

Habitat International Coalition



ETOs
for human rights beyond borders

अंतराष्ट्रीय पर्यावास गठबंधन



التحالف الدولي للموئل

Coalición Internacional para el Hábitat

Responding to Crises beyond Borders

ETO Consortium Global Conference

Friedrich-Alexander-Universität Erlangen-Nürnberg

16–19 June 2022

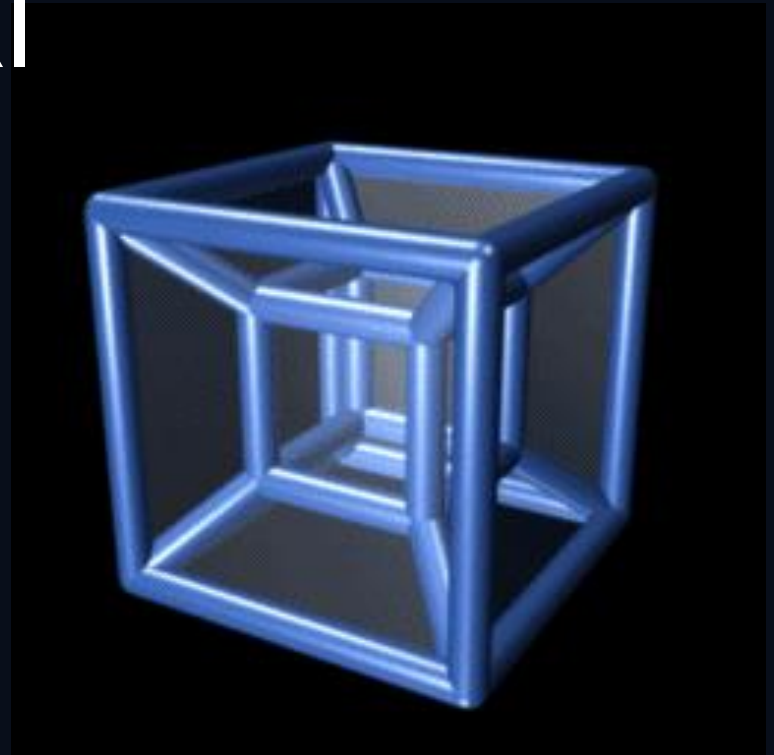
Joseph Schechla, *coordinator*

Housing and Land Rights Network • Habitat International Coalition

Middle East / North Africa

Dimensions of State obligations

- Individual / several
- Collective
- Domestic
- Extraterritorial



Definition of extraterritorial obligations

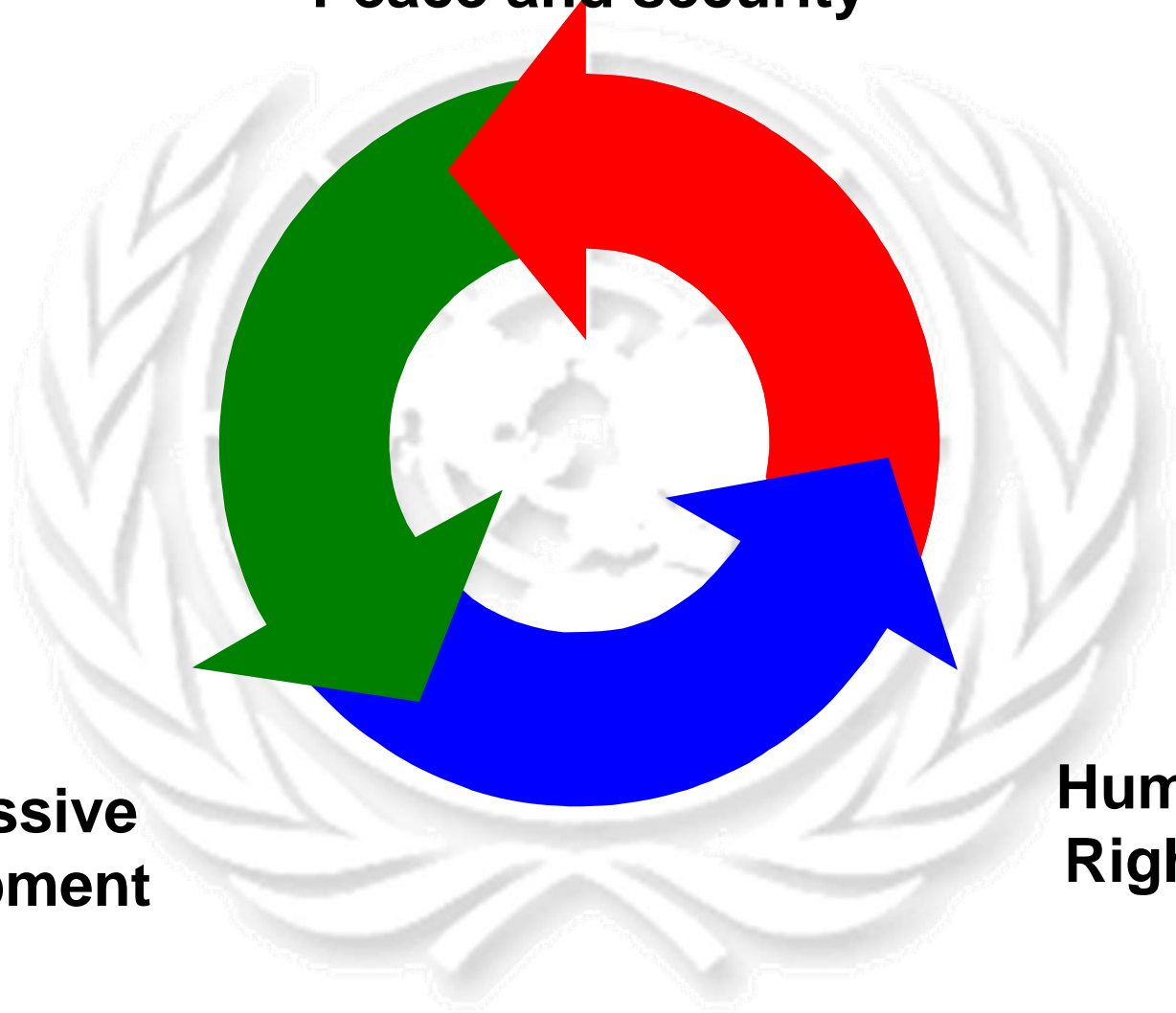
- Obligations relating to the acts and omissions of a State, within or beyond its territory, that have effects on the enjoyment of human rights outside of that State's territory; and
- Obligations of a global character that are set out in the Charter of the United Nations and human rights instruments to take action, separately, and jointly through international cooperation, to realize human rights universally.

The purposes of the United Nations

Peace and security

**Progressive
development**

**Human
Rights**





Charter of the United Nations

Development

Peace & Security

Human Rights



Charter of the United Nations



International Cooperation

Charter of the United Nations:

One of the purposes of the United Nations is "to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion."

Articles 1, para. 3

International Cooperation

Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations (GA 2625, adopted without a vote, 24 October 1970, annex):

"Considering that the progressive development and codification of the following principles:...

(d) the duty of States to cooperate with one another in accordance with the Charter;...

(g) the principle that States shall fulfill in good faith the obligations assumed by them in accordance with the Charter, so as to secure their more-effective application within the international community would promote the realization of the purposes of the United Nations;...

Development of human rights

from general to specific; from theoretical to practical

UN Charter, 1945

Universal Declaration of Human Rights (UDHR), 1948

**International Covenant on
Economic, Social and Cultural
Rights (ICESCR), 1966**

**International Covenant on Civil
and Political Rights (ICCPR), 1966**

**Racial
Discrimin-
-ation
(CERD),
1965**

**Discrimin-
-ation
against
Women
(CEDaW),
1979**

**Convention
against
Torture
(CaT),
1984**

**Child
Rights
(CRC),
1989**

**Migrant
Workers
(MWC),
1990**

**Persons
with
Disabilities
(CPwD),
2006**

Declarations, guidelines, body of principles, minimum rules

Over-riding principles of implementation

- **Self-determination** (Article 1[1])
- **International cooperation** (Articles 2[1], 11)
- **Rule of law** (Article 2[1])
- **Progressive realization** (Article 2[1])
- **Maximum of available resources** (Article 2[1])
- **Nondiscrimination** (Article 2[2])
- **Gender equality** (Article 3)



International Covenant on Economic, Social and Cultural Rights (1966)

11. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

International Covenant on Economic, Social and Cultural Rights

- **Right to decent work (Articles 6–8)**
- **Right to social security (Article 9)**
- **Right to protection of the family (Article 10)**
- **Right to an adequate standard of living (Article 11)**
 - **Adequate food (to feed oneself)**
 - **Water (and sanitation)**
 - **Adequate housing**
 - **Adequate clothing**
- **Right to highest attainable standard of health (Article 12)**
- **Right education, and free/compulsory primary education (Articles 13–14)**
- **Right to participate in cultural life (Article 15)**

Aspects of State obligation



Respect

Protect

Fulfill

Maastricht Guidelines on Violations of Economic, Social and Cultural Rights,
Maastricht, 22–26 January 1997; General comment No. 13: The right to education
(art. 13), CESCR, Twenty-first session (1999)

Categories of violation by a State party

- By omission
- By commission

General Comments No. 4 (housing), §5; No. 7 (forced eviction) §5, 17; No. 12 (food) §17–18; No. 13 (education) §58; No. 14 (health) 47–51; No. 15 (water) §41–43; No. 16 (♀=♂) §41–43; No. 18 (work) 31–35.

African Charter on Human and Peoples' Rights (1981)

Article 21:

1. All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it....
3. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting [international economic cooperation](#) based on mutual respect, equitable exchange and the principles of international law....
5. State Parties to the present Charter [shall undertake to eliminate all forms of foreign exploitation particularly that practised by international monopolies, so as to enable their peoples to fully benefit from the advantages derived from their national resources.](#)

Source and Standards in international law



International Law Commission

- **Draft Articles of State Responsibility for International Wrongful Acts (2001)**
- **Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm (2001)**
- **Allocation of loss in the case of transboundary harm arising out of hazardous activities (2006)**
- **Draft Articles on the Law of Transboundary Aquifers (2008)**
- **Draft Articles on the Responsibility of International Organizations (2011)**

Other applicable fields of law

- **International Humanitarian Law**
- **International Criminal Law**
- **International Environmental Law**
- **International Development Law**
- **Customary International Law**
- **Commercial Law**

A Hierarchy of International Law

- **Public international law**
- **Private international law (or conflict of laws)**
- **Supranational law or the law of supranational organizations:**
 - ***jus gentium* – law of nations**
 - ***jus inter gentes* – agreements between/among nations**

Human Rights as *erga omnes*



Maastricht Principles, 2011



Maastricht Principles, 2011

[EN] Maastricht Principles on Extraterritorial Obligation of States in the area of Economic, Social and Cultural Rights

[ESP] Principios de Maastricht sobre las Obligaciones Extraterritoriales de los Estados en el Área de los Derechos Económicos, Sociales y Culturales

[FR] Principes de Maastricht relatifs aux obligations extraterritoriales des États dans le domaine des droits économiques, sociaux et culturels

[DE] Die Maastrichter Prinzipien zu den Extraterritorialen Staatenpflichten im Bereich der wirtschaftlichen, sozialen und kulturellen Rechte

[AR] مبادئ ماستريخت المتعمقة بالالتزامات الخارجية لمدولفى مجال الحقوق الاقتصادية والاجتماعية والثقافية

[IND] Prinsip Maastricht untuk Kewajiban Ekstrateritorial Negara di Bidang Hak-Hak Ekonomi, Sosial dan Budaya

Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights

State Responsibility

11. ... is engaged as a result of conduct attributable to a State, acting separately or jointly with other States or entities, that constitutes a breach of its international human rights obligations whether within its territory or extraterritorially.

Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights (2011)

State responsibility extends to:

12. (a) acts and omissions of non-State actors acting on the instructions, or under the direction or control of the State; and

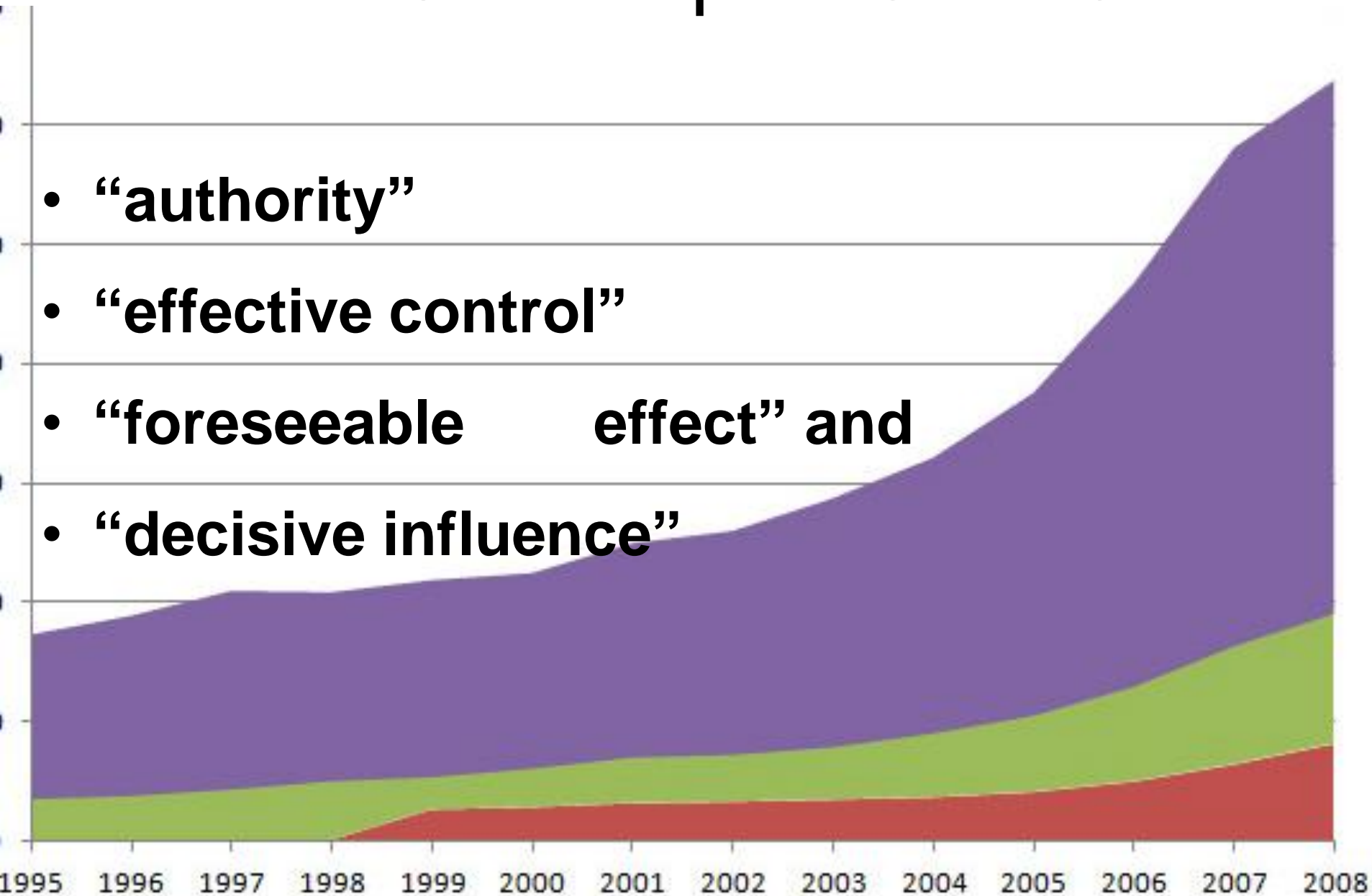
(b) acts and omissions of persons or entities which are not organs of the State, such as corporations and other business enterprises, where they are empowered by the State to exercise elements of governmental authority, provided those persons or entities are acting in that capacity in the particular instance.

Scope of Jurisdiction

- situations over which it exercises authority or effective control, whether or not such control is exercised in accordance with international law;
- situations over which its acts or omissions bring about foreseeable effects on the enjoyment of ESCR, whether within or outside its territory;
- situations in which it, separately or jointly, through executive, legislative or judicial authorities, is in a position to exercise decisive influence or to take measures to realize ESCR extraterritorially, in accordance with international law.

ETO Principles 8A & 9

- “authority”
- “effective control”
- “foreseeable effect” and
- “decisive influence”



Multilateral Organizations



**15. Obligations of States as members
of international organizations**

**16. Obligations of international
organizations**

International Agreements



17. States must elaborate, interpret and apply relevant international agreements and standards in a manner consistent with their human rights obligations. Such obligations include those pertaining to international trade, investment, finance, taxation, environmental protection, development cooperation, and security.

Belligerent Occupation and Effective Control

18. A State in belligerent occupation or that otherwise exercises effective control over territory outside its national territory must respect, protect and fulfill the economic, social and cultural rights of persons within that territory. A State exercising effective control over persons outside its national territory must respect, protect and fulfill economic, social and cultural rights of those persons.

Obligations to Respect

19. General obligation

20. Direct interference

21. Indirect interference

**22. Sanctions and
equivalent measures**

Obligations to Protect

23. General obligation

24. Obligation to regulate

25. Bases for protection

26. Position to influence

27. Obligation to cooperate

Obligations to Fulfill

28. General obligation

29. Obligation to create an international enabling environment

30. Coordination and allocation of responsibilities

31. Capacity and resources

32. Principles and priorities in cooperation

33. Obligation to provide international assistance

34. Obligation to seek international assistance and cooperation

35. Response to a request for international assistance or cooperation

ETOs' Preventive Dimensions



13. Obligation to avoid causing harm

14. Impact assessment and prevention

ETOs' Remedial Dimensions

United Nations

A/RES/60/147



General Assembly

Distr.: General
21 March 2006

Sixtieth session
Agenda item 71 (a)

Resolution adopted by the General Assembly

[on the report of the Third Committee (A/60/509/Add.1)]

60/147. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law

Restitution:

- **Return,**
- **Resettlement,**
- **Rehabilitation: all aspects;**

Compensation;

Nonrepetition;

Satisfaction;

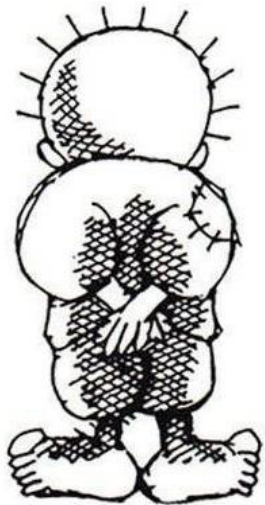
Nonrefoulement (crossborder).

Rome Statute of the International Criminal Court (1998)

- 
- **Judge-ordered reparations (conviction based)**
 - **Trust Fund for Victims (violation based)**



Commitments **or** Obligations?

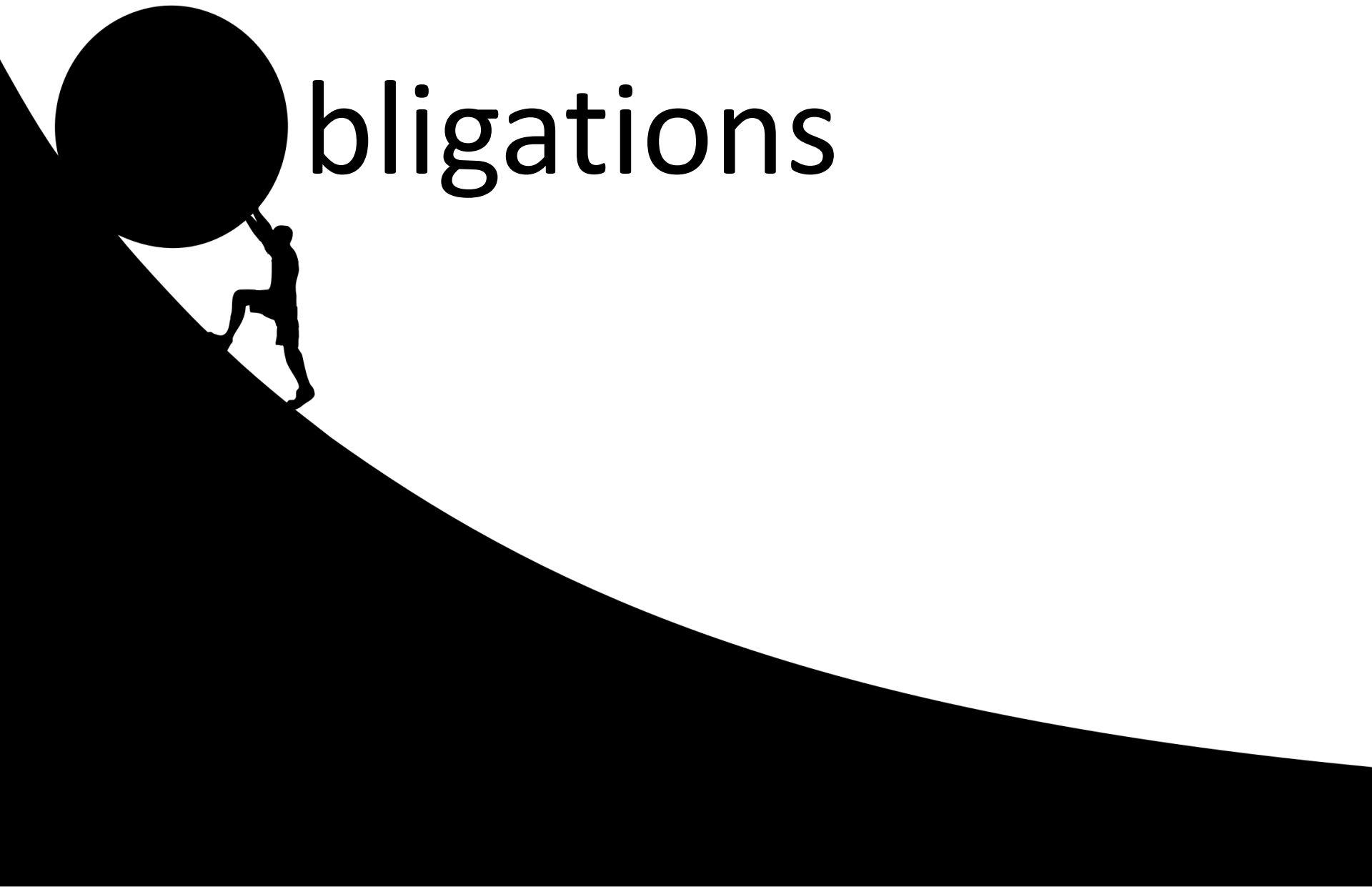


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Commitments & Obligations !





bligations



Case Categories

1. Conflict occupation and war (COW)
2. Corruption
3. Finance regulation
4. Tax evasion/avoidance
5. Trade, Investment and IPR
6. Landgrab and TNCs
7. Ecodestruction, climate change
8. IFIs, development cooperation
9. Rights to food, health
10. Other

Case Study Methodology

Country of victims: (primary and secondary)

Source:

Signature: category of case

Obligations: to respect, protect and, if applicable, fulfill

States breached their ETO: (primary and secondary)

Description:

Territorial HR analysis:

State in which violations took place:

External States

Extraterritorial HR analysis:

State in which violations took place:

External States

Lessons learnt:

Jurisdiction:

Strategies

State responsibility

Remedies:

Domestic jurisdiction:

State-to-state claims:

Foreign jurisdiction:

International jurisdiction:

Universal jurisdiction:

Responsibilities of external states



Division of Labor / Complementarity

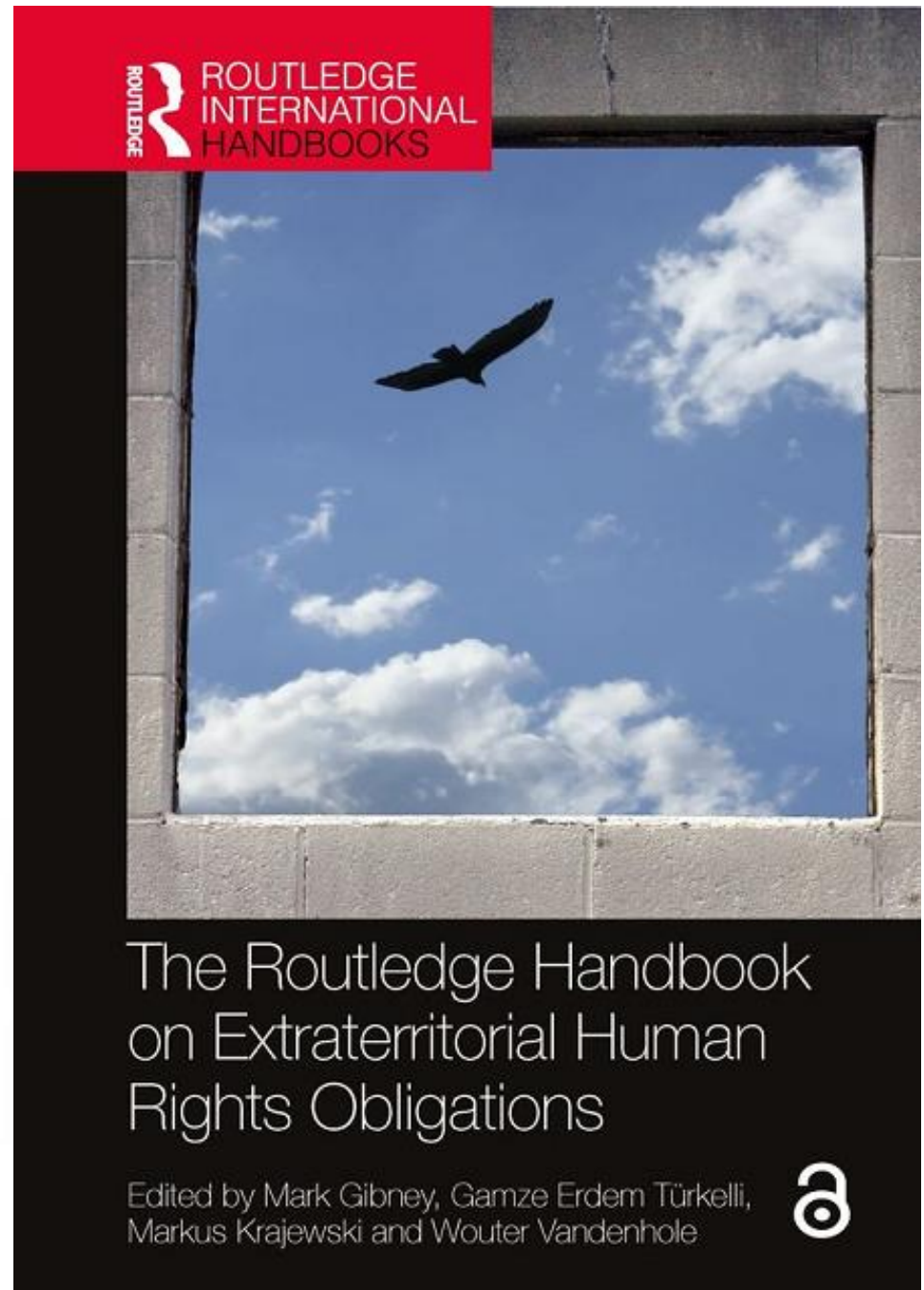


Pools of Experts

**Strategic Litigation
Corruption Law**



Everything
you wanted
to know...



Looming ETO Horizons

- ETOs in global policy implementation
- Climate change and 'ecocide'
- Green-transition financing
- ETOs of local spheres of government
- Foreign policies as cross-border organized crime
- Population transfer
- Apartheid
- Human rights of future generations
- Pandemic
- Extinction
- Others...

CSOs and academics, contact
the ETO secretariat:

secretariat@etoconsortium.org



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