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Extraterritorial Human Rights Obligations of Local Government

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After four years of deliberation, study and documentation of cases, a global collective of legal scholars, UN experts and civil society representatives adopted the Maastricht Principles on Extraterritorial Obligations of States in the Field of Economic, Social and Cultural Rights in 2011. Applying the legal theory of human rights, extraterritorial obligations (ETOs) of states are defined as "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."[1]

The Maastricht document draws out principles of international law that establish obligations of a global character, as set out in the Charter of the United Nations and human rights instruments. Those standards of modern statecraft require states "to take action, separately, and jointly through international cooperation, to realize human rights universally."[2] As integral institutions of the state, local spheres of government are likewise obliged.

The Sovereign and Integral State

For our purposes, a state is the entity that embodies both the self-determination and sovereignty of its constituent peoples. In the international system, the state asserts and exercises sovereignty and its related rights vis-à-vis other states.

Sovereignty is confined to the recognized territory of the state.[3] Although its meanings have varied across history, sovereignty essentially connotes *supreme authority within a territory*.[4] As the subject of sovereignty, the state is comprised of its (1) territory (land, territorial seas and water bodies, and corresponding natural resources), (2) people(s) and (3) institutions. Within their territory, states exercise their sovereignty domestically through the execution of obligations to citizens as defined by law, including treaties and general principles of international law, state constitutions and corresponding legislation. These norms also form an integrated system within which states are obliged to harmonize their laws and practices. As provided in the Vienna Convention on the Law of Treaties, a state party "may not invoke the provisions of its internal law as justification for its failure to perform a treaty."[5]

International law recognizes states as integrated systems. As far as the applicability of treaty obligations is concerned, the legal norms that apply to a state consequently apply to its constituent parts *within its jurisdiction and territory of effective control*.[6] Explicitly, this principle

prevails whether or not a state is organized within a unitary or federated system. Notably, for example, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant of Economic, Social and Cultural Rights (ICESCR) each stipulate that: "The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions."[7]

Likewise, general principles of international law also apply to states in their integrity. The International Law Commission has confirmed that

> the conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central government or of a territorial unit of the State.[8]

From the perspective of international law, whether unitary or federated, the integral state institutions operate within a common framework of the state's rights (vis-à-vis other states) and domestic obligations. All spheres of government fall within this rubric, including subnational authorities. Where necessary to resolve any contradictions, the classic hierarchy of law prevails in which human rights and other forms of *jus cogens* are paramount and constantly applicable.[9]

Subnational (regional and/or local) authorities, including local government, their constituent bodies and personnel are likewise bonded and bound by international law, including general principles and human rights treaties, in their public functions and extensions. Interpreting the human right to public participation, the Human Rights Committee sums up the pervasive nature of human rights obligations in a modern state:

> The conduct of public affairs…is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. The allocation of powers and the means by which individual citizens exercise the right…should be established by the constitution and other laws.[10]

The nature of human rights treaty obligations is binding on "every State Party as a whole," explains the UN Human Rights Committee further:

> All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local - are in a position to engage the responsibility of the State Party. The executive branch that usually represents the State Party internationally…may not point to…another branch of government as a means of seeking to relieve the State Party from responsibility for an action incompatible with the provisions of the Covenant.[11]

All spheres of government, thus, have common human rights obligations, but differentiated roles. Local governments and local authorities (see distinction below) have a greater potential role in the delivery of services and maintaining the local machinery necessary to respect, protect and fulfill the bundle of human rights. Central government institutions, in particular ministries, undertake the principle role in reporting on the implementation of treaties. However, the

guidelines on treaty-specific documents to be submitted by states parties under ICESCR affirm the essential role that local governments and local authorities play also in the periodic reporting on local implementation of human rights treaty obligations.[12]

"Local Government" or "Local Authorities"?

The human rights obligations of subnational public institutions apply whether those are qualified and referred to as "local governments" (LGs) or as "local authorities" (LAs). The two are not always synonymous. The distinction is important not to differentiate between the nature of the obligations, but to distinguish the two categories by their respective political processes.

For the citizen, local governance is the nearest of the various distinctive, interdependent and inter-related spheres of government within a territorial state.[13] In unitary states, local governance usually comprises one of two or three spheres of government; whereas, in federal states, local governance constitutes one of three, or sometimes four spheres of government.[14]

The concept of "spheres" of government offers an alternative to the hierarchy implied by the reference to "tiers" and "layers" of government. That terminology, often portraying local government as the "lowest" form, distorts the perception of more integrated approaches to governance. From the perspective of most citizens, local government/administration is actually the most proximate sphere of contact with the state's public institutions. From the human rights perspective, local government/administration is also the most-immediate and most-constant duty holder in day-to-day life.

The particular terminology and concepts defining "local administration" and "local government" distinguish the former is a generic term that may or may not constitute "government" as defined in representational terms.[15] Both forms of governance possess certain powers conferred upon them by legislation or directives of the central spheres of government. These powers consist, in substance, of regulating and managing certain public affairs and delivering certain public services.

The extent of local governance rights and powers should be analyzed always in the context of relations between local authorities and the central sphere of government and/or regional authorities (in federal states). One of the important features of local "government" is that it has a specific, subsidiary regulatory power for the relatively autonomous exercise of its functions, which is, however, subject to compliance with national law.[16] Whether or not local administration exercises these regulatory powers and meets the qualification as representative and autonomous "government," the human rights obligations of each sphere of administration remain constant.

"Local government," or "self-government," aims at bringing government to the grass-roots and enabling the citizens to participate effectively in the making of decisions affecting their daily

lives. As the level closest to the citizens, local government is in a much better position than central government to deal with matters that require local knowledge and regulation on the basis of local needs and priorities. This axiom applies whether the local government operates in urban or rural settings.[17]

According to the UN Human Rights Council's Advisory Committee (HRCAC), the degree of self-government exercised by citizens and local authorities can be regarded as a key indicator of genuine democracy. HRCAC sees political, fiscal and administrative decentralization to be essential for localizing democracy and its human rights cohort. The UN's human rights policy think tank asserts also that "democracy is not possible without respect for human rights, and no human rights can be achieved without democracy."[18]

"Local authorities" may include forms of governance closely associated with, or directly extending from the executive-branch of central government. However, such models are inconsistent with the more-specific notion of "local government" (or "local self-government"), which involves actual local decision making within a state.

A measure of local decision-making autonomy fosters and enables a concomitant measure local participation and meaningful citizenship for the majority of inhabitants within the subnational units belonging to the territorial state. Thus, the notion of "local authority," as distinct from "local government," does not necessarily lend itself to the democratic practices of government. In the modern sense of statecraft, "government" involves citizen participation. Administration defined merely as "authority" inherently does not.

Whichever the configuration of offices and division of duties and functions, the model of "local government" (LG) is understood as preferred in modern unitary states, as well as in federal systems. The constitutive principles of "local government" are aligned with the substantive and process human rights enshrined in the International Bill of Human Rights and specific conventions. Democratic local government upholds the organic vertical development of the state. It preserves the state.

In global practice, the majority of cities have elected mayors.[19] In some rare circumstances, constituents have declined their right to elect a municipal head, favoring instead appointed local governing councils.[20] However, some systems indeed have central authorities assuming mayoral selections by political,[21] military[22] or royal[23] appointment, rather than chosen through constituent elections.

Whether elected, appointed, military or security-state governance, all subnational authority bears identical treaty obligations, regardless of its civil or official status. Its obligations arise from the authority's status as representing institutions of a state.

Sources and Specificity in International Law

Given that international legal instruments apply to both LGs and LAs as well as, equally, constantly and complementarily to central governments, subnational institutions will find guidance on the source, level, nature and scope of their human rights obligations.

This guidance is found especially in the instruments that derive from and further inform the actual practice of implementing obligations specific to particular human rights. For example, within the state's obligations is to respect, protect and fulfil the human right to adequate housing, which is a human right naturally exercised at a very local level. With respect to all of the rights enshrined in ICESCR, the Committee on Economic, Social and Cultural Rights (CESCR), within its dual mandate of monitoring compliance with ICESCR and interpreting state parties' obligations, has concluded that a state's obligation under the Covenant requires that "all administrative authorities will take account of the requirements of the Covenant in their decision making."[24]

With regard to specific rights, respecting, protecting and fulfilling the human right to adequate housing involves the various spheres of government (ministries and regional and local authorities) taking steps, in coordination, to reconcile related policies (economics, agriculture, environment, energy, etc.) within the obligations under Article 11 of ICESCR and related General Comments.[25]

Operationalizing this human right almost invariably requires the adoption of a national housing strategy also that "defines the objectives for the development of shelter conditions, identifies the resources available to meet these goals and the most cost-effective way of using them and sets out the responsibilities and time frame for the implementation of the necessary measures."[26] Therefore, implementing the human right to adequate housing and its corresponding state obligations entails vertical coordination involving the spectrum of public bodies spanning the range of local, central and any intermediate-level authorities. The current UN Human Rights Council's Special Rapporteur on adequate housing has dedicated a recent annual report to the role of local and subnational governments in meeting the state's obligations corresponding to the human right to adequate housing.[27]

In the related matter of the human right to water, the authoritative international law interpretation of corresponding state duties points out the need for analogous coordination among all governmental spheres in order to meet treaty obligations and realize the human right to water and sanitation.[28] The UN Independent Expert on the right to water and sanitation has reported numerous examples of good practice in which a state's holistic approach involves local government's monitoring and implementation of the treaty-based right.[29]

Realizing the human right to adequate food has particular implications for local government. Indispensable national strategies require similar coordination among ministries and regional and local authorities to ensure that related policies and administrative decisions are in compliance with the obligations under the same Article 11 of ICESCR.[30]

The General Comment on the right to food stresses how responsibilities at multiple levels are essential to realizing that right. While "the State should provide an environment that facilitates implementation of these responsibilities," CESCR has noted that increasingly local measures are needed to ensure food security (if not also food sovereignty[31]). In recent years, numerous good practices and policy models exemplify the pivotal role of local decision making and preparedness to ensure the human right to food.[32] The Special Rapporteur on the Right to Food also has noted the role of local government in ensuring realization of the right to food through integrated national strategies.[33]

In cases where implementation of the universal human right to social security is decentralized, the treaty-implementation guidance on the subject recognizes the importance of the local spheres of governance. The relevant General Comment advises:

> Where responsibility for the implementation of the right to social security has been delegated to regional or local authorities or is under the constitutional authority of a federal body, the State party retains the obligation to comply with the Covenant, and therefore should ensure that these regional or local authorities effectively monitor the necessary social security services and facilities, as well as the effective implementation of the system. The States parties must further ensure that such authorities do not deny access to benefits and services on a discriminatory basis, whether directly or indirectly.[34]

The general prohibition against nondiscrimination is an overarching principle of human rights implementation also for LG/LA. Notably, the guidance on implementing the equal right of men and women to the enjoyment of all economic, social and cultural rights specifically obliges local implementation.[35]

Peremptory Norms (*jus cogens)*

A peremptory norm (also called *jus cogens*) is a fundamental principle of international law that the international community of states has accepted as a norm from which no derogation is permitted. It is generally accepted that *jus cogens* includes the prohibition against genocide, apartheid, maritime piracy, slaving, in general (including slavery as well as the slave trade), torture, non-refoulement of refugees and asylum seekers, wars of aggression, population transfer, the denial of self-determination and territorial aggrandizement.[36]

The International Court of Justice also has referred to such norms as "intransgressible principles of international customary law"[37]…"fundamental to the respect of the human person"[38] and "elementary considerations of humanity, even more exacting in peace than in war."[39] These peremptory norms "are to be observed by all States whether or not they have ratified the conventions that contain them."[40]

Local Governments' Extraterritorial Obligations

By way of human rights instruments and declaratory law, as well as through long-established general principles and peremptory norms, international law establishes multifaceted obligations to maintain standards of state behavior. States and their components actually bear at least four such dimensions of obligation in the interstate system: (1) individual obligations, (2) collective obligations, (2) domestic obligations and (4) extraterritorial obligations.

At the same time, each and every human right enshrined in the relevant international Covenants and Conventions corresponds with all of states' several and joint, domestic and extraterritorial obligations to respect and protect the right. In certain cases, states also can bear a responsibility to *fulfill* rights extraterritorially. In any case, human rights treaty provisions and peremptory norms govern relations between the state and individual or collective subjects (vertical effect), while simultaneously engaging third-party consequences (horizontal effect) on individual or collective subjects in other state parties and entail legal obligations also in private law interactions of legal persons in their relationships among themselves.[41]

The two preceding paragraphs above present two different-but-related points: The first concerns the general legal obligation and their component parts in unilateral, bilateral and/or multilateral actions to adhere to a uniform standard of conduct with predictable effect, wherever that effect manifests. Those obligations arise from multiple legal regimes, including human rights, international humanitarian law, international criminal law, general principles and *jus cogens*. The second point relates to the inherent "universal" nature of obligations corresponding to specific codified human rights, requiring the duty holder (state) to respect, protect and, in certain cases, fulfill the same enshrined human rights when its actions affect, or potentially affect human subjects of those standards in any jurisdiction. Both indicate the obligation of a state bound by the provisions of a treaty or peremptory norm of international law, requiring itself and third parties within its jurisdiction, or area of effective control, to adhere *ad minimum* to that same standard.

As LGs/LAs constitute organic subjects of treaties and other legal obligations of the state in which they are located, these extraterritorial human rights obligations apply equally to them. The obligation of LGs/LAs to uphold these *jus cogens* and human rights obligations apply whether or not the central sphere of government has succeeded or failed in upholding its and of those obligations. While central government institutions are primarily responsible for reporting on the state's performance in external forums, implementation of human rights and *jus cogens* requires the adherence of all spheres of government. This evokes the principle that the Human Rights Committee has articulated, namely that one sphere of government "may not point to…another branch of government as a means of seeking to relieve the State Party from responsibility for an action incompatible with the provisions of the Covenant.[42]

Obligations in Situations of Extraterritorial Violations and Breaches

As exemplified in "Sources and Specificity in International Law" above, the instruments, jurisprudence and legal literature are replete with norms and guidance for LGs/LAs to implement their individual and domestic dimensions of their obligations to implement human rights and peremptory norms. As noted also, the collective and extraterritorial dimensions of obligations on LGs/LAs arise from both treaty law and general principles of international law. These four dimensions of obligation meet most clearly in the breach of peremptory norms and in cases where human rights violations become gross and systematic, such as in cases of institutionalized discrimination or accompanying grave crimes (i.e., war crimes, crimes against

humanity, apartheid, aggression, slavery, refugee *refoulement*, the practices of colonization, population transfer, torture, genocide, etc.).

Unfortunately, these practices have not ceased since the surge in their codification and prosecution that followed the two World Wars of the 20th Century. However, in an ever more-interconnected world, local governments are in a position to make informed choices, take decisions and establish policies within their responsibility to constituents and other affected parties to apply all dimensions of their existing obligations. Where international law calls on states to take "effective measures" to remedy such situations involving gross violations of human rights, local governments have developed a community of practice in response to that call, in effect, exercising their extraterritorial obligations to apply human rights and peremptory norms in their horizontal dealings with other legal persons, entities and contracting parties.

Apartheid:

A decade after long debate, concluding that South African apartheid constituted an international issue due to its effect on regional peace and security,[43] the UN General Assembly resolved to request all states to take five specific measures with the objective of compelling the Republic of South Africa to abandon its apartheid policies:

(a) Breaking off diplomatic relations with the Government of the Republic of South Africa, or refraining from establishing such relations;
(b) Closing their ports to all vessels flying the South African flag;
(c) Enacting legislation prohibiting their ships from entering South African ports;
(d) Boycotting all South African goods and refraining from exporting goods, including all arms and ammunition, to South Africa;
(e) Refusing landing and passage facilities to all aircraft belonging to the Government of South Africa and companies registered under the laws of South Africa…[44]

This international call to apply the already self-executing extraterritorial obligations of nonrecognition and nonassistance under international law was misappropriated in both popular discourse and UN documents as "boycott" of apartheid South Africa. The term "boycott," actually involves "an act of voluntarily abstaining from using, buying, or dealing with a person, organization, or country as an expression of protest, usually for social or political reasons."[45] Its etymology derives from the name of a certain land agent ostracized for his evictions of tenants during Ireland's 19th Century "Land Wars."[46] It is the voluntary nature of a boycott, as continuously defined, that makes it a misnomer. However, the actions and policies deriving from nonrecognition of, and nonassistance to such an illegal situation as apartheid are actually measures fulfilling an *erga omnes* obligation in international law.

The General Assembly was more explicit in its 1982 resolution "Policies of apartheid of the Government of South Africa." The GA declared that "the United Nations and the international community have a special responsibility towards the oppressed people of South Africa and their national liberation movements

Boycott: "an act of voluntarily abstaining from using, buying, or dealing with a person, organization, or country as an expression of protest, usually for social or political reasons."

Obligation: a duty to fulfill, not a voluntary choice or option.

in their legitimate struggle for the elimination of apartheid and the establishment of a non-racial democratic society assuring human rights and fundamental freedoms to all the people of the country irrespective of race, colour or creed."[47] Specifically, the highest authority in the UN system also condemned the policies of certain Western States breaching these norms, "especially the United States of America, and Israel, and of their transnational corporations and financial institutions that have increased political, economic and military collaboration with the racist minority regime of South Africa despite repeated appeals by the General Assembly."[48]

In addition to calling on the International Monetary Fund and International Atomic Energy Agency to exclude, terminate and refrain from assistance to South Africa, the GA requested the Secretary-General to instruct all relevant units of the UN Secretariat and all United Nations offices to promote the international campaign against apartheid.[49] The Assembly reiterated its call to the Security Council to adopt a separate resolution making noncooperation with South Africa mandatory, to:

(a) reinforce the mandatory arms embargo against South Africa;
(b) prohibit all cooperation with South Africa in the military and nuclear fields by Governments, corporations, institutions and individuals;
(c) prohibit imports of any military equipment or component parts from South Africa;
(d) prevent any cooperation or association with South Africa by any military alliances;
(e) impose an effective embargo on the supply of oil and oil products to South Africa and on all assistance to the oil industry in South Africa;
(f) prohibit financial loans to and new investments in South Africa, as well as all promotion of trade with South Africa;[50]

With reference to responsibility in implementing international law by other third parties, the Assembly urged "Governments, international and non-governmental organizations, trade unions and other appropriate bodies to lend their full support to the oil embargo against South Africa."[51]

The GA further resolved that all States should "take all appropriate measures to facilitate such action" and "to take action against corporations and other interests that violate the mandatory arms embargo against South Africa or that are involved in the illicit supply to South Africa of oil from States that have imposed an embargo against South Africa."[52]

The Assembly expressed serious concern over the cooperation and assistance to apartheid South Africa provided by United Kingdom of Great Britain and Northern Ireland, the United States of America, the Federal Republic of Germany and Switzerland.[53] However, it reserved a special denunciation of the close cooperation between South Africa and Israel.[54]

The Security Council ultimately followed suit in 1985, also calling for more specific measures:

(a) Suspension of all new investment in the Republic of South Africa
(b) Prohibition of the sale of krugerrands and all other coins minted in South Africa;
(c) Restrictions in the field of sports and cultural relations;
(d) Suspension of guaranteed export loans;
(e) Prohibition of all new contracts in the nuclear field;

(f) Prohibition of all sales of computer equipment that may be used by the South African army and police;[55]

The resolution also commended those states that already had adopted "voluntary measures." While Security Council resolutions are, by definition, enforceable, international legal experts consider such measures in the face of a violation of peremptory norms to be self-executing, with or without specific resolutions to that effect.[56]

Some citizens already felt the local responsibility to exercise nonrecognition, nonassistance and noncooperation with apartheid before the General Assembly deliberated its first 1962 resolution on the remedial obligations of states in international law. In June 1959, a small meeting at Finsbury Town Hall in London marked South African Freedom Day and launched the citizens' "Boycott Movement." Soon after, the first city council to apply its extraterritorial human rights duties in practice was in the English City of Liverpool, "boycotting" all South African goods.[57]

In the United States, the City of Gary, Indiana began by voting for municipal sanctions against Control Data, IBM, ITT and Motorola, due to their supportive roles in South African apartheid. The Gary Council over-rode the veto of Mayor Richard Hatcher by a 6-to-3 vote in 1975, adopting a resolution was modeled on the selective purchasing resolution already being debated in the Washington DC City Council.[58]

Both the City and County of San Francisco passed local legislation on 5 June 1978, resolving not to invest "in corporations and banks doing business in or with South Africa."[59] Philadelphia followed in 1982, and Washington DC passed a selective purchasing resolution in 1984. The DC Council resolution passed amid a hail of repudiating voices from the U.S. Congress, accusing the city of inappropriately practicing foreign policy.[60] Those protesting voices revealed the sources and thinking behind the failure of the country's central government institutions to implement their own extraterritorial human rights and *jus cogens* obligations.

As the movement of local governments exercising their extraterritorial human rights obligations grew, the end of 1989 saw 26 U.S. states, 22 counties and over 90 cities taking some form of binding action to disassociate themselves from enterprises doing business in apartheid South Africa. These took the form of divestment of public pension funds connected to these local governments from South African companies and/or companies doing business in South Africa and, thus, benefitting from the apartheid system.

Encouraged by local and national civil organizations such as American Committee on Africa, the Washington Office on Africa, TransAfrica and the American Friends Service Committee, in cooperation with the UN Centre against Apartheid, these local governments also formulated selective contracting and procurement policies.[61] Under local legislation, many public pension funds connected to these local governments disinvested from South African companies. These local governments also exerted pressure via enacting selective-purchasing policies, "whereby cities give preference in bidding on contracts for goods and services to those companies who do not do business in South Africa."[62]

The disinvestment campaign realized its expression later at the level of national institutions. Federal U.S. legislation enacted in 1986 is credited as pressuring the South African government to negotiate with the African National Congress, ultimately leading to the dismantling of the apartheid system.[63]

Occupation, Annexation and Population Transfer

Notably, since the 1960s, the General Assembly has applied *jus cogens* as a basis of calls for states to act in order to remedy illegal situations involving colonization and/or denial of the exercise of a people's self-determination.[64] Since 1971, the International Court of Justice (ICJ) has established the Namibia Doctrine, recognizing all states' obligation under international law to act *erga omes* to bring about "the termination…and declaration of the illegality" exemplified in the presence of South Africa's occupation of Namibia.[65] This consistent rule of the ICJ obtained also in the contentious 1995 case concerning Indonesia's occupation of East Timor.[66]

With further specificity in analogous breaches of international law, the ICJ has maintained this standard in its Advisory Opinion in the case of Morocco's invasion and subsequent occupation of the Western Sahara.[67] In that decision, the Court consistently ruled out all six aspects of Morocco's claim to territorial or legal sovereignty over Western Sahara.[68] Accordingly, the Court again affirmed the call to states "to observe the resolutions of the General Assembly regarding the foreign economic and financial interests in the Territory and to abstain from contributing by their investments or immigration policy to the maintenance of a colonial situation in the Territory."[69]

Despite a UN Security Council resolution deploring Morocco's invasion and calling upon Morocco and participants in the "Green March" immediately to withdraw from the territory, the occupation continues after forty years.[70] However, the UN Legal Counsel has further clarified the illegality of external parties' exploitation or physical removal of natural resources in Western Sahara by applying the UN Charter, General Assembly resolutions, jurisprudence pertaining to Western Sahara and the progressive codification of norms applying to natural resources in Non-Self-Governing Territories.[71]

A long-standing principle of international law invokes the obligation of non-recognition, whereby states, severally and collectively, are obliged to withhold recognition of an illegal situation. This obligation manifests today in the almost-universal[72] nonrecongition of the Turkish Republic of Northern Cyprus, declared under Turkish occupation in 1983.[73] By 2001, the International Law Commission clarified that the duty of nonrecognition, which

> applies to situations…such as, for example, attempted acquisition of sovereignty over territory through the denial of the right of self-determination of peoples. It not only refers to the formal recognition of these situations, but also prohibits acts which would imply such recognition.[74]

The principle of nonrecognition, however seemingly impassive as an "effective measure," is nonetheless crucial, and its implementation essential. Nonrecognition provides the time-

honored legal basis for the specific prohibitions (i.e., noncooperation, nonassistance) that have consequential effect.

The obligations of states, including subnational structures, in situations of extraterritorial violations and breaches are self-executing; that is, requiring no further legislative act, but the political will to exercise them. Although the obligations corresponding to such illegal situations are also human rights treaty based, they also arise from peremptory norms provided in The Hague Regulations (1907) and the Fourth Geneva Convention (1949) that "incorporate obligations essentially of an *erga omnes* character."

The specificity about the measures that a state and its constituent parts should to take in the case of an illegal situation is provided in General Assembly and Security Council resolutions. In 1980, the Security Council (SC) addressed the colonization of occupied Palestine, calling upon "all States not to provide Israel with any assistance to be used specifically in connexion with settlements in the occupied territories."[75]

Any means of population transfer (e.g., displacement, expulsion, other forms of demographic manipulation and/or implantation of settler colonies) or territorial expansion, whether carried out by military or other methods, breaches peremptory norms of international law and, in turn, involves multiple gross violations of human rights.[76] Accordingly, the General Assembly (GA) has condemned the annexation of Palestinian territory by Israel and further deplored:

> any political, economic, financial, military and technological support to Israel that encourages Israel to commit acts of aggression and to consolidate and perpetuate its occupation and annexation of occupied Arab territories…[77]

In doing so, the Assembly has reiterated its call to "all Member States" to apply measures to:

> (a) …refrain from supplying Israel with any weapons and related equipment and to suspend any military assistance that Israel receives from them;
> (b) …refrain from acquiring any weapons or military equipment from Israel;
> (c) …suspend economic, financial and technological assistance to and cooperation with Israel;
> (d) …sever diplomatic, trade and cultural relations with Israel…[78]

Because of Israel's breach of peremptory norms of international law, the GA reiterated its call "to all Member States to cease forthwith, individually and collectively, all dealings with Israel in order totally to isolate it in all fields…"[79] and also urged "non-member States to act in accordance with the provisions of the present resolution…"[80]

Appling the Namibia Doctrine and general principles of international law, the ICJ Advisory Opinion on the illegality of the construction of a wall through the occupied West Bank referred to "*erga omnes* obligations of humanitarian law that are fundamental to the respect of the human person and elementary considerations of humanity, as well as the right to self-determination." The Court advised the General Assembly that the current illegal situation has resulted in "an obligation not to render aid or assistance in maintaining the situation created by such construction" [of the wall in Palestine]. The ICJ reminded that, in the context of war and

occupation, The Hague Convention and the four Geneva Conventions "incorporate obligations essentially of an *erga omnes* character"; that is, binding on all.[81]

The consequent ruling on the specific question of "Legal consequences for States other than Israel" recognized that the "*Erga omnes* character of certain obligations violated by Israel" engage the following specific obligations:

> Obligation of all states not to recognize the illegal situation resulting from construction of the wall and not to render aid or assistance in maintaining the situation created by such construction;
>
> Obligation for all states, while respecting the Charter and international law, to see to it that any impediments, resulting from the construction of the wall, to the exercise by the Palestinian people of its right to self-determination is brought to an end;
>
> Obligation for all states parties to the Fourth Geneva Convention, while respecting the Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention.[82]

Even more recently, the extraterritorial obligations of states to remedy the illegal situation is affirmed in the 2012–13 independent international fact-finding mission to investigate the human rights implications of the Israeli settlements for Palestinians, with reference to "State responsibility for internationally wrongful acts, including third-State responsibility."[83] Moreover, the UN Special Rapporteur on human rights in the occupied Palestinian territory has provided further specificity in his report on the conduct of, and obligations of states to prevent and remedy corporate activities in cooperation with the occupation and colonization of Palestine.[84]

Meanwhile, local governments have been making selective purchasing and procurement choices based on concerns over human rights violations in historic Palestine. These policy choices have involved the refusal of contracts with other cities and companies benefitting from the prevailing illegal situation. Some decisions have been inspired by the anti-apartheid model, while some may have taken their impetus from the current Boycott, Divestment and Sanctions Movement, a civil campaign to: end of Israeli occupation and colonization of Palestinian land, institutionalize full equality for Arab-Palestinian citizens of Israel and respect the right of [reparations, including] return of Palestinian refugees.[85]

Local governments that have taken decisions not to patronize companies and other entities that benefit from the crimes accompanying Israel's occupation of Palestine include: Durham NC, USA; Kuwait City;[86] Edinburgh, Scotland,[87] Marrickville NSW, Australia;[88] Bristol, England;[89] Buenos Aires, Argentina;[90] Lisbon, Portugal,[91] Dublin, Ireland;[92] and the State of Rio Grande do Sul, Brazil,[93] among others.

The Buenos Aires and Lisbon decisions to sever ties with the Mekorot - Israel National Water Company (operating extraterritorially as Mekorot Development and Enterprise) are particularly significant in that the cities' relationship was with an Israeli parastatal entity that is chartered in Israel to discriminate systematically and materially against the indigenous Palestinian people.

Originally formed in 1937 through a joint initiative of the Jewish Agency, Jewish National Fund and "Nir," a subsidiary of the Zionist labor organization Histadrut,[94] from its inception, the Israeli "national" water company Mekorot applies the principles of its founding parastatal organizations (JA, JNF and Histadrut) exclusively to serve beneficiaries whom they categorize as having "Jewish nationality."[95]

Buenos Aires' suspension of a $170m water deal with Mekorot came amid a campaign over the company's practice of "water apartheid."[96] At about the same time, Friends of the Earth International also joined the campaign against the Israeli National Water Company.[97]

These developments raise a further aspect of state obligations vis-à-vis entities that exercise institutionalized, material discrimination in breach of human rights and peremptory norms of international. Israeli parastatal institutions, including the Jewish Agency/World Zionist Organization, Jewish National Fund and their affiliates practice their charter-based institutional and material discrimination to the dispossession of indigenous Palestinians and the denial of their inalienable right to self-determination. Meanwhile, they form principal drivers of population transfer (demographic manipulation and settler-colony construction) in Palestinian lands under Israeli jurisdiction and effective control.[98] They also operate extraterritorially, registered and operating as tax-exempt charities in some 50 extraterritorial states.[99]

This situation raises another aspect of states' extraterritorial obligation to regulate locally registered entities engaged in gross violations of human rights and/or breach peremptory norms of international law. The local and global movements to rescind tax exemption and other benefits from Israel's parastatal institutions operating internationally seek simply to apply public international law as well as domestic law criteria to them. That would mean treating them as foreign agents while also, at once, they form and represent integral and extraterritorial parts of a foreign state (Israel).

Forty years after the General Assembly made explicit the extraterritorial obligations of states—in all their component parts—to take effective measures against the illegal situation in Palestine, local authorities formalized this principle in a collective statement of principle to guide local policy. In the Final Declaration of the Local Authorities Forum – Free Palestine, Canoas RS, Brazil, December 2012, representatives of subnational governments issued the corresponding call to all fellow local LGs/LAs. The Brazilian and Palestinian municipality representatives in the Local Authorities Forum demanded that:

> …Brazilian local governments…commit to responsible investment by avoiding contracting with parties that support or benefit from occupation, or violate related prohibitions under international law.[100]

In December 2014, local government and civil society organizations meeting at Seville, Spain also raised the extraterritorial obligation of local authorities in a declaration that enshrines the principle:

> Local governments…commit to responsible investment by not contracting with parties and not twinning with cities that support or benefit from occupation or violate related prohibitions under international law.[101]

The analogous case of Western Sahara has received considerably less attention than its Palestine counterpart. Some governments attribute the imbalance not to a lack of legal guidance, but to a lack of clarity and consensus on undifferentiated imports from Morocco, the occupying power, and the relatively limited attention that the conflict has received.[102] The 2012 European Union agreement with Morocco, for example, does not provide specific rules on product labelling, complicating selective purchase efforts. Nonetheless, an international civic campaign is promoting boycott and/or ban trade in "conflict tomatoes" and other commodities extracted and exported by that occupier of Western Sahara.[103]

Cross-border Organized Crime and Trade:

Transnational criminal organizations are self-perpetuating associations operating across national borders, using violence, corruption, and fraud to protect and disguise their illicit, profit-driven activities, which ultimately abuse and victimize other parties. Beyond those conducted or enabled by national governments, such activities may involve nonstate actors engaged in trafficking of humans and forced labor, illicit arms trade, and trade in products and goods derived from related criminal activities. Such illicit operations involve many of the same consequences as the gross human rights violations accompanying population transfer, institutionalized discrimination, colonization, occupation and apartheid. Likewise also, much cross-border organized crime has persisted without sufficient international mechanisms to prevent its practice.

Fighting such crimes of nonstate actors is the usual subject of cooperation among law enforcement organizations. However, city councils also have emerged as partners in opposing and impeding such crimes within their civilian capacity. More as a factor of deterrence, they build on the precedent of local city councils resolving not to cooperate with South African apartheid and other forms of institutionalized discrimination and dispossession. More recently, concern has mounted over trade in resources and goods derived from prohibited practices originating with actors outside of the domain of the state.

Local government responses to illicit trade illustrate. For example, some local governments have initiated measures to avoid participation in contraband commodities such as conflict minerals.

"Blood diamonds" is a term referring to precious gemstones (also called conflict diamonds, converted diamonds, hot diamonds, or war diamonds) mined in a war zone and sold to finance an insurgency, an invading army's war efforts, or a warlord's activity. The term is most commonly used in connection with the civil wars in Angola, Liberia, Sierra Leone and Ivory Coast. However, in the 1990s, the broader concept of "conflict resources" or "conflict commodities" emerged to mean natural resources extracted in a conflict zone and sold to perpetuate the fighting. In conflicts in Africa particularly, the practice of forced labor in the

extraction of the minerals is an aspect of felonious activity that notoriously accompanies the wanton use of force, rape, mass destruction and other war-related crimes.

A prominent contemporary example is in the eastern provinces of the Democratic Republic of the Congo, where various armies, rebel groups, and outside actors have profited, while contributing to violence and exploitation throughout wars in the region. The conflict minerals extracted and traded to finance the warfare include columbite-tantalite, also known as coltan (from which tantalum is derived), cassiterite (tin), gold, wolframite (tungsten), or their derivatives.

In response to the violent situation in Sierra Leone, the Security Council adopted resolution 1306 in July 2000.[104] It enshrined the principle that "all States shall take the necessary measures to prohibit the direct or indirect import of all rough diamonds from Sierra Leone to their territory," and sanctioned the importation of rough diamonds from that country. In an effort to break the chain linking the armed conflict and the illicit trade in diamonds, a subsequent resolution extending the ban instituted a certification-of-origin regime.[105] Since the late 2000s, the Security Council also adopted a series of resolutions[106] that established an arms embargo and targeted sanctions to thwart the illegal exploitation of natural resources in the country that was fueling conflicts and related human rights violations, killings, the use of child soldiers and sexual violence in the Great Lakes region.

In April 2011, Pittsburgh PA (USA) became the first in a series of U.S. cities whose councils passed a conflict-free resolution that banned trade and purchasing of consumer electronics containing conflict minerals.[107] St. Petersburg FL followed, passing a resolution in October 2011 that pledged to consider whether electronics contain conflict minerals before making any of the city's estimated $1 million in annual electronics purchases. The resolution, citing the city's "commitment to human rights and social justice in its governance policies," also called on electronics companies and other industries to take the necessary steps to remove conflict minerals from their supply chains.[108]

The next year, Edina MN, a suburb of Minneapolis, passed a similar resolution the next year in July 2012.[109] At the end of 2013, Madison WI passed a resolution to adopt conflict-free purchasing policy, urged by a movement of students from the University of Wisconsin - Madison.[110]

Most recently, in June 2015, Kingston-upon-Hull, England joined the list of local governments resolving to ban purchases of goods containing conflict minerals. Councillor Rosie Nicola lent historic continuity to the local legislative act, explaining that Hull City Council had a history of involvement in human rights issues, traceable to Hull native William Wilberforce (1759–1833) who led the parliamentary fight to abolish slavery.[111]

Conclusion: Envisioning Local Government's Extraterritorial Human Rights Policy

These applications of extraterritorial human rights obligations on the part of local governments reflect a trend in developing human rights-based governance at the municipal level, including the emergence of human rights cities[112] and the "right to the city" movement.[113] This trend coincides also with a period in which cities have assumed multiple ties with extraterritorial local governments and other actors, multiplying their opportunities and effect at exercising their human rights obligations extraterritorially.

A Council of Europe-organized "European Campaign for Urban Renaissance" (1980–82) produced the European Declaration of Urban Rights (1982), which inspired the European Urban Charter (1992) a decade later. That Charter enshrined a "right to…multicultural integration, where communities of different cultural ethnic and religious backgrounds coexist peaceably."[114] Recognition of that international dimension of the local urban identity coupled also with a claimed right to "Intermunicipal collaboration in which citizens are free and encouraged to participate directly in the international relations of their community."[115] These locally claimed "rights" reflect no less than the inherent international constitution of many cities participating in the European Urban Charter.

By 1996, the Second United Nations Conference on Human Settlements adopted the Istanbul Declaration and the Global Plan of Action (Habitat II). One of the Habitat II Agenda's seven operative sections is dedicated to international cooperation in the development of sustainable human settlements, "guided by the purposes and principles of the Charter of the United Nations" as "crucial to improving the quality of life of the peoples of the world."[116] The Agenda also contained multiple passages emphasizing the essential role of local authorities in international cooperation among municipalities and communities.[117]

Many of the international law norms referenced here expressed negative obligations in the sense that they require nonrecognition, noncooperation, nonassistance and nontransaction as prohibitions of public conduct that perpetrates, enables or condones human rights violations and other breaches of peremptory norms. However, local governments can—and do—take initiative also to pursue constructive cross-border activities. Such programs of international cooperation among urban or rural local governments are not the explicit expression of binding treaty requirements. However, our focus on local governments' legally binding ETOs, with an emphasis on the context of obligations of the state, acknowledges such pro-active extraterritorial human rights programming, but leaves it for another discussion.

Understanding the vertical and transversal effects of human rights principles, humanitarian law norms and *jus cogens* also compels lateral and, by extension, cross-border policy thinking. Articulating the human rights values at stake in recognizing, assisting and transacting with parties that violate human rights and breach *jus cogens* principles should propel that thinking. The human rights discourse has been demonstrably influential at invoking the extraterritorial obligations of local government. Although this discourse may be *prima facie* ethical in nature, it coincides with obligations binding on the territorial state and, indeed, all of its constituent parts.

As the Human Rights Committee has observed, "The conduct of public affairs…covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels."[118] Human rights obligations not only apply locally, but also have extraterritorial effect.

Insofar as nonrecognition of, and noncooperation with illegal situations are self-executing obligations, local LGs/LAs are required—beyond politics, self-interest and equivocating sentiment—to reject dealings with enterprises that violate human rights in their chain. Those include parties that participate in, or in any way benefit from occupation, apartheid, the denial of self-determination, population transfer, the recruitment and use of child soldiers, *refoulement* of refugees, or any of the other gross violations, grave breaches and crimes discussed here.

LGs/LAs' selective purchasing and outright rejection to transact with perpetrators and collaborators are not impediments to free trade,[119] nor are they merely a consumer's choice (i.e., "boycott"). Such policies are a requirement of the most fundamental principles of international law and world order. Leaving its enforcement exclusively to relatively remote central spheres of government may flout international human rights law and squander a rectifying opportunity to implement it, with extraterritorial effect, right where we live.

In this spirit, a recent European Council of Foreign Relations has explained the European Union's imperative to "differentiate" in its dealings with Israel on at least two levels of distinction:

(1) Differentiating between licit and illicit aspects of transactions with Israel, rejects those that involve violation of international law and European requirements. To the extent possible, such "differentiation" favors less-lethal dealings among friends and allies; and
(2) Distinguishing the obligatory refusal to transact with Israeli-linked parties and practices perpetuating crimes of dispossession, colonization and population transfer (i.e., against the indigenous Palestinian people) from "boycott" which is a voluntary consumer device. Rather, the nonrecognition of, and noncooperation with the illegal situation by operationalizing the accompanying negative obligations to avoid acting as an accessory to the crime derive from the requirements of existing law and "value-based European foreign policy."[120]

This gentle reminder of population transfer and related crimes as anathema to contemporary European values may be welcome. Consistent with this reminder, the combined efforts of some local governments already to refrain from collaboration with such violations and breaches so far have constituted a factor of potential deterrence. That compliance is also welcome, while far less than accountability or reparation measures still needed.

Other judicial mechanisms may aspire to the role of assigning liability. Nonetheless, these conscientious civil efforts of local government, whether termed "extraterritorial obligation," "selective purchasing" or "boycott," have managed to restrict public institutions of duty-bound states from playing accessory roles that, otherwise, would enable and reward international crime.

From the perspective of international human rights law, the engagement of local governments in upholding norms and standards in their local decision making is only natural and wholly expected. This local aspect of human rights implementation was not contemplated in either the World Charter on the Right to the City (2006) or the Maastricht Principles (2011). However, those documents and, more importantly, debates behind them both have helped clarify much thinking on the subject. Nonetheless, these issues so far remain among the missing links in the current debate toward Habitat III and the New Habitat Agenda (2016).

Although insufficiently heralded so far, democratic local governance doubtless will instruct us on many remaining legal and strategic questions about the extraterritorial application of locally held human rights obligations. In critical mass, human rights governance through "local government" even may defy political gravity and "trickle up." Rather, in a less-hierarchical configuration, a body of good practice potentially could reach the central sphere of government, as eventually experienced in the global opposition to South African apartheid.

An important lesson from the measures to end apartheid in South Africa, central spheres of liable governments can be relatively slow in making the legal and ethical curve defined by extraterritorial human rights obligations of states. A human rights approach to local government within the state would see the application of human rights and peremptory norms in relations with third parties as a particularly local task, as well as a universal promise, both being enshrined in binding law *erga omnes*.

Endnotes:

[1] Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights (2011), para. 8.

[2] *Ibid*.

[3] Figgis concludes that "The unity and universality and essential rightness of the sovereign territorial State, and the denial of every extra-territorial or independent communal form of life, are Luther's lasting contribution to politics." John Neville Figgis, *Churches in the Modern State* (London: Longmans, Green & Co., 1913, reprinted by Ithaca NY: Cornell University Library, 2009), p. 91. See also Andrew J. Williams, Amelia Hadfield and J. Simon Rolfe, *International History and International Relations* (New York: Routledge, 2012), p. 101.

[4] "A Definition of Sovereignty," *Stanford Encyclopedia of Philosophy*, at: http://plato.stanford.edu/entries/sovereignty/.

[5] Vienna Convention on the Law of Treaties (1969), Article 27.

[6] See observations on applicability in territory of effective control: "Concluding Observations of the Committee on the Elimination of Discrimination against Women (CEDaW) upon Consideration of Reports Submitted by States Parties," A/52/38/Rev.1, 12 August 1997, para. 170; "Concluding observations of the Human Rights Committee: Israel," CCPR/C/79/Add.93, 18 August 1998, para. 10; "Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel," E/C.12/1/Add.27, 4 December 1998, para. 8; "Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel," CERD/C/304/Add.45, 30 March 1998, paras. 4, 12; Letter of Chairperson Virginia Bonoan Dandan to Permanent Representative of Israel H.E. Ambassador M. David Peleg, 1 December 2000; Letter of CESCR Chairperson Virginia Bonoan Dandan to Permanent Representative H.E. M. Yaakov Levy, Geneva, 11 May 2001. Conclusions and Recommendations of the Committee against Torture: Israel," CAT/C/XXVII/Concl.5, 23 November 2001. "Concluding Observations of the Committee on Economic, Social and Cultural Rights: Israel," E/C.12/1/Add.90, 23 May 2003, para. 15. "Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel," CERD/C/ISR/CO/13, 14 June 2007, paras. 3, 13, 32; "Concluding observations of the Committee on the Elimination of Discrimination against Women: Israel," CEDAW/C/ISR/CO/5, 5 April 2011, paras. 2, 12, 13, 16, 17, 21–24, 26, 28, 38, 40; Concluding observations of the Committee on Economic, Social and Cultural Rights: Israel, E/C.12/ISR/CO/3, 16 December 2011, paras. 8, 16, 19, 24, 28, 29, 32–33, 35–36; Concluding observations of the Committee on the Elimination of Racial Discrimination: Israel, CERD/C/ISR/CO/14–16, 3

April 2012, paras. 3, 4, 10, 23, 24, 26, 28, 29; Human Rights Committee, "Concluding observations on the fourth periodic report of Israel," CCPR/C/ISR/CO/4, 21 November 2014, paras. 5, 9, 12, 13, 15–18, 22; CRC, "Concluding observations on the second to fourth periodic reports of Israel, adopted by the Committee at its sixty-third session (27 May–14 June 2013)," Human Rights Committee, "Concluding observations on the fourth periodic report of Israel," CCPR/C/ISR/CO/4, 21 November 2014, paras. 5, 9, 12, 13, 15–18, 22; CRC, "Concluding observations on the report submitted by Israel under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography," CRC/C/OPSC/ISR/CO/1, 13 July 2015, para. 3, at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/155/82/PDF/G1515582.pdf?OpenElement; CRC, "Concluding observations on the fifth periodic report of Israel," 2016, 13 May 2016, paras. 8–9, 17–18, 24, 28, at: http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/ISR/INT_CAT_COC_ISR_23917_E.pdf.

[7] International Covenant on Civil and Political Rights (1966), Article 50; International Covenant on Economic, Social and Cultural Rights (1966), Article 28.
Draft articles on Responsibility of States for internationally wrongful acts, A/56/10 (2001), at: http://www.un.org/documents/ga/docs/56/a5610.pdf; and Commentaries, at: http://www.eydner.org/dokumente/darsiwa_comm_e.pdf.

[9] Ian D. Seiderman, *Hierarchy in International Law: The Human Rights Dimension* (Antwerp: Intersentia, 2001); Michael Akehurst, "The Hierarchy of Sources of International Law," *British Yearbook of International Law*, Vol. 47 (1974–75), 273–85, at p. 283.

[10] HRC General Comment No. 25: Article 25 (Participation in public affairs and the right to vote) (1996), CCPR/C/21/Rev.1/Add.7, 27 August 1996, at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/21/Rev.1/Add.7&Lang=en.

[11] Human Rights Committee (HRC), General Comment No. 31: "The Nature of the General Legal Obligation Imposed on States Parties to the Covenant" (2004), para. 4, at: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d/PPRiCAqhKb7yhsjYoiCfMKoIRv2FVaVzRkMjTnjRO%2bfud3cPVrcM9YR0iW6Txaxgp3f9kUFpWoq/hW/TpKi2tPhZsbEJw/GeZRASjdFuuJQRnbJEaUhby31WiQPl2mLFDe6ZSwMMvmQGVHA%3d%3d. Also Vienna Convention, *op. cit.* [supra 5].

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[15] *Ibid*.

[16] *Ibid*., para. 8.

[17] *Ibid*., para. 6.

[18] *Ibid*., para. 10.

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[25] CESCR, General Comment No. 4: "the right to housing" (1991), para. 12, at: http://tbinternet.ohchr.org/Treaties/CESCR/Shared%20Documents/1_Global/INT_CESCR_GEC_4759_E.doc.

[26] As stated in the Global Strategy for Shelter, para. 32.

[27] Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Leilani Farha, A/HRC/28/62, 22 December 2014, at: http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_62_ENG.doc.

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[35] CESCR General Comment No. 16: "The equal right of men and women to the enjoyment of all economic, social and cultural rights (art. 3)" (2005), para. 42, at: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW1AVC1NkPsgUedPlF1vfPMJpdX7m2Tx5L7detnk4aL8Sk%2bOCLoaHsUFVMh6SviNU92S8cbmrriTaya9N9pSBR%2b0tHiI/LewK1gfET938Og3y.

[36] Mohamed Cherif Bassiouni, "International Crimes: 'Jus Cogens' and 'Obligatio Erga Omnes'," *Law and Contemporary Problems*, Vol. 59, No. 4 (autumn 1996), p. 68.

[37] International Court of Justice (ICJ), *Legality of the Threat or Use of Nuclear Weapons*, *ICJ Reports* 1996, p. 257, para. 79, at: http://www.icj-cij.org/docket/files/93/7648.pdf.

[38] *Ibid*.

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[40] ICJ, *Legality of the Threat or Use of Nuclear Weapons*, *op. cit.*

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[42] HRC, General Comment No. 31, *op. cit.*, para. 4. Also Vienna Convention, *op. cit.* [supra 5].

[43] General Assembly resolutions 44 (I), 8 December 1946; 395 (V), 2 December 1950; 615 (VII), 5 December 1952; 1179 (XII), 26 November 1957; 1302 (XIII), 10 December 1958; 1460 (SIV), 10 December 1959; 1597 (XV), 13 April 1961; 1662 (XVI), 28 November 1961 on the question of the treatment of people of Indian and Pakistani origin in South Africa.

[44] General Assembly, "The policies of apartheid of the Government of the Republic of South Africa, A/RES/1761 (XVII), 6 November 1962, "Resolutions Adopted on the Reports of the Special Political Committee," General Assembly – Seventieth Session, p. 9, operative para. 4, at: http://www.worldlii.org/int/other/UNGA/1962/21.pdf.

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[46] "Boycott" entered the English language in the context of "Land War" in Ireland, derived from the name of Captain Charles Boycott, the land agent of an absentee landlord, the conservative, Anglo-Irish John Crichton, 3rd Earl Erne. As harvests had been poor in 1880, Lord Erne offered his tenants a 10% rent reduction. However, in September of that year, protesting tenants demanded a 25% reduction instead. When Lord Erne refused, Capt. Boycott attempted to evict eleven tenants from the land and soon found himself subject to social ostracism organized by the Irish Land League. In addition, rather than resorting

to violence, everyone in the locality joined in shunning tenants who took farms where another tenant was evicted. In turn, Boycott soon became isolated, his workers carried out stop-work actions in his fields, stables and house. Moreover, local traders ceased doing business with him, and the local postman refused to deliver mail. Joyce Marlow, *Captain Boycott and the Irish* (London: André Deutsch, 1973), pp. 133–142.

[47] General Assembly, "Policies of apartheid of the Government of South Africa," A/RES/38/39 (1983) 5 December 1983, A: "Situation in South Africa," para. 2, at: http://www.un.org/documents/ga/res/38/a38r039.htm.

[48] *Ibid*., para. 12.

[49] *Ibid*., paras. 13–14.

[50] A/RES/38/39, *op. cit.*, "D: Sanctions against South Africa," para. 1.

[51] A/RES/38/39, *op. cit.*, "J: Oil embargo against South Africa."

[52] *Ibid*., paras. 2–3.

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[63] See Steven Rose and Hilary Rose, "Boycott of Israel? It worked for South Africa," "Nature", Vol. 417 (16 May 2002), p. 221; and George Fink, "Did an academic boycott help to end apartheid?" *Nature*, Vol. 417, Issue 6890, p. 690 (13 June 2002).

[64] Consistent with the following principles:

"4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.

5. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.

6. Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.

7. All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, noninterference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity." General Assembly resolution 1514 (XV), 14 December 1960, at: http://www.un.org/en/decolonization/declaration.shtml.

[65] "... the subsequent development of international law in regard to non-self-governing territories, as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them"..."the termination of the Mandate and the declaration of the illegality of South Africa's presence in Namibia [were] opposable to all States in the sense of barring *erga omnes* the legality of a situation which is maintained in violation of international law […]." ICJ Advisory Opinion on the international juridical status of Namibia, 21 June 1971, paras. 51 and 56.

[66] *Case Concerning East Timor* (*Portugal* v. *Australia*), Judgment of 30 June 1995, p. 16, para. 28; p. 102, para. 29, at: http://www.icj-cij.org/docket/files/84/6949.pdf.

[67] The International Legal Status of Western Sahara, General List. No. 61, 16 October 1975

[68] "…the Court does not support Morocco's claim to have exercised territorial sovereignty over Western Sahara." International Court of Justice, *Western Sahara Advisory Opinion of 16 October 1975*, para. 105, at: http://www.icj-cij.org/docket/files/61/6197.pdfI. The Court also cited "the paucity of evidence of actual display of authority unambiguously relating to Western Sahara renders it difficult to consider the Moroccan claim"; that "Morocco cannot, for the most part, be considered as disposing of the [legal] difficulties in the way of its claim to have exercised effectively internal sovereignty over Western Sahara," para. 103; finally, noting that, "even taking account of the specific structure of the Sherifian State [Morocco], [evidence] does not establish any tie of territorial sovereignty between Western Sahara and that State," paras. 107, 162. "Thus the Court has not found legal ties of such a nature as might affect the application of resolution 1514 (XV) in the decolonization of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory," para. 162.

[69] General Assembly resolution 3292 (XXIX), requesting the ICJ Advisory Opinion, 13 December 1974, para. 4.

[70] United Nations Security Council Resolution 380, 06 November 1975, at: http://www.worldlii.org/int/other/UNSC/1975/14.pdf.

[71] Letter from the Legal Counsel to the President of the Security Council, S/2002/161, 12 February 2002, at: http://www.arso.org/UNlegaladv.htm.

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[73] UN Security Council resolutions 541 and 550 determined the TRNC declaration of independence illegal and invalid.

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