

# ARE EXTRA-TERRITORIAL OBLIGATIONS REVIEWABLE UNDER THE OPTIONAL PROTOCOL TO THE ICESCR?

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**Abstract:** *This article discusses the possibility of employing the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights to bring claims involving the alleged violation of extra-territorial obligations of economic, social and cultural rights. Although the Optional Protocol explicitly restricts the making of individual complaints to those within a State's jurisdiction, it does not eliminate the possibility of extra-territorial complaints under either the inter-state complaint or, particularly, the inquiry procedures. In some cases, individuals could also bring claims if they could demonstrate that the effective jurisdiction of a State party extended beyond its borders.*

**Keywords:** *Extra-territorial obligations, jurisdiction, Optional Protocol, economic, social and cultural rights.*

## A. INTRODUCTION

This article discusses the possibility of employing the recently adopted Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (Optional Protocol)<sup>1</sup> to bring to the consideration of the Committee on Economic, Social and Cultural Rights (CESCR) claims involving the alleged violation of extra-territorial obligations grounded in the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>2</sup> The first section canvasses the arguments supporting the contention that the ICESCR enshrines extra-territorial obligations. The second section reviews each of the mechanisms provided by the Optional Protocol, and analyses to what extent they allow the Committee to deal with extra-territorial obligations. Finally, we offer some conclusions.

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<sup>1</sup> GA Res. 832, UN GAOR, 63<sup>rd</sup> Session, U.N. Doc A/RES/63/117 (2008).

<sup>2</sup> G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976.

## B. EXTRA-TERRITORIAL OBLIGATIONS IN THE ICESCR

There are two significant grounds on which it can be argued that the ICESCR does not contain territorial limitations in its obligations, and thus also enshrines extra-territorial obligations for State parties.

First, there is *an absence of any mention of territorial or jurisdictional limitations in article 2(1)*, which describes the general obligations that apply to all of the rights of the Covenant. Article 2(1) of the ICESCR is usually considered a key clause in the Covenant, given that it includes the concepts of “progressive realization” and the obligation to adopt measures “to the maximum of the available resources”. Article 2(1) is often compared to article 2(1) of the International Covenant on Civil and Political Rights (ICCPR),<sup>3</sup> to underscore the alleged “different nature” of civil and political rights on the one hand, and economic, social and cultural (ESC) rights on the other. Indeed, it is important to point out that the contrast between the respective articles 2(1) is often highlighted as a proof that the drafters of both Covenants, which were conceived, discussed and adopted simultaneously, believed that the different sets of rights provided for in each instrument responded to distinctly separate models. While these assertions are no longer sustainable they will not be discussed here.<sup>4</sup> However, it is safe to say that an important difference between article 2(1) of the ICESCR and article 2(1) of the ICCPR lies in the different language regarding their territorial scope. While article 2(1) of the ICCPR

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<sup>3</sup> G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.

<sup>4</sup> The wording of Article 2(1) ICESCR differs significantly from the wording adopted in Article 2(1) of the ICCPR, which establishes the obligation of each State Party ‘to respect and to ensure’ the rights recognised therein. However, despite the intention of the drafters, nowadays it is well established that all human rights impose a variety of obligations, which have been identified as different levels or layers in the ‘tripartite typology’ of States’ obligations. The duties to ‘respect’ and to ‘ensure’ under Article 2(1) ICCPR imply not only the obligation to abstain from interfering in the individual’s freedoms, but also the duty to take the positive actions necessary to ensure those rights. Therefore, there is no sharp distinction between the two wordings as to the “nature” of the obligations imposed.

<sup>5</sup> See ICCPR, Article 2.1: “Each State Party to the present Covenant undertakes to respect and to ensure *to all individuals within its territory and subject to its jurisdiction* the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (emphasis added). As a too literal interpretation would have limited the protection of the Covenant, the Human Rights Committee interprets this provision as “within its territory or subject to its jurisdiction.” In the Human Rights Committee’s words: “States Parties are required by article 2, paragraph 1, to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction. This means that a State Party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party.” See CCPR/C/21/Rev.1/Add.13(General Comments), para 10.

contains an express reference to the territory and jurisdiction of the State party,<sup>5</sup> there is no such mention in article 2(1) of the ICESCR.<sup>6</sup>

Second, apart from the absence of any reference in article 2(1) of the ICESCR to territorial or jurisdictional limitations of its application, there is a reference in the article to *international assistance and cooperation as a means to achieve the full realisation of the rights provided by the Covenant*.<sup>7</sup> Such references are not made in the equivalent provision of the ICCPR. Moreover, the reference in articles 2(1) of the ICESCR to international cooperation and assistance are not isolated: similar references are in fact repeated throughout the instrument.<sup>8</sup>

These elements offer the basis to conclude that the ICESCR, conceived as a whole, is an instrument where the full realisation of the rights that it recognises is not exclusively a function of the action or inaction of States parties in isolation, but also of the interaction between States. Thus, the Covenant includes extra-territorial dimensions: when ratifying it, States parties have also agreed to participate in the realisation of economic, social and cultural rights beyond their borders. Thus, there are persuasive textual elements in the ICESCR to conclude that extra-territorial obligations can be derived from it.

### C. EXTRA-TERRITORIAL OBLIGATIONS AND THE OPTIONAL PROTOCOL

The ICESCR did not allow, however, its monitoring body<sup>9</sup> to consider alleged violations in specific case situations, in contrast to the ICCPR, which was supplemented by an Optional Protocol providing for a communications mechanism since its adoption.<sup>10</sup> This historical gap was bridged by the adoption of the Optional Protocol in December 2008. However, let us analyse whether the different mechanisms provided for in the Optional Protocol – communi-

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<sup>6</sup> PIDESC, article 2.1: “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”

<sup>7</sup> Magdalena Sepulveda Carmona: “The obligations of ‘international assistance and cooperation’ under the International Covenant on Economic Social and Cultural Rights. A possible entry point to a human rights based approach to Millennium Development Goal 8”, 13(1) 2009 *The International Journal of Human Rights*, 86-109.

<sup>8</sup> Besides article 2.1, see, for example, articles 11(2), 15(4), 22 and 23.

<sup>9</sup> The UN Economic and Social Council, according to the text of the ICESCR. The ECOSOC delegated this function by establishing a Committee on Economic, Social and Cultural Rights, through ECOSOC Resolution 1985/17 of 28 May 1985.

<sup>10</sup> The first additional Protocol to the ICCPR establishes the competence of the Human Rights Committee to deal with individual petitions was adopted and entered into force at the same time as the Covenant. Optional Protocol to the International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302, *entered into force* March 23, 1976.

cations presented by victims or groups of victims, inter-state communications and inquiries – offer room for the CESCRC to consider situations where allegations of violation extra-territorial obligations are raised.

## 1. COMMUNICATIONS

Article 2 of the Optional Protocol provides as follows:

Communications may be submitted by or on behalf of individuals or groups of individuals, *under the jurisdiction of a State Party*, claiming to be victims of a violation of any of the economic, social and cultural rights set forth in the Covenant by *that* State Party. (emphasis added)

While the text of the Optional Protocol reflects the language of similar instruments,<sup>11</sup> in fact it has failed to take into consideration the different wording of the ICESCR in relation with other human rights instruments. As we pointed out before, article 2(1) of the ICESCR does not make any reference to territorial or jurisdictional limits to its application, and in fact makes express reference to international assistance and cooperation. There was thus no justification to include a jurisdictional limitation in the text of the Optional Protocol, when the ICESCR does not make any reference to such limitations and, on the contrary, makes clear that ESC rights obligations have international (and thus extra-territorial) dimensions.

Nevertheless, the text has included this limitation, so the submission of communications is restricted to individuals or groups of individuals *under the jurisdiction* of the State party against which a violation of the ICESCR is alleged. The meaning of the phrase ‘under the jurisdiction’ raises a number of complex arguments about the relationship between territory and jurisdiction. In the *Report of the 2nd Conference of the ETO Consortium*, Sigrun Skogly posits that the two notions are not indivisible; a failure to recognise the inherent differences between jurisdiction and territory limits the effectiveness and universality of human rights.<sup>12</sup> Indeed, the notion that jurisdiction must be separated from and not confined by territory alone has garnered support from the European Court of Human Rights and the UN Human Rights Committee with respect to human rights violations by police, diplomatic personnel, and foreign security services for example.<sup>13</sup> The latter, for example, has held that the reference in

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<sup>11</sup> See, for example, Optional Protocol *ibid.*, Article 1; CERD, 660 U.N.T.S. 195, entered into force Jan. 4 1969, Article 14; CAT, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), *entered into force* June 26, 1987, Article 22.1; OP-CEDAW, G.A. res. 54/4, annex, 54 U.N. GAOR Supp. (No. 49) at 5, U.N. Doc. A/54/49 (Vol. I) (2000), *entered into force* Dec. 22, 2000, article 2; CMW, U.N. Doc. A/RES/45/158, article 77.1; First OP-CRPD, G.A. Res. 61/106, Annex II, U.N. GAOR, 61st Sess., Supp. No. 49, at 80, U.N. Doc. A/61/49 (2006), entered into force May 3, 2008 Article 1.1.

<sup>12</sup> *Report of the 2nd Conference of the ETO Consortium*, FIAN International, Heidelberg, September 26-27, 2008.

<sup>13</sup> Fons Coomans and Menno Kamminga (eds.): *Extraterritorial Application of Human Rights Treaties* (Antwerp: Intersentia 2004).

Article 1 of the Optional Protocol to ICCPR to “individuals subject to its jurisdiction” is “not to the place where the violation occurred, but rather to the relationship between the individual and the State in relation to a violation of any of the rights set forth in the Covenant, wherever they occurred.”<sup>14</sup> International law also recognises the imperative of a State to comply with human rights obligations while participating in armed conflict in a foreign territory not under the State’s control.

With respect to ICESCR obligations, the argument that a State party has jurisdiction beyond its own territory has been implicitly developed in the jurisprudence of the CESCR. The Committee has consistently maintained that jurisdiction includes any territory over which a State party has geographical, functional or personal jurisdiction, including dependent territories<sup>15</sup> and territories where a State has *de facto* control.<sup>16</sup> Moreover, the Committee has suggested that a State party may have jurisdiction over nationals of a State party residing in another territory when the negative fulfilment of a Convention obligation results in violations within the State party’s territory.<sup>17</sup>

However, the extent of the extra-territorial jurisdiction of States regarding ESC rights is far from having a solid grounding under international law. In the absence of a specific act by a State to recognise jurisdiction on subjects operating or deeds occurring beyond its borders – when, for example, a statute allows its courts to consider cases for violations committed outside its territory – there is no generally accepted presumption in favour of State jurisdiction beyond its own territory. Consequently, under the Optional Protocol petitioners will bear the burden of proof in establishing that a violation occurring outside a State’s territory occurs *de jure* within the State’s jurisdiction.

Little attention was paid to the issue during the sessions of the Open-ended Working Group on an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.<sup>18</sup> States that participated in this Working Group were not eager to be innovative on this matter – either because of the inclination to follow agreed language, or because of fear of opening up unprecedented possibilities. Thus, claims involving extra-territorial violations of the ICESCR cannot be addressed validly under the communications procedure, unless a clear demonstration that a State party has jurisdiction beyond its territory is provided. However, as we will see, extra-territorial violations could be addressed either through inter-state communications or through the inquiry procedure.

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<sup>14</sup> HR Comm. Case no. 52/1979, *Delia Saldias de Lopez v. Uruguay*, UN Doc. CCPR/C/OP/1 at 88 (1984), para. 12.2.

<sup>15</sup> *Concluding Observations on the Netherlands* U.N. Doc. E/1999/22 para. 194.

<sup>16</sup> *Concluding Observations on Israel* U.N. Doc. E/1999/22 para. 232.

<sup>17</sup> *Concluding Observations on Sri Lanka* U.N. Doc. E/1999/22 para. 77.

<sup>18</sup> The Working Group held a total of five sessions: 2004 (23 February - 5 March), 2005 (10-20 January), 2006 (6-16 February), 2007 (16-27 July) and 2008. The fifth and final session in 2008 took place in Geneva from 4-8 February (first part) and from 31 March to 4 April (second part).

## 2. INTER-STATE COMMUNICATIONS

According to Article 10.1 of the OP-ICESCR

A State Party to the present Protocol may at any time declare under the present article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party *is not fulfilling its obligations under the Covenant*. (emphasis added)

As is clear from the text, and in contrast with article 2 of the Optional Protocol, there is no reference to the jurisdiction or territory of the State.<sup>19</sup> As the ICESCR includes international obligations, non-compliance with these extra-territorial obligations can thus be subject to inter-state communications. In fact, the use of inter-state communications might be sufficiently adequate here, because a State may be in a better position to represent the interests of those individuals whose rights were breached by the action or omission of another State party to the ICESCR. Moreover, when the alleged violation committed by a State party affects the rights of individuals under the jurisdiction of another State party, the latter's sovereign interest might also be affected. Accordingly, the submission of the communication can be justified both by the interest of the right-holders and by the interest of the complaining State.<sup>20</sup>

However, the employment of inter-state communications may pose some obstacles as an effective remedy to redress the violations of the ESC rights of individuals affected by the extra-territorial activity of a State party.

First, victims are not in a position to require the filing of a communication, which is left to the discretion of the State. Should the State decide that it is not convenient to submit a communication, victims will have no other remedy available, and the violation will remain unpunished. Moreover, even if a communication is submitted by the State, victims cannot be sure that the case is framed in a way that represents their interests or their voice properly.

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<sup>19</sup> The text of the Optional Protocol follows closely the wording of articles 41.1 of the ICCPR and 21(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987.

<sup>20</sup> A similar argument, *mutatis mutandi*, can be derived from the Vienna Convention on Consular Relations of 24 April 1963: a State party has an interest of protecting the rights of its own nationals when they are under the jurisdiction of another State, and that justifies the resort to inter-state complaints. For a specific case illustrating this point, see International Court of Justice, *case of Avena and Other Mexican Nationals (Mexico v. United States of America)*, Judgment, I.C.J. Reports 2004, p. 12, 31 March 2004. See also Inter-American Court of Human Rights, *The Right to Information on Consular Assistance. In the Framework of the Guarantees of the due Process of Law*. Advisory Opinion OC-16/99 of October 1, 1999. Series A No. 16. In the case of the employment of inter-state communications of the Optional Protocol in the case of extra-territorial violations of the ICESCR, the interest of the State is that of protecting the rights of persons under its own jurisdiction affected by the action or omission of another State party.

Second, even though they are provided for in many human rights instruments,<sup>21</sup> inter-state communications have been scarcely used by States.<sup>22</sup> This fact surely reflects States' reluctance to submit complaints against other States on human rights issues. Diplomatic and political considerations, the possibility of eliciting reprisals and the existence of other interests at stake may prevent a State from confronting another State party through the submission of a communication before a human rights body. Thus, the redress of victims of extra-territorial violations of the ICESCR may be compromised by other State interests. However, the fact that the protection mechanism has been infrequently used with respect to other human rights instruments provides no justification for diminishing the protection ESC rights. Nevertheless, during the sessions of the Working Group, some States expressed their preference for the inter-state communications procedure to be excluded from the Optional Protocol.<sup>23</sup>

Third, in order to allow inter-state communications, article 11(1) of the Optional Protocol requires State parties to declare that they recognise the competence of the Committee to receive and consider them. This applies both to a State's capacity to submit communications and to be the subject of other States parties' complaints.<sup>24</sup> That is, the Optional Protocol sets up an *opt-in* system in regard to inter-state communications. This may pose additional difficulties: the opt-in system may discourage States from accepting the competence of the Committee in this regard,<sup>25</sup> and the need for both States – the one submitting the communi-

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<sup>21</sup> The possibility to lodge complaints against another State party is contemplated in, several human rights instruments at the United Nations and regional level, such as in Article 41 ICCPR; Article 11 CAT; Article 11 CERD; Article 33 ECHR(ETS 5), 213 U.N.T.S. 222, *entered into force* Sept. 3, 1953, as amended by Protocols Nos 3, 5, and 8 which *entered into force* on 21 September 1970, 20 December 1971 and 1 January 1990 respectively ; Article 45 ACHR, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, *entered into force* July 18, 1978 ; and Article 54 ACHPR, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986 .

<sup>22</sup> The European mechanism is the only inter-state mechanism that has been employed several times (more than 20 times), most recently in 2001 (*Cyprus v. Turkey*, Application no. 25781/94 May 10, 2001). The possibility of an inter-state complaint under the ICCPR has not yet been resorted to by any State.

<sup>23</sup> For example, the Netherlands expressed doubt as to whether an inter-state complaints mechanism was compatible with the notion that international cooperation should be based on genuine dialogue, partnerships and technical cooperation programmes. See *Report of the Open-ended Working Group to consider options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural Rights on its third session*, Economic and Social Council, UN. Doc E/CN.4/2006/47 (2006), 14 March 2006.

<sup>24</sup> The European mechanism is the only inter-state mechanism that has been employed several times although the Court has delivered judgments in three cases. The most recent was in 2001 (Eur. Ct. HR, *Cyprus v. Turkey*, Application no. 25781/94 May 10, 2001). In March 2007, Georgia lodged a complaint against Russia.

<sup>25</sup> The experience under other human rights treaties shows that many states have not recognised the competence of the supervisory bodies to receive inter-state complaints. We should note that the inter-state procedure under the CERD, the European Convention and the African Charter is mandatory: it does not require any special authorisation for a State party to be able to bring inter-state complaints.

cation and the one to which the communications makes reference – to have made that declaration will make it difficult for many cases to be brought to the attention of the Committee.

### 3. INQUIRY PROCEDURE

Article 11.2 of the Optional Protocol reads as follows:

If the Committee receives reliable information *indicating grave or systematic violations by a State Party of any of the economic, social and cultural rights set forth in the Covenant*, the Committee shall invite that State Party to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned. (emphasis added)

The wording used to describe the requirements for the initiation of the inquiry procedure does not make reference to territorial or jurisdictional limitations:<sup>26</sup> it refers to grave or systematic violations of *any of the economic, social and cultural rights set forth in the Covenant*, without exclusion. The formula includes, therefore, those violations that have an extra-territorial effect – that is, those affecting the rights of individuals beyond the State party's territory or jurisdiction. Thus, the inquiry mechanism could be employed to call the attention of the Committee to issues regarding extra-territorial violations of the economic, social and cultural rights set forth by the ICESCR.

There could be some advantages in favour of the inquiry procedure *vis-à-vis* inter-state complaints: it is not necessary to count on a State to bring information to the Committee, meaning that victims, group of victims, non-governmental organisations and other stakeholders can do so, and even if the information comes from a State, it does not need to be a State party to the ICESCR or to the Optional Protocol; nor must it make any declaration about the inquiry procedure. More generally, the inquiry has the advantage of offering a means of addressing situations in which individual communications do not adequately reflect the systematic nature of a widespread violation of rights. This type of mechanism also addresses situations in which individuals or groups are unable to submit communications due to practical constraints or fear of reprisals.<sup>27</sup>

On the other hand, there are also some limitations to the possibility of employing the inquiry procedure in the case of extra-territorial violations of the ICESCR. First, the threshold is higher: not every violation of the obligations of the Covenant would allow the Commit-

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<sup>26</sup> The text of the Optional Protocol follows closely the wording of Article 20.1 of CAT, and especially Article 8(1) of the Optional Protocol to CEDAW and Article 6(1) of the Optional Protocol to CPRD.

<sup>27</sup> See D. Sullivan: Commentary on the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women”, in: *Optional Protocol to the International Convention on the Elimination of All Forms of Discrimination against Women*, (IIDH 2000) 71.



tee to engage in an inquiry, but only *grave and systematic violations*.<sup>28</sup> This threshold may leave aside relevant cases of extra-territorial violations of economic, social and cultural rights which are not sufficiently grave and systematic.

Moreover, as it is the case with inter-state communications, in order for the Committee to be allowed to receive and consider information and decide if an inquiry mechanism should be initiated, the State subject to the complaint must have made a specific declaration recognising this competence in the Committee: another example of the *opt-in* approach. The need for a specific declaration makes it more cumbersome for States to be subjected to the inquiry procedure, as a mere omission will mean a rejection of this possibility, while in order to accept the procedure a supplementary positive step is needed.

#### 4. INTERNATIONAL ASSISTANCE AND COOPERATION IN THE OPTIONAL PROTOCOL

Finally, paragraphs 1 and 2 of article 14 of the OP-ICESCR provide:

1. The Committee shall transmit, as it may consider appropriate, and with the consent of the State Party concerned, to United Nations specialized agencies, funds and programmes and other competent bodies, its views or recommendations concerning communications and inquiries that indicate a need for technical advice or assistance, along with the State Party's observations and suggestions, if any, on these views or recommendations.
2. The Committee may also bring to the attention of such bodies, with the consent of the State Party concerned, any matter arising out of communications considered under the present Protocol which may assist them in deciding, each within its field of competence, on the advisability of international measures likely to contribute to assisting States Parties in achieving progress in implementation of the rights recognized in the Covenant.

These provisions presuppose an existing communication or inquiry, so do not present any implications for the criteria to present complaints or to open inquiries. However, the article offers some room for the Committee to transmit its views or recommendations to UN bodies that may have had some participation in the relevant situation. The Committee on Economic, Social and Cultural Rights has constantly asserted in its General Comments the responsibility of actors other than State parties, such as international financial institutions. Therefore, there may be some space for the Committee, with the consent of the State party concerned, to transmit its views or recommendations concerning the participation of UN-related non-state actors in the facts considered under the communication or inquiry.

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<sup>28</sup> See, however, Article 4 of the ICESCR, which grants the Committee some discretion to declare communications inadmissible: "The Committee may, if necessary, decline to consider a communication where it *does not reveal that the author has suffered a clear disadvantage*, unless the Committee considers that the communication raises a serious issue of general importance" (emphasis added). The threshold for the inquiry procedure is, nevertheless, obviously higher.

While such non-state actors are not, by any means, respondents in the communications procedure, the views or recommendations transmitted by the Committee may help to highlight the role that those actors outside a States' territory could have played in the situation, and even include specific recommendations about remedial action. This can offer the complainants and the Committee an avenue to pinpoint the outcome of the action of international financial institutions in particular on the enjoyment of the rights provided by the ICESCR in a State party, and thus could be relevant to capturing some aspects of extra-territorial violations.

#### D. CONCLUSION

In consideration of both the absence of any territorial or jurisdictional limitation in ICESCR and the positive requirement for States to exercise international cooperation and assistance in the fulfilment of ICESCR obligations, the extra-territorial nature of ICESCR obligations is clear. The Optional Protocol provides a number of potential opportunities to enforce compliance with these obligations. Although the OP explicitly restricts the making of individual complaints to those within a State's jurisdiction, it does not eliminate the possibility of extra-territorial complaints under either the inter-state complaint or inquiry procedures. In some cases, individuals could also bring claims if they could demonstrate that the effective jurisdiction of a State party extended beyond its borders.

The inter-state complaint or inquiry procedures particularly allow for the articulation of complaints of violations of extra-territorial obligations before the CESCR. Of course, both procedures entail a number of limitations and hurdles to be overcome, particularly with regard to the 'opt-in' provisions of the OP. Nevertheless, the mechanisms could constitute the first steps towards the effective enforcement of extra-territorial obligations under ICESCR. In particular, considering that inter-state complaint mechanisms are seldom used, the inquiry procedure might prove to be the best mechanism to supervise compliance with the extra-territorial obligations under the ICESCR.