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EXTRATERRITORIAL APPLICATION OF HUMAN RIGHTS TREATIES

Law, Principles, and Policy

Marko Milanovic

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General Editors' Preface

The actions of States are not confined to their territory, but frequently affect the lives of individuals beyond their borders. In some cases these actions involve killings, torture or indefinite detention, and this raises the question of the extraterritorial application of a States's human rights obligations. Many human rights treaties, notably the European Convention of Human Rights, limit the scope of their application to everyone within the 'jurisdiction' of the Contracting Party concerned. There is considerable uncertainty as to what the term 'jurisdiction' means in this context. Depending on the standard applied, the ensuing human rights protection might be over-inclusive, and thus unrealistically burdensome for States to comply with, or too limited to secure adequate international human rights protection.

Dr Milanovic's important and original study explores the issue of 'jurisdiction' with clarity and vigour, both within the field of human rights treaties and within the wider framework of general international law. It is the quality of this analysis which merits careful consideration of Dr Milanovic's proposed way forward in this sensitive and difficult area of the law.

AVL, DS, ST
Oxford, April 2011

Preface

This book is an expanded version of the doctoral thesis that I defended at the University of Cambridge in 2010. I am most grateful to David Feldman for his guidance and input in the course of the preparation of the thesis; I could not have wished for a better supervisor. I say this not (just) with the utter relief of someone who is finally over and done with his PhD, or as an obligatory platitude in a post-PhD monograph. He was truly the Goldilocks supervisor, neither forcing me heavily-handedly into whatever direction he thought best, nor letting me drift through the PhD all on my own; he was *just right*, and his future students are lucky to have him.

I also wish to express my thanks to my two examiners, James Crawford and Colin Warbrick. Their great knowledge and good humour made my viva not only challenging and intellectually stimulating, but genuinely fun. Few are so lucky, and for that, again, I am thankful, as I am thankful for their comments. I am likewise indebted to Dapo Akande, Ken Anderson, Charles Garraway, Vidan Hadzi-Vidanovic, Rebecca Jenkin, Francesco Messineo, Tatjana Papic, Jelena Pejic, Bruno Simma, Sandesh Sivakumaran, and Tobias Thienel who were gracious enough with their time to read all or parts of this study and provide me with most helpful suggestions and comments. My gratitude also extends to John Louth, Merel Alstein, Bethan Cousins, and the whole OUP production team for their work on this book, as well as to Zeljko Djuric, Dusan Kanazir, Milica Kostic, Ines Lasic, Zarko Markovic, and Petar Zmak for preparing the tables of authorities.

Finally, I am of course grateful to my family and friends for their continuing support—particularly so to a certain circle of friends who made my three years in Cambridge not only bearable, but happy. The Tapp Fund of Gonville & Caius College provided me with a more material kind of support, for which I am most thankful.

Chapter II of the study is a revised version of an article I published as ‘From Compromise to Principle: Clarifying the Concept of State Jurisdiction in Human Rights Treaties’, (2008) 8 *HRLR* 411, while Chapter V is similarly a revision of a piece I originally published as ‘A Norm Conflict Perspective on the Relationship between International Humanitarian Law and Human Rights Law’, (2009) 14 *JCSL* 459, and then in a more expanded form as ‘Norm Conflicts, International Humanitarian Law and Human Rights Law’, in O. Ben-Naftali (ed.), *Human Rights and International Humanitarian Law* (Oxford University Press, 2011). The remainder of this study has not been published before, although some sections were reworked as posts at *EJIL: Talk!*, the blog of the European Journal of International Law.

It is always a danger to write a book in what is a fast-developing field, as the risk of obsolescence exponentially increases. There are always new cases and developments on the horizon when it comes to extraterritoriality and human rights—as I write, *Al-Skeini* is pending before the Grand Chamber of the European Court of Human Rights. One must, however, stop somewhere; the book takes into account all cases (to the best of my knowledge) decided until December 2010.

List of Abbreviations

ACHR	American Convention on Human Rights
ADHR	American Declaration on Human Rights
AJIL	American Journal of International Law
ASR	Articles on State Responsibility
BYIL	British Yearbook of International Law
CAT	Convention Against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CRC	Convention on the Rights of the Child
ECHR	European Convention on Human Rights
EJIL	European Journal of International Law
EU	European Union
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ICJ	International Court of Justice
ICLQ	International and Comparative Law Quarterly
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the former Yugoslavia
IRRC	International Review of the Red Cross
IHL	International Humanitarian Law
ILC	International Law Commission
JCSL	Journal of Conflict & Security Law
JICJ	Journal of International Criminal Justice
NATO	North Atlantic Treaty Organization
OJLS	Oxford Journal of Legal Studies
RdC	Recueil des Cours
UDHR	Universal Declaration on Human Rights
UK	United Kingdom
UN	United Nations
US	United States

NOTE ON METHOD OF CITATION

Citations to authorities will generally conform to the OSCOLA style. However, citations to cases will conform to the style of their own jurisdiction, as will standard abbreviations for journal titles. This study is divided into five chapters, which form separate units with regard to citation and footnote numbering. Cross-references within each chapter will cite the section number only, while cross-references to other chapters will indicate both the chapter number and the section number.

Because of frequency of use, the following works will be cited in abbreviated form throughout this study, except for their first appearance:

F. Coomans and M. Kamminga (eds), *Extraterritorial Application of Human Rights Treaties* (Intersentia, 2004), hereinafter Coomans and Kamminga;

M. Gondek, *The Reach of Human Rights in a Globalising World: Extraterritorial Application of Human Rights Treaties* (Intersentia, 2009), hereinafter Gondek.

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