

# DIRECT INTERNATIONAL HUMAN RIGHTS OBLIGATIONS OF NON-STATE ACTORS: A LEGAL AND ETHICAL NECESSITY

*Nicolás Carrillo-Santarelli*



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*“To deny to any person their human rights  
is to challenge their very humanity.”*

Nelson Mandela



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## FOREWORD

In a world where individuals may launch global cyber attacks, transnational corporations may affect the most basic rights of indigenous communities, and powerfully armed terrorist groups may take the lives of innocent people wherever, it is impossible not to recognize that the acts of non-State actors can vastly affect the exercise of human rights. The expansion of the full efficacy of international human rights obligations is nevertheless still generally limited by international law, which usually defines human rights obligations as falling only on States. The grounds for this restriction stem from different sources, but the limitation has its particular basis on a certain conception of international law sustaining that States were and remain its most relevant subjects. These approaches explain in part why, for example, as Judge Crawford would put it, the law of personality and recognition 'is still a law of exclusion, not participation' in the international legal system. Moreover, supporters of this classic approach of international law and human rights affirm that expanding human rights obligations beyond the State will trivialize these rights and, most importantly, will confer non-State actors a legitimacy that should be preserved only for the State.

This book is an act of passion in which Nicolás Carrillo Santarelli uses his indefatigable intellectual power to attack the idea that only states can be held responsible for the breach of international human rights obligations. The author joins a tradition that goes back to Hersch Lauterpacht's *International Law and Human Rights*, envisaging already in 1950 a protection for all human beings against a human rights violation 'from whatever source it may originate', and reaches a summit with the publication in 2006 of Andrew Caphlam's *Human Rights Obligations of Non-State Actors*, defending that 'human rights are entitlements enjoyed by everyone to be respected by everyone'.

In a style that bears a resemblance to that of Judge Cançado Trindade, Nicolás Carrillo Santarelli takes this argument to its limits, sustaining that reasons of justice, ethics and law require the imposition of direct human rights obligations and responsibilities on non-State actors. The author builds his thesis on a radical idea of human dignity and a broad prohibition of discrimination under the law. His endeavor, however, is not limited to a thorough doctrinal study: the second part of the book is committed to the analysis of the legal mechanisms and institutions concerned with the goal of giving total efficacy to international human rights, including proper reparations to the victims of human right violations by non-State actors, and not just States.



## FOREWORD

I have seen the evolution of this book from its origins as a doctoral thesis project presented at the University Autónoma of Madrid. Throughout years of hard work and untiring scholarly discussions, Nicolas Carrillo Santarelli has developed his argument with determination, an extreme care and an enormous amount of serious research. He has put his reason to work for his passion to realize the protection of human rights from any kind of breach, whatever its source, achieving an extraordinary academic monograph.

*Carlos Espósito*  
*Universidad Autónoma de Madrid*

In this book, addressing the reality that non-state actors do violate human rights in practice, which cannot be overlooked, Prof. Nicolás Carrillo-Santarelli argues that the foundations and main principles of international human rights law call for the regulation of direct non-state obligations and responsibilities, given the potential failure of domestic actions and the limits of voluntary strategies. In part I, the author presents his ideas on why non-state abuses should be regarded as human rights violations and wrongful acts. In this sense, Chapter 1 explores why the protection of human dignity, being non-conditional, cannot depend on the presence of a State abuser. Chapter 2 explores the idea that every conduct contrary to human rights has legal relevance and requires a correlative appropriate legal response. Chapter 3 reinforces the previous ideas in light of the peremptory principle of non-discrimination; with Chapter 4 providing suggestions on when direct international action should take place. Part II, afterwards, studies why direct protection from non-state violations is possible and what legal mechanisms and institutions permit to make it effective. In Chapter 5, the author argues that the notion of international legal personality is not an obstacle since regarding addressees as subjects highlights the possibility of there being direct non-state international duties, which would not weaken existing human rights protections. Chapter 6 presents the argument that there are already implied human rights obligations of non-state actors, and that complementary obligations should be created. Chapter 7 explores the idea that non-state responsibility can coexist with that of other participants in violations, and that non-state responsibility is often a precondition of full reparations. The final Chapter turns to the examination of the mechanisms that can be used to respond to or prevent non-state violations of human rights law. The book is based on the idea that the protagonists of human rights law are individuals, who deserve protection from all abusers, be them States, armed groups, international organizations, or other actors.

Nicolás Carrillo-Santarelli has a PhD in International Law and International Relations from the Autónoma de Madrid University and is currently Associate Professor of International Law at La Sabana University, Colombia.



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