

Research impact: making a difference

Respecting, protecting and promoting human rights beyond national borders

LSE's Margot Salomon was part of a team that drafted the Maastricht Principles defining states' human rights obligations beyond their own borders

What was the problem?

International law gives to states certain 'extra-territorial' obligations, which relate to acts (or omissions) committed within or beyond their borders that affect the enjoyment of economic, social and cultural rights by people living outside the territories of those states.

Whereas the existence of the obligations themselves has been clearly established, determining the exact definition of the pertinent socio-economic rights is an ongoing process and has been only partially achieved. These human rights are defined as access to food, healthcare and an adequate standard of living, as well as access to education, decent working conditions, adequate housing and sanitation, social security and participation in cultural life.

While these human rights are found in many international and regional treaties that the majority of states have signed, the fulfilment of extra-territorial obligations in actual practice has been impeded by global structures that advance other interests, like trade or investment. And while it is clear that states have duties not to violate the human rights of people outside their borders, international law does not offer much detail so far on the positive obligations that states have to fulfil these human rights beyond their borders, on either an individual or collective basis.

What did we do?

In 2007, Associate Professor of Law Margot Salomon wrote one of the first monographs to consider the nature and scope of states' international human rights obligations in the context of world poverty. Her monograph noted that international law creates obligations that require states to cooperate internationally in order to provide an enabling environment for exercising said rights.

Soon after, a group of academics and non-governmental organisations met in Geneva and formed the Extraterritorial Obligations (ETO) Consortium. The ETO Consortium's aim was two-fold: to consolidate research on extraterritorial obligations and violations in the area of social and economic rights; and to draft principles that would clarify the content of states' extraterritorial obligations concerning protection and promotion of such rights, for adoption by the academic community and, hopefully, broader influence in the realms of law and practice.

In September 2009, before drafting commenced, Salomon addressed the ETO Consortium on the topic of global structural impediments and human rights at a conference held at Lancaster University. At that same conference she convened a working group on conceptual issues, which

Research impact: making a difference

was responsible for establishing terminology and the theoretical basis for the Principles. In 2010, she was appointed to the Drafting Committee tasked with preparing the principles themselves.

After some considerable work and a Consortium meeting in Brussels to work through some of the trickiest legal issues, in February 2011 the Drafting Committee met at LSE over a two-day period to produce the first mature draft. The University of Antwerp hosted a subsequent ETO Consortium conference in May, at which members of the Drafting Committee explained the decisions behind various provisions and received comments from the Consortium. Salomon presented the draft Principles on positive extraterritorial obligations – one of her areas of special expertise – and was the respondent for an extended working group session that considered these obligations in depth.

The principles were finalised and adopted by 40 human rights academics, UN experts and legal advisors to NGOs in September 2011 at a conference convened by Maastricht University in cooperation with the International Commission of Jurists, a non-governmental organisation that promotes international human rights law and standards. They became known as the Maastricht Principles.

'The contribution of Salomon was particularly important...In particular, section V of the Principles was in significant ways shaped by her thinking, research and writing in this area over the past years and we were able to rely on her knowledge and publications to help substantiate the Principles when it came time to draft the accompanying legal Commentary.'

**- Professor Olivier de Schutter,
UN Special Rapporteur on the
Right to Food and a Member of
the Maastricht Principles
Drafting Committee**

What happened?

Salomon's research expertise in the field of international human rights obligations relating to world poverty, and her close involvement in the drafting process itself gave her a strong voice in shaping the Maastricht Principles.

According to Professor Olivier de Schutter, then UN Special Rapporteur on the Right to Food and a member of the Drafting Committee, her early monograph was a "major source of inspiration" for Section V of the Principles, outlining the obligations of states to fulfil the rights of people within their territories and beyond.

One of the principles in which her direct influence can be seen is Principle 29 on the 'Obligation to create an international enabling environment'. This Principle drew almost exclusively on her research into the legal basis for establishing an international enabling environment in which

Research impact: making a difference

socio-economic rights can be realised. As her research had shown, global structural impediments to the exercise of socio-economic rights must be addressed through the collective action of the international community of states. Principle 31, entitled 'Capacity and Resources', can also be traced directly to Salomon's research addressing the issue of states' collective obligations. In accordance with her research, the Principle addresses the requirement that each state contributes 'separately and, where necessary, *jointly*'.

A key objective behind the drafting of the Maastricht Principles was to go beyond a mere restatement of existing law and present a forward-looking approach. Previously the development of the notion of extra-territorial human rights had been approached by courts and human rights experts in an ad hoc fashion. An explicit objective of the Drafting Committee was therefore to consolidate and influence the development of international law in this relatively new area. Even further, it aimed to influence the thinking and action of UN treaty bodies whose operations were critical in enforcing the enabling environment necessary for the exercise of extra-territorial human rights.

Within only one year of their completion, the Maastricht Principles were being actively referenced by, and incorporated into the work of, United Nations judicial, expert, and intergovernmental bodies. As Professor Schutter observed, "[the] Maastricht Principles are already becoming influential on the international scene ... They are frequently referred to by special procedures of the [UN] Human Rights Council in the communications they send to States".

The UN Committee on the Rights of the Child cited Principle 25 in its general comments – one of the means by which the Committee provides jurisprudence. This Principle dealt explicitly with the circumstances in which states are required to regulate business activities to prevent harms abroad. The Guiding Principles on Human Rights and Extreme Poverty, prepared by the responsible UN Special Rapporteur, echoed the wording of Section 5 of the Principles, and referred to the concept of an 'enabling environment'.

The Office of the High Commissioner for Human Rights referred to them in its analytical study on the relationship between human rights and the environment. In the controversial Chixoy Dam case in Guatemala, when villagers were massacred and communities forcibly displaced to make way for a new reservoir on the Rio Negro, parties to the subsequent pleadings before the Inter-American Commission on Human Rights used the Principles to elucidate their arguments.

Perhaps most importantly, several members of the UN treaty bodies signed the Maastricht Principles, indicating the likelihood that the Principles would be embedded into the formal work of their Committees and enshrined in everyday thinking and practice.

Dr Salomon continues her work on obligations beyond borders, most recently in the context of the impact of austerity – required by international lenders such as Eurozone states – on the exercise of basic socio-economic rights in Greece.

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Margot Salomon is Associate Professor in the Law Department and the Centre for the Study of Human Rights where she directs the multidisciplinary Laboratory for Advanced Research on the Global Economy (Lab). Her research focuses on a range of issues under the broad theme of global economic justice including, legal dimensions of world poverty; development and international law; and human rights and economic orthodoxy.

Dr Salomon has been a consultant to the Office of the UN High Commissioner for Human Rights on extreme poverty and human rights (2009) and the World Bank's Nordic Trust Fund on human rights and economics (2011); Advisor to the UN High-level Task Force on the Right to Development (2004-9); and a member of the International Law Association's Committee on the Rights of Indigenous Peoples (2008-2012). She is currently Vice-Chair of the Association of Human Rights Institutes and sits on the Editorial Board of the Edward Elgar Monograph Series on Studies in Human Rights. In 2015 she was invited by the Speaker of the Greek Parliament to provide legal advice on socio-economic rights and international conditionality.

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