND, <https://perma.cc/X85N-HZ59> (last visited Sept. 21, 2021) (explaining how the social cost of carbon pollution is calculated and the value of such calculations).

so-called “Tobin tax”).³²² At the same time, the U.N. Commission emphasized the difference between global governance and a world government and refused to assign universal fiscal functions to the United Nations.³²³

The World Summit on Sustainable Development in Johannesburg (2002) returned to the issue and recommended “establish[ing] a world solidarity fund to eradicate poverty and to promote social and human development in the developing countries.”³²⁴ The World Solidarity Fund would accumulate voluntary contributions from both public and private donors. On the U.N. Secretary-General’s proposal,³²⁵ the U.N. General Assembly endorsed the decision of the World Summit on Sustainable Development to establish the World Solidarity Fund and suggested giving a mandate to the UNDP to operationalize it as its trust fund.³²⁶ The Economic and Social Council encouraged states and non-state actors to contribute to the Fund and invited developing states to submit projects for financing by the Fund as soon as resources are made available.³²⁷

Former U.N. Special Rapporteur on the right to food, Olivier De Schutter, and former U.N. Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda, put

322. James Tobin, *A Proposal for International Monetary Reform*, 4 E. ECON. J. 153 (1978). On contemporary initiatives concerning the taxation of financial transactions, see LEONARD E. BURMAN ET AL., URBAN-BROOKINGS TAX POL’Y CTR., FINANCIAL TRANSACTIONS TAXES: AN OVERVIEW (2016), <https://perma.cc/6QF7-QGLP>; cf. MOVE HUMANITY, *supra* note 11, at 24–26 (proposing carbon tax, among several other new taxes, to increase development assistance).

323. “We specifically do not propose a taxing power located anywhere in the U.N. system. User charges, levies, taxes—global revenue-receiving arrangements of whatever kind—have to be agreed globally and implemented by a treaty or convention.” COMM. ON GLOB. GOVERNANCE, *supra* note 319, at ch. 7.

324. World Summit on Sustainable Development, *Johannesburg Declaration on Sustainable Development, Resolution 2: Plan of Implementation of the World Summit on Sustainable Development*, ¶ 7b, U.N. Doc. A/CONF.199/20 (2002).

325. U.N. Secretary-General, *Proposal to Establish a World Solidarity Fund for Poverty Eradication*, ¶ 6, U.N. Doc. A/57/137 (July 2, 2002).

326. G.A. Res. 57/265, Establishment of the World Solidarity Fund, ¶¶ 1–2 (Feb. 28, 2003).

327. Econ. & Soc. Council Res. 2003/4, World Solidarity Fund, ¶¶ 5, 8 (July 11, 2003); see also G.A. Res. 60/1, World Summit Outcome, ¶ 23(h) (Sept. 16, 2005).

forward another ambitious proposal for a Global Fund for Social Protection.³²⁸ The proposal claimed that “a global social protection floor for everyone must of course be a top priority on the international agenda.”³²⁹ The Global Fund for Social Protection would perform two key functions and contain two branches. First, the “facility branch,” represented by a support fund, would assist states in the realization of their obligations to ensure basic social protection floors. Second, the “reinsurance branch” would provide a mechanism to protect states against any unexpected risk. The assistance provided by the Global Fund for Social Protection would address developing states and be conditional on their fulfillment of their territorial obligations to the maximum of their available resources. Additionally, states would need to have a “credible road map” for combining international assistance with local resource mobilization and further extending social protection.³³⁰ As the current U.N. Special Rapporteur on extreme poverty and human rights, Olivier De Schutter, proposes a program to set up the Global Fund for Social Protection on the basis of the already existing international mechanisms promoting the universalization of social protection floors, such as USP2030 and the ILO Global Flagship Programme on Building Social Protection Floors for All. The Global Fund structure should ensure a fair representation of developing and developed countries, civil society, and international workers’ and employers’ organizations, as well as country-level coordination.³³¹

Move Humanity, a global initiative created in 2016 by the Human Act Foundation, proposed a set of important budgetary revenues for international development assistance.³³² The initiative suggests four financing components:³³³ (1) better

328. DE SCHUTTER & SEPÚLVEDA, *supra* note 64, at 20 (“The [Global Fund for Social Protection] would ensure a long-term perspective and predictability in providing assistance as well as coordination amongst the international donor community, necessary for the effectiveness and sustainability of social protection, and would avoid a short-sighted, uncoordinated and fragmented approach from donors.”).

329. *Id.* at 14.

330. De Schutter, *supra* note 89, ¶ 51.

331. *See id.* ¶¶ 53–65 (demanding the proposed fund to equitably represent interests of all stakeholders).

332. MOVE HUMANITY, <https://perma.cc/S26D-RX8K> (last visited Sept. 21, 2021).

333. MOVE HUMANITY, *supra* note 11, at 34.

targeting of existing ODA, i.e., increasing its efficiency and directing it to the neediest societies, as well as implementing ODA mainly in the form of grants, rather than loans; (2) substantially increasing ODA, which presupposes not only reaching the threshold of 0.7% GNI by the current donors' club, but also by all other high-income and upper-middle income countries;³³⁴ (3) enhancing private assistance through taxing the world's billionaires and other "ultra-high-net worth individuals;"³³⁵ and (4) adopting new globally coordinated forms of taxation (such as the previously mentioned carbon tax and financial transactions tax; Offshore Accounts Tax which should bring approximately U.S. \$240 billion annually; a "Tech Tax on the technology giants" such as Amazon, Microsoft, Facebook; taxes on luxury and ultra-luxury consumption; and "sumptuary taxes" on harmful and addictive substances and behaviors, including tobacco, sugar additives, gambling").³³⁶

One more important proposal for a trust fund to address issues of international cooperation and assistance was elaborated during the discussions of the OP-ICESCR. According to the draft of the OP-ICESCR, the trust fund would "*assist individuals or groups of individuals to submit communications*" and "provide *expert and technical assistance* to Governments and *non-governmental organizations* for the implementation of the rights recognized in the Covenant."³³⁷ However, the final version of the OP-ICESCR turned out to be state-centered, i.e., it demands providing "expert and technical assistance" only to states parties and omits the initial requirement of assisting individuals and social groups in submitting complaints and providing expert and technical assistance to NGOs. Though the OP-ICESCR authorizes the submission of individual com-

334. *See id.* at 22–24 (projecting that if all Development Assistance Committee (DAC) countries met the 0.7% standard, it would raise an additional U.S. \$175 billion per year in ODA).

335. According to the assessment made for 2018, a 1% wealth tax would garner around U.S. \$100 billion per annum from the 2,208 billionaires and approximately U.S. \$320 billion from the 256,000 "ultra-high-net worth individuals" (those with net worth U.S. \$30 million up to U.S. \$1 billion). *Id.* at 26.

336. *Id.* at 24–26.

337. Hum. Rts. Council, *Revised Draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*, art. 14, U.N. Doc. A/HRC/8/WG.4/3 (Mar. 25, 2008) (emphasis added).

plaints, serious doubts have been raised that the right to assistance could be claimed through the CESCR individual complaint mechanism.³³⁸

Despite some limitations of these proposals, their important contribution consists of the following suggestions: to create a universal taxation system, to integrate several ways of accumulating public and private funds and a number of international taxes and levies, to develop cooperation of all global actors (states, IGOs, NSAs, and individuals), to combine assistance and insurance elements, and to assist individuals in the realization of their right to remedies.

Additional important features that a global institutional structure should embody to realize global obligations to assist are the following: recognizing that these obligations are human rights obligations of multiple actors, rather than voluntary commitments; switching from state-centered to human-centered assistance, i.e., improving international assistance and supplementing it with global assistance; institutionalizing the duty to undertake *ex ante* HRIAs and to monitor each stage of assistance projects; and creating individual complaint mechanisms for holding various actors accountable for their breaches of obligations to assist.

E. Summary

This Part focused on issues surrounding contemporary practices relating to obligations to assist. After a short overview of existing mechanisms used to provide public and private international assistance,³³⁹ it concentrated on the most relevant critique concerning the dominant patterns of assistance practices.³⁴⁰ It formulated legal measures to improve contemporary institutions and practices of assistance—applying a human rights-based approach and ensuring the accountability of global actors, empowering poor individuals to participate in creating and implementing assistance programs, transiting

338. For instance, Eibe Riedel, a member of the CESCR, asserted that, though it is difficult to claim the right to international assistance through the CESCR's individual communications procedure, it might be invoked under inter-state procedure. *Rep. of the OEWG, supra* note 33, ¶ 79. On inefficiency of the CESCR inter-state procedure, see *supra* note 255.

339. See *supra* Section IV.A.

340. See *supra* Section IV.B.

from donor-recipient to global partnership relations, shifting from state-centered to human-centered assistance, abolishing unjustified tied aid, mobilizing sufficient resources for assistance, and increasing aid efficiency and coordination³⁴¹—as well as some important features of global institutional structure necessary for realizing global obligations to assist.³⁴²

V. CONCLUSION

This Article provided a general outline of the justification of global obligations to assist in the realization of socio-economic rights, strategies for their legal conceptualization, and mechanisms of their realization. The main ideas developed in this Article may be summarized as follows.

First, global obligations to assist are not just voluntary commitments of beneficent actors but binding human rights obligations that should receive legal recognition at international, regional, and local levels. Individual and shared global obligations to assist embrace both secondary interactional obligations to provide assistance and primary institutional obligations to create and maintain a global institutional scheme necessary for ensuring relational and distributive justice. Furthermore, global obligations to assist run simultaneously with territorial obligations of social support. In addition, global obligations of assistance should not be confused with remedial extraterritorial responsibilities to compensate for harm, which generally should precede the implementation of global obligations to assist.

Second, individuals should be recognized as primary holders of the right to assistance and empowered to make direct requests for global assistance. It is necessary to shift from state-centered to human-centered assistance. In other words, guarantees and mechanisms of international assistance should be substantially improved and supplemented with those of global assistance. Duties of global assistance are conditional on an individuals' inability to obtain their state's support, excepting global emergency assistance that should be provided without this condition.

341. *See supra* Section IV.C.

342. *See supra* Section IV.D.

Third, shared global obligations to assist in the realization of socio-economic rights bind all global entities (states, IGOs, NSAs, and individuals). At the same time, poor individuals and developing societies have the right to participate in and contribute to the realization of shared global obligations to assist.

Fourth, the scope of global obligations to assist should be determined by the principles of sufficiency and a decent minimum sacrifice, the harmonization of which is possible through a fair distribution of the burdens of assistance among all members of the international community. In this sense, global actors have an obligation to cooperate in accumulating sufficient resources for assisting individuals and social groups in the realization of the socio-economic rights indispensable for leading a decent life. Global obligations of urgent assistance should guarantee protection from extreme poverty and the enjoyment of the minimum core content of socio-economic rights.

Finally, significant legal measures to solve problems surrounding the contemporary practices of assistance should include: applying a human rights-based approach while designing and implementing assistance programs and ensuring the accountability of global actors providing assistance; guaranteeing the involvement of all stakeholders, especially poor individuals, in creating and realizing assistance programs; transitioning from donor-recipient to global partnership relations; switching from state-centered to human-centered assistance; abolishing unjustified conditionality of assistance; mobilizing sufficient resources for assistance; and increasing aid efficiency and coordination.

Returning to the shipwreck metaphor, an adequate response to the numerous SOS signals sent by those suffering from poverty around the world includes recognizing the right of individuals to global assistance and the corresponding shared obligations to assist held by all members of the international community, as well as creating and maintaining a fair global institutional structure indispensable for the realization of those global obligations.