Extraterritorial obligations in the United Nations system: UN treaty bodies

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Introduction

The United Nations is a complex system exhibiting a number of various approaches to regulating, governing, and enforcing extraterritorial obligations (ETOs). This chapter focuses on the activity of five UN treaty bodies mandated to monitor the implementation of the core international human rights treaties – the *International Covenant on Economic, Social and Cultural Rights* (ICESCR); the *International Covenant on Civil and Political Rights* (ICCPR); the *Convention on the Rights of the Child* (CRC); the *Convention on the Elimination of all Forms of Discrimination Against Women* (CEDAW); and the *Convention on the Rights of Persons with Disabilities* (CRPD) – the Committee on Economic, Social, and Cultural Rights (CESCR), the Human Rights Committee (HRC), the Committee on the Rights of the Child (UN CRC), the Committee on the Elimination of Discrimination Against Women (UN CEDAW), and the Committee on the Rights of Persons with Disabilities (UN CRPD)² and the manner in which they have reformed international law relating to ETOs.

Based on an analysis of the treaty bodies' major outputs – General Comments/General Recommendations (GC/GR); Concluding Observations (COBs); Statements; and Individual Communications – the chapter seeks to identify their approach to ETOs. The study embraces descriptive and normative components. It explores practices of the treaty bodies concerning ETOs and outlines some directions for further development of these practices.

The chapter is structured as follows. First, it provides a general overview of the treaty bodies' interpretation and classification of ETOs as well as their definition of remedial ETOs. Following that, it explores the treaty bodies' approach to regulating and enforcing global obligations, including obligations of extraterritorial cooperation and assistance. Then, their methods of assigning ETOs to states and non-state actors (NSAs) are analysed. The final section examines the treaty bodies' role as accountability mechanisms capable of holding states responsible for breaching their ETOs.

Extension of states' human rights obligations beyond their borders

The treaty bodies have developed a common approach to ETOs, although some differences emerge due to a number of factors. First, the treaty bodies' activities are determined by the

different UN conventions themselves, the implementation of which they are designed to monitor.³ Second, the Committees have diverse experience of work. The HRC (1976), the CESCR (1985), the UN CEDAW (1982), and the UN CRC (1990) are more sophisticated in comparison to the relatively ‘young’ UN CRPD (2008).⁴

International law proceeds from a presumption, expressed in the *Vienna Convention on the Law of Treaties*, that international treaties are binding upon state parties within their territory (art. 29). Although the ICCPR and the CRC contain jurisdictional clauses,⁵ the ICESCR, the CEDAW, and the CRPD have no such restrictions. Moreover, the ICESCR, the CRC, and the CRPD explicitly recognise that states have ETOs corresponding to socio-economic rights in provisions on obligations of international assistance and cooperation (ICESCR, art. 2; CRC, art. 4, art. 24 para. 4, and art. 28 para. 3; CRPD, art. 4 para. 2 and art. 32).

The treaty bodies appeal to personal and spatial models of jurisdiction, according to which a state’s jurisdiction extends to situations beyond its borders when it exercises effective control over individuals or territory (Milanovic 2011, Ch. 4). For instance, in concluding observations on Israel, various treaty bodies have asserted that jurisdiction includes all territories and populations under a state’s effective control (CESCR 1998, para. 8; HRC 1998, para. 10; UN CRC 2002, paras. 2, 5, and 57–58; UN CEDAW 2005, para. 23; see also HRC 2004a, para. 10; HRC 2019, para. 63). Additionally, jurisdiction extends to situations where states’ acts or omissions affect the enjoyment of human rights abroad. Thus, the HRC determines that jurisdiction concerns the ‘relationship between the individual and the state in relation to a violation of any of the rights set forth in the Covenant’ (HRC 1981a, para. 12.2; see also HRC 2019, paras. 22 and 63).

One can distinguish between *remedial ETOs* for the negative impact of global actors on the enjoyment of human rights and *global obligations*, which arise when human rights deprivations cannot be attributed to any particular actors or institutions. A criterion used for this classification is the possibility of establishing a causal link between acts or omissions of global actors and human rights abuses.⁶ It is important to emphasise that both types of ETOs – remedial ETOs and global obligations – correspond to all types of human rights, which has been reaffirmed by the treaty bodies.

The treaty bodies have paid significant attention to states’ remedial ETOs for various human rights violations relating to military occupations and peacekeeping operations; killings, sexual abuse, torture or other cruel, inhuman, or degrading treatment; kidnapping and arbitrary detention; discrimination on various bases; abusive international trade, investment, financial secrecy, tax, and agricultural policies; extractive industries; environmental damage and climate change impact, etc. The treaty bodies have also addressed remedial ETOs for states’ non-compliance with global obligations to respect, protect, and fulfil human rights (UN CRC 2020a), including obligations of international cooperation and assistance (CESCR 2014, para. 12; CESCR 2016b, para. 15) and obligations to protect against extraterritorial human rights violations caused by private entities having a ‘reasonable link’ with these states (see Section on attributing ETOs to states and non-state actors).⁷

The treaty bodies have set forth two conditions for attributing remedial ETOs. The first is *causation*, i.e., the existence of a causal link between an actor’s activity and human rights impacts. The HRC asserts that ‘a state party may be responsible for extra-territorial violations of the Covenant, if it is a link in the causal chain that would make possible violations in another jurisdiction’ (HRC 2009, annex para. 14.2). As the CESCR specifies, states bear remedial ETOs ‘even if other causes have also contributed to the occurrence of the violation’ (CESCR 2017, para. 32). The second condition involves the *reasonable foreseeability* of extraterritorial human rights violations occurring. According to the HRC, ‘the risk of an extra-territorial violation

must be a necessary and foreseeable consequence and must be judged on the knowledge the state party had at the time' (HRC 2009, annex para. 14.2). The CESCR has held that the state is responsible even if it 'had not foreseen that a violation would occur, provided such a violation was reasonably foreseeable' (CESCR 2017, para. 32; see also HRC 2019, paras. 22 and 63).

Remedial ETOs embrace *interactional* and *institutional* aspects. Interactional remedial obligations are aimed at realising the right to effective and affordable remedies and adequate (full and effective) reparation for particular victims of extraterritorial human rights violations. They call for measures of comprehensive, long-term, needs-based, victim-centred protection and assistance to victims. Institutional remedial ETOs include obligations to guarantee the availability of efficient accountability mechanisms at national, regional, and international levels necessary to secure remedies for the victims, including measures of non-repetition, restitution, compensation, satisfaction, and rehabilitation (CESCR 2000, para. 59; HRC 2014, paras. 5 and 9; UN CEDAW 2016d, para. 13). States and other members of the international community should cooperate in order to 'prevent contradictions and inadequacies in the remedies and sanctions' (Commission on Human Rights 1997, para. 131).

Global obligations

In an earlier work, I proposed a classification of *global obligations*. It includes global obligations of result, which embrace *interactional obligations to realise human rights universally* and *institutional obligations to create and maintain a just global order*, as well as global obligations of conduct, consisting of *obligations to cooperate* and *obligations to assist* (Pribytkova 2020). Under both hard and soft international law (*UN Charter*, art. 1 paras. 2–3 and arts. 55–56; *Maastricht Principles*, Principles 8 and 29), there is a tendency to interpret all global obligations as obligations of conduct, focusing on efforts and processes, rather than obligations of result, addressing achievements and outcomes. The ICESCR and the CRPD also treat global obligations as duties of conduct (ICESCR, art. 2 para. 1; CRPD, art. 4 para. 2). However, the CESCR and the UN CRPD assert that general legal obligations corresponding to socio-economic rights involve both obligations of conduct and obligations of result. Although many global obligations of result corresponding to socio-economic rights are supposed to be implemented progressively, they aim at achieving a concrete goal – the full realisation of socio-economic rights universally (CESCR 1990, para. 1; UN CRPD 2016, para. 40). Some global obligations are obligations of immediate effect.⁸

According to a tripartite theory of human rights obligations, three types of obligations (to respect, protect, and fulfil) correspond to each human right (Shue 1996; Sepúlveda 2003). The treaty bodies acknowledge *global obligations to respect, protect, and fulfil* human rights, which embrace interactional and institutional aspects.⁹ First, the treaty bodies demand that states 'refrain from interfering directly or indirectly with the enjoyment' of human rights abroad (CESCR 2017, para. 29; UN CEDAW 2017, paras. 14–15). Institutional global obligations to respect human rights imply, in particular, obligations to create mechanisms for systematic and efficient human rights impact assessments (HRIAs) as well as gender, child rights, environmental, and social impact assessments with the participation of all stakeholders, especially vulnerable individuals and social groups (UN CEDAW 2018a, paras. 29–30; UN CRC 2019b, para. 18; UN CRPD 2019b, para. 67). Second, the treaty bodies recognise states' obligations to regulate and influence the conduct of NSAs and individuals to prevent extraterritorial violations of human rights and ensure victims' access to effective remedies. Global institutional obligations to protect require establishing efficient national and international monitoring and accountability mechanisms, and not only when these mechanisms are unavailable or inefficient in states where extraterritorial activity takes place (CESCR 2017, paras. 30–35; UN CRPD 2018b, para. 94(c);

UN CEDAW 2016b, paras. 24–25). Third, global obligations to fulfil combine obligations to *facilitate*, *provide*, and *promote*. Obligations to facilitate demand removing structural impediments to a just international order and creating the enabling environment necessary for the universal realisation of human rights. ETOs to promote involve interactional and institutional duties to produce, and ensure access to, educational programs, knowledge, and information about human rights globally and, thereby, supporting people in making informed choices. Global obligations to provide presuppose guaranteeing access to resources and services indispensable for leading a decent life to those who are unable to secure this access by themselves; they also embrace interactional and institutional obligations of extraterritorial assistance (CESCR 2000, paras. 33, 36–37 and 39; UN CRC 2013b, para. 29).

The treaty bodies address both *global obligations of relational justice* that presuppose guarantees of all individuals' full-fledged and meaningful participation in key global institutions and practices, including important decision-making processes (UN CRPD 2018a, para. 72; UN CEDAW 2015, para. 25), and *global obligations of distributive justice* that call for a fair allocation of certain social goods or resources indispensable for enjoying a decent life (CESCR 2017, para. 37; UN CRC 2013b, para. 29). For instance, the UN CRPD defends a new model of 'inclusive equality' which embraces relational (recognition and participative) and distributive components.¹⁰ In accordance with the principles of 'ownership of development' and 'leaving no one behind', global actors should ensure effective and meaningful participation, inclusion, and consultation with disadvantaged individuals and social groups and their representatives 'in the design, implementation, monitoring and evaluation' of all extraterritorial programs and projects (UN CRPD 2019a, para. 60; UN CRPD 2019c, para. 62; UN CEDAW 2013a, para. 42).¹¹ In the time of pandemic, the CESCR pays special attention to primary distributive obligations of states and NSAs to ensure universal, affordable, equitable, and non-discriminative access to treatment for and vaccines against COVID-19, which are 'safe, effective and based on the best scientific developments', for all individuals, especially those from the least developed countries (CESCR 2020b; CESCR 2021).

The treaty bodies have established that states have legal obligations to cooperate with other public and private actors and to assist in the realisation of their obligations to respect, protect, and fulfil human rights universally.¹² As the UN CRC states, '[w]hen states ratify the Convention, they take upon themselves obligations not only to implement it within their jurisdiction, but also to contribute, through international cooperation, to global implementation' (UN CRC 2003, para. 5). The CESCR stresses that without an active and efficient program of international assistance, which is more important than ever during a pandemic, the full realisation of socio-economic rights 'will remain an unfulfilled aspiration in many countries' (CESCR 1990, para. 14; CESCR 2020a, para. 19). In particular, the treaty bodies determine that key components of the right to an adequate standard of living – the rights to adequate food, water, sanitation, housing, and health – give rise to international obligations to assist (CESCR 1991, paras. 10, 13, and 19; CESCR 1999a, paras. 36, 38, and 40; CESCR 2000, paras. 38–40, 45, and 63; CESCR 2003, paras. 30 and 34; UN CRC 2003, section J; UN CRC 2013b, para. 41). The current practice of developed states reporting on their implementation of international obligations to assist within the treaty bodies periodic reporting procedure may be interpreted as a recognition of these legal obligations (CESCR 2019; UN CRC 2017, para. 29; UN CRC 2018, paras. 41–43). Moreover, territorial human rights obligations of social support and ETOs to assist are considered to be simultaneous: states are not exempt from obligations to provide extraterritorial assistance because their domestic obligations are not fully realised.¹³

Though international human rights law has not yet acknowledged the obligations of the state to seek international assistance if it is unable to guarantee the full realisation of human rights

within its jurisdiction, the treaty bodies often encourage states to seek international assistance (CESCR 2011b, para. 4; UN CRC 2011a, paras. 19 and 23). The treaty bodies appeal to the UN 0.7% GDP target for official development assistance (ODA) and request developed countries to take all measures to achieve this target (CESCR 2016a, paras. 7–8; UN CRC 2003, para. 61). However, the treaty bodies' references to the 'position to assist', 'maximum of available resources', and 'progressive realisation' clauses in the context of obligations to assist obscure rather than shed light on their nature, content, and scope, as they are often used by states as 'escape clauses' giving reasons to withdraw from the (full) realisation of their obligations (Alston and Quinn 1987, pp. 172–180).¹⁴

The treaty bodies address the obligations of both parties of extraterritorial relations of assistance – donors and recipients – to provide efficient assistance and to use it effectively for the realisation of human rights. On the one hand, they note that very often international assistance provided by donors is insufficient, inefficient, and causes serious human rights violations in recipient countries (CESCR 2014, para. 12; CESCR 2016b, para. 14; UN CRPD 2015a, para. 74). They also rightly criticise unjustified conditionalities of assistance, recalling that donor states should not impose duties that adopt retrogressive measures in violation of recipient states' human rights obligations (CESCR 2016c, paras. 9–11). The treaty bodies demand applying a human rights-based approach to international cooperation and assistance policies that implies creating efficient monitoring mechanisms for systematic, independent, and participatory *ex ante* and *ex post* HRIAs, taking remedial measures when necessary, and guaranteeing accessible complaint mechanisms (CESCR 2014, para. 12; UN CRPD 2019b, para. 67; CESCR 2016c, para. 11). In addition, they urge states to mainstream the most disadvantaged individuals and their organisations through international cooperation and assistance programs (UN CRPD 2015b, paras. 59–60; UN CRPD 2013, paras. 71–72).

On the other hand, the treaty bodies have noted the many cases of corruption, 'mismanagement of international cooperation aid', and 'unbalanced budgetary allocations', including low allocations to the 'social sectors', and 'the limited effectiveness of the use of foreign funds' that constitute 'serious breaches' of states' territorial obligations (CESCR 2002, para. 11; CESCR 2009a, para. 16). They stress the obligations of states receiving international assistance to use it efficiently to empower the local poor and to realise their human rights, while prohibiting the use of assistance to perpetuate inequalities, discrimination, and segregation (UN CRPD 2014, para. 47; UN CRPD 2017, para. 96). Recipient states should combat corruption and increase transparency and consultations with the most vulnerable individuals and social groups at all levels of decision-making concerning the distribution of funds, as well as the monitoring and evaluation of aid's impact (CESCR 2002, para. 30; CESCR 2009a, para. 16; UN CRPD 2018b, paras. 72, 78, 92, and 94(r)).

It is important to note that extraterritorial assistance implied by the treaties is state-centred. That is why the treaty bodies monitor the implementation of obligations of *international* assistance, which are addressed to states and aimed at supporting them in realising their human rights obligations within their territory, rather than obligations of *global* assistance specifically directed to those in need (Pribytkova 2019, pp. 276–282). In this context, the main agents of assistance are developed states. However, the UN CRPD goes beyond these limitations and urges states to ensure direct access of persons with disabilities and NGOs representing them to foreign development aid, i.e., to guarantee their independence and autonomy from the state and promote their right to seek and receive assistance from 'international sources, including private individuals and companies, civil society organisations, states parties and international organisations' (UN CRPD 2018b, paras. 64 and 94(b,p)). This may be interpreted as an expression of the awareness that state-centred international assistance is insufficient and the recognition of the right of disadvantaged individuals and social groups to direct *global* assistance.

Attributing ETOs to states and non-state actors

International human rights instruments acknowledge not only states but also intergovernmental organisations (IGOs), NSAs, and individuals as bearers of human rights obligations. For example, the UDHR proceeds from the assumption that ‘every individual and every organ of society’ should strive to promote respect for human rights and to ‘secure their universal and effective recognition and observance’ through progressive national and international measures (pmb., art. 29 para. 1 and art. 30). This provision is reaffirmed by the ICESCR (art. 5 para. 1). Relatedly, the CRPD determines the obligations of states to cooperate with international and regional organisations and civil society (art. 32). The treaty bodies also clarify that human rights bind all global actors and encourage states to cooperate with public and private actors for human rights realisation (see previous Section).

Without paying significant attention to direct obligations of other global entities, the treaty bodies address obligations of states in their triple role. First, states have *direct ETOs* which embrace global obligations to respect, protect, and fulfil and remedial ETOs (see two previous Sections). Second, *as members of IGOs*, including international financial institutions (such as the World Bank, the IMF, and regional development banks), states have ETOs to refrain from coercing other IGO members into violating human rights (CESCR 2016c, paras. 9–10) and to ensure that human rights are implemented through the policies of the IGOs (CESCR 1999b, para. 56; CESCR 2008, para. 58; UN CEDAW 2013a, paras. 12 and 14).¹⁵

Third, states should *regulate and influence the conduct of NSAs and individuals* (HRC 2004a, para. 8; CESCR 2017; UN CRC 2013b; UN CEDAW 2010, para. 36).¹⁶ The treaty bodies used to emphasise the primacy of host states’ obligations to regulate NSAs and protect their citizens from the negative impact as part of their territorial obligations (CESCR 2010, para. 10; UN CRC 2011b, para. 21; UN CRC 2013b, para. 42). This focus often exceeded the ability of developing countries to control more powerful NSAs (especially transnational corporations (TNCs)) affiliated with developed states; it also failed to encourage the acceptance of direct human rights obligations by NSAs and their home states (Vandenbogaerde 2016, p. 78). More recently, the treaty bodies have been requiring home states to govern the extraterritorial conduct of NSAs registered or domiciled in their territory (CESCR 2011a, para. 5; HRC GC 36, para. 22; UN CEDAW 2016a, paras. 18–19).

The treaty bodies call for the implementation of the *UN Guiding Principles on Business and Human Rights (UN Guiding Principles)*, according to which TNCs possess only obligations to respect human rights (along with remedial ETOs), while obligations to protect and fulfil human rights fall on the state (Principle 11). Generally following this pattern, the treaty bodies demand that TNCs act ‘with due diligence to prevent human rights violations and provide effective remedies for human rights violations connected to their operations’ (UN CEDAW 2018b, para. 48; UN CRC 2021b, paras. 35–36, 38, 48). At the same time, some treaty bodies go beyond the *UN Guiding Principles* and stipulate that TNCs also have obligations to protect human rights as well as certain obligations to fulfil human rights, making impact on their ‘effective enjoyment and exercise’ (UN CEDAW 2018b, para. 48; UN CRC 2010a, para. 31; UN CRC 2010b, para. 19; UN CRPD 2016, para. 76; UN CRC 2021b, para. 36).¹⁷ In the context of pandemic, the CESCR claims that TNCs should only ‘at a minimum’ respect human rights while having more extensive obligations corresponding to the human right to health, in particular obligations to contribute to guaranteeing universal, fair, and affordable access to medicines, vaccines, diagnostic tools, and health-care technologies (CESCR 2020b, para. 7; CESCR 2021, para. 8). The treaty bodies demand states to take several measures in relation to TNCs. First, they should establish and strengthen their regulatory framework, especially a national action plan on business and

human rights, and monitoring mechanisms, including HRIAs, and demand TNCs to exercise due diligence, consult with local populations and receive their informed consent prior to implementing any projects (HRC 2015, para. 6; UN CEDAW 2016c, para. 41; UN CRC 2019a, para. 17). Second, states should provide effective and independent judicial and non-judicial mechanisms to investigate complaints against TNCs and secure remedies and reparations for victims, particularly through supporting the work of the National Contact Points established under the *OECD Guidelines for Multinational Enterprises* (CESCR 2018, paras. 16–17; HRC 2011, para. 11; HRC 2012, para. 16; UN CEDAW 2014a, paras. 14–15).

The treaty bodies consider civil society to be an important global actor possessing obligations to respect human rights and to prevent and/or minimise possible harm resulting from its activity, including assistance projects (UN CEDAW 2018b, para. 50). They encourage states to cooperate with NGOs ‘in order to benefit from their expertise in human rights monitoring, reporting and analysis, policy development and implementation and all related capacity development in international cooperation’ (UN CRPD 2015c, para. 51; see also UN CRC 2021b, para. 34).

UN treaty bodies as accountability mechanisms

The treaty bodies have not developed any special procedures for monitoring the realisation of ETOs. States may be held accountable for extraterritorial human rights violations through the treaty bodies’ general procedures, including periodic reporting, inquiry procedures, and inter-state and individual complaints; though, in practice, not all of these procedures have been used for this purpose. The treaty bodies have different experiences of functioning as accountability mechanisms: while the HRC (1976) has elaborated a solid case law, including the one related to ETOs, the communication procedures of the UN CEDAW (2000), the UN CRPD (2008), the CESCR (2013), and the UN CRC (2014) are still in development. Since the treaty bodies’ accountability mechanisms are state-centred, NSAs cannot be held accountable through them even in case of their complicity with states in human rights violations.

As demonstrated in previous Sections, within the *periodic reporting procedures*, the treaty bodies concentrate on a set of questions surrounding extraterritorial human rights violations relating to international trade, investment and tax policies, military occupations and peacekeeping operations, surveillance activities, corporations’ extraterritorial activities, and environmental damage. They also address breaches of global obligations, including obligations of cooperation and assistance. Through periodic reporting on their implementation of ETOs, which should be submitted every four or five years by states, the latter express their recognition of these obligations as legally binding (see Section on global obligations). Parallel reports from civil society, encouraged and considered by the treaty bodies, play an important role in holding states accountable. Though the treaty bodies’ concluding observations provide a significant normative framework for ETOs influencing both theory and practice, they are criticised for being often inconsistent, using ‘soft’, ‘general’, and political rather than legal language, formulating non-obligatory recommendations and, therefore, not being taken seriously by states and having a limited impact (Langford and King 2008, p. 503; Vandenbogaerde 2016, p. 50). Additionally, periodic reporting procedures (along with inquiry procedures) usually focus on general problems rather than on concrete cases and are not aimed at holding certain actors responsible and providing remedies for particular victims.

Despite their potential to serve as accountability tools for ETOs, inquiry procedures and inter-state communications have not been used for this purpose. Through *inquiry procedures*, the CESCR, the UN CRC, the UN CEDAW, and the UN CRPD examine information which can be submitted by any actor, including those unable to submit individual communications

for ‘practical constraints or fear of reprisals’,¹⁸ about states’ ‘grave and systematic’ violations of human rights (the *Optional Protocol to the International Covenant on Economic, Social, and Cultural Rights* (OP-ICESCR), art. 11; the *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure* (OP-CRC), art. 13; the *Optional Protocol to the Convention on the Rights of Persons with Disabilities* (OP-CRPD), art. 6; the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* (OP-CEDAW), art. 8). The CESCR’s, the HRC’s, and the UN CRC’s *inter-state communications* mechanisms allow states to complain about human rights violations carried out by another parties (OP-CESCR, art. 10; ICCPR, arts. 41–43; OP-CRC, art. 12). One possible difficulty of using inter-state communications procedures relates to their optional character (states should declare whether they agree applying this mechanism to themselves). In addition, individuals rarely benefit from these procedures because inquiry procedures have a very high threshold (‘grave and systematic’ violations), while using inter-state communications is considered by states to be an ‘unfriendly act’ towards other states (Vandenbogaerde 2016, p. 184).

Since there is no judicial body addressing individual complaints at the international level, the significance of *individual communications procedures* provided by the treaty bodies cannot be overstated.¹⁹ With regard to ETOs, this mechanism has so far been most commonly used by the HRC. Individual communications procedures have been applied to hold states accountable in various extraterritorial cases, including kidnapping and unlawful detention by security forces on the territory of another state (HRC 1981a; HRC 1981b; HRC 2009); discrimination in paying pension allowances on the basis of nationality/race (HRC 1989); states’ refusal to issue/renew passports to their citizens living abroad because of their political views (HRC 1980a; HRC 1980b; HRC 1983b; HRC 2004b); alleged violation of the right to vote of citizens residing abroad (HRC 2003a); discriminatory denial of a migrant’s visa (HRC 2003c); state’s responsibility for human rights violations during an individual’s custody in another state and for executing the sentence of a foreign state (HRC 2016); responsibility of states for human rights violations committed by private corporations overseas (HRC 2017); and failure to repatriate children whose parents are linked to terrorism activities (UN CRC 2020a; UN CRC 2021a).

The treaty bodies also consider numerous territorial cases with the so-called ‘indirect extra-territorial effect’ (Skogly 2006, p. 155; Da Costa 2012, p. 57), such as extraditions or other removals of asylum seekers, refugees, migrant workers, and prisoners to states where their human rights may foreseeably be seriously violated or they may face real and personal violence or a more severe punishment, including the death penalty (HRC 1994; HRC 1993; HRC 2003b; UN CEDAW 2013b; UN CEDAW 2013c; UN CEDAW 2014b; UN CEDAW 2014c; UN CRC 2019c; UN CRC 2019d; UN CRC 2019e; UN CRC 2020c). Additionally, treaty bodies also consider communications from individuals who fled a state because of the human rights violations happening in its territory and reside abroad (HRC 1982; HRC 1983a; HRC 1983c; HRC 1984).

It is necessary to point to the limitations of some individual complaint mechanisms in relation to ETOs.²⁰ First, although there are no jurisdictional limitations in the ICESCR, the CEDAW, and the CRPD, the Optional Protocols to these instruments, which allow individual communications, impose the criterion of jurisdiction (OP-ICESCR, art. 2; OP-CEDAW, art. 2; OP-CRPD, art. 1). These jurisdictional restrictions contradict the very nature of states’ obligations under the treaties, narrow the scope of application of these instruments, and impose on claimants the burden of proof that a human rights violation occurred within the jurisdiction of the state (Courtis and Sepúlveda 2009, pp. 57–58). Second, individual communications may be submitted to the HRC, the CESCR, the UN CRC, the UN CEDAW, and the UN CRPD only against states that have ratified relevant Optional Protocols. Since states have been quite reluctant

to do so, for most individuals in the world, these mechanisms are still not available.²¹ Additionally, states can make reservations and thereby limit individuals' capacities to complain about violations of certain human rights. Third, the subject-matter jurisdiction of individual communications procedures is restricted to states' remedial obligations and there might be difficulties with claiming breaches of global obligations through them.²² For instance, according to the OP-ICESCR, 'communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a state Party, claiming to *be victims of a violation* of any of the economic, social and cultural rights set forth in the Covenant by that state Party' (art. 2; emphasis added). Non-compliance with global obligations that is not deemed to be a violation of human rights cannot, therefore, be claimed through this mechanism. Communications submitted by subjects other than victims may be considered only if they raise 'a serious issue of general importance' (art. 4).

Conclusion

The role of the UN treaty bodies in the interpretation and enforcement of ETOs can hardly be overestimated – they are significant global norm-setters and institution-designers and provide major international monitoring and accountability mechanisms. Among the most important contributions of the treaty bodies in relation of ETOs are the following:

First, the treaty bodies have extended states' human rights obligations, both remedial ETOs and global obligations to respect, protect, and fulfil human rights, beyond their borders. Additionally, they have specified interactional and institutional as well as relational and distributive ETOs, while emphasising obligations to guarantee the full-fledged and meaningful participation, inclusion, and consultation with disadvantaged individuals and social groups and their representatives in the design, realisation, and monitoring of all extraterritorial projects and programs.

Second, the treaty bodies call for the application of a human rights-based approach to extraterritorial assistance as well as a substantial improvement of contemporary mechanisms and practices of international assistance in order to integrate several essential ETOs: obligations to increase the effectiveness of assistance and ensure its sufficiency; obligations to seek assistance if states cannot fully realise the human rights of its people; obligations to conduct systematic HRIAs of assistance programs with the participation of the most vulnerable individuals and social groups; and remedial ETOs for violations of human rights through foreign aid projects. Moreover, the UN CRPD has recognised the principal limitations of state-centred international assistance and suggested its supplementing with human-centred global assistance addressed directly to those in need.

Third, the treaty bodies have clarified states' obligations to regulate the extraterritorial activities of private and public NSAs, with which they have a 'reasonable link', and to cooperate with them for the realisation of human rights. In addition, they have acknowledged that ETOs binding various NSAs (IGOs, TNCs, and civil society) go beyond obligations to respect human rights (including obligations to exercise human rights due diligence and consult with local communities before conducting any extraterritorial projects) and obligations to provide effective remedies to victims in case of human rights violations connected to their activity; NSAs' ETOs also embrace certain obligations to protect and fulfil human rights.

Fourth, through periodic reporting and individual communications procedures the treaty bodies have substantially increased the international accountability of states for extraterritorial violations of human rights and breaches of their ETOs.

Despite general state-centrism of their approach and certain limitations, the UN treaty bodies have a potential to contribute to the shift from a state-centred to a human-centred and polycentric global order. This would require several significant steps: first, further attribution of

direct ETOs to IGOs and NSAs (in particular through demanding states to regulate the ETOs of these actors); second, the reconceptualisation of international assistance, i.e., the recognition that people, not states, are the actual addressees of assistance and should be empowered to participate in and control over the processes of international assistance, and its supplement with direct global assistance to vulnerable individuals and social groups; and third, removing the existing restrictions of individual complaint mechanisms to ensure their effectiveness in providing remedies for victims and holding states accountable for extraterritorial violations of human rights and breaching their global obligations.

Notes

1. I would like to thank the editors and other authors of this volume for their valuable comments and suggestions.
2. Other UN treaty bodies include the Committee on the Elimination of Racial Discrimination, the Committee against Torture, the Committee on Migrant Workers, and the Committee on Enforced Disappearances.
3. Two general instruments – the ICESCR and the ICCPR – recognising fundamental rights of all human beings, designate the basic focus of the CESCR and the HRC on ETOs corresponding to social, economic, cultural, civil, and political rights. Since three special conventions – the CRC, the CEDAW, and the CRPD – determine additional measures of protection for children, women, and persons with disabilities, the UN CRC, the UN CEDAW, and the UN CRPD concentrate on ETOs towards these most vulnerable categories of right-holders. It is important to add that the treaty bodies' output concerning ETOs reflects their general intention to prioritise the interests and needs of the most disadvantaged individuals and social groups, including minorities, indigenous people, Roma, those in poverty, refugees, asylum seekers, migrants, older people, and conflict-affected populations, which has been recently reaffirmed in the context of the global pandemic (CESCR 2020a, para. 19; UN CRC 2020b, para. 7; UN CEDAW 2020a & 2020b; UN CRPD 2020).
4. Being 'younger' in this context means not only having less practice but also a capacity to be more progressive; cf., e.g., the UN CRPD's model of 'inclusive equality' and recognition of global obligations to assist (see the next Section).
5. 'Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant' (ICCPR, art. 2(1), emphasis added). The HRC interprets components of this clause disjunctively, i.e., territory or jurisdiction. The CRC's jurisdictional clause does not mention territory: 'States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind' (CRC, art. 2(1), emphasis added).
6. The *Maastricht Principles on Extraterritorial Obligation of States in the area of Economic, Social, and Cultural Rights (Maastricht Principles)* classify 'obligations relating to the acts and omissions of a state, within or beyond its territory, that have effects on the enjoyment of human rights outside of that state's territory' and 'obligations of a global character that are set out in the Charter of the United Nations and human rights instruments to take action, separately, and jointly through international cooperation, to realize human rights universally' (Principle 8, emphases added).
7. 'Reasonable link' means that a NSA 'has its centre of activity, is registered or domiciled' or has the main place of its substantial activities in the state (UN CRC 2013b, para. 43).
8. Applying the CESCR GC 3 to ETOs, the immediate ETOs of conduct and result are the following: obligations aimed at eliminating discrimination; obligations to 'take steps', in particular, to cooperate and assist (para. 2); minimum core obligations (para. 10); relatively low-cost targeted programs for vulnerable individuals (para. 12); obligations corresponding to human rights that are not subject to progressive realisation (para. 5).
9. *Interactional and institutional global obligations* are based on two fundamental entitlements embedded in the *Universal Declaration of Human Rights* (UDHR): first, the entitlement of an individual 'to realization, through

- national effort and international co-operation and in accordance with the organization and resources of each state, of the economic, social and cultural rights indispensable for [individual's] dignity and the free development of [individual's] personality' (art. 22); and second, the entitlement 'to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized' (art. 28).
10. Inclusive equality embraces: '(a) a *fair redistributive dimension* to address socioeconomic disadvantages; (b) a *recognition dimension* to combat stigma, stereotyping, prejudice and violence and to recognize the dignity of human beings and their intersectionality; (c) a *participative dimension* to reaffirm the social nature of people as members of social groups and the full recognition of humanity through inclusion in society; and (d) an accommodating dimension to make space for difference as a matter of human dignity' (UN CRPD 2018a, para. 11, emphasis added).
 11. Cf.: any system of support should be based on 'giving effect to the rights, will and preferences of those receiving support rather than what is perceived as being in their best interests' (UN CRPD 2018a, para. 49(b)).
 12. Obligations to assist are interpreted as an integral part of obligations to cooperate. For example, the CRPD states that obligations of international cooperation involve duties of technical and economic assistance (CRPD, art 32 para. 1) that is reaffirmed by the UN CRPD (2018b, paras. 92, 94(r)). Even if it is not specified in the ICESCR and the CRC, the CESCER and the UN CRC treat obligations to assist as part of obligations to cooperate (CESCER 1990, paras. 13–14; UN CRC 2013a, para. 88).
 13. Thus, the CESCER recommended to Spain that it 'redouble its efforts to increase official development assistance to at least 0.7 per cent of GDP, in line with the goals assumed at the international level' despite austerity measures adopted by the state (CESCER 2012, para. 10). The CESCER also emphasises simultaneous character of territorial and global obligations to ensure universal and affordable access to vaccines against and treatment for coronavirus disease (CESCER 2020b; CESCER 2021).
 14. Elsewhere, I demonstrated the inadequacy of these clauses for determining the scope of ETOs to assist and suggested using instead the principles of sufficiency and a decent minimum sacrifice, which may be balanced through a fair distribution of the burdens of assistance among all members of the international community (Pribytkova 2019, pp. 289–299).
 15. The CESCER requires states to report on how their participation in the decision-making and norm-setting of IGOs affects the enjoyment of socio-economic rights worldwide (CESCER 2009b, para. 3).
 16. States' obligations to regulate and influence the conduct of NSAs and individuals should not be confused with states' responsibility for the conduct of NSAs and individuals in cases when the latter are directed and controlled by the state (International Law Commission 2002, art. 8).
 17. As opposed to the *UN Guiding Principles*, the *UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* acknowledge that TNCs, 'as organs of society', should protect and 'promote and secure the fulfilment' of human rights (pmbll., arts. 1, 13–14).
 18. Christian Courtis and Magdalena Sepúlveda suggested that the CESCER's inquiry procedure 'might prove to be the best mechanism to supervise compliance with the extra-territorial obligations under the ICESCR' (Courtis and Sepúlveda, p. 63).
 19. The two world courts, the International Court of Justice and the International Criminal Court are able to act only on the basis of applications made by states (or other special subjects) and not individuals. As the Office of the High Commissioner for Human Rights affirms, 'the ability of individuals to complain about the violation of their rights in an international arena brings real meaning to the rights contained in the human rights treaties' (OHCHR).
 20. For further critique, see Vandenbogaerde and Vandenhoele 2010.
 21. For instance, only 26 states have ratified the OP-ICESCR meaning that 172 states cannot be held accountable through the CESCER individual complaint mechanisms. The OP-CRC is ratified by 48 states; the OP-CRPD – by 99 states; the OP-CEDAW – by 114 states; and the OP-ICCPR – by 116 states.
 22. The possibility of bringing individual claims regarding states' non-compliance with their obligations to cooperate and assist was discussed in the process of elaboration of the OP-ICESCR. Committee members asserted that though the CESCER had never considered such cases, 'in theory' they might arise (Commission on Human Rights 2004, para. 45; Commission on Human Rights 2005, para. 79).

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