

## Scientific report GLOTHRO Stock-Taking Conference, 19-21 May 2011, Antwerp, Belgium

### Summary

From 19 to 21 May 2011, more than one hundred participants from over 15 different countries convened in Antwerp, Belgium for the first of two major conferences of the Research Networking Programme (RNP) 'Beyond Territoriality – Globalisation and Transnational Human Rights Obligations (GLOTHRO).

The conference was an inter-disciplinary encounter on globalisation, disempowerment of the state (from government to governance), and how that affects legal regimes, in particular that of human rights. The conference took stock of the current state-of-the-art of scholarship on the impact of globalisation on the division of power among States and other powerful actors, including but not limited to transnational corporations and international organisations. It also provided an overview of a variety of emerging and consolidated frameworks for accommodation in international law of shared responsibilities of different powerful players.

Five objectives were pursued successfully during the conference:

1. To assess what we know about globalisation, its impact on the role of the state, and global good governance;
2. To enquire into theories of globalisation and its impact on the transformation of legal obligations;
3. To map out existing different regimes about global and shared responsibilities in international law;
4. To analyse current approaches in practice to the disempowerment of the state by human rights monitoring bodies, courts; and processes of treaty-making; and
5. To explore emerging conceptual frameworks and principles on extraterritorial human rights obligations, human rights obligations of companies and of international organisations.

The conference was set up with the support of four research groups of the University of Antwerp Law Research School, i.e. Government and Law, Social Competition and the Law; the Center for Law and Cosmopolitan Values; and the Law and Development research group. In addition to ESF as the main funder, it attracted sponsorship from Research - Flanders (FWO); VEWA Fund (Association of Educative and Scientific Authors); and the University of Antwerp.

The Conference has made a major contribution to the two primary objectives of the RNP GLOTHRO, i.e. *substantively*, to deepen and widen our understanding of transnational human rights obligations, i.e. extraterritorial obligations of foreign states, as well as human rights obligations of non-state actors; and *organisationally*, to forge an interdisciplinary research community on the topic. The conference managed to bring together for the first time most of the European and non-European scholars in this field. This initial networking and meeting exercise will be built upon in the coming years to create a research community on the topic. The conference also allowed real stock-taking, which will encourage all researchers involved to continue their research on the topic, to explore new avenues and to benefit from new cooperation opportunities.

## Content and discussion

1. From 19 to 21 May 2011, the stocktaking conference of the Research Networking Programme GLOTHRO took place at the premises of the University of Antwerp, Belgium.

The RNP GLOTHRO – Beyond Territoriality: Globalisation and Transnational Human Rights Obligations – has two major objectives: *substantively*, to deepen and widen our understanding of transnational human rights obligations, i.e. extraterritorial obligations of foreign states, as well as human rights obligations of non-state actors; and *organisationally*, to forge an interdisciplinary research community on the topic.

Human rights violations occur daily, all over the world. Sovereign States legally bear the primary responsibility for human rights violations. But what happens when these States are not able to live up to their human rights obligations? Do other States have extraterritorial obligations to help them out? Which role should other actors (companies, international organisations) play? The RNP starts from the assumption that human rights obligations, in particular also in the field of economic, social and cultural rights, need to be re-thought in the present era of globalisation. The disempowerment of the State and the increased power and impact of corporations and international organisations, among others, pose major practical and conceptual challenges to human rights law. In practice, human rights law faces a serious risk of marginalisation if it fails to adapt to this changing reality. Conceptually, the disempowerment of the territorial state necessitates a fundamental re-thinking of a basic tenet of human rights law, i.e. that human rights obligations are primarily if not exclusively incumbent on the territorial state.

Rather than a launching conference, it had been decided to organize a *stocktaking* conference, to assess progress made, remaining challenges, and also new challenges that may have arisen meanwhile. The conference built in particular on the 2004 Maastricht conference on extraterritorial human rights obligations (which focused mainly on civil and political rights, and more in particular on the Bankovic decision), and on the ESF exploratory workshop, held in January 2008 in Tilburg, the Netherlands. There have also been some ETO Consortium conferences, notably in Heidelberg (2008), Lancaster (2009) and immediately preceding the GLOTHRO conference, in Antwerp (2011). Fruitful cooperation and interaction has been established with the ETO Consortium, a Consortium of NGOs, scholars in their individual capacity, and some universities, with which there is some overlap in membership. A joint working group was held last year in November, and the two networks held their conference now back to back in Antwerp. The ETO Consortium has been working on extraterritorial human rights obligations with the objective of creating an enabling environment for the elaboration of Maastricht Principles on Extraterritorial Human Rights Obligations, due to be adopted in September 2011 in Maastricht. The drafting group of these Principles was meeting in parallel too, in order to finalize the current draft after having received input from the Consortium members.

The GLOTHRO stocktaking conference was an inter-disciplinary encounter on globalisation, disempowerment of the state (from government to governance), and how that affects legal regimes, in particular that of human rights. The conference took stock of the current state-of-the-art of scholarship on the impact of globalisation on the division of power among States and other powerful actors, including but not limited to transnational corporations and international organisations. It also provided an overview of a variety of emerging and consolidated frameworks for accommodation in international law of shared responsibilities of different powerful players.

The stocktaking nature of the conference was reflected in its structure and set-up: an assessment was made in different fields, from different disciplinary angles, to see whether our working hypotheses hold and how we can move forward.

On the first day, Thursday 19 May, we looked into the *phenomenon of globalization and into (good) governance at the global scene* from a political science perspective, so as to better understand the impact on human rights law. From a philosophical perspective, insight was sought on how *globalisation forces us to rethink and structurally transform legal obligations, including human rights obligations, and how social justice theories may help to ground transnational human rights obligations.*

### ***Political Science perspective: Globalisation and Global Good Governance***

Scholars of globalisation and global good governance focus on other actors than the State. Managing globalisation and providing global good governance is about ensuring that social goals are obtained by the interplay between societal and governmental actors and implies international co-operation beyond the State: collective action to provide public goods. The results of international efforts are new global economic, political, and societal actors.

Global governance must capture this confusing and ever-acceleration and transformation of the international system to ensure that values of the national level do not get lost. There is a need for a new global governance framework to capture the broad, dynamic, and complex process of interactive decision-making that is constantly evolving and responding to changing circumstances and a growing range of actors. The central questions were:

- Can global good governance go beyond sole State responsibility for human rights and render it a joint effort of all actors, including non-State actors?
- Can the constitutive elements of good governance at national level be transplanted to the international plane even though there is no global government? What role does State membership of regional organisations play in this regard?

#### **Keynotes:**

- Jernej Pikalo, University of Ljubljana - Globalisation
- Magdalena Bexell, University of Lund - Globalisation and Global Good Governance

### ***Philosophical perspective: Globalisation and the Transformation of Legal Obligations: Legal Theory and Political Philosophy Perspectives***

In light of the intensification of trans-national interaction between agents, which is assumed to be the main effect of globalisation, legal obligations have been structurally transformed. In particular with regard to human rights obligations, two specific questions were to be addressed:

1. How does globalisation widen the cycle of the addressees of HR obligations?
2. Are there transnational obligations with respect to claims of distributive justice (socio-economic rights)?

Methodologically, the session focused on recently emerging case law that questions the standard model of human rights obligations, and aimed to offer a coherent reconstruction of those cases by proposing a fresh understanding of the workings of human rights obligations. The reconstructive approach helps connect existing practice with a more ambitious theoretical account that aims to lead to a reconceptualisation of human rights obligations, one that is capable of coping with the challenges posed by globalization

#### **Keynotes:**

- Andrea Sangiovanni, Kings College London – Social Solidarity and the Transnationalisation of Rights
- George Letsas, University College London – Not Every Moral Issue is a Human Rights Issue
- Georgios Pavlakos, University of Antwerp – Legal Obligation in the Global Context

On the second day of the conference, attention was shifted to human rights law. In a first time slot, it was examined how *in practice* human rights courts have dealt with the disempowerment of the State. Secondly, we looked into emerging conceptual frameworks of norms and *principles on transnational human rights obligations*, i.e. with regard to foreign States and international financial institutions.

### ***First part on Experiences from Practice: Human Rights Treaty-Making And Litigation***

The first time slot focused on the relevant practice emerging from treaty-making processes and human rights monitoring bodies and courts. Judgments, decisions, general comments and concluding observations of human rights courts and treaty monitoring bodies have addressed questions of disempowerment of the state, and increased power of other actors, such as the European Union, UN field missions, companies and so on. They have been challenged to come to terms with human rights obligations of increasingly powerful actors other than the state. This first part of the session wanted to enquire if answers emerging from human rights practice are the forebodes of new rules or rather exceptions to the existing rules, and whether and to what extent they are still firmly rooted in the old state-centric paradigm.

Keynotes:

- Dinah Shelton, George Washington University and Chairperson Inter-American Commission of Human Rights - Extraterritorial Obligations: Legislation and Litigation in the Inter-American Human Rights System
- Rick Lawson, Leiden University – The Extraterritorial Application of the ECHR – so far
- Christos Rozakis, Judge European Court of Human Rights – Accountability for Actions of International Organisations – insights from within

### ***Second part on New Conceptual Frameworks for Transnational Human Rights Obligations – Emerging Principles and the Way Forward***

In recent years, attempts have been undertaken or are underway to develop principles and conceptual frameworks within human rights law, which address the present realities of disempowerment of the State and the rise of powerful non-state actors. The second part of the session wanted to explore these emerging principles and conceptual frameworks, and see whether some common principles can be identified, e.g. on the issues of attribution and distribution of responsibility, and on accountability.

Keynotes:

- Fons Coomans, University of Maastricht - Developing A Normative Framework for Extraterritorial Human Rights Obligations in the Area of Economic, Social and Cultural Rights
- Mac Darrow, UN/OHCHR – Human Rights Obligations of International Financial Institutions
- Olivier De Schutter, Université catholique de Louvain– Human Rights Obligations of Companies (cancelled)

On Friday afternoon, paper presentations and discussions took place in twice four parallel working group on the following themes:

- Obligations of companies
- Conceptual Issues: Transnational HROs
- Alternative Frameworks
- Actor specific approaches
- Globalization and Good Governance
- Conceptual Issues II
- Alternative Frameworks II
- Regimes of Shared Responsibility in International Law

All in all, 25 papers were presented. The working groups were generally of an excellent quality, and offered an opportunity to many young researchers in the field to present and discuss their work.

### ***Regimes of Shared Responsibility***

On the third and final day of the conference, Saturday 21 May, regimes of shared and global responsibility in *public international law more generally* were presented and discussed.

In international law, a growing number of issues is, for a variety of reasons, considered a common concern of humanity. The list includes issues such as climate stability, biodiversity, cultural heritage, public health (communicable diseases), cultural diversity, peace, protection against international crimes, protection of common areas etc. The idea of 'Humanity' is wider than 'all States'; it includes all agents.

Decision-making power on issues of common concern is exceptionally entrusted to an international body (such as the Area Authority in the law of the sea), but the more usual approach is for the international community to respect territorial sovereignty, and to entrust to a (custodial) State the responsibility for the common concern, which that State then exercises on behalf of the international community.

This type of custodial sovereignty implies that other States and international bodies (and perhaps also non-State actors) have the authority to monitor the custodial State's performance.

Taking into account that the capacities of custodial States differ, the regimes also provide for some type of 'support' obligations of (more affluent) States or other actors. The triggers for such support obligations differ. Regimes also differ in dealing with wilful non-compliance by the custodial State.

The purpose of the session was to review the various mechanisms that exist, and to draw lessons for the theme of extraterritorial obligations in the area of human rights.

Keynotes:

- Koen De Feyter, University of Antwerp – Shared Responsibility in International Law
- Adeno Addis, Tulane University Law School – The Obligation to Protect and Universal Jurisdiction
- André Nollkaemper, Amsterdam Centre for International Law - Shared Responsibility in International Law: some reflections on the Srebrenica Cases and Some Lessons for the Law of Responsibility

## Result and impact

The conference has achieved the two results that were envisaged, i.e. to take stock of current scholarship on transnational human rights obligations and related fields, and to identify and bring together scholars in the field.

As to the *substantive* objective of stock-taking, that has worked well for most sessions, such as on globalisation and global good governance, current practices and emerging frameworks in human rights law, and regimes of shared responsibility in public international law. Unfortunately, due to an urgent mission to Germany and train disruptions, the invited speaker on companies Olivier De Schutter (UCL, New York Law School and UN Special Rapporteur on the Right to Food) had to withdraw last minute from the conference. A more challenging field is that of legal and political philosophy: general frameworks and reference points seem to be so different from those lawyers are accustomed to, that more time and efforts is needed to develop a shared language and agenda. This challenge will be taken up in the further running of this RNP, in particular in workshops.

With regard to the *organisational* objective of forging and consolidating a research community in this field, the conference equally represents a major effort in that direction. The conference has mobilized broad interest within the University of Antwerp Law Research School, with the involvement of four research groups; it has attracted leading scholars in the field of human rights law, public international law, political philosophy and political science, as well as key practitioners from the United Nations and regional monitoring mechanisms; it has consolidated the emerging human rights research community that met for the first time at the 2008 Exploratory Workshop; and it has been a major outreach exercise to early stage researchers and others, who will be brought together later this year in a training school.

The impact of the conference is thus to be seen in that dual perspective (substantive and organisational). The conference has helped in really taking stock and thus refining the research agenda ahead, certainly also of the RNP: it has increased awareness of what has been achieved, and of the many challenges ahead; it has helped in refining the GLOTHRO RNP roadmap, both with regards to actor-specific insights and inspirational sources (in particular philosophy, political science/globalisation studies and public international law). Organisationally, many conference delegates have confirmed that this was the first conference ever to bring the field together, and that they look forward to follow-up meetings for further exploration and consolidation.

**Participants List GLOTHRO Stock-Taking Conference,  
19 – 21 May 2011, Antwerp, Belgium**

<b>Surname</b>	<b>Name</b>	<b>Affiliation</b>
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Buhmann	Karin	University of Copenhagen
Bulto	Takele	Regulatory Institutions Network
Burke	Roisin	Melbourne Law School
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BYAMUNGU Armel	LUHIRIRI	Senior Human Rights Officer/UN in Burundi
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Cerulus	Michael	European External Action Service
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De Groof	Jan	University of Antwerp
De Schutter	Olivier	University of Louvain
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Lawson	Rick	University of Leiden
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Letsas	George	University College London
MANSARAY	Alhaji Sanfa	Human Rights Actives
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