GLOBAL JUSTICE, STATE DUTIES

The Extraterritorial Scope of Economic, Social and Cultural Rights in International Law

The rise of globalisation and the persistence of global poverty are straining the territorial paradigm of human rights. This book asks whether States possess extraterritorial obligations under existing international human rights law to respect and ensure economic, social and cultural rights and how far those duties extend. Taking a departure point in theory and practice, the book is the first of its kind to analyse the principal cross-cutting legal issues at stake: the legal status of obligations, jurisdiction, causation, division of responsibility and remedies and accountability. The book focuses specifically on the role of States but also addresses their duties to regulate powerful non-State actors. The authors demonstrate that many key issues have been resolved or clarified in international law, whereas others remain controversial or await the development of further practice, particularly the scope of jurisdiction and the quantitative dimension of extraterritorial obligations to fulfill.

MALCOLM LANGFORD is a Research Fellow at the Norwegian Centre for Human Rights at the Faculty of Law, University of Oslo, and is the Director of the Centre’s Socio-Economic Rights Programme.

WOUTER VANDENHOLE is a Professor of Human Rights Law and holds the UNICEF Chair in Children’s Rights at the Faculty of Law of the University of Antwerp (Belgium), and is the Co-Director of the Law and Development Research Group.

MARTIN SCHEININ is a Professor of Public International Law at the European University Institute. He was a Member of the UN Human Rights Committee (1997–2004) and the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (2005–2011).

WILLEM VAN GENUGTEN is a Professor of International Law at Tilburg University (The Netherlands) and Dean of The Hague Institute for Global Justice. He is also a Visiting Professor at the University of Minnesota and Extraordinary Professor of International Law at the North-West University, South Africa.
Global Justice, State Duties

THE EXTRATERRITORIAL SCOPE OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN INTERNATIONAL LAW

Edited by

MALCOLM LANGFORD
University of Oslo

WOUTER VANDENHOLE
University of Antwerp

MARTIN SCHEININ
European University Institute

WILLEM VAN GENUGTEN
Tilburg University
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Wolfgang Benedek is Professor and Director of the Institute of International Law and International Relations, University of Graz, Austria, and of the European Training and Research Centre for Human Rights and Democracy of the University of Graz (ETC). He is also a lecturer at the Diplomatic Academy Vienna and at the European MA Programmes on Human Rights and Democracy in Venice and Sarajevo. His publications cover the fields of international and regional human rights, human rights education, human security, globalisation and human rights, international economic organisations and global governance, international civil society, information society and human rights, and include Economic Globalisation and Human Rights, edited with De Feyter/Marella (Cambridge: Cambridge University Press, 2010).

Fons Coomans holds the UNESCO Chair in Human Rights and Peace at Maastricht University and is a Senior Researcher at the Netherlands School of Human Rights Research. His fields of research include the international protection of economic, social and cultural rights in general and extraterritorial obligations in particular. He is the coordinator of the courses on economic, social and cultural rights of the European Masters Programme in Human Rights and Democratization in Venice. His publications include Extraterritorial Application of Human Rights Treaties (co-editor with M. Kamminga) (Intersentia, 2004). He edited Justiciability of Economic and Social Rights – Experiences from Domestic Systems (Intersentia, 2006) and Methods of Human Rights Research, together with F. Grünfeld and M. Kamminga (Intersentia, 2009).

Mac Darrow is Chief of the Millennium Development Goals (MDGs) Section of the Office of the United Nations High Commissioner for Human Rights (UN/OHCHR) in Geneva, leading the work of UN/OHCHR in integrating human rights within the development policies and programmes of the UN system. He previously served as Secretary to the UN Committee on the Elimination of Racial Discrimination;
Contributors

Research Fellow at the Academy of European Law, European University Institute, Florence; and consultant to the World Bank Legal Vice-Presidency and UNICEF Innocenti Research Center. Darrow has published monographs, chapters in edited works and articles in refereed journals on topics including the theory and practice of mainstreaming human rights in development and aid policies including the MDGs, human rights in the context of UN reform and the policies and programmes of international financial institutions, poverty and human rights, socio-economic rights, children’s rights, the right to water and climate change.

Maarten den Heijer is Assistant Professor of International Law at the University of Amsterdam. He is a member of the Standing Committee of Experts on International Immigration, Refugee and Criminal law and a regular contributor to the Dutch journal for Human Rights. Den Heijer researches international and European asylum and immigration law, human rights and the law on State responsibility; his publications include Europe and Extraterritorial Asylum (Hart Publishing, 2012) and European Migration Law, co-authored with P. Boeles, G. G. Lodder and K. Wouters (Intersentia, 2009).

Mark Gibney is the Belk Distinguished Professor at the University of North Carolina at Asheville. His most recent book projects include The Handbook of Human Rights (Sage Publications, forthcoming), edited with Anja Mihr; Watching Human Rights: The 101 Greatest Films (Paradigm Publishers, forthcoming); The Politics of Human Rights: The Quest for Dignity (Cambridge University Press, 2010), authored with Sabine Carey and Steven Poe; Universal Human Rights and Extraterritorial Obligations (University of Pennsylvania Press, 2010), edited with Sigrun Skogly; and The Global Refugee Crisis (ABC-CLIO, 2010). Since 1984, Gibney has directed the Political Terror Scale (PTS), which measures levels of physical integrity violations in more than 185 countries: www.politicalterrorscale.org.

Felipe Gómez Isa is Professor of Public International Law and researcher at the Institute of Human Rights of the University of Deusto (Bilbao). He is also the National Director of the European Master in Human Rights and Democratization, EMA, organised by forty-one European universities in the framework of the European Inter-University Centre for Human Rights and Democratisation (EIUC, Venice, Italy). He has been Visiting Professor in several European, Latin American and Asian universities, and his publications include Privatisation and Human Rights in the Age of Globalisation, edited with K. de Feyter (Intersentia, 2005); International Human Rights Law in a Global Context (University of Deusto), co-edited with Koen de Feyter, 2009; Rethinking Transitions: Equality and Social Justice in Societies Emerging from Conflict, edited with G. Oré (Intersentia, 2011); and ‘Freedom from Want from a Local Perspective: Evolution and Challenges Ahead’, in The Local Relevance of Human Rights, edited with K. de Feyter and S. Parmentier et al. (Cambridge University Press, 2011).
Ashfaq Khalfan is the Economic, Social and Cultural Rights Policy Coordinator (Legal Enforcement) at Amnesty International’s International Secretariat. He is also the Acting Chair of the Board of Governors of the Centre for International Sustainable Development Law. Relevant co-authored publications include Sustainable Development Law: Principles, Practices and Prospects (Oxford University Press, 2004); Manual on the Right to Water and Sanitation (COHRE, AAAS, UN-HABITAT and SDC, 2008) and The Significance of Human Rights in MDG-Based Policy Making on Water and Sanitation: An Application to Kenya, South Africa, Ghana, Sri Lanka and Laos (2009). He previously directed the Right to Water Programme at the Centre on Housing Rights and Evictions and consulted for the Office of the UN High Commissioner for Human Rights (OHCHR) and the German Technical Cooperation Agency (GTZ).

Malcolm Langford is a Research Fellow at the Norwegian Centre for Human Rights, Faculty of Law, University of Oslo, and Director of the Centre’s Socio-Economic Rights Programme. He is an advisor to the different UN agencies, governments and nongovernmental organisations (NGOs) and leads a number of international research networks. He has published on a wide range of topics in human rights, law and economics, and his books include The International Covenant on Economic, Social and Cultural Rights, with M. Craven (Oxford University Press, forthcoming); Social Rights Jurisprudence: Emerging Trends in International and Comparative Law, edited (Cambridge University Press, 2008) and Road to a Remedy: Current Issues in Litigation of Economic, Social and Cultural Rights, edited with B. Thiele and J. Squires (AHRC and distributed by University of New South Wales Press, 2005).

Rick Lawson is Dean of the Leiden Law School and Professor of European Law at Leiden University, The Netherlands. He specialises in European human rights law, in particular the case law of the European Court of Human Rights. Another area of interest is the protection of human rights in the EU legal order. He served as a senior expert of the FRALEX Network of Human Rights Experts, set up by the EU Fundamental Rights Agency, and as an expert to the Parliamentary Assembly of Council of Europe. Together with Henry Schermers he wrote Leading Cases of the European Court of Human Rights (Nomos, Maklu en Schultess Polygrafischer Verlag, 1999).

Smita Narula is Associate Professor of Clinical Law and Faculty Director of the Center for Human Rights and Global Justice at New York University School of Law. She is an advisor to the UN Special Rapporteur on the right to food. Both her scholarship and clinical work focus on key human rights issues, including the impact of economic globalisation and counterterrorism policies on human rights, and the accountability of corporations and international financial institutions for human rights abuses. She has authored numerous articles and studies on these subjects, including The Right to Food: Holding Global Actors Accountable Under
Contributors

International Law’. Her current research assesses market- and rights-based responses to the global phenomenon of agricultural ‘land-grabbing’. Narula is a renowned expert on caste discrimination, and author of the award-winning book Broken People: Caste Violence Against India’s “Untouchables” (1999).

Cedric Ryngaert is Associate Professor of International Law at Utrecht University and Leuven University and a senior member of the Leuven Centre for Global Governance Studies. He is the author of Jurisdiction in International Law (Oxford University Press, 2008) and various articles and book chapters on jurisdiction, international criminal justice, non-State actors, international organisations and human rights. He is also managing editor of Wereldvisie (an Acco/VVN book series on international law and policy), editor of Human Rights and International Legal Discourse and correspondent for Wereldbeeld, and coordinator of the Oxford Reports on International Law in Domestic Courts for Belgium.

Margot E. Salomon is Senior Lecturer, Centre for the Study of Human Rights and Law Department, London School of Economics. Dr Salomon has been a consultant to the UN OHCHR, the UN High-Level Task Force on the Right to Development and the World Bank’s Nordic Trust Fund. She sits on the Executive Board of the Association of Human Rights Institutes and is a member of the International Law Association’s Committee on the Rights of Indigenous Peoples. Her publications include ‘Why Should It Matter That Others Have More: Poverty, Inequality and the Potential of International Human Rights Law’, Review of International Studies, Vol. 37, No. 5, (2011) and Global Responsibility for Human Rights: World Poverty and the Development of International Law (Oxford University Press, 2007).

Martin Scheinin is Professor of Public International Law at the European University Institute. He was a member of the UN Human Rights Committee and the first UN Special Rapporteur on the protection and promotion of human rights and fundamental freedoms while countering terrorism. He has published widely in the field of international, constitutional and human rights law, and his books include The Impact of Human Rights Law on General International Law, edited with M. Kamminga (Oxford University Press, 2009); International Protection of Human Rights: A Textbook, edited with C. Krause (Åbo Akademi University Institute for Human Rights, 2009) and Cultural Human Rights, edited with F. Francioni (Martinus Nijhoff, 2008).

Dinah Shelton is the Manatt/Ahn Professor of Law Emeritus at the George Washington University Law School, where she has taught since 2004. Previously she taught at the University of Notre Dame and the University of Santa Clara and has lectured at other universities throughout the world. In 2010 she began a four-year term as a member of the Inter-American Commission on Human Rights and in 2011 served as president of the Commission. She is the author of several prize-winning books and numerous articles on human rights, environmental law and general international
law. She is a member of the board of editors of the American Journal of International Law and consultant to numerous international organizations.

**Sigrun I. Skogly** is Professor of Human Rights Law at Lancaster University Law School, UK, and Visiting Professor at Buskerud University College, Norway. Her research particularly focuses on economic, social and cultural human rights and obligations of intergovernmental organisations and States in their international relations. Her publications include *The Human Rights Obligations of the World Bank and the International Monetary Fund* (Cavendish, 2001), *Beyond Borders: States’ Human Rights Obligations in International Cooperation* (Intersentia, 2006) and ‘Universal Human Rights without Universal Obligations?’, in S. Joseph and A. McBeth (eds.), *International Human Rights: A Research Handbook* (Edward Elgar, 2010).

**Willem van Genugten** is Professor of International Law at Tilburg University, The Netherlands, and Dean of The Hague Institute for Global Justice. In addition, he is Visiting Professor at the University of Minnesota and Extraordinary Professor of International Law at the North-West University, South Africa. Some relevant publications include *The United Nations of the Future; Globalization with a Human Face*, authored with Kees Homan, Nico Schrijver and Paul de Waart (KIT Publishers, 2006), selected by *Choice* magazine (US) as an Outstanding Academic Title in 2007; and ‘Protection of Indigenous Peoples on the African Continent: Concepts, Position Seeking, and the Interaction of Legal Systems’, *American Journal of International Law*, No. 1 (2010), pp. 29–65. Recently he led a project on *Harnessing Intellectual Property Rights for Development Objectives* (the results were published by Wolf Legal Publishers, 2011).

**Wouter Vandenhole** holds the UNICEF Chair in Children’s Rights at the Faculty of Law of the University of Antwerp (Belgium). He is also the Co-Director of the Law and Development Research Group and founding member of the editorial board of *Human Rights & International Legal Discourse*. He has published extensively on human rights, and his previous books include *Casting the Net Wider: Human Rights, Development and New Duty-Bearers*, edited with M. Salomon and A. Tostenson (Intersentia, 2007); *Protocol No. 14 and the Reform of the European Court of Human Rights*, edited with P. Lemmens (Intersentia, 2005); and *Non-discrimination and Equality in the View of the UN Human Rights Treaty Bodies* (Intersentia, 2005).
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Preface

This book emerged from an initiative to take the scholarly discussion on extraterritorial human rights a step further. The result is the first publication in the field that takes a point of departure in the standard legal building blocks of obligation, jurisdiction, causation, attribution and remedies, and it does so in the context of largely under-examined economic, social and cultural rights.

The ambition was not to reach a definitive conclusion on the state of international law on extraterritorial obligations. It is a field in flux and dogged by particular controversies – and the assembled authors in this volume diverge on various points. The introduction therefore seeks to distinguish areas of clarity and consensus from those of uncertainty and disagreement and points to some ways forward. In an afterword, two authors also look more normatively at the state of legal play from the perspective of different theories in political philosophy.

The project commenced with a presentation of papers by various scholars in human rights and/or international law on 24–26 January 2008 at a conference in Tilburg, Netherlands. It was a joint initiative of the Institute for Human Rights (Åbo Akademi University), the Centre for Transboundary Legal Development (Tilburg University) and the Law and Development Research Group (University of Antwerp) and was held under the auspices of the Nordic School in Human Rights Research and the Netherlands School of Human Rights Research. With the collaboration of the Norwegian Centre for Human Rights, the book was further developed and additional authors were included.

We are particularly grateful to the European Science Foundation (ESF) and the University of Oslo for providing funding for, respectively, the conference and the editing process. The project has also benefited from the ongoing work of the ESF-funded Research Networking Programme GLOTHRO (Beyond Territoriality: Globalisation and Transnational Human Rights Obligations).
Preface

During the drafting of this book, the *Maastricht Principles on Extraterritorial Obligations (ETO)s of States in the Area of Economic, Social and Cultural Rights* (2011) were adopted. We have chosen to annex this expert statement in the book along with the International Covenant on Economic, Social and Cultural Rights. The Maastricht Principles are “drawn from international law” and apply a teleological method of legal interpretation: seeking to give “full effect to the object of the Charter of the United Nations and international human rights.” This book does not provide an analysis of these principles but we include them as they offer a useful comparison point with the chapters in this book – and they were partly influenced by the process of the development of this volume.*

We would particularly like to thank the external reviewers who provided valuable comments on many individual chapters together with Brian Griffey, Cheryl Lorens and Jo-Anne Prud’homme du Hancourt for their careful work in proofing the chapters. In the production of the book, we are very grateful to John Berger at Cambridge University Press for his support and professionalism in driving the project forward; Peggy Rote at Aptara, Inc., for shepherding the book through its various phases; Susan Sweeney at Aptara for her painstaking copyediting of the entire manuscript and Janine Kisba Silga at the European University Institute for helping to prepare the table of authorities.

Malcolm Langford, Wouter Vandenhole, Martin Scheinin and Willem van Genugten
11 September 2012

* For a commentary, see “Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, Olivier De Schutter, Asbjørn Eide, Ashfaq Khalfan, Marcos Orellana, Margot Salomon, & Ian Seiderman, forthcoming in Vol. 34, No. 4 (Nov. 2012) Human Rights Quarterly.”