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Extraterritorial human rights obligations and sovereign debt

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Introduction

Today, sovereign financing is central to the realisation of human rights. States need to raise and allocate resources 'to create, implement and sustain the network of institutions (such as courts, legislative bodies, national human rights institutions), policies and programmes (such as general plans of basic education or training programmes for security forces), services (free legal aid, primary health care), infrastructure (appropriate detention facilities, schools, recreational spaces), personnel (administrative and technical staff), procedure and systems (fair trials, birth registration, immunization against infectious diseases), etc., that are necessary to fulfil the[ir] broad range of human rights obligations' (Office of the United Nations High Commissioner for Human Rights (OHCHR) 2017, p. 18). Furthermore, governments across the world appear under increasing pressures to step in and level off – often by recourse to public resources – the structural imbalances and recurring manifold crises of financialised global capitalism. Especially since the 1970s, however, sovereign financing has evolved into a predominantly debt- and market-based practice, with an evident transnational dimension (Megliani in Bantekas et al. 2018; Frieda in Lastra et al. 2014). States (nowadays, also many advanced economies) increasingly rely on debt, global financial markets and international institutions to fund their sovereign functions, including the realisation of human rights, a trend that has been worryingly intensified by the COVID-19 pandemic (United Nations General Assembly (UNGA) 2020; International Monetary Fund (IMF) 2020; Scali 2020), and which ultimately points to a form of 'public poverty' linked, among other things, to the growing privatisation of global wealth (United Nations Human Rights council (HRC) 2020, paras. 14–15; IMF 2018; HRC 2016a). In such interconnected scenery, economic, monetary and fiscal decisions – increasingly governed by supranational legal regimes (Lastra 2015) – and their human rights consequences, naturally transcend territorial boundaries, eliciting consideration of the relevance for the sovereign financing-related conduct of state and non-state actors of extraterritorial human rights obligations (hereinafter, ETOs). Since their notion is more thoroughly discussed by Gibney at the outset of this volume, it seems sufficient to recall here that ETOs identify the human rights obligations owed by states to individuals located outside their territory (the latter comprising land, sea and airspace, as defined by borders), or on territory not subject to any particular state; and they can arise in relation to: *a)* extraterritorial

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conduct, or *b)* territorial conduct with extraterritorial human rights effects – i.e., an act/omission performed either directly outside or inside a state's territory, but which has implications for the human rights of individuals located outside it.

After briefly introducing sovereign debt as a human rights issue and the relevant international law (Section 2), this chapter will review the notion of ETOs, its reliance on the (unsettled) concept of jurisdiction and the main jurisdictional models so far developed by monitoring bodies (Section 3), before discussing their applicability, and some of the possible limitations, in relation to sovereign debt (Section 4).

Sovereign debt, human rights and international law

Sovereign debt identifies the sum of the existing (contractual and non-contractual) obligations (including, but not limited, to financial obligations) owed by a state (and by all entities for whose debts the state is ultimately responsible) to one or more (in the case of multilateral lending) creditor(s). The latter include other states and public institutions (e.g., central banks), international financial institutions (e.g., the IMF or the World Bank), as well as private financial institutions and bondholders (e.g., commercial or investment banks, insurance companies, pension or hedge funds and retail investors). Sovereign debt instruments vary greatly in their nature and governing law (HRC 2012; Paulus 2014). However, especially since the Latin American debt crisis of the 1980s (which marked a steep decline in syndicated lending) sovereign bonds have resumed as a major global source of sovereign financing. Although, as it has been noted, every financing method presents its own specific risks, '[t]he speculative nature of short-term bond investment, backed by technological advances, subjects many […] countries to the risk of arbitrary and irrational choices by a multitude of different investors', and 'may involve submitting the sovereignty of a country to the forces of private financial speculation' (Megliani in Bantekas et al. 2018, pp. 78–79; see also IMF 2002).

However, as recently reaffirmed, among others, also by the Independent Expert on the effects of foreign debt and other related international financial obligations of states on the full enjoyment of all human rights, particularly economic, social and cultural rights (hereinafter, Independent Expert on debt and human rights), debt is not 'per se a human rights problem, even less a violation' (HRC 2020, para. 20), but 'depending on a variety of factors, such as responsible lending and borrowing, the loan terms and conditions, prudent use of loans and proper debt management, debt financing can contribute to countries' economic development and the establishment of conditions for the realization of human rights' (HRC 2011, p. 3). However, unsustainable debt burdens (on definitions of sustainability that also take human rights obligations into account, see HRC 2018b, p. 13; HRC 2012, p. 18) and the costs associated with their servicing, can reduce the number of resources available, especially to poorer countries, for the realisation of human rights (Lumina in Bantekas et al. 2018), hinder the achievement of development goals, and pose a more general threat to economic, social and political stability and to democratic regimes. Recent debt trends are particularly alarming in this regard. As noted by the Independent Expert on debt and human rights in relation to the effects of the COVID-19 pandemic on the debt situation of developing countries, 'since the 1990s, and especially since the 2008 global financial crisis, some countries, including low-income countries […] have shifted to riskier debt, […] [they] have to accept increasing debt payment burden, thus less fiscal space, and exposing themselves more to external shocks like exchange rate and interest rate volatilities. […] Moreover, external debt with short terms to maturity has been on the rise since 2010, […] a very dangerous trend, resulting in greater vulnerability to rollover and solvency risk and thus potentially affecting resources available for the progressive realization of economic, social and cultural rights' (HRC 2020, pp. 8–9).

In addition to excessive debt levels, the harmful consequences on a wide range of human rights and on specific individuals and groups (OHCHR 2013) of the (neoliberal) policy conditions generally attached to loans, emergency assistance and debt relief – typically including: *a)* fiscal measures directed at reducing public (above all social) expenditure; *b)* (often regressive) structural reforms of labour markets, the public administration and the pension, social security, healthcare and education systems; and *c)* the privatisation of public assets (CoE Commissioner for Human Rights 2013) – have been extensively documented (e.g., HRC 2019; HRC 2018a; Tamamović 2015; Ortiz et al. 2015) and conceded by the IMF itself (Ostry et al. 2016; IMF 2013). Remarkably, the Independent Expert on debt and human rights has recently upheld that 'given the direct causal link between austerity and human rights violations, the latter being foreseeable consequences of the former', there is 'a solid legal basis to make the case for a prima facie inconsistency between the imposition of austerity policies in times of recession and the enjoyment of human rights' (HRC 2019, paras. 75 and 79).

As is well known, sovereign financing and debt remain largely unregulated under international law (Esposito et al. 2013). Especially since the wave of debt crises set in motion by the 2008 global financial crisis, however, various UN agencies, special procedure mandate holders and treaty monitoring bodies have attempted to fill this normative gap by extrapolating 'guiding principles' from existing international human rights law (hereinafter, IHRL) to direct and assess lending, borrowing and state budgeting practices against international human rights obligations (with the disputed expression 'IHRL' I refer, for the present purposes, to the core UN international human rights instruments and their protocols, as well as the European Convention on Human Rights/ECHR, the American Convention on Human Rights/ACHR and the African Charter on Human and Peoples' Rights/ACHPR). Besides the guidance provided in specific statements or General Comments (GC) – e.g., the Committee on the Rights of the Child (CRC) 2016 GC 19 on budgeting for children's rights, or the Committee on Economic Social and Cultural Rights (CESCR) 2016 statement on public debt and 2012 Letter on austerity measures – these attempts have resulted in the elaboration of the UN Guiding Principles on foreign debt and human rights (2011), the UNCTAD Principles on responsible sovereign borrowing and lending (2012), the Basic Principles on sovereign restructuring processes (2015) and the Guiding Principles on human rights impact assessments of economic reforms (2018b). Among other things, these reaffirm that states have the obligations to respect, protect and fulfil human rights whenever they act, individually or collectively, including as members of international organisations. This entails that they are obliged, at all times and also at times of economic crisis, to adopt economic policies and manage their fiscal affairs – including 'any and all of their activities concerning their lending and borrowing decisions [and] those of international or national public or private institutions to which they belong or in which they have an interest' (HRC 2012, pp. 11–12) – to ensure that these respect, protect and fulfil all human rights without discrimination (HRC 2018b, Principles 3 and 6–8). As more extensively maintained by the CESCR in its 2016 Statement on public debt, states retain their human rights obligations also when making decisions in their capacity as members of international financial institutions. Thus, they would be 'acting in violation of their obligations if they were to delegate powers to IMF or to other agencies and allowed such powers to be exercised without ensuring that they do not infringe on human rights', or 'if they were to exercise their voting rights within such agencies without taking human rights into account' (para. 9). Nor would states be absolved of their international responsibility were they, in that capacity, to act in full accordance with the rules of the organisation (Art. 58(2) of the 2011 Draft articles on the responsibility of international organisations).

With regard to both public and private creditors, the principles (in a rather summary way) affirm that they have an obligation to respect human rights (HRC 2012, p. 12), and consequently 'should ensure that the terms of their transactions and […] proposals for reform policies and conditionalities for financial support do not undermine the borrower […] state's ability to respect, protect and fulfil its human rights obligations' (HRC 2018b, Principles 15–16). In particular, since they 'share responsibility' with debtors for sovereign debt burdens and for preventing and resolving unsustainable debt situations (HRC 2018b, para. 12.9; HRC 2012, p. 14), creditors have an obligation to perform due diligence on the creditworthiness of the borrower, and to make sure that the loan will be used for a public purpose; that it will not increase the borrower's external debt stock to an unsustainable level; that it will not finance activities/projects that (would foreseeably) violate human rights in the borrower state (HRC 2012, pp. 14–15). To this aim, creditors (and debtors) are under an obligation to conduct an independent, credible, participatory and transparent human rights impact assessment (HRC 2018b, Principles 3 and 15; HRC 2012, pp. 15–16). Furthermore, they 'should not exert undue influence on other [debtor] states so that [these remain] able to [… use] their policy space in accordance with their human rights obligations'. Nor should they 'compel borrowing/receiving states to compromise satisfying their international human rights obligations' (HRC 2018b, Principles 14–15; HRC 2012, p. 19).

With regard to ETOs (only tangentially addressed) the principles assert, without expounding on the details, that '[b]ilateral lenders [i.e. creditor states] and other public donors, including Government-guaranteed financial institutions or private institutions extending loans with government guarantees have extraterritorial human rights obligations governing their decisions in the context of economic reform measures of the concerned [debtor] states' (HRC 2018b, para. 15.4). They also affirm that, as part of their duty of international assistance and cooperation (ICESCR, art. 1(2); CESCR 1990, para. 14; see more extensively Chenwi in this volume), 'states have an obligation to respect and to protect the enjoyment of human rights of people outside their borders', which 'involves avoiding conduct that would foreseeably impair the enjoyment of human rights by persons living beyond their borders' (HRC 2018b, Principle 13) and ensuring 'that their activities, and those of their residents and corporations, do not violate the human rights of people abroad' (HRC 2012, p. 13).

As these instruments explicitly admit, they do not aim to create new international rights and obligations, but rather to identify existing IHRL standards applicable to sovereign debt and related policies (HRC 2012) and, importantly, to persuade and influence states and other subjects to carry out their borrowing/lending activities in accordance with their human rights obligations. Perhaps also because of their non-legally binding (nonetheless, authoritative) nature (it is debated whether especially some of the UNCTAD Principles reflect customary international law, Esposito et al. 2013), these instruments appear to make at times broad statements, not fully substantiated by existing practice, although they do so with legitimate and laudable promotional intents. Unfortunately, they have so far received rather limited attention by states and (especially judicial) monitoring bodies (Bradlow 2016).

Extraterritorial human rights obligations

From a legal perspective, the existence and scope of ETOs are essentially a matter of interpretation of existing IHRL (Milanovic 2011). In this regard, reference to territoriality for delimiting the applicability of IHRL is to an extent a 'misnomer' (ibid., p. 61), since both in the text of most human rights treaties (e.g., ICCPR, art. 2(1); CRC, art. 2(1); ECHR, art. 1; and ACHR, art. 1(1)) and in the interpretative practice (including its more 'progressive' instances) of (especially

judicial) monitoring bodies (see also Pribytkova, and Burbano Herrera and Haeck in this volume), the scope of IHRL obligations is decoupled from formal title over territory alone, and premised on states' exercise of *jurisdiction*. I will call this 'IHRL jurisdiction' to differentiate it from the notion of jurisdiction more generally existing in public international law or 'PIL jurisdiction', which identifies the authority of each state, based in and limited by international law, to prescribe, adjudicate and enforce its own domestic law in respect of natural and legal persons, property or events located within or, exceptionally – generally, in the presence of some personal or functional connecting factor – outside its territory (on such distinction, see i.a. Milanovic 2011; den Heijer et al. in Langford 2012). A reference to the notion of IHRL jurisdiction is also contained in the *Maastricht Principles* on the Extraterritorial Obligations of states in the area of Economic, Social and Cultural Rights (2011, Principle 9). The *exercise of IHRL jurisdiction by a state* represents a 'threshold criterion' and 'necessary condition' (European Court of Human Rights (ECtHR) 2011, para. 130; IACtHR 2017, para. 72) for that state to have human rights obligations towards individuals outside (and ultimately also inside, e.g., ECtHR 2004, para. 312) its territory, and thus to incur potential responsibility for any conduct attributable to it which violates an IHRL norm. In other words, states have ETOs whenever they exercise extraterritorially their IHRL jurisdiction.

As of today, monitoring bodies have acknowledged the extraterritorial exercise of IHRL jurisdiction in:

1 Cases where *a state exercises, lawfully or unlawfully, its PIL jurisdiction (as legal authority, through the exercise of legislative/judicial/enforcement powers) or PIL jurisdiction on behalf of another state, over persons, property or events located outside its territorial boundaries, with or without necessarily exercising effective physical control over an area or over individuals* ('*de jure* control' or 'public powers' model). In effect, there seems to be a presumption, at least in part of the jurisprudence of the ECtHR and the CCPR – dealing with state conduct that Milanovic (2011) broadly termed 'extraterritorial law enforcement', such as in absentia trials of a person located in another country (ECtHR 2006), extraterritorial trials by courts of one state sitting in another (ECtHR 2006a), the issuance of passports by consular authorities (CCPR 1990), or rescue/police operations on the high seas (ECtHR 2012) – as well as in a very recent judgment of the German Constitutional Court (2020, but see, *contra*, e.g., UK Investigatory Powers Tribunal 2016) that when a state is lawfully/unlawfully exercising extraterritorially elements of its governmental authority, its IHRL jurisdiction is also triggered, so that that state is under an obligation to secure all the relevant rights to the specific individuals involved by such exercise. With regard to the ECtHR in particular, this jurisdictional model can be deemed to cover also the scenarios of 'state agent authority' *sub* para. 134 a) and b) in *Al-Skeini* (ECtHR 2011; these cases amount, in effect, to exercises of PIL enforcement jurisdiction) and, more recently, it has been quite loosely applied to assert states' extraterritorial IHRL jurisdiction with regard to procedural obligations under Article 2 ECtHR (ECtHR 2014 and 2015).
2 Cases where a state exercises, lawfully or unlawfully, directly (e.g., through its armed forces) or through a subordinate local administration, *de facto* effective overall control of an area outside its own territory ('spatial' model, generally applied in cases of military occupation/interventions on a foreign territory) (i.a. ECtHR 1996 and 2001a; CCPR 1998; CESCR 1998; CAT 2004; CRC 2002; ICJ 2004 and 2005). The threshold of 'overall control' required by the courts has generally been high, demanding some physical presence (not always consistently defined and of varied duration) of the controlling state over the area in question. However, in more recent case law, the ECtHR has submitted that, besides having 'primarily

[…] reference to the strength of the state's military presence in the area', '[i]n determining whether effective control exists, […] [o]ther indicators may also be relevant, such as the extent to which [a state's] military, economic and political support for the local subordinate administration provides it with influence and control over the region' (ECtHR 2011, para. 139) (so called 'decisive influence' test, see ECtHR 2004; ICJ 2007; Bantekas et al. 2020).

3 Cases where a state exercises, through its agents, physical control and authority over persons located outside its territorial boundaries ('personal' model, generally applied to instances of extraterritorial arrest, detention, abduction and extradition; see also ECtHR 2008 with regard to the possibility that the acquiescence/connivance of state authorities in the acts of private individuals may engage a contracting state's responsibility under the personal model). As the ECtHR has clarified, '[w]hat is decisive in such cases is the exercise of physical power and control over the person in question', not solely 'over the buildings, aircraft or ship in which the individuals were held' (ECtHR 2011, para. 136). Direct physical contact is not always necessary, as long as control is indeed effective ('contactless control' test, ECtHR 2009; Moreno-Lax 2020). The personal model has been endorsed also by the CCPR (e.g., 2004) and the IACmHR (e.g., 2012).

4 Cases where state conduct, or conduct originating or taking place in whole or in part in a state's territory and over which that state has control, has direct and reasonably foreseeable extraterritorial effects on the human rights of individuals outside its territory ('cause-and-effect' model). This broader (and not uncontested) jurisdictional model has been recently affirmed by the CCPR (2019, para. 63: 'a State party has an obligation to respect and ensure the rights under article 6 [ICCPR] of […] all persons over whose enjoyment of the right to life it exercises power or effective control. This includes persons located outside any territory effectively controlled by the State whose right to life is nonetheless affected by its military or other activities in a direct and reasonably foreseeable manner'; but see the comments of the US, Canada, France, Germany, Austria, Norway and the Netherlands to this GC's draft version. More recently, see also CCPR 2020). It has also been affirmed – importantly, this being a judicial body – by the IACtHR (2017, para. 104(h): 'when transboundary harm or damage occurs, a person is under the jurisdiction of the State of origin [of such harm], if there is a causal link between the action that occurred within its territory and the negative impact on the human rights of persons outside its territory. The exercise of jurisdiction arises when the State of origin exercises effective control over the activities that caused the damage and the consequent human rights violation'). The existence of ETOs based on a 'cause-and-effect' model of IHRL jurisdiction has been, on the contrary, expressly rejected by the ECtHR (2001, para. 75, but see ECtHR 2008) and espoused, instead, by the CESCR (2017, para. 28) which upheld that '[e]xtraterritorial obligations arise when a State party may influence situations located outside its territory, consistent with the limits imposed by international law, by controlling the activities of corporations domiciled in its territory and/or under its jurisdiction, and thus may contribute to the effective enjoyment of economic, social and cultural rights outside its national territory'.

It must be noted that, in order for this jurisdictional test to be triggered, it is not enough for the relevant conduct to have 'kinetic' effects on human rights extraterritorially, but: *1)* such effects must be a direct/necessary and reasonably foreseeable consequence of that conduct (causal link), and *2)* the latter must be attributable to the state (in the case of the CCPR), or it must be alternatively proved (in the case of the IACtHR) that the state had effective control (not further specified in the IACtHR's advisory opinion) over the territorial activity (including of private actors, e.g., corporations) that originated the alleged extraterritorial human rights violation

(attribution). This last model clearly opens the door to affirming state ETOs in cases where state conduct, or the conduct of a non-state actor over which a state has control is directly linked to a reasonably foreseeable extraterritorial human rights violation, regardless of any spatial or personal control. Although neither the CCPR nor the IACtHR have further elaborated on principles to establish such causal link in practice, causation is generally assessed (the burden of proof resting with the victim/applicant) by recourse to: *a)* a 'but for' (sine qua non) test, according to which causation is only established if the act/omission of a state is a 'but for', necessary cause of the human rights violation (where a state's act/omission is one among multiple factual causes, a causal link will be established only if that state's contribution was a 'principal cause'); *b)* a 'foreseeability' test, requiring that the wrongful human rights impact that eventually materialises could have been reasonably foreseen by a person of normal prudence when the relevant act/omission was carried out (this standard generally depends on the knowledge/information available to a state at the relevant time); and *c)* a 'remoteness' test, requiring a certain 'proximity' or significance of the conduct in question to the human rights violation, especially in cases where multiple successive causes may disrupt the chain of causation rendering the damage too 'remote' (Skogly in Langford et al. 2012; Plakokefalos 2015; Chauhan 2019).

ETOs and sovereign debt

Clearly, the first and last jurisdictional models could more aptly apply to debt relationships, which generally do not entail physical control over territory or individuals. Nonetheless, the required exercise of IHRL jurisdiction for the affirmation of ETOs poses some limitations to the applicability of the notion in the sovereign debt context (the following list of issues is not exhaustive).

Issue 1. States as main ETOs-bearers.

A first point to be noted is that, as interpreted so far, the concept of ETOs refers to the human rights obligations owed by *states* to individuals *abroad*, and thus is not particularly apt to clarify the contents/scope of non-state actors' human rights obligations (Gibney in Langford et al. 2012, such as international organisations (e.g., the EU or the IMF) or private creditors, who do not possess any territory nor exercise jurisdiction as interpreted by international bodies, and yet in the sovereign debt context are often significantly able to affect the enjoyment of human rights. Furthermore, even with regard to state actors, the notion of ETOs is suitable to apply to *creditor states*, particularly in the context of financial assistance and debt relief initiatives, as their conduct can have negative effects on the human rights of people located abroad, presumably in the territory of a debtor state. Instead, *debtor states*' ETOs may come into play, for instance, should one of them unilaterally repudiate its odious, illegitimate or illegal debt (Bantekas et al. 2018), and such decision have negative consequences on the human rights of individuals abroad (e.g., on the right to property of small bondholders who might, in specific cases, lose their savings, as it was the case, for instance, with the 2012 restructuring of the Greek debt, see ECtHR 2016).

Issue 2. Attribution of conduct in the case of complex multilateral debt-related activities and involvement of the territorial state.

For ETOs to be affirmed based on the jurisdictional models summarised above, attribution of conduct to a state is a necessary (though not a sufficient) condition: it is a conduct of the state or, in the case of the IACtHR 'cause-and-effect' model, a (at least partly) territorial conduct

over which that state has effective control, that *de facto* creates the conditions for affirming the extraterritorial exercise by that state of its IHRL jurisdiction, further based on the additional elements of *de jure*/physical control or ability to influence the enjoyment of human rights abroad. Especially in the context of multilateral debt, the direct attribution of conduct having negative human rights effects – e.g., the adoption of austerity measures, which tends to involve: *a)* multiple actors (including international organisations, private actors and the, at least formally, consenting territorial state); *b)* complex decision-making processes; and *c)* instruments, such as Memoranda of Understanding, characterised by a certain 'opacity' in terms of the role, relative bargaining power and legitimacy of the actors involved (Ioannidis 2014; Costamagna 2012) – to specific (creditor) states for the purposes of any of the jurisdictional models summarised above, may prove arduous (for a significant attempt, however, see De Schutter et al. 2015). The relevant acts/omissions may be more easily formally attributable to the territorial state or to an international organisation (the involvement of the territorial state may be also – although not necessarily successfully – raised by creditor states and international organisations as a legal defence against their international responsibility).

A similar issue may arise when considering other debt- or financial assistance-related decisions, especially of supranational actors, with negative human rights impacts, e.g., the Eurogroup decision – after the June 2015 announcement by Greece of a referendum on the bailout terms then put forward by its international creditors – not to grant the requested one-month extension of Greece's Master Financial Assistance Facility (MFAFA). This decision led the country to default on its €1.6 billion repayment to the IMF due on the 30 June 2015 (on those same days, the Eurogroup was also discussing the forthcoming expiry of Greece's European Financial Stability Facility (EFSF) financial assistance and issued a statement, for the first time in history breaking the Eurogroup conventional unanimity rule, as Greece was arbitrarily excluded from the meeting; Eurogroup 2015). Similarly, on 28 June 2015 (i.e., a few days before the Greek referendum, which eventually took place on 5 July 2015), 'taking note of [Greece's] decision on [the] Greek referendum', the ECB decided 'to maintain the ceiling to the provision of emergency liquidity assistance (ELA) to Greek banks' (European Central Bank 2015), in other words, not to provide further financial support despite being clear at the time that funds were leaving the country and bank reserves running low (more than €7 billion-worth deposits left Greek banks in less than a week, as a 'mini-bank run' took place). This decision forced, on 29 June 2015, the Greek authorities to impose a bank closure and capital controls, capping money withdrawals at €60 per day, in order to avoid financial panic. The everyday life scenes that directly followed these announcements were sadly familiar: queues at ATMs, car lines at petrol stations, supermarkets reporting unusual volumes of sales, as people were making stocks of basic goods in fear of the worst (e.g., The Guardian 2015; Financial Times 2015). The Independent Expert on debt and human rights has noted how some observers perceived the ECB decision to reduce emergency credit to Greek banks shortly before the referendum 'as an attempt to influence the outcome of the democratic decision-making process in Greece' (HRC 2015, p. 2) and to (coercively) induce the Greek people to accept financial assistance under the proposed terms. In this case as well, a 'direct' causal link between the Eurogroup/ECB decisions and a potential interference with the human rights of people in Greece could be established, and yet issues of attribution in particular (perhaps more easily surmountable in the case of the Eurogroup, this being an informal body actually composed of the Ministers of Finance of the Euro Area member states) for the purposes of ETOs, persist.

Attribution may be less of an issue, instead, for the purposes of acknowledging the existence of creditor states' ETOs in the case of bilateral debt-related agreements (and conditionality).

Tangentially, it must be noted that attribution problems may arise as well with regard to the question of international responsibility (on responsibility scenarios linked to ETOs and their own potential limitations, see Erdem Türkelli in this Research Handbook). In this respect, existing grounds for state responsibility and for the responsibility of international organisations in connection with the act of a third state, in particular, may perhaps better assist attempts to hold state and non-state creditors accountable for their debt-related activities that have negative human rights effects abroad, and thus certainly merit further consideration (see arts. 16–18 of the 2001 Draft Articles on the Responsibility of States for Internationally Wrongful Acts, and arts. 58–63 of the 2011 Draft Articles on the Responsibility of International Organisations; the latter in particular include the case of IOs' aid and assistance to the internationally wrongful conduct of a state – remarkably, an hypothesis recently explored by the Independent Expert on debt and human rights in relation to the debt-related conduct of IFIs (HRC 2019) – as well as the cases of potential direction or control, or coercion by an IO).

Issue 3. Qualification of a debt-related state act as an exercise of its PIL jurisdiction for the purposes of the applicability of the first model.

As per the first model, IHRL jurisdiction may be affirmed where a state exercises, lawfully or unlawfully, its own legal authority/PIL jurisdiction over persons, property or events located outside its territorial boundaries, without necessarily exercising effective physical control over individuals ('*de jure* control' model). A difficulty that could arise in such instances would concern the qualification of the debt-related conduct of a state as an exercise of its PIL jurisdiction, in order potentially to affirm IHRL jurisdiction and thus the existence of ETOs.

For instance, does the exercise of creditor states' adjudicative and enforcement powers in relation to (foreign) debt contracts constitute an exercise of PIL jurisdiction triggering the adjudicating state's IHRL jurisdiction and ETOs? Although we may suppose that, if so, a state would be in theory under an IHRL obligation to secure to the specific individuals involved all the relevant rights, litigation in these cases is generally promoted by private actors (not seldom also vulture funds) against a (debtor) state, and thus would hardly fit that specific model in practice. Likewise, does the provision by means of domestic legislation of debt-related financial assistance to a foreign state with attached harsh conditionality, or the domestic regulation of debt-related financial activities with extraterritorial effects, amount to an extraterritorial exercise of state PIL jurisdiction in the above-mentioned sense (for a non-debt related example in this sense, see Coomans et al. 2012)?

Issue 4. Necessity and proximity of harm for the applicability of the fourth model.

The 'cause-and-effect' model of IHRL jurisdiction clearly opens the way to affirm ETOs on the part of all the actors potentially involved in sovereign debt relationships in a much broader range of situations. However, in the sovereign debt context, both because of the frequent involvement of multiple actors, including the territorial state, as mentioned, and because of the not necessarily strict causal connection between a specific (foreign state) debt-related conduct and human rights violations, it might be difficult (though not impossible) to prove that a creditor state's conduct, or conduct over which it has control, has been the necessary and principal cause of harm and is not too remotely connected with a human rights violation abroad. It must be noted, however, that in some cases – for instance, with regard to conditionality, as mentioned in

Section 2 – the human rights impact of certain acts/omissions have been now extensively and persuasively documented (HRC 2019 and 2016b), and thus may be easier to prove.

Nonetheless, even assuming that, as convincingly argued by the Independent Expert on debt and human rights, a 'direct causal link between austerity and human rights violations' can be asserted, 'the latter being foreseeable consequences of the former' (HRC 2019, para. 75), issues of attribution (point 2 above) may persist.

Conclusions

From a legal perspective, the exercise by a state of IHRL jurisdiction, referred to by most IHRL instruments and as currently interpreted by monitoring bodies, represents a threshold criterion to affirm the existence of a state's ETOs towards individuals outside (and, as mentioned, ultimately also inside) its territory. With regard to sovereign debt in particular, the '*de jure* control' or 'public powers', and the 'cause-and-effect' models of IHRL jurisdiction – the latter more recently adopted by the CCPR and the IACtHR, and endorsed i.a. by the CESCR, and opening the way to the recognition of (creditor) states' ETOs whenever their conduct or conduct originating or taking place in whole or in part in their territory, and over which they have effective control, has direct and reasonably foreseeable effects on the human rights of individuals abroad – certainly bear important consequences for sovereign financing and debt. Nonetheless, the affirmation of ETOs and more generally the applicability of the concept in the realm of sovereign debt remains potentially limited, i.a. because of some of the peculiarities of contemporary debt relationships that this contribution has attempted to explore.

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