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The Extraterritorial Application
of Selected Human Rights Treaties

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INTRODUCTION

1. ORIGINS OF THE CURRENT DEBATE

In the last few years, much has been written¹ on the applicability of human rights treaties abroad and extensive case law² has dealt with this and related issues.

¹ For an overview of academic views on the subject, see, for example, two recent monographs in English, namely: Marko Milanovic (2011), *Extraterritorial Application of Human Rights Treaties – Law, Principles, and Policy* (Oxford: Oxford University Press), focusing on conceptual issues related to the subject; and Michał Gondek (2009), *The Reach of Human Rights in a Globalising World: Extraterritorial Application of Human Rights Treaties* (Antwerp: Intersentia), covering a wide array of relevant materials on the subject, including on socio-economic rights. For a further recent monograph in French, see Guillaume Grisel (2010), *Application extraterritoriale du droit international des droits de l'homme* (Brussels: Bruylant). For relevant academic articles and collected works, see, for example, Ralph Wilde (2008), "Triggering State Obligations Extraterritorially: The Spatial Test in Certain Human Rights Treaties", in R. Arnold and N. Quéniwet (eds), *International Humanitarian Law and Human Rights Law: Towards a New Merger in International Law* 121 (Boston: Martinus Nijhoff Publishers); Fons Coomans and Menno Kamminga (2004), *Extraterritorial Application of Human Rights Treaties* (Antwerp, Oxford: Intersentia); Françoise Hampson (2008), "The Relationship between International Humanitarian Law and Human Rights Law from the Perspective of a Human Rights Body", 90 (871) *International Review of the Red Cross* 549; Rick Lawson (2002), "The Concept of Jurisdiction and Extraterritorial Acts of State", in Gerard Kreijen et al. (eds) *State, Sovereignty, and International Governance* 281 (Oxford: Oxford University Press).

² For an overview of the case law, see, for example, ICJ, *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, I.C.J. Reports 2004, p. 136 (hereinafter 'Wall Advisory Opinion'); ICJ, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment of 19 December 2005, I.C.J. Reports 2005, p. 168 (hereinafter 'Armed Activities on the Territory of the Congo'); ECtHR, *Banković and Others v. Belgium and Others*, Admissibility Decision of 12 December 2001 (Grand Chamber), Application no. 52207/99 Reports 2001-XII (hereinafter 'Banković decision'); ECtHR, *Issa and Others v. Turkey*, Judgment of 16 November 2004 (Merits), Application no. 31821/96 (hereinafter 'Issa and Others v. Turkey (Merits)'); *Cyprus v. Turkey*, Admissibility Decision of 10 July 1978, Application no. 8007-77, European Commission of Human Rights (1979), 13 Decisions and Reports 85 (Strasbourg: Council of Europe) (hereinafter 'Cyprus v. Turkey (1978)'); ECtHR, *Loizidou v. Turkey*, Judgment of 23 March 1995 (Grand Chamber, Preliminary Objections), Application no. 40/1993/435/514, 20 EHRR 99 (hereinafter 'Loizidou v. Turkey – Preliminary Objections'); ECtHR, *Loizidou v. Turkey*, Judgment of 28 November 1996 (Grand Chamber,