Right to Education

A New Right to a New Education

By

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Introduction
By what right do we educate?

Education is a complex theoretical-practical field of research because the educational phenomenon is multiform, multidimensional, multidisciplinary.

The educational phenomenon raises the primordial anthropological question of human educability, but the central question of pedagogic thought has been that of the purpose of education, that is, the question of the values and principles that should inspire and guide it. However, the most radical one, nowadays, concerns its legitimacy, that is the question of the source, sense and control of the power the education exerts, through the contents and forms of the communication it accomplishes. It should be considered its *meta-question* or the question of questions. It is such a radical question that it has been generally *unthinkable*. For the traditional pedagogical mindset, educating is so *natural* that the question of the legitimacy of education is dissolved in this assumption: (As) education is necessary, (whatever) education is legitimate. It is fallacious reasoning because it does not distinguish between necessity and legitimacy.

To problematise the legitimacy of education is to question the *pedagogic* as the traditional signifier of validity claims concerning education:

- What is pedagogic?
- Is what is useful? But whom for?
- Is what is efficient? But what for?
- Is what parents, teachers, Ministries of Education, say and order? But with what legitimacy?
- By what right human beings do what they do over human beings in the name of education?

Boldly put: *By what right do we educate?*

In the age of human rights – and especially of the rights of the child – the most legitimate response to the *meta-question of the legitimacy of education* should be researched in the *right to education*.

In children's education, different interests are involved and sometimes confronted, all claiming entitlement to the 'right to education'. However, education and *human right* to education may be different things. That is why the first United Nations Special Rapporteur on the Right to Education (Katarina Tomaševski, 1998-2004) wrote in her Preliminary Report (E/CN.4/1999/49)[1]:

> 8. … A simple but crucial question – what does full realization of the right to education entail? – will thus orientate the work of the Special Rapporteur.
> …
> 13. … The Special Rapporteur therefore attaches a great deal of importance to emphasizing differences between *education* and the *right to education* [original emphasis] so as to create a background for advocating changes within education aimed at conformity with the human rights requirements.

The right to education being about 'right' and 'education', the Special Rapporteur wrote in another Report (E/CN.4/2001/52)[2]:

> 69. … The orientation and contents of education can only be studied in close collaboration between educationalists and human rights lawyers, and the Special Rapporteur is very much looking forward to this collaborative effort.

This book aims at briefly and clearly highlighting the "differences between *education* and the *right to education*". Its contents are as follows:

- Chapter 1 presents an overview of human rights and the rights of the child – highlighting their ethical revolutionary significance – as a general framework necessary to know and understand the specificity of the right to education. Thereafter, the respective international profile is outlined, and its singularity and priority are emphasised, especially the consubstantiality with human dignity. It is concluded that the emergence and development of the right to

education is a new chapter of the History of Education and has given rise to an International Education Law.

- Chapter 2 proposes a conceptualisation for the operationalisation of the normative content of the right to education, that is, for drawing its juridical-political-pedagogical implications. It is encapsulated in the concept of Rightful Education, which is systematised in Principles of Ethics of the Right to Education from which stem Educational Rights. It is concluded that a Rightful Education requires a Right to Education Pedagogy and Policy, as well as the recognition of new Sciences of Education.

- Chapter 3 offers short answers – in the light of the preceding chapters – to questions on issues more familiar to public opinion and others. They are examples of the juridical-political-pedagogical outcomes of a *human right approach* of education.

The Conclusion highlights the revolutionary significance of the right to education. The Appendices add the main universal normative framework of the right to education, as well as extracts from the Education Agenda of the International Community, and a classical question is revisited.

This is an *essential* edition, summarising, updating and upgrading the main results of the author's research and theorising on the right to education as a human right. Without prejudice to rigour and depth, backed up by a documentary counterpoint of endnotes, it aims at a wide audience with interest in human rights, children's rights and, in particular, the right to education, including mothers and fathers more concerned with the education of their sons and daughters. For this reason, it does not contain authors' quotations and bibliography (except for three poets, but poetry is not and has not bibliography). Only international instruments and documents are quoted, as well as international and national Case Law. Also, the use of abbreviations/ acronyms unfamiliar to lay readers is generally avoided.

This book can serve as a brief and accessible Introduction to International Education Law. The subject matter is much more developed in two other publications, each with its own academic apparatus: *Revolution of the Right to Education* (Brill|Sense, 2021) and *Introdução ao Direito da Educação – Internacional, Europeu e Português* (Introduction to Education Law – International, European and Portuguese, Lisbon International Press, 2023).

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Chapter 1
New Right

1.1 Human rights

1.1.1 Origins and concept

- **Origins**

Human rights have no date or place of birth. They have emerged slowly, like a dawn, from the night of times, in East and West, in South and North, expressing sentiments and aspirations as timeless and cross-cultural as human suffering and the ideal of Justice. This is illustrated by the unique and beautiful anthology *Le droit d'être un homme* (Birthright of Man), published by UNESCO (United Nations Educational, Scientific and Cultural Organisation) in the context of the 20th anniversary of the Universal Declaration of Human Rights. Think of the Code of Hammurabi (Babylon, 18th century BC), the Ten Commandments (13th century BC), the Charter of Cyrus (Persia, 4th century BC), the Magna Carta or The Great Charter of Liberties of England (1215), the Bill of Rights (England, 1689), the 18th century American and French Revolutions and Bills of Rights.

We may distinguish three main stages in the modern and contemporary history of human rights:

- Philosophical elaboration of the old 'natural rights' idea (17th – 18th centuries)
- Bills of Rights and their constitutionalisation (18th – 20th centuries)
- Internationalisation of human rights (after World War II)

The universalisation of the principle of respect for human rights began with the Charter of the United Nations (UN), drawn up by the San Francisco Conference (US), whose proceedings took place from 25 April to 26 June 1945, the day on which the Charter was signed by 50 States (plus one a little later). It entered into force on 24 October of the same year, now celebrated as United Nations Day. The Nazi Third Reich had capitulated on 8 May, after 5 years and 8 months of an unprecedented world war. According to the UN Charter[3], one of its objectives is "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion" (Article 1.3).

The first far-reaching legal instrument devoted to human rights by an Intergovernmental Organisation (IGO) was the American Declaration of the Rights and Duties of Man, adopted on 2 May 1948 by the IX American International Conference, in Bogota (Colombia), that had adopted the Charter of the Organisation of American States (OAS) on 30 April.

On 10 December 1948, the UN General Assembly, meeting in Paris, proclaimed the Universal Declaration of Human Rights, for 48 votes to none against, with 8 abstentions. The Declaration was drafted by the Commission on Human Rights established by the Economic and Social Council (ECOSOC), first as 'Nuclear Commission', on 16 February 1946. The full Commission, composed of 18 elected members, held its first session in New York from 27 January to 10 February 1947.

The history of human rights juridification, that is, of their moral claims becoming Law, is frequently presented as a 'generations' succession, reflecting the trilogy of the French Revolution: *Liberté, Égalité, Fraternité* (Liberty, Equality, Fraternity).

- *First generation* ('liberty rights' or 'negative rights': *freedoms from*…): they are the civil and political rights proclaimed by the 18th century Bills of Rights, progressively incorporated into constitutional texts, becoming a cornerstone of liberal democracies.

- *Second generation* ('equality rights' or 'positive rights': *rights to*…): they are the economic, social and cultural rights which emerged during the 19th century and developed in the 20th century, claimed principally by the socialist ideologies as conditions of enjoyment of the liberties.

- *Third generation* ('solidarity rights' or 'collective rights': *new rights*): they are such rights as the right to peace, the right to sustainable development, the right to healthy environment, the right to be different, which took the floor since the 1960s as demands of new realities and threats.

There is talk of a *fourth generation* of rights, which are mainly those related to new information and communication technologies, such as "the right to the protection of personal data concerning him or her" (right to informational self-determination) recognised in the Charter of Fundamental Rights of the European Union (Article 8)[4], the right of access to Internet (see 2.3.8), the right to be forgotten…

The 'generations' distinction is controversial, however, for several reasons. The classic freedoms began to be constitutionally recognised before economic, social and cultural rights, but these ones began to internationalise first, with the establishment of the International Labour Organisation (ILO) as part of the Versailles Peace Treaty (Part XIII) that, following the Paris Peace Conference, formalised the end of World War I, in 1919, and included the Covenant of the League of Nations. In addition, a right may be both 'first generation' and 'second generation', as is the case of the right of trade union association. Some rights have a transversal content, especially the right to life and the right to education. Moreover, the distinction may suggest a misleading hierarchisation of rights.

The largest international conferences on human rights to date have been:

- International Conference on Human Rights, in Tehran (Iran), from 22 April to 13 May 1968, with the participation of 84 States. It

adopted the *Tehran Proclamation* and 29 Resolutions (apart from other 18 ones especially addressed to the UN bodies).

- World Conference on Human Rights, in Vienna (Austria), from 14 to 25 June 1993. It gathered about 7000 participants, among them representatives of more than 170 States and about 800 Non-governmental Organisations (NGOs). It adopted the Declaration and Programme of Action of Vienna which has become the human rights reference of the UN system.

- **Concept**

Every human community and society needs rules, written or not, to make living together according to common values possible, and to meet common needs. This is the meaning of the Latin saying, *Ubi societas, ibi jus* (Where there is society, there is Law).

Positive, written Law is a coercive normative order, that is, whose violations are sanctioned. It has expanded as a network framing international, national and individual lives, becoming the most powerful driver of Civilisation. In the contemporary world, there is no other alternative for the peaceful coexistence of cultures, peoples and the human diversity.

There are Law (objective) and rights (subjective) – a terminological distinction specific to the English language. Law is the body of written normativity forming a legal order. Rights are prerogatives attributed to individuals by Law. The rights of a person constitute her legal personality.

A right is, therefore, a normative position that confers on someone a freedom or faculty, to which obligations correspond (passive or active) on the part of others, individuals or entities. The recognition and protection of rights by Law distinguishes them from purely moral rights.

Human rights are a higher category of rights. According to the most elementary definition, they are rights recognised to every human being just because (s)he is a member of the human species. Human rights are therefore universal and qualified as "equal and inalienable".

- *Equal* because they are held by every human being, without any discrimination, in all circumstances, everywhere.

- *Inalienable* because they are never lost, that is, they cannot forcibly be taken away (by expropriation) or voluntarily given up (by transaction).

'Imprescriptible' is another term used in 18th century Bills of Rights, but it has practically fallen into disuse. The idea of imprescriptibility (inextinguishability) is subsumed in that of inalienability (which needs to be nuanced, however).

Human right is an open concept. Higher Courts sometimes refer to the living nature of human rights instruments, which must be interpreted teleologically, that is, taking into account their spirit and purpose. Scientific-technological progress and social changes, in addition to influence how human rights are exercised, create the need to recognise new rights.

In 1986, the UN General Assembly adopted a Resolution on "Setting international standards in the field of human rights" (A/RES/41/120)[5]. In it: "*Recognising* the value of continuing efforts to identify specific areas where further international action is required to develop the existing international legal framework in the field of human rights", the General Assembly proposed "guidelines in developing international instruments in the field of human rights". *Inter alia*: "Be of fundamental character and derive from the inherent dignity and worth of the human person".

The UN Charter (1945) and the 1948 Universal Declaration are at the origin of a new branch of International Law: International Human Rights Law.

1.1.2 International Human Rights Law

- **Specificity**

Classical International Law, predominant until World War II, was dominated by the principles of sovereignty and consent of States – its exclusive actors – which accepted obligations only of a contractual, reciprocal nature.

State sovereignty remains the basis of the international political order, as provided for by the UN Charter (Article 2.7, inherited from Article 15.8 of the Covenant of the League of Nations, and echoing in UNESCO's Constitution Article I.3), but it is eroding, increasingly shifting to institutions building up the International Community.

Human rights are not a matter "essentially within the domestic jurisdiction" (Article 2.7 of the Charter)[6]**.** The Charter mentions them seven times. According to its Article 56: "All Members pledge themselves to take joint and separate action in co-operation with the Organisation for the achievement of the purposes set forth in Article 55", one of which is promoting "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion"[7]. The Universal Declaration of Human Rights has been proclaimed by a Resolution of the UN General Assembly.

International Human Rights Law is not subject to the principle of reciprocity. In it, States have no self-interest, but a common interest: the protection of the human rights of all persons under their jurisdiction, which is an obligation *erga omnes* (towards all, towards the whole International Community), as the Human Rights Committee pointed out at the beginning of its General Comment 31 (CCPR/C/21/Rev.1/ Add. 13, 2004)[8]:

> 2. While Article 2 is couched in terms of the obligations of States Parties towards individuals as the right-holders under the Covenant, every State Party has a legal interest in the performance by every other State Party of its obligations. This follows from the fact that the 'rules concerning the basic rights of the human person' are *erga omnes* obligations. […] Furthermore, the contractual dimension of the treaty involves any State Party to a treaty being obligated to every other State Party to comply with its undertakings under the treaty. […] Accordingly, the Committee commends to States Parties the view that violations of Covenant rights by any State Party deserve their attention. To draw attention to possible breaches of Covenant obligations by other States Parties and to call on them to comply with their Covenant obligations should, far from being regarded as an unfriendly act, be considered as a reflection of legitimate community interest.

International Human Rights Law thus has both a vertical valence (the principal one, concerning the obligations of States Parties towards all persons under their jurisdiction) and a horizontal valence (concerning obligations between States Parties).

International Human Rights Law may be defined narrowly or broadly:

- Narrowly defined, its object includes the legal dimensions of human rights: their sources, normative content, mechanisms of protection, jurisprudence, doctrine[9].

- Broadly defined, it is an interdisciplinary field of research to which legal and other disciplines contribute, whose scope should include the study of the human dignity principle, of the history of human rights and the repercussions of their recognition (and violations) in the life of individuals, peoples and the future of the human species.

- **Normative sources**

Prior to World War II, custom was viewed as the principal source of International Law, binding on all States. Customary International Law consists mainly of General Principles of Law, common to most legal systems as a kind of universal juridical conscience, as was the ancient

Jus Gentium (Law of Nations), formed of rules dictated by *recta ratio* (right reason).

After World War II, Customary International Law was largely codified, notably in the Vienna Convention on the Law of Treaties (1969), and Treaty Law has developed as the main source of International Law. According to the canonical Article 38.1 of the Statute of the International Court of Justice, annexed to the UN Charter[10], the Court applies "international conventions", "international customs", "the general principles of law", as well as "judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law".

The *Corpus Juris* (Body of Law) of International Human Rights Law comprises hundreds of legal instruments – universal and regional, conventional and declaratory, with general, specific or categorical content.

- Universal are legal instruments adopted within the United Nations institutional framework or under its auspices.

- Regional are legal instruments covering a continent or region, such as those adopted by the Council of Europe or the Organisation of American States.

- Conventional are legal instruments formally binding States Parties, such as treaties and other equivalent instruments.

- Declaratory are legal instruments not formally binding, with varying denominations, adopted by Intergovernmental Organisations, such as the UN General Assembly.

- General are legal instruments that include all categories of human rights or some of them.

- Specific are legal instruments concerning a sole right (the right to education, for example).

- Categorical are legal instruments aiming to reinforce the protection of a more vulnerable category of persons (children, for example).

The most general universal normative framework of International Human Rights Law is the International Bill of Human Rights, which is not a legal instrument. It designates a set of three instruments adopted by the United Nations: Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights (1966) and International Covenant on Economic, Social and Cultural Rights (1966).

Besides the two 1966 International Covenants, there are more seven treaties adopted within the United Nations framework, forming the *core human rights treaties*, namely:

- International Convention on the Elimination of All Forms of Racial Discrimination (1965)

- Convention on the Elimination of All Forms of Discrimination against Women (1979)

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)

- Convention on the Rights of the Child (1989)

- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)

- Convention on the Rights of Persons with Disabilities (2006)

- International Convention for the Protection of All Persons from Enforced Disappearances (2006)

These nine treaties, which are complemented by Protocols (short treaties), form a system of protection against the most serious violations of human rights and to reinforce the protection of more vulnerable categories of human beings. Their application is supervised by

Committees. All UN Member States have ratified at least one of them, and 80% have ratified four or more. The International Covenant on Civil and Political Rights was so far ratified by 173 States (and signed by 6 more) and the International Covenant on Economic, Social and Cultural Rights was so far ratified by 171 States (and signed by 4 more)[11].

At the regional level – European, American, African and in other regions – the main legal instruments on human rights are the following:

- European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)

  (Council of Europe, 1950, now with 16 Protocols, some of them incorporated into the Convention)

- European Social Charter

  (Council of Europe, 1961, with Protocols, revised in 1996)

- American Declaration of the Rights and Duties of Man

  (Organisation of American States, 1948)

- American Convention on Human Rights (Pact of San José de Costa Rica)

  (Organisation of American States, 1969, now with 2 Protocols)

- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)

  (Organisation of American States, 1988)

- Social Charter of the Americas

  (Organisation of American States, 2012)

- African Charter on Human and Peoples' Rights (Banjul Charter)
  (Organisation of African Unity (OAU, replaced by the African Union in 2002), 1981, now with 2 Protocols)

On the European continent, there are two more instruments:

- Charter of Fundamental Rights of the European Union, adopted by the European Union (EU) at the European Council meeting held in Nice (France) on 7 December 2000, which applies only to the implementation of the European Union Law by its institutions and Member States. It became binding on 1 December 2009 with the entry into force of the Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, which had been signed at Lisbon on 13 December 2007[12].

- Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms (Minsk, Belarus, 1995)[13]

The League of Arab States, established in 1945, sitting in Cairo, adopted in 1994 an Arab Charter on Human Rights, revised in 2004 and entered into force in 2008. The League is partly overlapped by the larger Organisation of Islamic Co-operation (OIC), founded in 1969 as Organisation of the Islamic Conference, sitting in Saudi-Arabia, that adopted in 1990 the Cairo Declaration on Human Rights in Islam that subjects human rights interpretation and application to Islamic Law.

In the Asia-Pacific region, the Association of Southeast Asian Nations (ASEAN) adopted a Human Rights Declaration (2012) and other texts.

There are human rights provisions in other branches of International Law, including International Labour Law, International Environmental Law, International Health Law, International Refugee Law, International Humanitarian Law and International Criminal Law.

Let us better explain the distinction between conventional and declaratory instruments.

- Conventional instruments are those creating international legally binding obligations. This is the so-called 'Hard Law' (*lex lata*: Law enacted) that goes by a variety of denominations: Treaty, Convention, Covenant, Protocol, Charter, etc. (38 names were

identified). A treaty is self-executing when it is domestically immediately effective, without need of implementing legislation to be enforceable, or non-self-executing, when it requires ancillary legislation in order to be judicially implemented.

- Declaratory instruments are those not legally binding, creating rather moral and political obligations. This is the so-called 'Soft Law' (*lex ferenda*: Law in the making) that also goes under a variety of denominations: Declarations, Recommendations, Resolutions, Principles, Directives, Codes of Conduct, Frameworks for Action, Commentaries, Opinions, etc. mainly adopted within the framework of the United Nations and other Intergovernmental Organisations. Despite its name, Soft Law is not of minor importance. It frequently includes norms already having customary or conventional legal force, contributes to the emergence of new rights and paves the way for the adoption of instruments of a conventional nature.

The most striking example of the influence of a Soft Law instrument is the Universal Declaration of Human Rights – the mother of International Human Rights Law. There is virtually no instrument of International Human Rights Law not invoking it, notably those adopted by the UN General Assembly. In the opinion of many scholars, the principles and rights proclaimed by the Universal Declaration (or most of them) have become Customary International Law.

- **Terminology**

In the UN Charter (Preamble) and in the International Bill of Human Rights we find the expressions "fundamental rights", "fundamental human rights", "fundamental rights and freedoms", "human rights and fundamental freedoms", "human rights and freedoms", "rights and freedoms", "rights or freedoms". Other terms are 'civil rights' and *libertés publiques* (public liberties/freedoms). No significant conceptual distinction can be drawn between "rights" and "freedoms". Both terms appear together sometimes. For example: "Everyone shall have the right to freedom of thought, conscience and religion."

A distinction exists between *human rights* and *citizens' rights*. Although they are generally closely tied, they should be distinguished. In a Rule of Law, citizens' rights include universal human rights and other rights held only by nationals (especially political rights).

Although the Anglophone expression *human rights* has become the most common, the classic French expression *droits de l'homme* (Rights of Man) continues to circulate in the French-speaking world.

In constitutional texts, the most used expression is "fundamental/basic rights", consecrated by the 1919 German Constitution of Weimar, whose Part II, echoing the 1849 Frankfurt Constitution, was titled *Grundrechte und Grundpflichten der Deutschen* (Fundamental/basic rights and duties of Germans).

1.1.3 Structure and normative content of human rights

Human rights are the answer of International Community to this question: What do human beings need to live free "from fear and want", as reads the Preamble to the Universal Declaration of Human Rights?

The International Bill of Human Rights lists some 40 rights[14] which, according to the denominations of the 1966 International Covenants, fall into five categories (by alphabetical order): civil, cultural, economic, political, social. They aim at protecting the weakest against the strongest – especially States – as well as guaranteeing to everyone a minimum of autonomy and self-determination, for living a decent and meaningful life, i.e. by providing every human being with food, shelter, health care, etc., as well as conditions of participation in cultural, social and political life, thus generating feelings of self-worth and self-esteem.

Each right has a structure and normative content that answer the following main questions:

- Who holds the right (entitlement: right-holders)?
- To what is it a right (object)

- Who has the corresponding obligations (exigibility: duty-bearers)?

Holders of human rights are, by definition, "everyone", "every human being", "all persons", except when a legal instrument addresses a more vulnerable category of persons (women, for example).

Some rights have a collective dimension, when their exercise involves interaction with other people, as are typically the right of assembly and the right of association; and there are rights collectively recognised to minority communities (indigenous peoples, for example). In any case, collective rights should never be exercised to the detriment of individual rights.

Each right proclaims and protects a fundamental human value and lays down the interdictions and/or the actions/provisions it requires. It is its object. The normative specificity of each right is essentially determined by it.

The exigibility of a human right refers to those to which the right is opposable, that is, who bear obligations and responsibilities towards its fulfilment.

All rights are necessary for the "common standard of achievement" proclaimed by the Universal Declaration of Human Rights (last paragraph of the Preamble). Their interdependence was proclaimed by the International Covenants of 1966, in their common Preamble, and solemnly reaffirmed by the two major international conferences on human rights (Tehran, 1968, and Vienna, 1993). It is a principle and leitmotif of the texts adopted by the UN General Assembly.

1.1.4 Obligations concerning human rights

According to the Vienna Convention on the Law of Treaties (1969)[15], an international obligation of States is the recognition of the primacy of International Law over the national legal order (Article 27).

States – the authors and direct addressees of International Law – are the first human rights duty-bearers. All UN Member States have human rights obligations under its Charter. In addition, they have obligations under the treaties they ratify (an act formally binding to their application) and other relevant international norms they approve. Therefore, as the Committee on the Rights of the Child said in the Report of its 22nd Session (1999) (CRC/C/90, para. 269)[16]: "After the adoption of an international treaty, implementation faces two initial challenges: the translation of the international legal obligations enshrined in the Convention into domestic legal obligations, and the translation of domestic laws into reality by means of their day-to-day implementation."

States' human rights obligations are generally typified in the following trilogy: to respect, to protect, to fulfil.

- *To respect*

  States, including entities acting on their behalf, have an obligation to refrain from interfering with the enjoyment of human rights, at the vertical level of their relationship with people under their jurisdiction.

- *To protect*

  States have the obligation to set up mechanisms to prevent and to remedy human rights violations by public authorities or individuals and other private actors.

- *To fulfil*

  States have an obligation to enable persons to really enjoy their rights, whatever their social, economic or other condition.

These obligations are then "both negative and positive in nature", as the Human Rights Committee said (CCPR/C/21/Rev.1/Add. 13, 2004, para. 6)[17].

States may have extraterritorial obligations too. They "are a missing link in the universal human rights protection system", following the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (2011)[18], because without them "human rights cannot assume their proper role as the legal bases for regulating globalization and ensuring universal protection of all people and groups". According to Principle 8:

> For the purposes of these Principles, extraterritorial obligations encompass:
>
> a) 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
> b) 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.

Extraterritorial obligations arise, for instance, in situations where a State holds temporary control over populations in other territories, in the case of occupation or with an international mandate. They include its actions or omissions related to international cooperation, and as member of international organisations, as well as regulation and supervision of the activities in other countries of international non-State actors based in its territory, such as transnational corporations.

The Human Rights Committee said (CCPR/C/21/Rev.1/Add. 13, 2004, para. 6)[19] that no restriction on any rights in the Covenant may "be applied or invoked in a manner that would impair the essence of a Covenant right". The same said the Committee on Economic, Social and Cultural Rights (E/1991/23)[20]:

> 10. … the Committee is of the view that a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State Party. Thus, for example, a State party in which any significant number of individuals is deprived of essential foodstuffs, of essential primary health care, of basic