SHARING INTERNATIONAL RESPONSIBILITY FOR POOR MIGRANTS?

AN ANALYSIS OF EXTRA-TERRITORIAL SOCIO-ECONOMIC HUMAN RIGHTS LAW

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Abstract

This article analyses possible legal bases for the establishment of extra-territorial socio-economic human rights obligations on the part of wealthier European 'Destination Countries' vis-à-vis poor migrants. In particular, it considers whether obligations of international cooperation and assistance under the International Covenant on Economic Social and Cultural Rights (ICESCR) might provide a basis for addressing socio-economic deprivation in Countries of Origin and lead to the provision of social assistance. The article also analyses the socio-economic case-law under Article 3 of the European Convention on Human Rights (ECHR) in respect of expulsion of migrants (e.g. MSS v Belgium and Greece, Sufi and Elmi v the UK, and SHH v the UK).

The analysis of these documents supports the claim that wealthy states can attract responsibilities for providing protection against living in poverty for persons in other countries. At the same time, although language and semantics relating to extra-territorial socio-economic protection are converging under the ICESCR and ECHR, there are a number of pertinent questions that remain in the sphere of concrete burden sharing. These relate primarily to the allocation to wealthy European states of concrete burdens of responsibility for the elimination/prevention of poverty in other countries and raise the question of how far the responsibility stretches.

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1. INTRODUCTION

It should be clear to anyone who is concerned with global migration that irregular migration is 'one of the telling signs' of the severe socio-economic imbalances in our contemporary society, 'aggravated by economic globalisation and the rapid impoverishment of the underdeveloped countries' (International Law Commission 2006: para. 30). In fact, every year a great number of migrants try to cross international borders in the hope of gaining a better life elsewhere, whether for political, economic or social reasons and as 'global disparities continue to grow', the problem of migration is becoming ever more urgent and, arguably, in need of structural attention (International Law Commission 2006: para. 30; Triandafyllidou 2010: 13).

This article focuses on the socio-economic aspects of migration, and in particular analyses whether wealthy European 'Destination' countries may attract responsibilities for extra-territorial social protection or assistance in the context of international human rights law. In this respect, the article focuses on two possible bases of protection. First, it analyses the so-called obligations of 'international cooperation and assistance' under the International Covenant on Economic Social and Cultural Rights (ICESCR). Second, it analyses the developing socio-economic case-law under Article 3 of the European Convention on Human Rights (ECHR), which indicates that European States may attract obligations of protection in respect of a migrant who would be unable to cater for his/her own basic needs abroad, including the provision of basic levels of food, hygiene, shelter and social support.[1]

The overarching argument developed in the article is that, when considering all the above avenues for protection, a certain 'internationally shared responsibility' for the socio-economic protection of migrants, which requires wealthy States to help migrants through measures of social protection when they are forced to live in a situation of extreme poverty abroad, seems to emerge. At the same time, there are some issues that need to be resolved in order for this responsibility to take practical effect.

[1] See e.g. ECtHR 28 June 2011, Appl. Nos. 8319/07 and 11449/07 *Sufi and Elmi v the United Kingdom*, paras. 279 and 283; ECtHR 21 January 2011, Appl. No. 30696/09 *MSS v Belgium and Greece*, paras. 246 and 254; ECtHR 2 May 1997, Appl. No. 30240/96 *D. v the United Kingdom*, ECHR *Reports* 1997-III, paras. 52 and 53.

2. OBLIGATIONS OF INTERNATIONAL COOPERATION AND ASSISTANCE UNDER THE ICESCR

Article 2(1) of the ICESCR requires States Parties to the ICESCR to take steps towards the full realisation of ICESCR-rights, both on an individual basis 'and through international assistance and co-operation, especially economic and technical, to the maximum of [their] available resources'.[2] This provision is concomitant with a wide variety of similar provisions included in other binding and non-binding international documents, thus affirming the acceptance of international obligations of cooperation and assistance for human rights protection more broadly (for discussions of the foundations and development of the obligations to cooperate and assist internationally in international human rights law, see Gondek 2009: 316–332; Sepúlveda 2003: 370; Skogly 2003: 75–82; Skogly 2006: 73–98; Skogly and Gibney 2002: 787).

Over the years, the exact scope and content of obligations of international cooperation and assistance have been much debated. In general it has been pointed out that the relevant provisions fail to address explicitly a number of important questions, e.g. (a) Do cooperation and assistance follow a 'logic of charity' or a 'logic of shared responsibilities', in other words is the obligation to engage in cooperation and assistance legally binding?; (b) What type of assistance and cooperation should Parties to the ICESCR engage in?; and (c) Is engagement in cooperation and assistance an obligation for both poor and wealthy States, and should it be channelled through the State or can it also be provided to individuals directly? (Alston and Quinn 1987: 186–192; Coomans 2004: 187: 195 and 196; De Schutter *et al.* 2012: 1094 and 1095 and 1149–1154; Fukuda-Parr 2007: 285 and 286; Gondek 2009: 328–33; Sepúlveda 2009: in general, and particularly from 193 onwards; Skogly 2006: 85).

Further analysis of these questions below demonstrates that the discussion in a number of international settings paints, in some respects, a mixed picture although there does seem to be some consolidation.

2.1. OBLIGATIONS OF INTERNATIONAL COOPERATION AND ASSISTANCE ACCORDING TO CESCR

First of all, the work of the official monitoring body of the ICESCR, the United Nations Committee on Economic Social and Cultural Rights [CESCR or the Committee] is worthy of attention in assisting understanding of the meaning, content and consequences of the obligations of international cooperation and assistance under the ICESCR. Since the CESCR is charged with monitoring functions under the ICESCR, it has, over the years, contributed a great deal to the understanding of particular obligations in its interpretative work, most notably through its 'General Comments',

[2] International Covenant on Economic, Social and Cultural Rights 16 December 1966, New York, United Nations, *Treaty Series*, 993: 3.

and the State reporting procedures.[3] While none of the work of the Committee is formally legally binding, its statements on interpretation and application are generally considered as 'authoritative' in nature (see e.g. Mechlem 2009: 924 929 and 930: 920 and 921; Sepúlveda 2003: 87 and 88). In addition, the Committee's work is hardly ever (openly) challenged by States, and States generally follow the Committee's instructions in reporting (Gondek 2009: 328; Mechlem 2009[4], in particular 920 and 921, 929 and 930: Sepúlveda 2003: 40, 42 and 88). That the Committee's work is, however, not always representative of States' actual opinions on the interpretation of the treaty is further discussed in section 2.3.

The CESCR's main contribution to the elaboration of Article 2(1) took place in its General Comment on 'the nature of obligations under Article 2(1) ICESCR' where it addressed a number of important issues.[5] First of all, the CESCR considered, for example, in General Comment 3 – as a reaction to the relatively vague obligation to realise all ICESCR-rights 'progressively' – that under each of the rights of the ICESCR there also exists a minimum core content, or so-called 'minimum core obligations'/'minimum essential levels of rights', which, if not observed by a State, would entail a *prima facie* breach of the ICESCR. Without such a hard minimum core the ICESCR 'would be largely deprived of its *raison d'être*'.[6] Thus, according to the Committee 'a State party in which any significant number of individuals is deprived of essential food stuffs, essential primary health care, basic shelter and housing, or the most basic forms of education' is failing to discharge its obligations under the Covenant.[7] Generally the idea of 'core obligations' has received international support, although difficulties have been raised with the concept, for example, that States may end up adopting a too minimalistic approach in rights protection, or that there are problems in finding the exact core of each right (see e.g. Salomon 2011; Sepúlveda 2003: 370; Ssenyonjo 2010: 61 and 62; Young 2008 on the concept of core obligations more generally).

However, most important for our present purposes, the Committee also explicitly elaborated obligations of 'international cooperation and assistance' in its third General Comment, considering, first of all, that the phrase in Article 2(1) 'to the maximum of its available resources' 'was intended by the drafters of the Covenant to refer to both the resources existing within a State and those available from the

3 See e.g. General Comment 3 on The nature of States parties obligations (Art. 2, para. 1), adopted by the Committee on Economic Social and Cultural Rights 14 December 1990, CESCR GC3 (1990).

4 Mechlem notes that States Parties 'typically base their reports on the interpretations offered by the treaty bodies in General Comments, the reporting guidelines, and the questions provided to them'. States also hardly ever put forward their own interpretations of specific rights, and hardly challenge the work of Committees. Mechlem however also points out that 'the work of supervisory bodies can be strengthened when it comes to their methodological approaches'.

5 General Comment 3 on The nature of States parties obligations (Art. 2, para. 1), adopted by the Committee on Economic Social and Cultural Rights 14 December 1990, CESCR GC3(1990).

6 *Idem*, paras. 8, 9 and 14.

7 *Idem*, para. 9.

international community through international cooperation and assistance'.[8] In addition, it considered that 'international cooperation for development and thus for the realisation of economic, social and cultural rights is an obligation of all States', while 'it is particularly incumbent upon those States which are in a position to assist others in this regard'.[9] The CESCR later stated, in other General Comments, in respect of the core rights, that a State which cannot ensure minimum essential levels for a significant number of persons in its territory for reasons beyond its control, such as resource constraints, 'has the burden of proving that this is the case and that it has unsuccessfully sought to obtain international support'.[10] Additionally, the Committee considered on a number of occasions that it is particularly incumbent on States parties and other actors in a position to assist, to provide 'international assistance and cooperation, especially economic and technical' (see also Sepúlveda 2006: 277),[11] and that taken together 'the core obligations establish an international minimum threshold that all developmental policies should be designed to respect' and all states should help to uphold (Committee on Economic Social and Cultural Rights 2001: paras. 17 and 18). For further support of the argument that the core obligations are 'a universal absolute bottom-line of obligations under each of the rights of the ICESCR', to which all states should contribute, see e.g. Müller 2009: 580–581). In any case, where national or international anti-poverty strategies do not reflect the minimum threshold of core obligations, this is in violation of the 'legally binding obligations' of the State party (Committee on Economic Social and Cultural Rights 2001: para. 17). It should be noted that the rationale of the Committee seems mainly to be one of 'support fulfillment', indicating that while the principal obligation of protection lies with the national State, 'other States, if they have available resources, have a complementary obligation to help the national State', although such a reading has also been challenged by others (see Gibney 2011: 144; and Skogly 2010: 75 both referring to the work of the Special Rapporteur on the Right to Food, Jean Ziegler and her successor, Olivier de Schutter, who put forward and developed the understanding of 'support fulfillment'; also see Gondek 2009: 299–301; Skogly 2006: 83–98).

An important question that remains for present purposes is that it is not completely clear whether the obligation of 'international cooperation and assistance' exists solely between states, or whether it could ultimately also be invoked by persons of third countries directly vis-à-vis foreign States – for example, by a migrant who is about to be expelled or who lives in poverty abroad. This is a matter that deserves further

8 *Idem*, paras. 8, 9 and 13.

9 *Idem*, paras. 13 and 14.

10 General Comment 12 on The right to adequate food, adopted by the Committee on Economic Social and Cultural Rights on 12 May 1999, UN Doc. E/C.12/1999/5, para. 17.

11 See General Comment 14, The right to the highest attainable standard of health, adopted by the Committee on Economic Social and Cultural Rights on 11 May 2000, para. 45; General Comment 3 on The nature of States parties' obligations (Art. 2, par.1), adopted by the Committee on Economic Social and Cultural Rights 14 December 1990, CESCR GC3(1990), para. 14.

attention but is not discussed here. It is worth observing at this point, however, that Beltman (2012: 234), for example, in his research on return facilities for migrants, has indicated that some governments consider facilities of this kind, such as lump sum payments or other support, to be a part of development cooperation/assistance and/or based on humanitarian considerations. Beltman also questions the potential legal bases (in *inter alia* human rights law) for such (European) return facilities for migrants. This arguably leaves some room to explore measures of social protection for migrants in the context of human rights law and in respect of extra-territorial obligations of socio-economic assistance. The issue of protecting migrants against harmful expulsion, specifically for reasons of socio-economic deprivation, is given further attention in the context of the case-law of the European Court of Human Rights [ECtHR or the Court], as discussed in section 3 below.

Summing up the above considerations, it seems clear that, at least according to the CESCR, the ICESCR has something to say about international cooperation and assistance between wealthy and poor States and the individuals in them, especially in confirming obligations of 'support fulfillment' when 'minimum essential levels' of socio-economic rights are not guaranteed. This could arguably provide a legal basis for the provision of social protection/assistance to poor migrants in an extra-territorial setting. However, some difficult questions still remain including, for example, exactly what kind and extent of cooperation and assistance would be required by Article 2(1) of States in each case.

In addressing this question, a general reference can be made to the phrase 'especially economic and technical' cooperation and assistance in Article 2(1), which is taken to refer to a wide variety of possible kinds of cooperative action and assistance deemed fit for a particular situation (e.g. Gondek 2009: 326; Skogly 2006: 84–87 and 98 on the basis of various documents). An especially interesting aspect of the work of the Committee is the more recent discussion of the levels of official development aid (ODA) expenditure for the extra-territorial protection of socio-economic rights. In practice, during recent State reporting procedures, the Committee has increasingly praised or reprimanded States for their levels of ODA, especially against the backdrop of the internationally negotiated – though officially non-binding – target of 0.7 per cent GDP ODA expenditure, asking questions as to how States have contributed to the realisation of ICESCR-rights in other countries (see also Coomans 2011: 26 and 27; Sepúlveda 2009: 86–109).[12] Indeed, it now seems very common for wealthier States Parties to the ICESCR to state their ODA expenditures or their participation in development programmes to the CESCR, thereby indicating the contribution they

[12] The CESCR reporting guidelines as revised in 2009, now explicitly require States to indicate, under Article 2(1), 'the impact of international economic and technical assistance and co-operation, whether received or provided by the State party, on the full realization of each of the Covenant rights in the State party or, as the case may be, in other countries, especially developing countries'. Guidelines on Treaty-Specific Documents to be submitted by States Parties under Articles 16 and 17 of the ICESCR, 24 March 2009, UN Doc. E/C.12/2008/2: para. 9.

make to human rights protection abroad (see Sepúlveda 2009: 93; Ssenyonjo 2010: 61–66). States' reports demonstrate that only Sweden and the United Kingdom, and perhaps Italy, have actually challenged the view that development cooperation and assistance is a legal obligation under the ICESCR; other States seek to demonstrate their international development cooperation efforts and pledge to take further steps on development cooperation, including moving towards the UN target of 0.7 per cent of GDP.[13] Of course, this begs the question of whether the participation of most States in this practice implies that there is a legal obligation of this kind, or, alternatively, whether the position of Sweden and the United Kingdom that any 'obligations' in the ICESCR lack legal teeth should be considered the appropriate one (Chinkin 2010: 119; Sepúlveda 2003: 40, 42 and 88; for similar considerations Sepúlveda 2006: 286 and 287; and see also the negative comments on the Swedish position regarding the legal nature of international obligations under the ICESCR Hunt 2008: paras. 132, 133 and 135).

In any case, it may be difficult, as Alston and Quinn (1987: 191) have argued, to establish *particular* obligations for *particular* wealthy States regarding the position of *particular* (persons in) poor states. At the same time, however, a general consensus seems to exist that there are at least some obligations on wealthy states to mobilise resources for cooperation and assistance (Coomans 2011: 27 and 34, referring to

13 See generally the reports/replies in support development cooperation under Article 2(1) ICESCR by New Zealand, UN Doc. E/C.12/NZL/Q/3/Add.1 (2012) paras. 9 and 10; Spain, UN Doc. E/C.12/ESP/Q/5/Add.1 (2012); Iceland, UN Doc. E/C.12/ISL/4 (2011), paras. 17–19; Japan, UN Doc. E/C.12/JPN/3 (2011), paras. 122–125; Norway, UN Doc. E/C.12/NOR/5 (2010), para. 25, referring specifically to obligations under the Covenant; Germany, UN Doc. E/C.12/DEU/5 (2010) paras. 12–25; Belgium, UN Doc. E/C.12/BEL/4_fr (2010); Portugal, UN Doc. E/C.12/PRT/4 (2011) paras. 5–18; Austria, UN Doc. E/C.12/AUT/4 (2011); New Zealand, UN Doc. E/C.12/NZL/3 (2011), paras. 43–45; Australia, UN Doc. E/C.12/AUS/Q/4/Add.1, paras. 167–170; Switzerland, UN Doc. E/C.12/CHE/2–3 (2009), paras. 42–46; France, UN Doc. E/C.12/FRA/3 (2007) para. 43 / UN Doc. E/C.12/FRA/Q/3/Add.1 (2008), para 1; Norway, UN Doc. E/C.12/NOR/5, para. 25, referring specifically to obligations under the Covenant; and Finland, E/C.12/FIN/5 (2006), paras. 56–58 / UN Doc. E/C.12/FIN/Q/5/Add.1 (2007) para. 3. Finland does not seem to have (yet) addressed the specific 2007 recommendations on cooperation by the Committee in its latest, as yet undiscussed, report, UN Doc. E/C.12/FIN/6 (2011), while Canada left the issue of international cooperation entirely unaddressed in its latest report to be discussed, UN Doc. E/C.12/CAN/6 (2012); in relation to the state reporting of the Netherlands in 2009–2010 the issue of international cooperation was also not raised, either by the State or the Committee. However, in both the Concluding Observations of 2006 and 2009 the Netherlands was commended for contributing 0.7% and 0.8% GDP respectively. UN Doc. E/C.12/NLD/CO/3 (2006) para. 9 / UN Doc. E/C.12/NLD/CO/4–5 para. 4(e); On the more negative stances: The UK considered in 2008: 'One of the UK's strategic international priorities, *though not an international legal obligation*, over the next five to ten years is promoting sustainable development and poverty reduction underpinned by human rights, democracy, good governance and protection of the environment'. UN Doc. E/C.12/GBR/5 (2008) para. 55; Likewise the Italian government recently referred to an 'ethical obligation of solidarity' and the benefit of cooperation for Italy itself, see UN Doc. E/C.12/ITA/5 (2012), while Sweden noted that efforts of mainstreaming a rights perspective into its development cooperation 'stem from a strong and solid political commitment, *rather than from its obligations under the Covenant*, UN Doc. E/C.12/SWE/Q/5/Add.1 (2008), para. 48; on the other hand Belgium clearly sees its development assistance expenditures as related to the realisation of the ICESCR and the increase to 0.7% GDP as well. See UN Doc. E/C.12/BEL/3 (2006), para. 50.

Craven, who states that States Parties would be 'under a duty to provide some form of assistance to the developing world'; De Schutter *et al.* 2012: 1094). It seems that a major obstacle is the actual allocation of concrete burdens. A similar reading of the above considerations is affirmed by taking a closer look (see below) at the adoption of the Maastricht Principles on Extra-territorial Obligations of States in the area of Economic, Social and Cultural Rights.

2.2. CONTRIBUTIONS OF ACADEMIC SCHOLARS AND THE ADOPTION OF THE MAASTRICHT PRINCIPLES ON EXTRA-TERRITORIAL OBLIGATIONS OF STATES IN THE AREA OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Recently, the work of prominent academic scholars, experts and non-governmental organisations working in the field of extra-territorial human rights obligations culminated in 2011 in the adoption of the Maastricht Principles on Extra-territorial Obligations of States in the area of Economic, Social and Cultural Rights (see e.g. De Schutter *et al.* 2012; Gibney 2011: 123–51).[14] These principles were drafted and supported by a large group of distinguished experts, and purported to be 'drawn from international law'; they aim to clarify the content of extra-territorial State obligations in 'advancing and giving full effect to the object of the Charter of the United Nations and to international human rights'.[15]

Leaving aside the question whether the Maastricht Principles fully reflect human rights law as it is, or also, to some extent, propose what the law should, or could, be (see e.g. De Schutter *et al.* 2012: 1094), the Principles do at least underscore the CESCR's work when it comes to obligations of international cooperation and assistance and its rationale for 'support fulfillment'.[16] The Maastricht Principles, moreover, indicate that States' assistance should be geared towards prioritising the rights of disadvantaged, marginalised and vulnerable groups and the realisation of the core obligations and provision of assistance at minimum essential levels.[17] At the same time, they also seem to hint at continuing obligations of assistance beyond minimum essential levels (see De Schutter *et al.* 2012: 1150–54),[18] and try to tackle questions of allocation of responsibilities, i.e. which obligations are incumbent on which States in which situation, and what is the purpose of mobilising ODA, e.g. towards the target of 0.7 per cent GDP (see De Schutter *et al.* 2012: 1149 and 1150)?[19] A recent extensive commentary on the Maastricht Principles suggests that various bases for allocating

14 See, for more information on the adoption of the Maastricht Principles, a publication available at: www.icj.org/dwn/database/Maastricht ETO Principles-FINAL.pdf.

15 See preambular paragraphs of the Principles.

16 See Principles 31, 33–35.

17 *Idem*, Principle 32.

18 *Idem*, Principles 28–35.

19 *Idem*, Principles 30–31.

responsibilities and burden-sharing can be envisaged, such as historical factors, causation, or other concepts in international law, e.g. common but differentiated responsibilities (De Schutter *et al.* 2012: 1149 and 1150, 1153). It is suggested here that, in the case of migration, including the case of the expulsion of a migrant by a particular State, the Maastricht Principles could provide a good point of departure in trying to identify the existence of a basis for socio-economic protection towards that migrant. Importantly, in this respect, the Maastricht Principles not only address extra-territorial obligations of a 'global character', as obligations of international assistance and cooperation are referred to, but also extra-territorial obligations in a situation where the State may have direct control over a particular area or person, or is able to influence an extra-territorial human rights situation in some other way (De Schutter *et al.* 2012; Langford *et al.* 2013).[20] This will not be further discussed at this point, but it is suggested that avenues for further analysis in the future can be found here as well.

2.3. OPINIONS OF STATES IN THE DEBATES ON THE OPTIONAL PROTOCOL TO THE ICESCR AND THE ADOPTION OF DRAFT GUIDELINES ON EXTREME POVERTY AND HUMAN RIGHTS

Finally, a critical comment on the above analysis of a possible legal basis for international social assistance on the part of wealthy States may be found in the explicit discussions that States have recently engaged in on this matter, e.g. in the context of the adoption of the Optional Protocol to the International Covenant on Economic Social and Cultural Rights (OP-ICESCR) – establishing a number of new monitoring mechanisms for the ICESCR – and the UN Guiding Principles on Extreme Poverty and Human Rights (Sepúlveda Carmona 2012).[21] It is important to note that States can often give the impression that they acquiesce in particular interpretations, because they do not explicitly speak out against them, for example, in the context of the work of the Committee when they follow particular reporting practices, although they may not actually agree with them (Gondek 2009:328; Mechlem 2009: 929 and 930: 920 and 921). The analysis below suggests that opinions by States on the nature of international obligations and assistance are still divided, or, at least, still leave some room for different interpretations.

2.3.1. Discussions on the Optional Protocol to the ICESCR

The debates on the adoption of the OP-ICESCR, first of all, clearly demonstrate the existence of a number of diverging opinions amongst States in 2005–2006, especially as

20 See Articles 8 and 9 of the Maastricht Principles.

21 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, adopted on 10 December 2008 in New York by General Assembly resolution A/RES/63/117, UN Doc. A/RES/63/117; Human Rights Council (2012), Resolution A/HRC/21/L.20 (21 September 2012).

to whether obligations of international cooperation and assistance are legally binding and should be made amenable to complaints procedures under the OP-ICESCR. This does, of course, refer back to the issue of concrete burden sharing in specific cases.

Looking at the debates more closely, we see that in 2005 the United Kingdom, the Czech Republic, Canada, France and Portugal all clearly considered that extra-territorial 'international cooperation and assistance was an important moral obligation but not a legal entitlement' under the ICESCR. They 'did not interpret the Covenant to impose a legal obligation to provide development assistance or give a legal title to receive such aid' (Open-ended Working Group on an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 2005: para. 76). While Canada repeated this claim during a later discussion in 2006, the other States questioned the appropriate place of obligations of cooperation and assistance in an instrument relating to complaints and petitions, but did not directly challenge the legal nature of the obligations in Article 2(1) ICESCR as such (Open-ended Working Group on an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 2006: paras. 79–85). On the other hand, Angola, Egypt and Morocco (on behalf of the Group of African States), Ghana, Indonesia, the Islamic Republic of Iran, India, South Africa and Nigeria explicitly asserted 'that international cooperation and assistance was a legal obligation enshrined in the Covenant', although they were not more precise as to its scope and content (Open-ended Working Group on an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 2006: para. 78). Interestingly the United Kingdom questioned the Committee's competence to provide advice on a 'complex area of development policy', suggesting that 'it was better placed to address core obligations' (Open-ended Working Group on an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights 2006: para. 84). Of course, this begs the question of what should be made of the discussions leading up to the adoption of the OP-ICESCR in 2008, in terms of the questions posed in previous sections. In any case, it seems that the issue of concrete determination of burdens remains a main obstacle. Perhaps with the entry into force of the OP-ICESCR on 5 May 2013, some further clarifications as to the matter will be made (see e.g. Committee on Economic, Social and Cultural Rights 2007).

2.3.2. Discussions on the UN Guiding Principles on Extreme Poverty and Human Rights

Turning to the later debates engaged in by States in relation to the drafting of the UN Guiding Principles on Extreme Poverty and Human Rights, which were adopted by the United Nations Human Rights Council in September 2012, we see a somewhat different and perhaps more nuanced picture in relation to the obligations concerned (Sepúlveda Carmona 2012).[22] Of course, it is important to bear in mind that the

[22] Human Rights Council (2012), Resolution A/HRC/21/L.20 (21 September 2012).

Guiding Principles are not, as they stand, binding in nature, and that the document has not yet been endorsed by the UN General Assembly. However, the text does state that the Principles reflect current international law – including the existing obligations of international cooperation and assistance – and that States have had the opportunity to express their opinions on the drafting process, and that they did so.[23]

If we take a closer look at the drafting process for the Guiding Principles, we see that again only Canada clearly responded negatively, putting forward the argument that no legally binding obligation can be presumed in respect of international cooperation and assistance,[24] while the United Kingdom, Sweden, Switzerland, Norway and France, as possible challengers to obligations of international cooperation and assistance, did not refer to the matter in their replies to the discussions.[25] Germany, on the other hand, suggested that the UN Guiding Principles refer to and affirm existing human rights obligations and should clarify whether they go beyond such obligations.[26]Brazil and Finland noted that 'the responsibilities of the State notwithstanding, the international community has a responsibility to create circumstances where the poorest States are able to discharge their obligations' (UNHCHR 2009: paras. 46–47). Finally, Mexico argued that the Principles should 'make clear that international assistance and cooperation cannot be reduced to the provision of development assistance' (UNHCHR 2009: para. 46). In the end, for the most part, the UN Guiding Principles reaffirm the existence of obligations of international cooperation and assistance as phrased by the Committee and as elaborated by the Maastricht Principles, thereby arguably endorsing and consolidating the work in both. For present purposes, some interesting provisions can be mentioned, particularly under Principle IV, such as the principle that States have a duty to provide international assistance and cooperation in line with their 'capacities, resources and influence', as well as a duty to 'mobilise maximum available resources' in order to combat poverty in an internationally enabling environment.[27] The Principles also affirm the 'support fulfillment' rationale of the Committee.[28] Unfortunately, the Principles do not offer much assistance with the identification of specific obligations, thus leaving questions of the actual division of labour, specific responsibilities and burden sharing unresolved.

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23 See in particular paragraph 11, but also paragraph 91 of the Guiding Principles, 18 July 2012, UN Doc. A.HR/C.21/39.

24 See Canada's submission, p. 2, available at: www2.ohchr.org/english/issues/poverty/consultation/WrittenSubmissions/PermanentMissions/Canada6June2011.doc.

25 See all submissions available at: www2.ohchr.org/english/issues/poverty/consultation/comments_submissions.htm.

26 See Germany's submission: 4, available at: www2.ohchr.org/english/issues/poverty/consultation/WrittenSubmissions/PermanentMissions/Germany6June2011.pdf.

27 Guiding Principles 18 July 2012, UN Doc. A.HR/C.21/39, Principle VI, paras. 91, 92 and 96.

28 Guiding Principles 18 July 2012, UN Doc. A.HR/C.21/39, Principle VI, paras. 93 and 94.

2.4. CONCLUSIONS ON OBLIGATIONS OF INTERNATIONAL COOPERATION AND ASSISTANCE FOR EXTRA-TERRITORIAL SOCIO-ECONOMIC RIGHTS PROTECTION

In conclusion, on the basis of the above analysis, it seems impossible to deny that the ICESCR is imbued with a 'logic of shared responsibilities in the global community', rather than merely a 'logic of charity' (Fukuda-Parr 2007: 285 and 286). Developed States appear to have a responsibility to contribute to the welfare of persons abroad, i.e. to cooperate and assist in the protection of socio-economic rights extra-territorially, especially when it comes to ensuring or maintaining an international minimum socio-economic threshold for all persons. Such a threshold comprises a minimum essential level of foodstuffs, primary health care, basic shelter and housing, and the most basic forms of education, as per the CESCR.

However, some very important questions still remain, primarily in relation to who can claim what and on which basis in particular instances. The question of concrete burden sharing seems to be a major obstacle. In addition, is there a basis for (identified) persons to claim assistance of a foreign state directly? i.e. should cooperation and assistance occur solely through a State of Origin or can assistance also be provided directly to a particular extra-territorially residing person or group of persons, e.g. to a returned migrant? Can that person claim assistance as an entitlement? A final question is whether human rights law also provides a basis for social protection and assistance beyond minimum essential levels in another country. Both rejection and support of minimalist approaches to obligations and assistance under the ICESCR can be found in current literature (see e.g. Salomon 2011; and more generally, on core obligations, Young 2008)

3. OBLIGATIONS OF SOCIO-ECONOMIC PROTECTION UNDER ARTICLE 3 ECHR: TOWARDS A 'SHARED' OR 'SUBSIDIARY' RESPONSIBILITY TO PROTECT AGAINST EXTREME POVERTY, EITHER AT HOME OR ABROAD?

The following sections wrap up the analysis in this article from another angle. They consider a set of cases discussed by the ECtHR on the socio-economic dimensions of inhuman and degrading treatment and *non-refoulement* under Article 3 of the ECHR. It is suggested that the joint cases of *D v the United Kingdom* (1997),[29] *N v the United Kingdom* (2008),[30] *MSS v Belgium and Greece* (2011)[31], *Sufi and Elmi v the United*

[29] ECtHR 2 May 1997, Appl. No. 30240/96 *D. v the United Kingdom*, ECHR *Reports* 1997-III.

[30] ECtHR 27 May 2008, Appl. No. 26565/05 *N. v the United Kingdom*, para. 44.

[31] ECtHR 21 January 2011, Appl. No. 30696/09 *MSS v Belgium and Greece.*

Kingdom (2011),[32] and *SHH v the United Kingdom* (2013)[33]), like the discussions of the core obligations above, demonstrate that European states have a shared responsibility to protect migrants against deprivation. They also raise some similar questions.

Indeed, in the case-law discussed below, the ECtHR has considered that, particularly when a migrant is unable 'to cater for his own basic needs', such as 'food',' hygiene', 'shelter' or a 'place to live', 'health care', or other 'social support', an expelling State may attract subsidiary responsibilities for protecting the migrant against such deprivation.[34] Of course, it is noted that, while *non-refoulement* would, first and foremost, require a State to keep a particular migrant on its own territory, the underlying rationales of protection may be the same as those discussed above, namely that persons are entitled at all times to have their socio-economic rights met in their respective Countries of Origin to the level required for human dignity. The main responsibility for providing such protection lies with the Country of Origin, but if it is not provided for, a shared responsibility for alternative protection may be passed on to other States.

It will be argued that the ECtHR cases closely resemble the reasoning of the CESCR in respect to core obligations, without which there is a *prima facie* violation of the rights in the ICESCR. In fact, it is worth noting, that, while the original purposes of Article 3 ECHR are arguably different from the socio-economic rights in the ICESCR, it is now generally accepted that the protection of core rights, closely related to human dignity, are of a similar absolute and non-derogable nature to the obligations in Article 3 ECHR, meaning that they apply at all times. Of course, it is valid to consider whether a lack of minimum essential levels of ICESCR-rights could also result in 'inhuman' or 'degrading' treatment or suffering, in terms of Article 3 ECHR. The interpretation of Article 3 by the ECtHR in this respect is set out below, although, at this point, it can be noted that it would not be difficult to imagine that a life without a shelter or home, with lasting hunger and thirst, unsanitary living conditions and little prospect of bringing oneself out of that condition, could qualify as inhuman suffering, or at least as an affront to the basic human dignity of that person.[35] At the same time, however, it also noted that both the 'core-obligations' under the ICESCR and Article 3 ECHR have been subject to discussion for the manner in which the concept of 'absoluteness' and the obligations deriving from it are given shape practically.[36] In this sense, the analysis below not only confirms the arguably crystallising shared international responsibility for protecting poor persons abroad as a matter of human rights, but

32 ECtHR 28 June 2011, Appl. Nos. 8319/07 and 11449/07 *Sufi and Elmi v the United Kingdom*.

33 ECtHR 29 January 2013, Appl. No. 60367/10 *SHH v the United Kingdom*.

34 ECtHR 28 June 2011, Appl. Nos. 8319/07 and 11449/07 *Sufi and Elmi v the United Kingdom*, paras. 279 and 283.

35 Consider in this respect Koch 2009 65, who held that what the ECtHR is arguably doing in the case-law about to be discussed is basically recognizing 'a notion of minimum core rights to health care'.

36 See e.g. recently Mavronicola (2012) on Article 3 ECHR or Young (2008) and Müller (2009) on core-obligations under the ICESCR.

also the fact that the ECtHR is dealing with similar questions of how to deal with such obligations from the perspective of practical burden sharing in following through on its interpretations.

3.1. CASE LAW ON ARTICLE 3 ECHR: SOCIO-ECONOMIC PROTECTION AND *NON-REFOULEMENT*

The first ECtHR case discussed is *D v the United Kingdom* (1997), which concerned an applicant in the last stages of HIV/AIDS whose expulsion to the small island state St Kitts. would arguably have led him to spend the rest of his life in inhuman, undignified conditions, considering the general lack of medication on the island, the exposure to health and sanitation problems in St Kitts, the lack of any form of moral or social support and the inability to access any of the 222 hospital beds that would have been available to him on the island.[37] The ECtHR accepted D's argument about his dire situation and ruled that expulsion would have condemned D to spending his remaining days in pain and suffering, and in conditions of isolation, squalor and destitution, while 'he had no close relatives or friends to attend to him as he approached death [and] no accommodation, financial resources or access to any means of social support'.[38] As such, the Court found the expulsion of D would amount to a violation of Article 3 ECHR. Importantly, for the remainder of the discussion, the Court considered specifically, that D's situation would not be the result of acts or omissions of the authorities of St Kitts, but rather a consequence of the general poor state of affairs on the small island and the general lack of resources and facilities available there.[39]

In 2008, the ECtHR had an opportunity to elaborate further on its case-law by means of *N v the United Kingdom*, another HIV/AIDS patient, who, this time, would have been expelled to Uganda. N's case contrasted with D's case to the extent that while N also suffered serious illness, D had been 'critically ill and appeared to be close to death', and 'could not be guaranteed any nursing or medical care in his country of origin and had no family there willing or able to care for him or provide him with even a basic level of food, shelter or social support'.[40] D would thus have been left in a state of complete deprivation, whereas N's case was not one of such 'very exceptional circumstances', of a 'compelling humanitarian nature', because N was not sick enough at the time.[41] In other words, while the ECtHR recognised that the expulsion of N might affect her life, it also explicitly considered that European States are not expected to alleviate general socio-economic imbalances, such as the lack of available

37 ECtHR 2 May 1997, Appl. No. 30240/96 *D. v the United Kingdom*, ECHR *Reports* 1997-III, para. 52.

38 ECtHR 2 May 1997, Appl. No. 30240/96 *D. v the United Kingdom*, ECHR *Reports* 1997-III, para. 40.

39 ECtHR 2 May 1997, Appl. No. 30240/96 *D. v the United Kingdom*, ECHR *Reports* 1997-III, para. 40.

40 ECtHR 27 May 2008, Appl. No. 26565/05 *N. v the United Kingdom*, para. 42.

41 ECtHR 27 May 2008, Appl. No. 26565/05 *N. v the United Kingdom*, para. 44.

healthcare, between different countries.[42] 'A finding to the contrary would place too great a burden on the Contracting States'.[43] Here we can see the reasoning of the ECtHR starting to bear resemblance to the CESCR, with particular socio-economic core protection guaranteed, but a struggle to place appropriate burdens of protection on a particular State actor.

The Court subsequently clarified the above statements in *MSS v Belgium and Greece* (2011), *Sufi and Elmi v the United Kingdom* (2011) and *SHH v the United Kingdom* (2013). First, in MSS, the Court affirmed that, while Article 3 does not require States to provide migrants with 'financial assistance to enable them to maintain a certain standard of living', 'a situation of extreme poverty can raise an issue under Article 3', namely that 'the possibility that the responsibility of a State [is] engaged under Article 3 in respect of treatment where an applicant, who is wholly dependent on State support, found herself faced with official indifference in a situation of serious deprivation or want incompatible with human dignity' had never been excluded.[44] The case of MSS concerned an asylum seeker who was forced to await the outcome of his asylum procedure in Greece while living in poverty on the streets, without any further support from the Greek authorities. The Court observed that MSS found himself in the situation of spending 'months living in a state of the most extreme poverty, unable to cater for his most basic needs: food, hygiene and a place to live', i.e. in a situation of not having access to any means of subsistence, being homeless, living on the streets and sleeping in parks, and not having access to any sanitary facilities or any resources.[45] As such, the Court found that MSS had been 'the victim of humiliating treatment showing a lack of respect for his dignity and that this situation has, without doubt, aroused in him feelings of fear, anguish or inferiority capable of inducing desperation'. A violation of Article 3 was found.[46]

Although the ruling on MSS thus clearly affirms that the ECtHR considers severe poverty to be a ground for alternative social protection by a Host State, it ultimately clarified, in *SHH v the United Kingdom*, that it was its membership of the European Union which required Greece to provide by law particular reception facilities and adequate treatment to asylum seekers.[47]

However, in *Sufi and Elmi v the United Kingdom* and *SHH v the United Kingdom*, the ECtHR added to its case-law in ways that clarify and consolidate some of the lines of reasoning set out in *D v the UK*, *N v the UK* and *MSS v Belgium and Greece*, the main aspect, here, being the fact that the ECtHR started to distinguish between cases in which Countries of Origin are either *unwilling* to protect a migrant or those

42 ECtHR 27 May 2008, Appl. No. 26565/05 *N. v the United Kingdom*, para. 44.

43 ECtHR 27 May 2008, Appl. No. 26565/05 *N. v the United Kingdom*, para. 44.

44 ECtHR 21 January 2011, Appl. No. 30696/09 *MSS v Belgium and Greece*, paras. 249, 252–253.

45 ECtHR 21 January 2011, Appl. No. 30696/09 *MSS v Belgium and Greece*, paras. 236–238 and 263.

46 ECtHR 21 January 2011, Appl. No. 30696/09 *MSS v Belgium and Greece*, para. 263.

47 ECtHR 29 January 2013, Appl. No. 60367/10 *SHH v the United Kingdom*, para. 90.

in which it was *unable* to protect a migrant.[48] In fact, according to the Court,[49] it is possible to distinguish between poor socio-economic living conditions which result from 'intentional acts or omissions' of public authorities or non-State bodies, and poor socio-economic living conditions which result from 'naturally occurring [situations] and the lack of sufficient resources to deal with them in the receiving country'.[50] In case of the latter, the threshold for protection is higher and only accorded in very exceptional circumstances of a compelling humanitarian nature. However, what the different threshold exactly is, and why the difference in the threshold would be justified, does not seem fully clear as yet, and has been subject to critique.

To illustrate, in *SHH v the United Kingdom*, the ECtHR considered, in respect of a complaint by a disabled person from Afghanistan about his future socio-economic position upon return, that the poor living conditions awaiting him in Afghanistan were ultimately related to Afghanistan's inability to care for disabled persons due to the 'lack of sufficient resources to provide either medical treatment or welfare provision' and largely 'a result of inadequate social provisions through a want of resources'.[51] Therefore, the 'test' applied in *D v UK* and *N v UK* was applicable to SHH's case, meaning that the case had to be 'a very exceptional one where the humanitarian grounds against removal are compelling'.[52] It ultimately meant that SHH's case was rejected, *inter alia*, because there may be potential local family support and because the applicant had already lived in Afghanistan with his injuries for a substantial period of time; in any case, the mere fact that quality of life may diminish upon return was not a decisive reason for the UK to have to provide protection. A similar line of reasoning was followed in *Sufi and Elmi*, although in that case the Court finally 'preferred the approach adopted in *MSS v Belgium and Greece*', over 'the approach in *N v the UK*' because there was involvement of authorities in the situation. Thus, because

48 See for a similar consideration: ECtHR 28 June 2011, Appl. Nos. 8319/07 and 11449/07 *Sufi and Elmi v the United Kingdom*, paras. 281 and 282: 'If the dire humanitarian conditions in Somalia were solely or even predominantly attributable to poverty or to the State's lack of resources to deal with a naturally occurring phenomenon, such as a drought, the test in *N. v the United Kingdom* may well have been considered to be the appropriate one. However, it is clear that while drought has contributed to the humanitarian crisis, that crisis is predominantly due to the direct and indirect actions of the parties to the conflict.[...] Consequently, the Court does not consider the approach adopted in *N. v the United Kingdom* to be appropriate in the circumstances of the present case. Rather, it prefers the approach adopted in *MSS v Belgium and Greece*, which requires it to have regard to an applicant's ability to cater for his most basic needs, such as food, hygiene and shelter, his vulnerability to ill-treatment and the prospect of his situation improving within a reasonable time-frame.'

49 ECtHR 28 June 2011, Appl. Nos. 8319/07 and 11449/07 *Sufi and Elmi v the United Kingdom*, paras. 281.

50 See e.g. ECtHR 28 June 2011, Appl. Nos. 8319/07 and 11449/07 *Sufi and Elmi v the United Kingdom*, paras. 280–282; ECtHR 29 January 2013, Appl. No. 60367/10 *SHH v the United Kingdom*, paras. 91 and 92.

51 ECtHR 29 January 2013, Appl. No. 60367/10 *SHH v the United Kingdom*, paras. 89 and 92.

52 ECtHR 29 January 2013, Appl. No. 60367/10 *SHH v the United Kingdom*, para. 92; similarly: ECtHR 28 June 2011, Appl. Nos. 8319/07 and 11449/07 *Sufi and Elmi v the United Kingdom*, paras. 281 and 282.

Sufi and Elmi, two Somali nationals, were likely to end up in Somali refugee camps after expulsion, where they would undoubtedly suffer from the dire humanitarian conditions prevailing there, and the ECtHR considered this to be the result of the intentional actions of the parties to the conflict in Somalia,[53] the Court considered that it was required 'to have regard to an applicant's ability to cater for his most basic needs, such as food, hygiene and shelter, his vulnerability to ill-treatment and the prospect of his situation improving within a reasonable time-frame'.[54] Although the exact material difference between the levels of destitution in *Sufi and Elmi* and *D v UK* or *S.H.H v UK*, is not fully clear, it seems that poor living conditions in both cases could lead to an obligation of protection. Of course, a question remains, why the distinction in the case law?

The discrepancies in the considerations taken into account in these cases have not gone unnoticed in literature and practice. For example, some judges in *N v the UK* had already criticised the line of reasoning put forward by the Court for having made an inappropriate distinction between *inability* and *unwillingness* regarding treatment in the Country of Origin – a person is either living in unacceptable living conditions or is not.[55] The particular cause of the applicant's situation should never preclude that person's protection.[56] The distinction has also been noted and questioned in the literature (see e.g. Wouters 2009: 276–279), and it was considered that the ECtHR inappropriately had incorporated consequentialist considerations into its reasoning. While the fear of opening the 'floodgates' to poor migrants and of budgetary constraints of States being breached are clear in the reasoning, it has been suggested that what are perhaps legitimate political concerns are not necessarily appropriate legal considerations (Mantouvalou 2009: 826). Mavronicola (2012: 757) also points out, in her analysis of Article 3 ECHR, that 'certainly, resource-related concerns appear to underlie the ECtHR's approach in *N v United Kingdom*' and they 'also seem to lie behind the Court's reluctance to take Article 3 duties too far into the socio-economic realm'. Indeed, it seems that concerns about placing disproportionate burdens on European States for alleviating general poverty, lie at the heart of the ECtHR's split. However, at the same time, the Court, like the CESCR, is clearly aware of the fact that certain issues of basic dignity are deserving of protection as a matter of absolute human rights law. This leaves the observation that the cases discussed indicate that the ECtHR is battling with similar issues to the CESCR in respect of determining specific

53 ECtHR 28 June 2011, Appl. Nos. 8319/07 and 11449/07 *Sufi and Elmi v the United Kingdom*, para 282.

54 ECtHR 28 June 2011, Appl. Nos. 8319/07 and 11449/07 *Sufi and Elmi v the United Kingdom*, para 283.

55 See e.g. the Joint dissenting opinion of Judges Tulkens, Bonello and Spielmann in the case of ECtHR 27 May 2008, Appl. No. 26565/05 *N. v the United Kingdom*, basing such considerations on the absolute nature of Article 3.

56 *Ibid.* See however also the recent dissenting opinion appended to SHH case, by Judges Ziemele, David Thór Björgvinsson and de Gaetano to the effect that SHH's situation would now even present a separate situation to the cases of D and N *versus* Sufi and Elmi, finding itself somewhere in the middle. This would complicate the discussion on causes and thresholds of destitution warranting protection even further.

burdens of protection, in the face of extra-territorial poverty. This ultimately leads us back to similar unresolved legal (or perhaps only practical?) questions as those raised in the previous section: apparently there is a certain shared responsibility to protect all persons against undignified poverty as a matter of international human rights law, but we are left with the question of how to deal with it effectively from a human rights point of view. What is more, at least from a view point of the obligations articulated to date and analysed above, we seem past the point of denying that any legal obligations for socio-economic protection in an extraterritorial setting might exist at all.

4. CONCLUSION

This article has explored the existence of possible legal bases for extra-territorial social protection or assistance by wealthier States *vis-à-vis* poor migrants abroad. It was argued, first, that obligations of international cooperation and assistance as enshrined primarily in the ICESCR cannot be taken as merely following a 'logic of charity' but give rise to a 'logic of shared responsibilities in the global community' that requires a positive contribution from wealthy States to the protection of basic socio-economic rights in other countries. Especially where the protection of minimum essential levels relates to the *'raison d'être'* of human rights protection, e.g. where it involves the availability of essential foodstuffs, primary health care, shelter and education or the combating of severe poverty, foreign States would be expected to provide a contribution when national States are not able guarantee such rights by themselves (Fukuda-Parr 2007: 285 and 286). Similar considerations apply to the ECtHR. Indeed, language and semantics seem to be converging on the interpretation that all persons have basic socio-economic rights to 'essential foodstuffs, essential primary health care, basic shelter and housing' (ICESCR),[57] or alternatively, to be able to 'cater for [their] own basic needs', including basic levels of food, hygiene, shelter and other social support (ECtHR), which is inherent to living one's life in dignity as the ultimate and absolute basis of human rights protection.[58] However, a stumbling block to further implementation of such obligations is the highly problematic area of the determination of specific burdens and clear responsibilities of particular States in particular settings, in other words, 'who ultimately owes what to the very poor? (see also, on more fundamental and philosophical approaches to this question, the volume edited by Pogge 2007).

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57 General Comment 3 on The nature of States parties obligations (Article 2, para. 1), adopted by the Committee on Economic Social and Cultural Rights 14 December 1990, CESCR GC3(1990), paras. 8, 9 and 14.

58 See e.g. ECtHR 28 June 2011, Appl. Nos. 8319/07 and 11449/07 *Sufi and Elmi v the United Kingdom*, paras. 279 and 283; ECtHR 21 January 2011, Appl. No. 30696/09 *MSS v Belgium and Greece*, paras. 246 and 254; ECtHR 2 May 1997, Appl. No. 30240/96 *D. v the United Kingdom*, ECHR *Reports* 1997-III, paras. 52 and 53.

Indeed, we see, both in the discussions on the ICESCR, and in the crystallization of burdens for absolute socio-economic protection under Article 3 ECHR, that, ultimately, it comes down to the question of appropriate burden sharing. When does a European State contribute enough to the situation of poor migrants, and what is the basis upon which to clearly claim a set of social protection measures towards a particular country or even a particular person? The conundrum presents itself that, on the one hand, it cannot be denied that human rights law, incorporating the interpretations of the CESCR and the ECtHR, dictates basic levels of protection for all persons, including those in the international setting of migration, but there is no place at present to really put forward a strong and concrete claim for protection beyond one's own State. Both in the context of the CESCR and in the ECtHR the matter of concrete international burden sharing have been evaded, or even denied to date when it comes down to it. This begs the question of whether the evasion of the question is ultimately a political concern or a legal consequence (Mantouvalou 2009: 825 and 826).

Ultimately, until a division of labour and a division of responsibilities between an assisting wealthy State and the State of Origin, or between a wealthy State and a poor foreign person is clearly established, it will remain difficult for an individual to claim concrete extra-territorial socio-economic protection in relation to a particular foreign State. However, this article has attempted to demonstrate that there are certainly bases for further exploration of this matter in the future and that current human rights law offers foundations which might be crystallised to full potential in the years ahead when matters continue to be raised.

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