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978-1-107-01277-6 - Global Justice, State Duties: The Extraterritorial Scope of Economic, Social and Cultural Rights in International Law

Edited by Malcolm Langford, Wouter Vandenhoe, Martin Scheinin and Willem Van Genugten
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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.

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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*).

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Preface

During the drafting of this book, the *Maastricht Principles on Extraterritorial Obligations (ETOs) 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*.”