

# Twelve reasons to strengthen extraterritorial human rights obligations



# ETO Consortium

The ETO Consortium is a member-led network, comprised by a large number of CSOs and academics interested in human rights promotion and protection.

Established in Geneva in 2007, the purpose of the ETO Consortium is to address the gaps in human rights protection that have opened up through the neglect of extraterritorial obligations (ETOs).

The ETO Consortium mainstreams and applies ETOs, using as its key terms of reference the present Maastricht Principles on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights. The Consortium is continuously working to advance ETOs in multiple contexts and on various occasions, for instance by virtue of international and regional conferences and capacity building, case-work, research and advocacy.

The ETO Consortium organizes its work in focal groups according to thematic issues and to geographical regions. In addition to the focal groups there is an academic support group, with a separate mandate to assist the focal groups and members. The ETO Consortium members use the Maastricht Principles in their day-to-day work, individually and in cooperation, with a view to seeking new avenues for addressing some of the most urgent problems related to the protection of economic, social and cultural rights.

The ETO Consortium is led by an elected Steering Committee with representatives of CSOs and academics from various regions of the world. The Consortium appoints one of its member CSOs to host the ETO Consortium Secretariat for a certain period of time.

CSOs and academics interested in cooperation or membership are invited to contact the ETO Consortium's Secretariat.

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## Preface

Human rights provide a much needed global legal tool, both for States and civil society, to work our way out of the current crises. A new understanding of States obligations is necessary, and a renewed commitment to human rights. In order to overcome a deep crisis of confidence and to remain or become legitimate, States have to rediscover the primacy of human rights. Moreover they have to throw overboard some legal and doctrinal misunderstandings that have helped to curtail the powers of human rights in the past – one of them the attempted reduction of States obligations to territory.

There are certainly more than twelve reasons to strengthen extraterritorial obligations (ETOs). There is also considerable urgency to do so now – in the middle of multiple crises. The ETO Consortium, a network of more than 80 CSOs and academics, has made this its task. The Consortium also deals – in another publication - with some of the mentioned misunderstandings surrounding ETOs.

Although published by the ETO Consortium, neither the choice of the 12 reasons nor the reasoning behind them reflect a position of the Consortium or any of its members. The responsibility is with the author. He tried to capture some of the discussions inside and outside the ETO Consortium.

The ETO Consortium deals with economic, social and cultural rights (ESCR) and uses the Maastricht Principles on States extraterritorial obligations in this area as its key term of reference. Just as the Maastricht Principles carry the spirit of indivisibility of human rights, so do the following 12 reasons. They are applicable to human rights in general and should be read in this sense.

Rolf Künnemann    Heidelberg, June 2013

## 1. The universality of human rights implies ETOs

Global communication has become so dense that there is a growing understanding of human beings as a global community - and of the universality of human rights as a fundamental part of human rights doctrine. This has profound consequences.

Universality of human rights means that human rights are not something restricted or limited. Moreover universality indicates that human rights are the same everywhere, for everyone, at any time. Human rights are essentially a claim to the enjoyment of “content” – be it freedom from torture, an adequate standard of living, etc.. As this claim is universal, not restricted or limited, it is made against all fellow human beings and their institutions. In particular the claim is not limited to the fellow human beings or institutions in a certain territory.

The claim turns other people or institutions into duty-bearers carrying obligations. One of these obligations is not to impair the content of the human right – i.e. not to torture, not to threaten or destroy people's adequate standard of living, etc.. The early pronouncements including the Universal Declaration of 1948 proclaimed human rights with a focus on their content without elaborating much on the duty-holders and their obligations. It was clear, however, already in documents of the 18th century that the purpose of governments is to secure the content of these human rights. In modern human rights terminology we would say that States have to protect human rights against third parties and to fulfil them, once the rights-holder failed to enjoy the content to which he or she has a claim.

Governments are thus instituted to protect and fulfil human rights. Claims under human rights being universal means they are in principle claims against all institutions, and hence against all governments. It is commonly understood that it is the person's home State that has to take – to the maximum of its available possibilities – the measures necessary to protect and fulfil the right in question. Whether these measures are sufficient to meet the claim that the right be protected or fulfilled is a contingent matter. For protect-obligations it depends on the degree of involvement of foreign actors and the needs for foreign States to get involved to protect the right. For fulfil-obligations it is entailed by the possibilities of foreign States

to close the gaps in national fulfilment systems. With international relations becoming increasingly dense over the past two decades, the needs for foreign States to get involved in order to protect of fulfil human rights has dramatically increased. This implies that the claims under a person's human right increasingly involve States besides their own. For these foreign States the implied obligations are extraterritorial obligations. Altogether universality implies claims that increasingly trigger extraterritorial obligations.

The impact of States' action or inaction abroad has increased dramatically with globalisation. This situation has increased the gap in human rights protection and fulfilment. The gap can only be closed on the basis of extraterritorial obligations. These obligations include in particular the obligation to cooperate internationally in protecting and fulfilling the universal human rights of the affected individuals and communities.

## **2. ETOs are necessary for a rights-based world order**

International law is fragmented. A well-structured international legal order is urgently necessary. The law on which such an international legal order will be based has to contain human rights. So much is clear already now – from the primacy of human rights. Human rights provide the basis for any legal system – and also for international law. These facts are still widely ignored. When human rights obligations are largely reduced to territorial obligations, this comes as no surprise: How should a legal relationship between a State and the persons and communities in its territory be in a position to provide a basis for international law?

The Universal Declaration contains a right to a “social and international order” in which human rights can be fully realized. There must then be a lot of international social orders in which human rights cannot be realized. The full realisation of rights – tantamount to the full and justiciable implementation of the related obligations – is something that needs a certain “order” beyond States and their borders (an international social order). There are two possibilities: Either the obligations themselves extend beyond borders and are hence extraterritorial. Or there are only territorial obligations and the international order consists mainly in the rules of international cooperation

among States helping each other to meet these obligations in their respective territories – without accepting protect- or fulfil obligations towards persons outside their territory. The question then remains whether in the second “reductionist” model human rights can be fully realized. The problem with cooperation between States (on behalf of human rights in either or both of them), is that individuals under territorial obligations only have a claim against their own State – and it is only their own State that can lay a claim against another State for cooperation. What if it doesn't? Hence this duty of a foreign state to cooperate is not justiciable for the rights-holder. In other words, human rights cannot be fully realized in this model of an “international social order”. Only if this duty to cooperate can be claimed in a court by a rights-holder can the right be considered fully realized as a human right. This, however, changes the nature of cooperation: Cooperation is now no longer merely an act between a foreign State and a person's home State, at best enforceable by the home State. It now has become an obligation of the foreign States towards a person, a rights-holder. In other words, it is an extraterritorial obligation. Hence the second model does not qualify. It has to be modified at least to include a certain type of ETOs, namely the extraterritorial obligations to cooperate. Once one has accepted this one has to ask oneself why one should stop short of accepting ETOs in general. In fact it is not possible to stop short here, because a foreign State may be in a position to ensure a person's human rights, even without cooperating with its home State (and without violating international law). Home States sometimes are not always best positioned to act, or even don't know. An international order, where a foreign State would not carry a duty to act in such a situation, is certainly not an order where human rights can be fully realized.

Altogether we have to conclude that a world order based on human rights needs the implementation of extraterritorial obligations. Allowing human rights to take their rightful place as basic international law therefore requires that extraterritorial obligations be strengthened and understood as integral part of all human rights work. In order to realize the fundamental, quasi-constitutional role of human rights in international law, and moving it from theory to practice, human rights must deal with the current challenges stemming from issues around international trade and investment law, international property law, environmental law, and international governance issues in fields such as food and nutrition, health etc.. That's what ETOs do.

### **3. ETOs are needed to re-introduce democracy as 'government of the people, by the people, and for the people'**

When the modern State under the rule of law established itself in the course of the past three centuries, the State was essentially a nation state – with or without colonies – based on a national economy. This has been so at least until the 1960s. Since then world trade and - since the 1990s - also world investment have exploded, with at least half of such trade taking place inside TNCs, and with investment protected against national policies by investment treaties. This by itself has posed enormous global governance problems. The situation was further exacerbated by examples of corporate capture exemplified by highly ideological Thatcherist and Reaganist policies trying to do away with governance interventions in general as soon as it may negatively affect the short term return on investment. This undermined governance nationally – and even more so internationally – and ultimately led the global financial system to the brink of collapse and world economy into depression, it prevented the control of ecodestruction and climate change, and led to massive retrogressive steps in the area of social rights in a number of countries.

In many countries people feel victimized – and indeed they are – by a type of “Wild West” development governed by the “law of the jungle”. They start doubting whether the related governance issues can be solved. They cultivate scepticism, if not cynicism about the rule of law, as they see the law making being captured by short term investor interests – even in States with democratic elections and respectable constitutions.

National democracy has to be defended or even re-introduced as “government of the people, by the people and for the people”. These approaches have difficulty to succeed on a national basis alone. For this matter, restructuring international governance is equally important: People need to regain control of their lives and of the global decision making that profoundly affects them and their children. Our understanding of human rights has to get updated and our vision of human rights law needs to get fit for this “task of the century”. States no longer must get away with ignoring their extraterritorial obligations. A spade must be called a spade. Human rights are meant to provide people with guidance when taking their lives in their hands and reform governance. By obliging States to provide regulation



vis-à-vis international markets, investments and the transnational corporate sector, ETOs prevent corporate rule and capture of governments, and facilitate the reinstatement of democracy.

#### **4. ETOs operationalize international cooperation**

Over the past decades, there has been an unfortunate tendency to confuse international cooperation with 'development aid'. International cooperation, of course, means any type of "working together among States". International cooperation in this sense is a key term in the UN Charter and is formulated as an extraterritorial obligation in both the protect- and fulfil-sections of the Maastricht ETO Principles. As the purpose of States is to ensure human rights, the purpose of international relations between States is international cooperation ensuring human rights.

The challenges posed for example by ecodestruction, climate change, unsustainable food systems, consumerism and growthmania, corporate rule, and the inequitable global distribution of wealth and income are essentially international in nature. Had these challenges been national, one would have expected the nation State to regulate and mitigate. In the absence of a world State, regulation and mitigation requires that States cooperate with a quality and intensity hitherto unseen. For this matter there is the need for a fresh look at the concept of international cooperation ensuring human rights. It should be clear that in the human rights context international cooperation is an extraterritorial obligation owed to human beings. This cooperation is of course between States, but it has a clearly defined purpose based on human rights. Rights-holders, therefore have a claim against a State (their own or foreign) that fails to cooperate in implementing their rights. In other words international cooperation is horizontal, while the duty to cooperate is diagonal. The right to remedy requires that individuals, victimized by a State's failure to cooperate in ensuring human rights, must have access to remedy in courts.

In general, cooperation between States is at the discretion of States. This is not the case for cooperation that is essential to the protection and fulfilment of human rights. The related duty to cooperate is grounded in the full spectrum of economic, social, cultural, civil, and political rights. Hence work

on each of these human rights needs to take the States' duty to cooperate into consideration. In this way the duty to cooperate will be increasingly spelled out – and made operational.

The duty to cooperate is an important extraterritorial obligation. It is closely linked to, and in fact implied by, the general extraterritorial obligations to protect and fulfil human rights. It should be kept in mind that the extraterritorial duty to cooperate does not exhaust extraterritorial obligations. There are situations where States have to protect or fulfil extraterritorially without cooperating with another State.

## **5. ETOs are necessary to ensure accountability for human rights violations**

Human rights violations are breaches of obligations under human rights. For States these breaches mean failures to respect, protect or fulfil human rights. Accountability for human rights violations requires a clear understanding of those obligations. Ignoring extraterritorial obligations implies ignoring the breaches of such obligations - and hence of extraterritorial violations of human rights. The first that human rights defenders usually learn is “recognizing a violation when you see it”. Without ETOs a blind eye is turned on extraterritorial violations. And the impression is created as if the human rights of persons abroad could only be violated by their own State.

The absence of ETOs would imply a general accountability gap for those foreign or transnational actors that impair human rights. Their victims would not have access to remedy. In addition the problem is magnified by a multiplier effect in the sense that where there is no accountability, there are also no solutions provided for systemic violations and the denial of enabling environments. This prompts impairments to continue and more people to suffer from them.

Without ETOs, States other than the victims' State could only base their regulatory measures towards the respective abuses by transnational corporations on a duty owed to the victims' State to cooperate in the realisation of human rights. If the victims' State failed to take the corporation to account, the victims would have no possibility to address other States who

may have considerable influence on or control over the corporation. And even if the victims took the corporation to court in their State, the involvement of say the corporate head quarters or other essential parts of the corporation in the abuse could not fully enter into the case, unless the home State cooperated voluntarily. This amounts to yet another accountability gap.

Once a victims' State passed judgment against a transnational corporation implying payment of compensation for the victims of abuses, the State may have difficulties enforcing the payment, unless the corporation has sufficient assets in this State. This would imply impunity and de facto lack of accountability of the corporation – unless another State – where the transnational corporation has substantive assets – comes to the rescue of the victims and seizes the respective assets, as required by the extraterritorial protect-obligation. The protect-obligation is applicable in such a situation according to Maastricht Principle 25c.

## **6. ETOs respect and protect human rights of future generations globally**

Economic globalisation has made evident and enhanced the interdependence between the people on Earth. Ecodestruction and climate change are essentially phenomena that cannot be contained by borders. They affect everybody – if not now, then in future.

The governing generations in a State may be tempted to “export” the ecologically destructive potential in order to avoid an adaptation of its industries and life styles and the related cost. By doing so it continues to permit the destructive activities in its territory to be prolonged - with international and hence global affects for the lives of future generations primarily abroad. Such a State jeopardizes future generations abroad instead of squarely addressing the issue.

Without ETOs, a State could argue for example that it has to export hazardous waste under its protect obligation towards the future generations in its territory. The effects on future generations abroad – or globally – could be construed as irrelevant to this State under human

rights. The result for future generations globally would be a shifting of damage from one State to others – instead of the avoidance of damage as required by the universality of human rights and the prohibition to discriminate according to generation. Pushing a damage or risk of damage on future generations abroad is outlawed by ETOs. Without such principles future generations cannot be effectively protected, because the States of the future victims (and their guardians) often only have a very limited direct impact on the destructive activities abroad – unless supported by the appropriate structures of human rights law.

The impairment of future generations' economic and social rights is a global phenomenon that needs a new understanding of nature and humanity to be overcome. First of all the discrimination of future generations' human rights has to stop. These rights are currently impaired either by negligence or in the vague hope that by some technical miracle these generations can pull themselves out of the predicament prepared by the current exhaustion of natural resources, climate destruction and ecodestruction. Such attitude fails to exercise due diligence for the future of humankind. Moreover States' attempts to keep the future consequences outside their own borders overlook the global nature of these consequences, and prevent international cooperation to stop the “race to the abyss”. International cooperation to stop the impairment of future generations' human rights is not at the discretion of States, but an extraterritorial and territorial obligation flowing from the universality of human rights.

## **7. ETOs put an end to the 'race to the bottom'**

The “race to the bottom” refers to the tendency of States to lower their social and environmental standards in order to increase profits for foreign direct investors – and thereby attract investment. This lowering of standards can go to the extent – the “bottom” - of States breaching their obligations under ESCR. The race to the bottom is a consequence of States promoting or upholding unregulated international investment. States are under an obligation to regulate investors by putting human rights conditionalities on their investments and by regulating international financial markets. Moreover they should (individually and jointly) reduce the importance of private sector foreign direct investment for States - and they should increase

instead international economic and financial cooperation. A straightforward way of doing so is to introduce an international transaction tax with the revenue flowing into international economic cooperation.

Failing to do so ultimately coerces or entices States, participating in the race to the bottom, to breach their territorial obligations under ESCR. Home States to investors may uphold ESCR for people in their own territory. Under ETOs such States – and any other States where investors have substantial activities – have protect obligations towards persons in race-to-the-bottom-States. These “investor States” must not shrug their shoulders to foreign States bending over backwards in order to please investors operating in the investor States. Whether investor State or not, under unregulated international financial markets each State ultimately runs the risk of becoming a race-to-the-bottom State. In order to make those markets – and investors – safe for ESCR, rules need to be introduced that make it internationally illegal for investors to benefit from breaches of ESCR in any territory. Such regulation is most naturally based on ETOs including the ETO to cooperate internationally.

States may sometimes hesitate to embrace ETOs because they see them as a burden limiting their room for manoeuvre. The reverse, however, is true. ETOs allow States to assert their regulatory powers, escape the vagaries of global markets and the powers of investors. States that may now be threatened by a race to the bottom or by undue influence of vested investors' interests will regain their sovereignty in safeguarding ESCR.

In fact, ETOs require something like a race to the top. Under ESCR investment is not an end in itself, but serves the function to achieve – as quickly as possible – the full realisation of human rights. States therefore have to regulate investment (separately and jointly) accordingly. Investment in States where it can strengthen the full realisation of human rights needs to be privileged. ETOs require international structural policies of this nature, comparable to the national structural policies required under territorial ESCR-obligations. Under such policies, international cooperation and direct investment will favour States that are in the process of strengthening their social and environmental standards – the “race to the top”.

## **8. ETOs provide rules for global social policies**

ETOs not only provide rules for global structural policies as mentioned in the previous section. They also regulate global social policies – and even bring about this very notion. Rights-based national social policies, as in modern welfare States, require an understanding that all persons in the State's territory have certain social rights that must be ensured by the State and that the State therefore carries the entailed obligations in social policies. ETOs and the universality of human rights, however, widen the social space beyond territorial borders and introduce the obligation to engage in global social policies.

Global social policies offer a perspective different from development assistance. Oftentimes, 'development assistance' is being governed by exports promotion, provision of raw materials and other geopolitical concerns of “donor” States, rather than by a genuine and qualified cooperation to guarantee the human rights of the often extremely poor people in the “recipient” countries.

In response, ETOs define the room for manoeuvre of States when it comes to global social policies and international assistance. First of all assistance is owed to recipient persons not to “recipient States”. The State of the recipient person still continues to be the primary duty-holder. Global social policies require States to cooperate with this State - and among each other. (The lack of coordination and cooperation among “donor States” is one of the recurrent themes of aid effectiveness conferences). The Maastricht Principles go to great length in explaining the duty to cooperate and the principles and priorities that have to govern this cooperation.

## **9. ETOs put a check on increased global inequity**

ETOs imply global structural and social policies. They establish the legal foundations for a global sharing economy. Sharing extends beyond the distribution of income to the distribution of natural and productive resources. Both elements are necessary to put a check on increasing global inequity.

Global income inequality has further grown over the past two decades. It is now ten Gini points above the inequality in the most unequal States. Progressive taxation combined with social policies has managed to reduce national inequality in most welfare states by as much as twenty Gini points. Similar global measures such as transaction taxes and global social policies will have the same effect: Taxing international financial transactions (as mentioned in reason 7) is progressive global taxation, as low income groups are not involved in such transactions. And global social policies are in fact required by ETOs.

Moreover, redistribution of income has to be complemented by redistributing the control over productive resources. Over the past two decades the control over such resources has increasingly been concentrated in the hands of financial institutions and profiteering investors to the detriment of public ownership or owner-operator control. Global taxation and global social policies cannot fully remedy such concentration processes leading to extreme private wealth and the undermining of public institutions. No standard of living can ever be considered “adequate” as long as long as such inequities are generated. Adequate living standards are a human right. Settling for a living standard as adequate, however, is needed to introduce the notion of sufficiency necessary to safeguard the living standards of future generations.

As noted above, depletion of resources, ecodestruction and climate change threaten the ESCR of future generations. They are linked to a notion of “adequacy” for living standards that cannot be sustainably generalized: Living standards that are ecologically unsustainable must not be allowed to set the standards of “adequacy”. Extreme wealth creates not only undue political influence contrary to the human right to participate in national and global policy making and to the related extraterritorial obligations. It also creates “inflationary pressures” on what is considered adequate in terms of living standards. Such pressures are an impediment to the culture of sufficiency needed to safeguard future generations' human rights and have to be avoided.

## 10. ETOs help to regulate TNCs

A State has a legal obligation to protect human rights abroad against abuses by third parties in situations for which there is a basis for protection. This obligation has been exercised for example in the context of sex tourism and child abuse, by home States of tourists involved in such abuses. This prosecution by the home State – in addition to or in place of the home State of the victims – was not a matter of much discussion.

Not only human beings have a nationality, so do business enterprises in a certain sense: Home States to a TNC are States where the TNC is registered and/or headquartered and host States are other States where the TNCs operate. Often the victims of corporate human rights abuses can be found in the latter category of States.

The increasing power of global non-State actors – in particular transnational companies – prompts a call for tools to support States in regulating such transnational third parties so as to protect human rights abroad. TNCs have various ways to move their assets and activities internationally that can make it difficult for an individual State to regulate them. Some States may even be dependent on TNCs in various ways. In those States even territorial regulation of companies could be a problem. Other States have possibilities to act efficiently on TNCs, because those depend on them in one way or the other. This dependency need not be legal (where home States could withdraw the licence of a corporation), or administrative (where a State is in a position to search the TNC's offices / headquarters), it can also be economic (seizing the assets of a corporation). Corporations try to legally shield themselves against such dependencies – by spending on political lobby and by enticing various States (their home States, but others as well) to tie the host States' hands through “investment treaties”. Even though these treaties tend to include some “escape clauses” to make them in theory compatible with a State's human rights obligations, for most practical purposes such clauses are not effective for the protection of human rights.

The Maastricht ETO Principles are very clear on a State's duty to regulate TNCs, and also on the situations, where such duty extends to the protection of human rights abroad. The Maastricht Principles indicate also the measures that States must – or must not – take.



ETOs imply that such regulation essentially is a matter of cooperation among States, and that in particular those States, where the business enterprise has substantial business activities, carry major obligations, even if the victims of the third parties' activities happen to live elsewhere. This cooperation (with another State) is not owed to the State, but to the victim, and hence is an ETO.

In their action States must take it for granted that the victim's State acts in line with its obligations, wants to see its subjects protected and is open to cooperation to this effect, even if this de facto may not be the case: If the foreign State can take protective action (within the limits provided by the Principles) and fails to do so, it breaches its extraterritorial human rights obligations.

These separate and joint extraterritorial obligations provide a basis for regulating rights-based cooperation internationally. The regulation of TNCs and its affiliates is a duty that does not fall on home States and the States of the victims alone, but is incumbent on all States that can have an impact on the TNC. In a globalisation context this can be a considerable number of States. Unless these States come to a joint agreement on regulation, they can easily be played against each other by major TNCs. ETOs naturally include global obligations to cooperate in order to realize global protection against abuses by TNCs.

## **11. ETOs provide for the accountability of Intergovernmental Organisations**

The human rights obligations of Intergovernmental Organisations (IGOs) provide the basis for the accountability of these organisations. There has been some controversy whether and to what extent IGOs carry such obligations. Some organisations such as the World Bank continue denying to be bound by human rights obligations. Altogether Intergovernmental Organisations contribute to the human rights protection gap by disregarding human rights concerns in their decision-making. This has great negative impacts.

The denial of some IGOs to be bound by human rights obligations is an untenable position. The question whether any individual or entity carries human rights obligations and what they are is a field for careful consideration.

IGOs, however are not any kind of entity. Intergovernmental organisations are entities created and governed by States, such as all other governmental organisations. While it is true that IGOs are created not by one, but by several States, this does not make an essential difference. The fact that a State is bound by certain human rights obligations (more or less well-described and remedied) has obvious implications to national governmental organisation, as organisations through which the respective government/State acts. And hence acts and omissions of this organisation can be ascribed to the respective State. IGOs are entities through which the States act that created them, maintain them and/or govern them. The implications for the IGOs are as profound as the implications of national human rights law for national governmental organisations, such as the police, public administration etc.. IGOs have to act consistently with the substantive human rights obligations of their governing States or at least with the obligations of the majority of States' votes in their governing body, as this is what determines their policies. IGOs must not start from the assumption that their governing States may want to breach their obligations, just as national authorities cannot get away with such assumptions for their respective governing States.

To most States that govern IGOs the effect of IGO conduct is extraterritorial. This includes situations where IGOs actions or omissions have global consequences. (Obligations of a global nature are included in the notion of ETOs). As the key question is not whether or not IGOs are bound by human rights, but what their substantive obligations are, States extraterritorial obligations are essential. In fact, IGOs have to act consistently with the ETOs of their governing States – and this of course is a human rights obligation.

What about remedy? The right to remedy provides that a State should be actionable for its breaches of ETOs. If this is so, this State's national authorities responsible for the respective breaches of ETOs can be held accountable by - or on behalf of - the victims. The State has to create the respective procedures and mechanisms for doing so. Similarly for IGOs acting inconsistently with their governing States' ETOs, the governing States have to create the respective procedures and mechanisms to hold this IGO accountable. If this procedural obligation did not exist, States

could evade the right to remedy against breaches of specific ETOs by transferring the respective powers from national authorities to IGOs. This, in fact, is happening in the context of globalisation and is undermining the implementation of human rights, unless countermeasures are taken along ETOs.

Ultimately the right to remedy may have to be exercised against the community of governing States in an IGO. In national law it is not useful to have recourse in each administrative matter violating rights to the State itself – at least not as a first step. There is no reason to expect that this procedural experience with national governmental organisations can be ignored with international governmental organisations. There must first of all be a possibility to seek legal remedy at the level where the breach occurred, before having to seek remedy from the governing States. For this matter the accountability of IGOs towards victims of their conduct is implied by the ETOs of States and the substantive obligations in the human rights treaties between States can be carried over directly to IGOs. The strict application of ETOs in this sense will finally turn IGOs into effective vehicles for the full realisation of human rights.

## **12. ETOs foster caring and sharing economies worldwide**

Under the protect obligation, States have to protect people against business practices and economic models that abuse their human rights. It is hard for States to implement this obligation in economies that produce and reproduce human rights abuses – and at a time where economies extend beyond territory. For this matter States have to foster economies that care about people – caring economies. Under the fulfill obligation, States have to make sure that people who are not in enjoyment of economic, social or cultural rights, are provided the respective content as soon as possible. This is not possible without constant sharing of resources and income from resources. States have to institutionalize the sharing and make it obligatory. Social programs in particular are not to be based on the States taking out loans, but on a redistribution of resources and income. States must therefore foster sharing economies in order to meet their fulfill-obligations.

We live in world of interlinked and interdependent economies, often

extending beyond borders. Sharing and caring therefore have to be institutionalized to include people outside one's own territory. This duty is reflected in extraterritorial obligations. Extraterritorial obligations are obligations that go beyond borders. They are, however, not obligations without borders. On the contrary: Reference is made to territories. The nation States remain the ultimate duty-holders - controllable and controlled by the people in their territory, and based on a national economy that allows for food sovereignty and similar elements of self-determination. Moreover the specifics of the ET protect- and fulfill-obligations make reference to territory.

Under ETOs States no longer have to institutionalize caring and sharing only inside their territories, but also beyond their borders. They are not permitted to look only after the interests of people inside their territories, or to put these interests on top of foreign people's human rights. The community of States is responsible in principle for everybody's welfare – at least at a level defined by ETOs. Implementing ETOs will therefore move us towards caring and sharing economies worldwide.