



# NGO Duties in Relation to Human Rights

## A Closer Look at One Proposal

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### **ABSTRACT**

This paper investigates the moral duties that human rights NGOs, such as Amnesty International, and development NGOs, such as Oxfam, have in relation to human rights – especially in relation to the human right to a decent standard of living. The mentioned NGOs are powerful new agents on the global scene, and according to many they might be duty-bearers in relation to human rights. However, until now their moral duties have hardly been investigated. The present paper investigates NGO duties in relation to human rights by looking in particular to a moral theory recently proposed by Leif Wenar, a theory which has some similarities to utilitarianism. In applying this theory, a case for human-rights duties of NGOs is developed mainly by considering the indispensable role that civil society plays in protecting human rights. The paper concludes that, at least, NGOs bear duties with regard to human rights when, as in certain real-life cases, NGO involvement is the only way to achieve acceptable protection against standard threats to certain goods, such as a decent standard of living.

**Keywords:** NGOs; human rights, moral duties, human right to a decent standard of living; Leif Wenar, moral theory, utilitarianism; civil society.

### **RÉSUMÉ**

Ce papier approfondit la question des obligations morales que les ONG de droits de l'homme, telle qu'Amnesty International, et les ONG de développement, telle Oxfam, ont vis-à-vis des droits de l'homme- particulièrement en relation avec le droit de l'homme à un niveau de vie décent. Les ONG mentionnées sont de nouveaux agents possédant un certain pouvoir sur la scène globale, et devraient être investies d'obligations à l'égard des droits de l'homme selon certains. Pourtant, jusqu'à maintenant, leurs obligations morales ont été difficilement analysées. Ce papier analyse les obligations des ONG en relation avec les droits de l'homme en se référant à la théorie morale proposée récemment par Leif Wenar, une théorie qui a des similarités avec l'utilitarisme. En appliquant cette théorie, l'analyse des obligations morales des ONG vis-à-vis des droits de l'homme est développée, principalement en considérant le rôle indispensable que la société civile joue dans la protection des droits de l'homme. L'article conclut que, au moins, les ONG possèdent des obligations vis-à-vis des droits de l'homme quand, comme dans certains cas de la vie réelle, l'engagement des ONG est la seule voie pour atteindre une protection acceptable contre les menaces usuelles vis-à-vis de certains biens, tels qu'un niveau de vie décent.

**Mots clés:** ONG, Droits de l'homme, devoirs moraux, droit de l'homme à un niveau de vie décent, Leif Wenar, théorie morale, utilitarisme, société civile.

## INTRODUCTION<sup>1</sup>

This essay tries to provide some more clarity about the human-rights related moral duties of NGOs (Non-Governmental Organizations), more particularly about the human-rights related moral duties of NGOs, such as Amnesty International and Oxfam, which engage in human rights promotion and development work. There is very little philosophical work on this topic, with Bell & Coidaud (2007) and Vedder (2007) being about the only substantial contributions that I am aware of.

In order to make this large subject somewhat more manageable, I will be considering what human-rights related duties of NGOs may look like, particularly what NGO duties in relation to a human right to a decent standard of living may look like, if we take one particular theory as our starting point. I propose to look at the interesting theory recently developed by Leif Wenar,<sup>2</sup> a theory which has some similarities to utilitarianism, as will become clear.

However, nowhere will my concern be with exegesis as such. My interest is thematic, in the human-rights duties of NGOs. It will shortly be explained why I turn to Wenar nonetheless. First of all, however, some background to the topic of this essay will be provided as well as some conceptual clarifications.

We start with human rights. Human rights are currently an influential discourse or set of discourses in many practices — such as political, social, juridical, and ethical practices. Many observers think that we should certainly not get rid of human rights discourses before we have something that is clearly better; but philosophically, human rights raise many questions. These concern, among other things, the questions of what human rights are and what there are human rights to. And they concern the question of the relationship between human rights and duties and, more specifically, the question of who bears whatever duties that may be connected with human rights.

This last question has particular importance. Some argue that human rights are conceptually incoherent as long as no duty-bearers can be specified;<sup>3</sup> all agree that human rights talk is rather meaningless as long as the duty-bearers are unclear.

That gets us to the question of whether (certain kinds of) NGOs may be duty-bearers with regard to human rights. Some think that it is nonsense even to suggest that they might be. This may, firstly, relate to the idea that human rights are by definition connected to duties only of states or governments. Or it may, secondly, relate to the idea that collective entities

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<sup>1</sup> For their comments on earlier drafts of this paper I thank Bert van den Brink, Marcus Düwell, Isabelle Duyvesteyn, Nina van Heeswijk, Marcel Verweij, and the members of the Practical Philosophy Colloquium of Utrecht University. Of course, the present text remains entirely my own responsibility.

<sup>2</sup> Wenar proposes his theory in a paper entitled ‘Responsibility and Severe Poverty’, which appears in the volume *Freedom from Poverty as a Human Right. Who Owes What to the Very Poor?* (Oxford: OUP 2007), edited by Thomas Pogge.

<sup>3</sup> Some go even further and say that there are conceptual problems concerning human rights until duty-bearers can be identified *and* it can also be enforced that they carry out their duty. See James (2005).

such as NGOs cannot properly be regarded as agents or moral agents. As for the first idea, we will shortly see a definition of human rights where it is not obvious nonsense that NGOs could bear duties. Concerning the second idea, in this essay it will be assumed that NGOs can be moral agents.<sup>4</sup>

Now NGOs are, according to many, powerful new agents on the global scene, with both a great capacity and a great willingness to promote human rights. Thus, if it is not an obvious mistake to think that NGOs could bear human-rights duties at all, it is a very interesting question what human-rights duties they do in fact bear.

To get a better understanding this question, it will now be explained what we mean by NGOs and what we mean by human rights.<sup>5</sup>

Vedder mentions the following characteristics of NGOs: firstly they are not-for-profit; secondly, they consist at least in part of a voluntary group of citizens; and in the third place they depend at least partly on voluntary activities or donations from private citizens.<sup>6</sup> In order to get closer to a full definition of NGOs, that is to say, a definition that truly states the necessary and sufficient conditions for an entity to be an NGO, I propose to add a fourth characteristic: NGOs are to a considerable extent formally organized (different from, for example, social movements). Finally, to do justice to the 'realities on the ground' it may be good to add a fifth characteristic: although NGOs should be clearly distinguishable from governments, they may in part receive government funding.<sup>7</sup>

I am well aware, however, that all this does not yet amount to a full-fledged definition of NGOs. Or if it does, we would have to regard churches, soccer clubs, and even armed rebel groups, as NGOs.

However, I propose not to search for a full definition of NGOs but to say instead that, when we speak of NGOs in this paper, we will be concerned with what may be particular kinds of NGOs, namely NGOs that engage in the advocacy of human rights, and NGOs that engage in relief and development activities.<sup>8</sup> These NGOs may be large or small, work locally or worldwide, be northern-based or southern-based, and so on.<sup>9</sup> However, as will be explained below, the present essay will concentrate on national contexts.

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<sup>4</sup> For business corporations, the case has been argued by e.g. Peter French (1984).

<sup>5</sup> Furthermore, here follow some brief comments about duties: first, we will be speaking about moral duties, while not in this essay trying to explain what 'moral' means. Secondly, if agents have a (moral) duty to act in a certain way with regard to human rights, this is taken to mean that they have decisive moral reason to so act. Thirdly, below we will also be speaking about moral permissions. We take it that a given agent has a moral permission to act in a certain way if he has neither a duty to act in this way nor a duty *not* to act in this way.

<sup>6</sup> Vedder (2007), p.3, closely paraphrased.

<sup>7</sup> Another part of the clarification of what NGOs are, may consist in clarifying what groups fall inside and outside and inside its organizational boundaries: management, field workers, funders...? Various decisions may be made here, but in the context of the present essay, these questions can be left open.

<sup>8</sup> Relief and development activities, as commonly understood, may involve the protection or promotion of certain human rights.

<sup>9</sup> I will not further pursue such qualifications.

We turn to human rights. I begin with the definition of a right that Henry Shue proposes in his influential book on basic rights. Shue says that ‘a (moral) right provides (1) the rational basis for a justified demand (2) that the actual enjoyment of a substance be (3) socially guaranteed against standard threats.’<sup>10</sup>

For the purposes of this essay, I propose the following modification: if X has a right to Y, this means that (1) X’s actually being able to enjoy Y (2) ought to be socially protected against certain standard threats. The most important difference with Shue is that in this modification, the idea is left out that a (moral) right itself provides the rational basis for a justified demand that a substance be protected. This basis, I would say, is provided by the *justification* of the right, by the story about *why* X has a right to Y.

We will follow Shue in talking about *moral* rights. In this essay, it will not be further explained what ‘moral’ means. In any case, moral rights are not legal rights, and they might tell us why there ought or ought not to be certain legal rights.

We will now propose a definition of *human* rights.<sup>11</sup> To begin with, a human right is a *right*, as specified above. Furthermore, X has a *human* right to Y if (3) X has a right to something, a substance Y which is in some sense very important to X, (4) and this Y is very important because of X’s very humanity. In addition, (5) it is very weighty or important that X’s actually being able to enjoy Y be protected against certain standard threats.

Some further explanation is appropriate. We begin at the end: human rights, we have said, by definition express *weighty* moral claims. This conceptual choice has the (I think desirable) result that one can no longer meaningfully say: ‘OK, this is a human right, but is it morally important?’

Furthermore, we have said that human rights concern substances that are important in virtue of a human being’s very humanity. This is most straightforwardly taken to mean that they are important for everyone, whether young, old, male, female, laborer, philosopher, and so on. But this raises complications. Many substances that intuitively belong in lists of human rights, for example the ability to participate in government, cannot be important for those who irremediably lack the necessary capacities for doing so. It seems, then, that lists of human rights might implicitly rely on a picture of a human being with certain capacities.<sup>12</sup> In this line, we may propose that lists of human rights should only include substances whose actual enjoyment (or perhaps better: where the freedom to actually enjoy them) is weighty for broad categories –or: great numbers– of people, everywhere, anytime. Even if this does not sound too impressive, we will nonetheless rest content with this proposal for now.

However, we should acknowledge that some substances that are sometimes seen as candidates for there being human right to, like actually enjoying a free press, are dependent for their realization on *certain kinds of social contexts*. I would propose that such substances

<sup>10</sup> Shue (1996), p. 13.

<sup>11</sup> Human rights, as we will define them, are not the same as Shue’s basic rights. Basic rights in his sense are rights that are a precondition for any other rights.

<sup>12</sup> Are these *average* capacities? (If most of us were like Bach, would it be a human right to have an environment with the preconditions for composing and listening to music?) Relatedly, since the level of generality of the formulation is obviously important here, it is an interesting question whether, if we formulated generally enough, we could come up with a list of substances that would be important to *everyone*. If so, just *how* general would we have to be?

are only substances to which there could be a human right –in other words, they are only viable substances for a human right– if they are such (or are formulated at such a level of generality) that their actual enjoyment is weighty or important to broad categories of people in a wide array of social institutions across time and place.<sup>13</sup> An example can clarify what I mean: freedom of the press is a substance to which there could be a human right only if actually to enjoy freedom of the press would also be weighty or important for, say, Middle Ageders or Amazon Indians – which would mean that it would be important for these people to have (had) different social institutions than they in fact had.

However, if a substance Y is a viable substance for a human right, in the sense of being very important to broad categories of people everywhere anytime, that does not yet mean that human beings have a human right to Y. If this is to be the case, we have, according to our definition, to be able to identify ‘standard threats’ against which there ought to be ‘social protection’. For our purposes there is, in the expression ‘protection against standard threats’, the idea of a certain level of protection, and the idea of a certain likelihood and shape of protection: the right to food, for example, is a right to a certain minimum diet, and certain likelihood that this diet is protected in case things happen such as income shortfalls, crop failure, and certain (other) disasters. We may then perhaps say that there is a human right to food if social arrangements across place (perhaps not time) are widely such as to be able to provide protection against standard threats as specified – or more precisely, if social arrangements are widely capable of doing this *provided that* there are no ‘rough elements’ such as food-hoarding crooks and cruel dictators.<sup>14</sup>

In the above account of what human rights are (and relatedly to *what* there can be human rights), these rights depend conceptually on social arrangements:<sup>15</sup> a substance is only fit as a candidate substance for a human right if it is important to people in social arrangements everywhere, anytime; and for there to be a human right to the actual enjoyment of this substance, it must be the case that ‘standard threats’ can be identified against which protection can be provided in all existing social arrangements.<sup>16</sup>

However, social arrangements are only obliquely or vaguely present in our definition, in the sense that it is left conceptually open (once ‘rough elements’ are out of the way) what the answer is to the question of more particularly *which* agents ought to provide protection against standard threats, and who ought to provide this protection if these agents do not live up to their duties. Thus we may ask what the duties of human-rights advocacy NGOs and development NGOs are here.

<sup>13</sup> This is not to say that they have to be independent from social institutions, related to a human nature conceived presocially or eternally – as some versions of natural law theory might have it (cf. Beitz 2004).

<sup>14</sup> Admittedly, this qualification would require further discussion.

<sup>15</sup> Yet our account differs from Rawls’s in *The Law of Peoples* (1999), where he defines human rights politically in the sense that he calls human rights those things the observance of which is the necessary and sufficient condition for precluding foreign intervention, as well as a necessary condition for being a member in good standing of the so-called ‘Society of Peoples.’ (cf. also Beitz 2004)

<sup>16</sup> Agents who act for the sake of human rights would then act to come closer to the protection of the actual enjoyment of certain substances against standard threats, or to keep them protected against such threats. In the present essay, this is the background of talk of ‘protection’, ‘fulfillment’, ‘enhancement’, ‘promotion’ of human rights, such terms being used indiscriminately.

This concludes my tentative account of human rights. I have aimed in the first place at making my usage *clear*, and at developing a concept that is not too counterintuitive.<sup>17</sup> Also, I have explicitly tried to avoid the kind of reductionist account that says that there is a human right to Y whenever a moral theory says that all humans ought urgently to get Y – or something similar. In other words, I have tried to avoid an account where human rights theory collapses into general moral theory.<sup>18</sup>

I am aware that the account offered above still has many loose ends. What would be especially needed is a justification of why people should have any human rights (and subsequently of which particular human rights there would be). Such a justification would then also be the most straightforward place to go looking for an account of human-rights duties and duty-bearers.

However, all this is rather ambitious, and in the present essay we will not try to approach our topic via a justification of human rights. Instead, we will for the sake of clarifying duties turn to general moral theory again. The idea is not to arrive at a reductionist account of human rights after all. Rather, the idea is to use general moral theory so to say heuristically. Put differently, as long as a justification of human rights is pending, general moral theory will be used to get clearer about the moral reasons that bear on our topic; explanation follows shortly.

In what follows we shall concentrate on the human right to an adequate standard of living, understood as a human right to food, shelter, basic health care, income, and the like; and we will proceed on the assumption that this is a human right. We will leave human rights to other substances to one side.

## **2. MORAL THEORY**

Who ought to provide protection against standard threats to the ability of human beings actually to enjoy an adequate standard of living? More particularly, what duties (if any) do human rights advocacy and development and relief NGOs have here?

In exploring this issue we turn, as said, to moral theory. For if we inquire into the human-rights duties of NGOs, what we are after is moral reasons; and moral theories can be regarded as reservoirs of important moral reasons, concerning what fairness is, what the role of likely consequences should be in deciding on a certain course of action, what bearing past wrongdoing should have on present behavior, and so on. The subjects and shapes of moral theories provide some orientation in the multitude of varied considerations that could bear on the question of what actions NGOs should or should not take with regard to human rights.

However, moral theories generally speak about reasons that are formulated at a very high level of abstraction. Much additional information and many additional suppositions are

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<sup>17</sup> In footnotes 13 and 15 above, something has been said about how this account relates to some other prominent accounts of human rights, such as some natural law accounts and Rawls's political account. To explain why we do not adopt those accounts, more discussion would be required.

<sup>18</sup> Cf. what Griffin (2008) calls 'top-down approaches' to human rights.

needed if we are to arrive at a level where we can more specifically say something about the human-rights duties of NGOs. Therefore, it might ‘skew’ our approach to give a central place to moral theory: certain (rather abstract) reasons get much more attention than other (often more concrete) reasons, even though the former are not necessarily more important than the latter.

My reply to this concern is that I would still like to start with moral theory, because of the welcome order and orientation that it can provide. The hope is that by applying a relatively general theory to our subject, we will get in a better position to see clearly what considerations most importantly bear on our subject;<sup>19</sup> and this may in turn help us to build better and also more concrete theories.

More specifically, we propose to consider Leif Wenar’s theory, presented in 2007 in the essay ‘Responsibility and Severe Poverty’.<sup>20</sup> Wenar holds that the duty to act against threats to basic well-being is to be attributed to the agent who can act at the least cost to themselves. This is a theory that both urgently requires clarification and may raise some eyebrows. Still, it is a good theory for our purposes, in the first place because it builds on one of the most central intuitions that most of us have concerning the question of who bears duties to protect against certain threats, namely the intuition that this is up to the agent with the greatest capacity to do so. This intuition keeps coming up again and again, and it is worth exploring its content and justification.

Furthermore, while Wenar’s theory is close in spirit to utilitarianism, one of the great traditions of Western moral philosophy, we can discuss it as a self-contained theory<sup>21</sup> and thus (hopefully) keep our discussion somewhat more manageable.

In what follows we first present Wenar’s theory (in this section), and point to some difficulties of it (also in this section). Then we try to apply it to the question of human-rights duties of NGOs (Section 3), and we reflect on where this application seems correct and revealing for our subject, and where the application brings to light problems for Wenar’s theory – and where it may, by doing this, begin to show the way to a better theory (also Section 3). Finally, we conclude.

I will now reconstruct Wenar’s theory as an answer to the question of which agents ought to act to provide protection against standard threats to an adequate standard of living. As said at the beginning of this paper, I am not concerned primarily with exegesis - although of course I try not to misrepresent Wenar’s views.<sup>22</sup>

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<sup>19</sup> Such considerations will sometimes give us reason to modify the moral theory that we started out with, while at other times we will have to conclude that this theory gets it right about our subject, even if some of the results of its application may be unexpected.

<sup>20</sup> See footnote 2 above.

<sup>21</sup> In addition, Wenar’s theory is designed to answer a relatively specific question, namely who ought to act to protect avert threats to basic well-being; this might, on the face of it, also help to keep the discussion more manageable.

<sup>22</sup> In fact, Wenar himself is concerned with a very similar problem. He speaks of ‘responsibilities’ to refer to what we call ‘duties’ and he prefers to reserve the term ‘human rights’ for use in relation to duties of the powerful, esp. governments. However, I take these differences to be primarily terminological – they do not make unjustified an attempt to apply Wenar’s theory to our problem.

Wenar says that the duties to act against threats to basic well-being (of which, important for us, we may consider threats to an adequate standard of living to be a part) lie primarily with the party that can do so at the least cost to themselves (or, as he also says, that can do so ‘most easily’). Only if these do not live up to their duties does a different agent come in sight: namely the agent that, of the remaining agents, can act most easily. Throughout, Wenar admits that he needs a good story about what ‘cost’ (or ‘ease’) is but that he cannot (yet) provide one.

Wenar often talks as if the above ‘least-cost hypothesis’ (as he calls it) is justified because it fits with how we intuitively think about a wide number of cases of threats to basic well-being (or, for our purposes, an adequate standard of living). At this point, we may of course ask Wenar the obvious question of whether our intuitions are right. However, as I reconstruct Wenar, there is another source of support for the ‘least-cost hypothesis’: if we follow this hypothesis, we get the most effective, publicly storable system to provide protection against threats to basic well-being.

In other words, Wenar may be construed as saying (relatively plausibly) that what we should want, morally speaking, is the most effective system of protection against threats to basic well-being; and he adds that this system should be publicly storable.<sup>23</sup> He then goes on to submit, as an empirical hypothesis, that the most effective system is the one in which duties to avert threats to basic well-being lie with those parties who can most easily fulfill them. More precisely, with predictable threats (which concern us first of all in this essay) we would, Wenar says, attribute duties to agents on the basis of relatively general descriptions under which these agents fall; this makes the system easy and hence publicly storable. For example, we say that able-bodied young males, firefighters, parents, or local governments, should avert certain threats; and we do not regard the particular circumstance of every firefighter to see whether it is indeed less costly for them to help than it would be for non-firefighters. However, Wenar adds, in unpredictable ‘one-off’ cases, like certain emergencies, we do think that that agent has the primary duty for helping who in fact, and not only on the basis of a fairly general description, bears the least cost.<sup>24</sup>

Now, because I think that what Wenar is after is the solution with the most effective protection against threats, I will use this as the basis for my application, and I will not put so much emphasis on the least-cost principle. There is another reason for this: the least-cost hypothesis speaks as if we have a fixed outcome, call it O, and that there are different ways W to get there: W(O)1, W(O)2, ... W(O)n. In each of these scenarios, different agents act and, according to Wenar, that scenario W is to be chosen in which those agents act who can do so at the least cost to themselves, compared with all the other agents. By contrast, suppose that, as Wenar in the end suggests, we are after the most *effective* protection against threats. Then, I would say, the idea may easily arise that the outcome is different in different

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<sup>23</sup> Put differently, the system should meet the publicity condition; the system is meant to be a public one that everyone is aware of. This obviously sounds very Rawlsian (cf. Rawls 1971, p. 115). However, with Wenar himself, it is not clear whether (1) public storable is an independent desideratum or requirement or (2) whether (and what now follows is an empirical hypothesis) the system should be publicly storable because otherwise it could not be the most effective.

<sup>24</sup> By way of example, think of the famous Peter Singer-case where a professor passes by a child drowning in a shallow pond (Singer 1972).



scenarios. Or, put in the vocabulary that is relevant for our essay, different scenarios offer outcomes that are relevantly different with regard to protection against ‘standard threats’: the required level, likelihood and shape of protection are not equally achieved. We should then, I think, first of all go for the scenario where we get as closely as possible what we require, and only then consider least-cost.<sup>25</sup> If this reading of Wenar should mean that we started with Wenar and end up with something much more consequentialist, then so be it.<sup>26</sup>

Incidentally, this primary focus on the desired outcome squares well with two exceptions that Wenar wants to admit to his least-cost hypothesis:<sup>27</sup> agents need not act where the cost is excessive, and sometimes the requirement to provide compensation trumps the least-cost principle, i.e., sometimes a wrongdoer must act rather than the agent who most easily can. Wenar tells us of these exceptions that the one is sometimes ‘hard ... to activate’ and that the other ‘surrounded by least-cost reasoning on all sides’ (p. 262; 269). If we try to understand why Wenar says these things about his exceptions, we are puzzled if we look to the least-cost principle *per se*; but we are not puzzled at all if we assume that Wenar is ultimately concerned about effectiveness in achieving the desired outcome (with the least-cost principle being only derivative).

### **3. HUMAN-RIGHTS DUTIES OF NGOS**

Wenar himself applies his theory as follows: the primary duty for averting threats to basic well-being lies with the individuals themselves whose wellbeing is at stake. Next, as step-back options, come their near and dear, the local community, the national government, and the international community and foreign governments, in this order. The row is closed by citizens of foreign countries. Presumably, these rough application guidelines would not only be in line with the least-cost principle, but also make for the most effective protection against threats to basic well-being. However, if this is what Wenar thinks, we should immediately acknowledge that, at least for the case of human rights as we have defined them and in particular for the human right to an adequate standard of living, governments come into the picture very often concerning the question of who, concretely, should act. Effective protection against standard threats involves certain kinds of guarantees, and it may be that these can only be provided at the national or international level.

A second notable feature of Wenar’s own application of his theory is that he thinks that the theory does not always point to definite social or institutional arrangements. According to

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<sup>25</sup> Capacity, an ambiguous concept (cf. D. Miller 2005), would on this reading of Wenar’s theory, have relevance for the attribution of duties first of all in the sense of ‘the ability to get things *done*’, rather than in the sense of ‘the ability to do things *easily*’.

<sup>26</sup> I have said that we only speak of a *human right* to a certain substance if it is widely feasible across existing social arrangements to protect the actual enjoyment of that substance against standard threats. This was meant as a crude reality test; it was not meant to imply that we can only speak of a human right to something if its actual enjoyment is already safe no matter what we do, and apart from efforts to strive for its protection. That would be a strange idea of a human right.

<sup>27</sup> No doubt, Wenar admits of these exceptions in order to avoid counterintuitive implications of his theory.

Wenar, the way to deal with this indeterminacy is for the agents involved to agree on and put in place *some* effective arrangement. However, Wenar's discussion of this point is very brief.

We will now try to say something on the human-rights duties of NGOs, based on Wenar's proposal as it was reconstructed above. When trying to say something relatively concrete about the human-rights duties of NGOs, I will take only *one* possible 'road' among many, a road that starts by observations about the state and about civil society, and then returns to NGOs. This is a relatively roundabout road, so I would like to ask the reader for some patience.<sup>28</sup>

Let us begin by stating that we cannot examine in the present context and will treat as a big assumption, that an acceptable arrangement for protection against standard threats to an adequate standard of living would always attribute great duties and the (in many senses) most important duties to an agency which in some credible sense would have a monopoly of violence, whether this agency would resemble more closely a national government or government at a different level or take a yet different shape. Again, this assumption would certainly merit discussion, but I cannot provide that here.

Against this background, my thoughts about the possible duties and permissions of human-right advocacy NGOs and development and relief NGOs stem from the idea that any acceptable arrangements for protecting an adequate standard of living against standard threats, would also involve a substantial role for a lively civil society. Civil society is then understood broadly, as all voluntary associations of citizens. The reason why any arrangement without a substantial role for a vibrant civil society –put differently, any arrangement of which a lively civil society would not be an important part– would be unacceptable, is that it would decidedly provide substandard protection, whatever the exact specification of 'standard threats' may turn out to be. So the reason for insisting on a substantial role for civil society would not have to do with least-cost considerations, whatever exactly these may look like. Rather, it would hinge on the consideration that without such a substantial role, the objective of protection against standards threats to an adequate standard of living, would not be achieved.

But why not? Here, the main argument –if we may call it that– consists of a largely empirical claim: that without a lively civil society, there is no way that there are going to be sufficient guarantees against abuse of power, and against incompetence and cruelty of those in power, and the like. True, in principle one could perhaps think of a system of checks and balances that may in some sense be part of a state or government apparatus (or, more generally, part of the institution that has the monopoly of violence) and that would provide guarantees against the mentioned failings. In fact, however, even such a system of checks and balances is unthinkable if there is not a culture of watching and criticizing those in power. And for that we need a lively civil society.

This is surely very brief. Furthermore, there are many other functions that a lively civil society, in the broad sense of voluntary citizen associations, would play in any acceptable arrangement to protect an adequate standard of living against standard threats – it would have a role in implementing protection mechanisms, in informing people on various essential

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<sup>28</sup> Also, as will become clear, our discussion largely refrains from exploring the global or international case, and we restrict ourselves for the most part to ideal theory, in a sense to be explained.

points, and in educating them as well as inspiring them. This again is somewhat vague and very broad and would require further elaboration and investigation.<sup>29</sup> Still, the remarks just made may suffice to make the point that a lively civil society is a vital part of any arrangement for sufficiently protecting an adequate standard of living.

We may add that the role of civil society seems vital not only in ideal situations, defined in the Rawlsian sense as situations where institutions are as they could be, given that people are taken as they are<sup>30</sup>; it is also vital in many situations that are non-ideal in the mentioned sense (although perhaps not all such situations). Put differently, the above observations about the vital role of a lively civil society provide arguments both (non-ideally) for establishing a lively civil society and (ideally) for maintaining a lively civil society where it exists. Below, we will mainly, but not exclusively, discuss the ideal case.

Before returning from civil society to NGOs, we observe that we will not try to develop and expand the above story –about the vital role of a lively civil society– for the *global* case. The global case involves many complexities and unclaritys. The present global situation is one where there are many states, limited interstate (or transstate) institutions, and many civil societies that are more or less national, as well as a number of emerging transnational civil societies (and perhaps also *one big* emerging global civil society). Whether this situation is even closely the ideal one, is not at all clear; more generally, it is not very clear how we should begin to think about the global case.<sup>31</sup>

So, I will leave the global case to one side, and thus only discuss whether we may or must see any place for human-rights and development NGOs if they should operate on a national scale. (To see the possible concrete relevance of this discussion, think of the case of a large country, like Brazil.) Only towards the end will I briefly take up the global case again.

Now, suppose that the above observations are correct. Then what does this show about how human-rights and development NGOs may or must act for the sake of protecting an adequate standard of living against standard threats? To answer this question, I will now develop my observations about civil society further. Once again, this development takes a few relatively specific directions where many others may also be possible.

Civil society as we have defined it is very broad; it includes the NGOs that concern us in this essay, but much else as well: churches, sport clubs, labor unions, the press, social movements, artistic circles, and so on. For our purposes, a few observations about civil society, thus understood, are important. Firstly, most collectives that are part of it are not

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<sup>29</sup> What has been said also involves a number of empirical hypotheses. However, it seems to fit in with a fairly wide and robust array of empirical evidence. Or does it? Some have contended that dictatorships can also provide sufficient protection of a decent standard of living against standard threats. But I would doubt this: for example, Sen's work (e.g. 1999) shows that the prevention of famines crucially depends on a well-functioning free press.

<sup>30</sup> Cf. Rawls (1999). So, in ideal situations there would still need to be safeguards against power abuse. (If we define ideal situations, in an alternative Rawlsian formulation (1971), as situations of full compliance with just arrangements, then it is understood that the institutional arrangements in such situations must be such as to make full compliance realistic.)

<sup>31</sup> For example, even if we assume that the most important human-rights duties are to be borne by an agent that has the monopoly of violence, it is not clear how we should conceive of such an agent in the global case.

neatly *representative* of anyone (of any group or collective of individuals) – in something like the way that parliaments are representative of the citizens of a given country. Nor, secondly, are many of the collectives in the civil society neatly *accountable* to a group or collective of individuals – in something like the way that parliaments are accountable to the citizens of a given country.<sup>32</sup> Many collectivities or organizations in civil society may be said to have multiple allegiances – like universities have to research communities, to their students, to governments, to funders, and so on. Thirdly, many agents in civil society are part of a network of influences – they are influenced by many and do in turn have an impact on many, but it is *hard to sort out the effects*. In sum, we may say that civil society is *messy* and, we may add, this is quite inevitably so; and I presume that this conclusion is not based just on the brief and somewhat vague analysis that I have given. And, we may say that in spite of its being messy, it has a great and indispensable role to play in any acceptable arrangement to protect an adequate standard of living.

What we can get from this (though not as a matter of logic) concerning the role of human-rights and development NGOs, is the following. Firstly, what has been said can make one doubt whether many objections to the legitimacy of NGO agency that can be found in the literature, are decisive. Such objections, which can be taken to question the permissibility of NGO agency, often refer to the lack of representativeness, the lack of accountability, and doubts about the effects of NGO involvement. However, if the above is right, such lacks and doubts are more the rule than the exception with regard to agents in the civil society; but this does not preclude a vital and indispensable role for civil society with regard to our subject. We may say that NGOs are still permitted to act, even if there are concerns about their representativeness and accountability, as well as about the effects of their action (although I will come back to these effects).<sup>33</sup>

It may be objected that this is rather too quick. Surely, one might think, human-rights and development NGOs (or certain of these NGOs) are not permitted to act if there are agents in civil society that fare better than they do in such regards as representativeness, accountability and effectiveness. That we are always going to need civil society cannot for sure mean that all kinds of agents that are as matter of fact part of it, are legitimate agents, in the sense that they are permitted to act - let alone that all specific agents or even all their specific actions are permitted.<sup>34</sup>

This is right. Indeed, NGOs (or certain NGOs) are, in the line of thought that we are pursuing (in our attempt to make an application of Wenar's theory), not permitted to act if there are civil society agents of which we can somehow credibly say that they offer a

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<sup>32</sup> In the present context, I will not elaborate on the (complex) concepts of 'representativeness' and 'accountability'.

<sup>33</sup> Put more exactly, their manifold lack of representativeness and accountability is no bar to NGOs, generally speaking, being permitted to act. However, this is not to say that they are permitted to act, period. That would only be the case if there are no further considerations that are a bar to their being permitted to act. In what follows, we will discuss some considerations of this (possibly 'barring') kind.

<sup>34</sup> I will not in this essay operate with a neat distinction between (1) the legitimacy of NGOs generally and as a whole; (2) the legitimacy of specific NGOs as a whole; and (3) the legitimacy of specific NGO activities (where one might again speak about such activities as a class or as they are carried out by specific NGOs).

substitute for these NGOs and that they are somehow clearly superior in working towards an acceptable arrangement for protection of an adequate standard of living. The problem is (but this is of course a guess involving many empirical elements) that I do not see any such agents around. The NGOs that concern us work, mainly through advocacy and so-called development activities, for the promotion of human rights, such as the right to an adequate standard of living. Where do we see their credible substitutes? These may be, for example, trade unions, social movements, or churches. I do not see in what way such agents should be clearly superior to NGOs. Admittedly, this is rather brief, and surely a more precise look is called for, also because we want to be able to tell the better NGOs from the worse. The point here, however, is that it is on the face of it not particularly credible that generally human-rights and development NGOs are not permitted to act (and in that sense illegitimate) because we have clearly superior alternatives for them in the civil society.

One possibility must still be considered, however. It may be better that NGOs, no matter how much they may try to do the right thing, stop acting even if no one else takes up what they are trying to do. This possibility raises large (and largely empirical) issues about whether NGO activities are at all effective or, rather, counterproductive, what exactly this means, and about how we can find this out. I cannot attempt to draw a balance here;<sup>35</sup> suffice it to say that if their activities should turn out to be counterproductive, they are indeed for that reason not permitted to act – if we are speaking, again, against the background of Wenar's theory as we have understood it. It is possible that they are not permitted to act while at the same time there would remain a vital and indispensable role for civil society; for there is much in civil society beyond NGOs.<sup>36</sup>

Let us take stock. The thrust of what we have said is that human-rights and development NGOs are permitted to act despite their partly inevitable shortcomings in such regards as representativeness and accountability, unless their contribution is (despite their good efforts) clearly worse than doing nothing. The background of this conclusion is that we want an arrangement that provides protection against standard threats to an adequate standard of living in a given society.<sup>37</sup>

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<sup>35</sup> For one particularly thoughtful and valuable attempt to do so, see Cullity (2004), Ch. 3. On a different occasion (forthcoming), Cullity also discusses possible collective-action problems, in the following sense: what if the activities of one particular (development) NGO are clearly better than doing nothing, while the activities of all (development) NGOs taken together are clearly worse than doing nothing – e.g. because they get in the way of a better long-term solution? Cullity asks what the particular NGO should do in such a scenario. He says –I paraphrase him– that (1) it should consider how it should act given that all the other NGOs act as they do (given the absence of action coordination); (2) what kind of action coordination would be desirable; (3) what it can and should do to further this coordination. The upshot is that even in the mentioned scenario, it depends whether the particular NGO should abstain from acting (and all this within an effectiveness-based approach).

<sup>36</sup> However, here collective action problems may come up again: maybe the activities of whole categories of civil society agents considered on their own had better be absent, if we consider the goal of sufficient protection of an adequate standard of living, while at the same time the presence of civil society as a whole remains vital. This possibility will not be further considered here.

<sup>37</sup> All this applies to ideal and also to many situations which, due to unfavorable circumstances, unjust behavior, or other factors, are not yet ideal; and much of it applies most naturally if we assume that NGOs are trying hard to work as well as they can.

The stronger conclusion, that human rights and development NGOs have a *duty* to act in regard with human rights, does not follow from our story. In any case, from the observation that a lively civil society is a vital part of any acceptable solution concerning human-rights protection, it does not immediately follow that any particular kind of agent in civil society has to be a part of any acceptable solution – although more analysis could indeed point the way to particular kinds of agents.

However, it is worth making one point. In a number of non-ideal situations in the world that we live in,<sup>38</sup> no particular agent seems to be concerned about the protection of an adequate standard of living for certain people, with the exception of certain human-rights of development NGOs. In such cases, the only feasible way forward for the concerned people to acquire a somewhat better protection of an adequate standard of living, would probably be through the involvement of the mentioned NGOs.<sup>39</sup> In keeping with Wenar's theory as we have reconstructed it, these NGOs would have duties to act here: when faced with actual situations, Wenar, as we have read him, asks us to consider which arrangement offers, here and now, the most acceptable protection of an adequate standard of living. This arrangement then offers the basis for saying who has a duty to act here and now.<sup>40</sup>

To end this attempt at application, let us briefly return to the global case, more particularly, to a case where we can ask the question of whether an NGO composed of citizens of one country may or must engage in human-rights promotion in another.

We have argued that human-rights and development NGOs remain legitimate agents despite their various, partly inevitable shortcomings concerning for example representativeness and accountability. However, this argument is not obviously applicable in the global case. For above, this argument was not presented as a general case for messiness (in which case we might apply it to the state and think, well, if messiness is allowed, why not be content with an unrepresentative and incompetent state, for one?). Rather, the argument was made in the context of what a civil society looks like, and against the background that a civil society is going to be part of the solution anyway. In the global case, it is not clear that this last point holds true. Transnational civil societies are emerging, to be sure, and as a matter of fact they are probably here to stay. But that does not yet show that such civil societies are an important part of the ideal solution in the global case (and the manifold non-ideal situations are often equally unclear); and therefore it is not clear either, until further notice at least, that agents that are part of such societies are morally permitted to act. We need, first of all, to

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<sup>38</sup> So: here follow a couple of observations regarding non-ideal situations, which I have largely left to one side until now.

<sup>39</sup> In some non-ideal cases, NGO activities would have the effect of (for example) discouraging government involvement or making such involvement more difficult. It is a difficult question what course of action would in such cases be in line with achieving an acceptable protection of an adequate standard of living.

<sup>40</sup> It is interesting to note that Wenar's theory wouldn't hesitate to tell us that *voluntary* associations of citizens can bear moral *duties*. Some have found it strange that they can, but many moral theories (like Wenar's) offer a fairly straightforward story here. (Any duties to *found* NGOs would require additional stories.)

have a clearer view of possible global arrangements which could provide an acceptable protection against standard threats to an adequate standard of living.

The other two points that we have made above do seem to remain upright. Surely if an international NGO's involvement makes matters clearly worse, there is, on the Wenar approach as we have understood it, no permission for this NGO to act. And, if an international NGO is in a given non-ideal situation the only or by far the best agent that can work towards a better protection of an adequate standard of living for certain people, then it has a moral duty to act.<sup>41</sup>

Let's try to draw a balance concerning Wenar's theory based on this sketchy application of it to our problem of human-rights duties of NGOs. I do not think that on the face of it this application exposes the theory as wildly implausible.<sup>42</sup> Further, the theory seems indeed to have fulfilled its heuristical function by focusing our thought around the question of what would make for acceptable arrangements to provide protection of an adequate standard of living.<sup>43</sup> There are, however, a number of problems, which may have been hidden somewhat by the rather impressionistic nature of our discussion. These problems could be identified apart from our application, but they may have come to light once more and particularly clearly through it.

Firstly, although as said Wenar's relatively abstract theory orients our discussion, our attempt to apply this theory makes also clear how much else we need. For example, we require a good account of the civil society (and of the global or international civil society) and its relation to state (and to trans-state or interstate institutions).

At the same time, and this is a second point, Wenar's account shows itself as not general or at least not comprehensive enough. For, come to think of it, if we concentrate on threats to basic well-being (or to an adequate standard of life), and tell our story about duties in that light, and our story about civil society in that light, how can we know that we are correct? Civil society does much more than contributing to the protection against threats to an adequate standard of living; and most agents that feature in the above story apart from human-rights and development NGOs, have much more on their hands than averting threats to an adequate standard of living. If we want to say something about what such agents ought to do, how can we do so if we do not have a story about their other concerns as well?

Something quite similar applies to accounts of human rights: come to reflect about it, we want a good account of human rights to be about much more than about human rights alone. Just to observe, for example, that a certain substance (like an adequate standard of living) is

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<sup>41</sup> However, we'll shortly come to a number of objections. To mention one already: one may say that the point made in the text is not very informative. However, it is *somewhat* informative.

<sup>42</sup> One element of his theory, namely that there is sometimes a requirement for wrongdoers to provide compensation, would call for further discussion and application. Cf. Philips (2007), p. 101-107.

<sup>43</sup> One may contest this and say that we might as well have started out by thinking about what arrangement makes for the most acceptable protection of an adequate standard of living. Indeed; but this starting point is already quite something. And, Wenar's account provides three more things: (1) it provides a background for understanding somewhat better what the mentioned starting point means; (2) it provides some justificatory materials as to why one may take this (and only this) as a starting point; and (3) it shows that there are in fact authors around who do take this starting point, even if there may be many doubts about it (this is an admittedly an argument from authority).

important for broad categories of people, everywhere, at all times, and to observe that we now widely have social arrangements in which it is feasible to protect such a substance, doesn't even tell us, in the end, in how far this substance is universally to be protected, that is, it doesn't even tell us that *any* agent at all should act for its sake. For maybe, all things considered –or perhaps better, all *values* considered– it is best to stick to non-interference with a certain social situation (especially where that situation is in a foreign country); or it is best (where force would be needed) to abstain from using force; or it is best to use certain scarce resources not for the sake of working towards an adequate standard of living, but to direct these resources elsewhere. In all these cases, there would be *no* agent at all that has to act in relation to the right to an adequate standard of living.

The conclusion can be that a good account of duties and a good account of human rights must address much more than its immediate subject. The application of Wenar's theory has suggested this to us, yet his own theory seems not to pass the test.

A third consideration follows up on the idea that messiness is inevitable in civil society, yet that civil society remains an indispensable part of any acceptable arrangement for the protection of an adequate standard of living. Now once we acknowledge the (apparently inevitable) messiness of civil society –i.e. its (seemingly inherent) problems with representativeness, accountability, and effects, in many ways and shades– a non-naïve analysis of what is going on seems to be called for, that is to say, an analysis that takes seriously that civil society is a field where power is exercised, and where any action by any agent also contributes to a new configuration of powers. Similarly, writing a philosophical text that sees no objection to or speaks in favor of involvements of NGOs, can itself be seen as a contribution to a new configuration of power, however small its impact may be. Once we realize this, the next thing we should do is think about whether it should in turn influence the contents of what we have to say morally. In fact, this aspect is totally lacking in Wenar's approach.

Fourthly, Wenar, as we have interpreted him, wants to go for the arrangement that is best at providing an acceptable protection of an adequate standard of living. Yet we have noticed that he also tends to say that moral agents need not bear excessive cost. He seems to be of two minds here – he wants the best outcome and he wants no one to suffer excessively in order to get there, and it seems that he does not know what to choose. Or rather, he doesn't get very explicit about the tension, but it seems that ultimately he wants to go for the arrangement that most effectively provides acceptable protection of a decent standard of living against standard threats.

However, some have suggested that we need not choose: by attributing more duties to institutions, such as governments and NGOs, rather than individuals, we can have the best outcome without anyone suffering.<sup>44</sup>

I would like to surmise that although this is to some extent correct (at least, put cautiously, sometimes better coordination of individual actions can lead to better outcomes and at the same time reduce the cost to individuals), but that we should not exaggerate: to some extent we do have to choose. NGOs and the like may be genuine moral agents (as I have assumed throughout), but their actions will of course run through individual actions (through their

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<sup>44</sup> Cf. M. Green (2005).



staff, field workers etc.); and if we assign heavy duties to NGOs, this may mean that their staff (and fieldworkers, etc.) will incur very high costs. It is important to realize this; for it may influence how much duties we think that should be attributed to NGOs.

In the end, the tendency of Wenar's account is to hold that, even if it means that some individuals (like NGO staff) have to bear great costs, we should still go for the arrangement that is most effective, that is, for the arrangement comes closest to offering acceptable protection of an adequate standard of living for everyone. But certainly many would disagree with Wenar here, and the point would merit further discussion.

#### **4. TO CONCLUDE**

We end by repeating the five main points that this essay has tried to make regarding the duties of (human rights and development) NGOs in relation to human rights, to be precise, about their duties in the national case (so not, for example, for NGOs seeking to influence affairs in a country that is for them foreign) and about their duties with regard to the protection of an adequate standard of living.

These points were made against the background of Leif Wenar's theory, interpreted as saying that we are after the arrangement that best provides acceptable protection of an adequate standard of living. Duties are to be attributed based on what such an arrangement looks like.

*Permissions for NGOs to act with regard to a human right to an adequate standard of living.*

1. Some considerations that are often taken to be sufficient to show that NGOs may not act, such as their lack of representativeness and accountability, do not in fact (as such) show that they may not act.

For such lack of representativeness and accountability is generally true for agents in the civil society. If they were to make it impermissible for a civil society agent to act, then the overwhelming part of the civil society would be forbidden to act. But this cannot be the case, for a lively civil society is a vital part of any acceptable arrangement for protecting an adequate standard of living.

2. Nor can the argument convince that NGOs, in general, may not act because there are clearly superior alternatives for them in the civil society; for there are not. So again: here there is no bar for their permission to act.

It may be important to note that points 1 and 2 only say that certain considerations that purport to show that there is no permission for NGOs to act with regard to human rights, do in fact fail to show this. (Points 1 and 2 do not warrant the conclusion that NGOs do have a permission to act in relation to human rights, period. For, there may be other considerations, which we have not yet seen, that do succeed in showing that NGOs have no such permission.)

3. We have indeed seen one reason that would suffice for (certain) NGOs to have *no* permission (to be forbidden) to act with regard to human rights: this would (rather obviously) be the case if their actions resulted in a situation clearly worse than the situation that would arise if they did nothing.

*Duties of NGOs to act with regard to a human right to an adequate standard of living.*

4. Can we say that NGOs have a duty to act with regard to the promotion of the human right to an adequate standard of living? The argument that a lively civil society is needed in any acceptable arrangement for protecting an adequate standard of living, does not suffice to show this. For there are many ways in which a lively civil society can be achieved without NGOs.

5. Finally, we have seen one reason that would in certain situations suffice for (certain) NGOs to have a duty to act in relation to the human right to an adequate standard of living: they would have such a duty in situations where their involvement would be the only way to get a better protection of an adequate standard of living.

So, that is at least something: one case, fairly abstractly characterized, where we would single out NGOs as duty-bearers with regard to human rights.<sup>45</sup> A modest harvest; but hopefully to be continued.

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<sup>45</sup> As said above, even this conclusion is only valid under a certain kind of *ceteris paribus*-under the assumption that considerations relating to values that are not considered, do not undermine it.

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