

**Beyond Territoriality: Globalisation and Transnational Human Rights Obligations
(GLOTHRO)**

GLOTHRO Doctoral School 28 November – 3 December 2011

Global Governance and Transnational Human Rights Obligations

European University Institute, Florence, Italy

**Scientific Report
for Science Meeting no. 3862**

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Summary

The one-week long Doctoral School was an activity of GLOTHRO which has the status of a Research Networking Programme at the European Science Foundation. At the same time, at the host institution, the European University Institute, GLOTHRO forms a research strand within the EUI Global Governance Programme (GGP). GGP aims to play a leading role in building-up the critical mass and promoting the European imprint in shaping the global order. One of the central activities of the GGP is the Academy of Global Governance (AGG), a unique executive training programme by world's leading experts in the field of global governance targeted at "leaders of the future". AGG combines the EUI's top-level academic environment with distinguished speakers coming from academia, politics and business.

The event combined the benefits of an ESF Doctoral School and an AGG Executive Training Seminar. It consisted of three and a half days of intensive and interactive training by some of the world's leading experts in the field of global governance and transnational human rights obligations. The participants recruited were "leaders of the future": mainly doctoral students but also young executives and policy-makers and junior academics. The last two days of the event were devoted to presentations by the PhD candidate and young academic participants, hence making the event as a whole into a Doctoral School.

During the Doctoral School, a meeting of the GLOTHRO Steering Committee was convened. The Steering Committee meeting is reported separately.

Scientific Content and Discussions

The point of departure for GLOTHRO is that the disempowerment of the state and the increased power and impact of corporations and international organisations in the era of globalisation pose major practical and conceptual challenges to human rights law. In practice, human rights law faces a serious risk of marginalization if it fails to adapt to this changing reality. Conceptually, the decentralization 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. Through its research, GLOTHRO is addressing a dual challenge, i.e. to deepen the understanding of human rights obligations of foreign states, and to bring together sub-fields of human rights study, i.e. on the human rights obligations of transnational corporations, international organizations and foreign states.

The Doctoral School built already done within GLOTHRO and took into account the outcomes of the May 2011 GLOTHRO stock-taking conference. In particular, the keynote addresses and lectures that formed the Executive Seminar part of the week focused on problematising the issue of new-duty bearers and socio-economic rights, and situating legal obligations in the new transnational legal landscape. This followed on from much of the mapping and presentation of existing norms that took place in May. In particular, it built upon ideas and work presented as part of the ‘Globalisation and the Transformation of Legal Obligations’, ‘Experience from Practice’, ‘New Conceptual Frameworks for THROs’ and ‘Shared Responsibility in International Law’ plenary sessions that took place in Antwerp. The advantage of much of this groundwork having been completed already in May was that, following brief recapitulative summaries, discussion was able to quickly develop in all the sessions exploring the ramifications and possibilities of various new approaches. For an overview of the material that formed the basis of these discussions, an abstract for each of the Faculty members, who were mainly senior members of the GLOTHRO network or Steering Committee members, can be found below (for biographies please see the programme annexed to this report):

Professor Wouter Vandenhole (University of Antwerp): The emerging normative frameworks on transnational human rights obligations

A re-conceptualization of human rights law is needed as far as the duty-bearers are concerned, so as to make it responsive to realities on the ground and to enable it to act as a corrective to power regardless of the identity of the power holder. There have been efforts to elaborate principles or frameworks that define the human rights obligations of three sets of duty-bearers in particular: foreign states (2011 *Maastricht Principles on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights*), international organizations as direct duty-bearers (2002 *Tilburg Guiding Principles on the World Bank, IMF and Human Rights*); and companies as direct duty-bearers (2011 *UN Guiding Principles on Business and Human Rights*). What can be learnt from these efforts? Is the fragmented method of elaboration of principles for each different actor bound to fail in dealing with the global landscape and its various actors? Is a holistic approach to be preferred, and how feasible would it be?

Professor Martin Scheinin (European University Institute): The emerging accountability frameworks for transnational human rights violations

What are the merits and weaknesses of the proposed normative frameworks discussed in the preceding session (the 2002 *Tilburg Principles*, the 2011 *Maastricht Principles* and the 2011 *UN Guiding Principles*), in terms of securing the accountability of the actors in question, in respect of human rights grievances? Can lessons be drawn from the practice and achievements of regional human rights courts and international human rights treaty bodies, in securing the accountability of other actors beyond the territorial state? What would be the added value of the proposed World Court of Human Rights (Kozma-Nowak-Scheinin 2010)?

Professor Elina Pirjatanniemi (Åbo Akademi University): Common But Differentiated Responsibilities – a Way to Operationalize Disability Rights in Development Context? (Part 1)

The adoption of the UN Convention on the Rights of Persons with Disabilities (CRPD) in 2006 strengthened the international normative framework for advancement of the rights of persons with disabilities. CRPD is an achievement in many respects, not least because of the focus on international cooperation which is present in Article 32. The purpose of the presentation is to analyse the significance of this provision and place it within a broader conceptual discussion concerning common but differentiated responsibilities with the context of the Right to Development and Development generally.

Professor Martin Scheinin (European University Institute): Rescue at Sea - human rights obligations of states and private actors, with focus on EU's external borders

Roughly 110,000 migrants and persons seeking protection traverse the Mediterranean Sea each year without adequate documentation for entry into the EU. Approximately 10,000 persons have drowned attempting to cross the Mediterranean in the past decade. The law of the sea, and human rights law both impose an obligation to rescue those at peril. But the different legal frameworks may give different answers in respect of which actors have what kind of obligations, and this is further complicated by the invisible lines that determine whether a person is in international waters or in an area where a state has particular rights and obligations. Private actors such as fishermen and shipmasters have a role in the initial phase of rescue at sea but a more complete set of human rights can be claimed in relation to states. Though the duty to rescue itself is comparatively uncomplicated, the concomitant issues of what to do with those persons who have been rescued and/or intercepted and their rights – as well as the tangentially related question of how to compensate private rescuers – are certainly not.

Professor Jens Vedsted-Hansen (University of Aarhus): Migration and asylum in the age of globalization – human rights obligations

While migration and refugee protection are by definition transnational phenomena, the tendencies of globalization have emphasised and reinforced this feature. Migration control has largely moved away from the borders and territories of destination countries as various forms of extraterritorial control measures have been put in place, often combined with the involvement of private actors. This has significantly impacted on refugee protection. The transnational exercise of traditional state functions pertaining to migration control and, potentially, assessment of protection needs, raises complex legal issues, most notably concerning extraterritorial jurisdiction and state responsibility. This must be analysed in the context of state sovereignty and legal strategies employed to reinforce or fetter sovereign powers vis-à-vis human rights obligations. At the same time, such international obligations are increasingly being invoked in order to protect the rights of migrants and refugees already

present in industrialised countries, thus offering the basis for comparison of the intersection between human rights obligations and state sovereignty in national and the transnational settings.

Professor Georgios Pavlakos (University of Antwerp): Institutions, Justice and the Grounding of Legal Obligations

The lecture will endeavour, in an interdisciplinary manner, to make fruitful for the legal debate on transnational human rights obligations the extremely rich philosophical debate on global justice. Particular emphasis will be placed on the fundamental question of the grounding of obligations of distributive justice, as well as the question concerning their content and scope. On another level, it will endeavour to formulate its answers to the above questions with an eye to clarifying important aspects of their institutionalisation and enforcement through the medium of the law. Among the specific legal question, which purports to guide the workshop, will feature such questions as: do obligations of justice give rise to a duty to distribute or to a duty to avoid wrongdoing? Do obligations of justice apply only to state institutions (i.e. state officials) or do they create direct duties also for persons? Does the enforcement of obligations of justice presuppose the current system of states or can it take alternative forms?

Dr Margot Salomon (London School of Economics): Do we have legal obligations to strangers?

Virtually all industrialised states are keen to limit the notion that there are positive human rights obligations to people other than their own. However, decades of human rights standard-setting in the area of international cooperation have advanced interpretations whereby policies should be designed in such a way as to avoid causing injury to the interests of developing states and to the rights of their peoples, and moreover, should actively seek to address existing deprivations. These obligations to fulfil socio-economic rights elsewhere give rise to a host of important issues. Should we understand the obligations to be those of individual states or can we speak of collective obligations? If the obligation to fulfil socio-economic rights is not limited to resource transfer what else might it entail? Are they best framed as secondary or as simultaneous obligations? In seeking to determine the basis for assigning these obligations owed to others how should we appreciate the UN assertion that obligations belong to those ‘in a position to assist’? How might the obligations be divided? In fulfilling its positive obligations of international assistance and cooperation what would constitute an unreasonable cost for a state?

Professor Willem Van Genugten (Tilburg University)The World Bank, IMF and Human Rights: Practical and Conceptual Issues

The World Bank and IMF approach to poverty is highly relevant for the realization of human rights such as the right to food and adequate health care, but also raises many questions. Is it enough when the World Bank states that its poverty programs contribute to the realization of human rights *per se*? What about the confrontation between theory and the daily reality: Who profits from poverty programs – how about the macro level consequences versus the micro level of families, etc.? – and to what extent are economic, social and cultural *rights* fulfilled by these programs? Who are the dominant states within the various decision-making bodies, and what does it mean that some are “not highly in favor” of the concept of economic, social and cultural rights? Against this background, it is interesting to discuss the direct consequences of World Bank and IMF activities in the field of involuntary resettlements of indigenous peoples. Finally, we will address the conceptual issue of whether “UN family”

organizations like the World Bank and the IMF are automatically bound by human rights obligations or whether they can “look away” because of their specialized mandates (“self-contained regimes”).

Professor Wolfgang Benedek (University of Graz): WTO and Human Rights: The Question of Coherence

As a result of the increasing impact of economic globalization, in particular in the Global South, the issue of how to take human rights better into account has generated much discussion, something particularly true for the World Trade Organization (WTO). However, the efforts of mainstreaming human rights as part of UN reform also addressed the WTO, raising issues of coherence between world trade rules and human rights. An important role was played by the UN human rights bodies as well as by civil society organizations in raising issues of accountability and democratic legitimacy. However, the positions of developing countries, often mainly concerned with their sovereign rights, complicate achieving the objective of greater consistency. In the Doha Development Round negotiations, human rights have been largely absent and social rights explicitly excluded. In the absence of progress on the multilateral level, bilateral and regional agreements have proliferated, again with little concern for human rights, i.e. with regard to additional obligations in the fields of services (GATS) or intellectual property rights (TRIPS). This raises the question of how coherence between trade rules and human rights can be strengthened in the future.

Following the first four days, the meeting split into separate panels for the doctoral school. Participants were required to present a short paper, with each participant being allotted a total of one hour including presentation, comment time from senior faculty and a general discussion. Insofar as possible, topics were paired together for relevance, and all papers were commented by at least two senior faculty. For a list of the topics of papers, please see the attached programme (Annexe 1).

Assessment of the Event & Impact on Future Directions of the Field

Overall, the event was extremely well received by both faculty and participants. The Global Governance Programme at the EUI collected feedback data from the a participants, which yielded an average rating of the quality of speakers of 4.3 out of 5, an excellent result. Among the comments received during the feedback exercise were statements such as: 'The speakers and discussants created an excellent and stimulative environment, inspiring new ideas. I couldn't have asked for a better environment'; 'the seminar provided an excellent frame for a deep intellectual exchange on the issue of global governance and human rights'; and 'the interactive multi-disciplinary and multicultural set-up of the seminar was a unique and valuable experience'.

Informal feedback from speakers and Faculty was also similarly positive. It was felt that most sessions were well-planned, well-structured and generated a superlative level of in-depth discussion. In terms of the overall planning of the whole week, it was felt by some that the schedule bordered on being too intense, and that it would have benefited from slightly shorter working days before the doctoral school in order to allow people time to absorb the outcome of discussions.

Dealing in detail with the second part of the event, the doctoral school, this proved to be a particularly constructive exercise. Perhaps the most noticeable result is the fact that since December 2011 several of the students and young academics involved have begun to develop informal networks of their own in order to network and share the results of mutual research. In general, the level of participation in doctoral panels by other participants, as opposed to faculty commentators, was high.

In terms of the impact of the event on future directions in the field, it was clear from the topics and focus of the doctoral presentations that not only is research already ongoing in this field, but there is a great deal of interest in and scope for further research. Moreover, several students commented that the discussions during the Executive Seminar and doctoral school were likely to strongly influence all or parts of their research.

The second way in which the event is likely to affect the future of the field is that it provided an in-depth testing ground for discussing the ramifications of recent initiatives, such the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights (2011) which formed the basis for several of the discussions. In that way, ideas which came about either in drafting such initiatives or at the earlier Stocktaking conference were developed and refined, or subjected to critical scrutiny.

Third, it should not be forgotten that there was a pedagogical element to the event, namely to equip participants, particularly doctoral students, with expert up-to-date knowledge of a emerging and fast-moving field. While certain among the participants already have a degree of specialized knowledge on certain topics, others did not. Judging from the feedback, overall it was an extremely useful exercise in terms of equipping participants with some of the knowledge necessary to conduct successful research in the field of international law, human rights law, and transnational obligations generally.

Annex 1: Meeting Programme



Robert Schuman Centre for Advanced Studies

ACADEMY OF GLOBAL GOVERNANCE

Executive Training Seminar Series

GLOBAL GOVERNANCE PROGRAMME

GLOBAL GOVERNANCE AND TRANSNATIONAL HUMAN RIGHTS OBLIGATIONS

Villa Schifanoia - Sala Europa
Via Boccaccio, 121 – Firenze - European University Institute

Coordinator: Martin Scheinin

Florence, **28 November – 1 December 2011**

28 November 2011

TRANSNATIONAL HUMAN RIGHTS OBLIGATIONS: EMERGING FRAMEWORKS

12:00 – 13:00	Registration
13:00 – 14:00	Lunch (Sala Bandiere)
14:00 – 15:00	Opening: Global Governance S-G & Stefano Bartolini Welcome from Wouter Vandenhole (GLOTHRO Chair) Participant introductions
15:00 – 17:30	Wouter Vandenhole University of Antwerp The emerging normative frameworks for transnational human rights obligations
17:30 – 17:45	Coffee Break
17:45 – 18:45	Martin Scheinin European University Institute The emerging accountability frameworks for transnational human rights violations (Part 1)

20.30 Welcome Dinner (venue to be confirmed)

29 November 2011

COLLECTIVE AND NON-STATE RESPONSIBILITIES

- 9:30-10:30 Martin Scheinin | European University Institute
The emerging accountability frameworks for transnational human rights violations (Part 2)
- 10:30-11:00 Coffee Break
- 11:00-13:00 Martin Scheinin | European University Institute
Rescue at Sea - Human Rights Obligations of States and Private Actors, with a Focus on the EU's External Borders
- 13:00-14:30 Lunch (Sala Bandiere)
- 14:30 – 15:30 Elina Pirjatanniemi | Åbo Akademi University
Common but Differentiated Responsibilities - a Way to operationalize Disability Rights in the Development Context? (Part 1)
- 15:30-16:00 Coffee Break
- 16:00 – 18:00 Elina Pirjatanniemi | Åbo Akademi University
Common but Differentiated Responsibilities - a Way to operationalize Disability Rights in the Development Context? (Part 2)

30 November 2011

GLOBALIZATION & HUMAN RIGHTS

- 9:00-11:00 Georgios Pavlakos | University of Antwerp
Institutions, Justice and the Grounding of Legal Obligations part 1
- 11:00 – 11:30 Coffee Break
- 11:30 – 13:00 Georgios Pavlakos | University of Antwerp
Institutions, Justice and the Grounding of Legal Obligations part 2
- 13:00-14:30 Lunch (Sala Bandiere)
- 14:30-16:00 Jens Vedsted-Hansen | University of Aarhus
Migration and Asylum in the Age of Globalization – Human Rights Obligations (Part 1)
- 16.00-16:30 Coffee Break
- 16:30-18:00 Jens Vedsted-Hansen | University of Aarhus
Migration and Asylum in the Age of Globalization – Human Rights Obligations (Part 2)

1 December 2011

OBLIGATIONS & TRADE AND FINANCIAL INSTITUTIONS

- 9:00-11:00 Margot Salomon | London School of Economics
Do We Have Legal Obligations to Strangers? (Part 1)
- 11:00-11:30 Coffee Break
- 11:30-13:00 Margot Salomon | London School of Economics
Do We Have Legal Obligations to Strangers? (Part 2)
- 13:00 – 14:30 Lunch in Sala Bandiere

14:30-16:00	Willem Van Genugten Tilburg University The World Bank, IMF and Human Rights: Practical and Conceptual Issues
16:00-16:30	Coffee Break
16:30-18:00	Wolfgang Benedek University of Graz The WTO and Human Rights: The Question of Coherence

2 December 2011

DOCTORAL SCHOOL

9:00 – 11:00	<p>Doctoral School Presentations: <u>Panel 1 (Europa)</u></p> <p>Charline Daelman (Leuven Institute) <i>The Responsibility of Investors for Human Rights Violations</i></p> <p>Josh Curtis (ICHR Galway) <i>People, Profit and Priority: International Cooperation and the Principled Regulation of Foreign Investment</i></p> <p><u>Panel 2 (Capella)</u></p> <p>Renaud Colson (EUI) International law, Human Rights & the War on Drugs (TBC)</p> <p>Damiano de Felice (LSE) Private Banks and the Corporate Responsibility to Respect Human Rights</p>
11:00 – 11:15	Coffee Break
11:15 – 13:15	<p>Doctoral School Presentations: <u>Panel 3 (Europa)</u></p> <p>Stephen Sondem (Essex) <i>National Human Rights Institutions – An Appraisal of the Commission on Human Rights & Administrative Justice, Ghana</i></p> <p>Charles Riziki Majinge (LSE) <i>The United Nations, African Union and the Rule of Law in Southern Sudan</i></p> <p><u>Panel 4 (Capella)</u></p>

Khulekani Moyo (Stellenbosch)

Privatisation of water services and its implications for the realisation of the human right to water

Lisa Clarke (Amsterdam)

Shift in global health governance from states/IOs to PPPs, and issues arising under IL

13:15 – 14:30 Lunch in Sala Bandiere

14:30 – 16:30 Doctoral School Presentations:
Panel 5 (Europa)

Gregor Novak (Vienna)

Costs, Procedures and Access to Justice: A Comparative Analysis of International Dispute Settlement Procedures

Arne Vandenberghe (Antwerp)

Accountability for Violations of Transnational Human Rights Obligations

Panel 6 (Capella)

Tara L. Van Ho (Essex)

Foreign Investment in Transitional States: Is Ruggie Sufficient?

Krit Zeegers (Amsterdam)

Human Rights and International Criminal Courts and Tribunals

16:30 – 17:00 Coffee Break

17:00 – 19:00

Doctoral School Presentations:

Panel 7 (Europa)

John Pearson (Antwerp)

International Framework Agreements: A Route to Human Rights Obligations for Trans-national Corporations?

Andrea Talarico (EUI)

A Historical (Re)Interpretation of Territoriality and the Multinational Corporation

Panel 8 (Capella)

Haye Hazenberg (Leuven)

A (somewhat) Democratic Argument for Human Rights

Jure Vidmar (Oxford)

Human Rights and Hierarchy in International Law: Theory versus Transnational Judicial Practice

3 December 2011

DOCTORAL SCHOOL

9:00 – 11:00

Doctoral School Presentations:

Panel 9 (Europa)

Margit Ammer (Ludwig Boltzmann)

Transnational Human Rights Obligations in the Context of Climate Change

Margaretha Wewerinke (EUI)

State responsibility for climate change-induced human rights violations: The relevance of the no-harm rule

Panel 10 (Triaria)

Emmanuel de Groof (EUI)

The BASESwiki project

Stephanie Jansen (Tilburg)

The Duty to Accept Aid in the Aftermath of a Disaster

11:00 – 11:15

Coffee Break

11:15 – 13:15

Doctoral School Presentations:

Panel 11 (Europa)

Benedict Wray (EUI)

A Justice Framework for Transnational Corporate Harm

James Devaney (EUI)

The Increasing Significance of Inquiry under the Auspices of the United Nations: Implications for International Law

Panel 12 (Triaria)

Lourdes Peroni & Alexandra Timmer (Ghent)

Recent case law of the ECtHR: towards a special duty to protect the vulnerable?

Stuart Wallace (Nottingham)

All's well that ends well? Assessing the impact of the Al-Skeini judgment on the extra-territorial application of the ECtHR

13:15 – 14:30

Lunch in Sala Bandiere

14.30 – 16.30

Doctoral School Presentations:

Panel 13 (Europa)

Alexandre Skander Galand (EUI)

Security Council referrals to the ICC and norm conflict

Dorothy Estrada-Tanck (EUI)

Obligations regarding human security and human rights of migrants: global and transnational dimensions

Panel 14 (Triaria)

Claire Staath (EUI)

Universal Civil Jurisdiction as a Forum of Necessity for Victims of Corporate Human Rights Abuse

Antoine Perret (EUI)

Private Military and Security Companies and the International Code of Conduct: toward a real corporate responsibility?

Departures by participants

Annex 2: List of Participants

Convenor

- Martin Scheining (European University Institute, Italy)

Speakers and Members of the GLOTHRO Steering Committee

- Wolfgang Benedek (University of Graz, Austria)
- Georgios Pavlakos (University of Antwerp, BE)
- Elina Pirjatanniemi (Åbo Akademi University, FIN)
- Margot Salomon (London School of Economics, UK)
- Wouter Vandenhole (University of Antwerp, BE)
- Willem Van Genugten (Tilburg University, NL)
- Jens Vedsted-Hansen (Aarhus University, DK)
- Arne Vandenbogaerde (University of Antwerp, BE)
- Jernej Letnar Cernic (Grad. School for Government and European Studies, Kranj, SLO)

Participants to the Doctoral School

- Margit Ammer (Ludwig Boltzmann, AU)
- Nicolas Carrilo (The Autonoma University of Madrid, ES)
- Lisa Clarke (Univeristy of Amsterdam, NL)
- Renaud Colson(European University Institute, Italy)
- Josh Curtis (Irish Centre for Human Rights)
- Charline Daelman (K.U. Leuven, Institute for Human Rights, BE)
- Damiano De Felice (London School of Economics, UK)
- Emmanuel de Groof (European University Institute, Italy)
- James Devaney(European University Institute, Italy)
- Alexandre Skander Galand(European University Institute, Italy)
- Emily Hancox (European University Institute, Italy)
- Haye Hazenberg (Leuven University, BE)
- Stephanie Jansen (Tilburg University, NL)
- Charles Riziki Majinge (London School of Economics and Political Science, UK)
- Khulekani Moyo (Stellenbosch University, SA)
- Gregor Novak (University of Vienna, AU)
- John Pearson (University of Antwerp, BE)
- Lourdes Peroni (Ghent University, BE)
- Antoine Perret (European University Institute, Italy)
- Stephen Sondem (University of Essex, UK)
- Claire Staath (European University Institute, Italy)
- Andrea Talarico (European University Institute, Italy)
- Dorothy Estrada-Tanck (European University Institute, Italy)
- Alexandra Timmer (Ghent University, Belgium)
- Arne Vandenbogaerde (University of Antwerp, BE)
- Tara L. Van Ho (University of Essex, UK)
- Stuart Wallace (University of Nottingham, UK)
- Margaretha Wewerinke (European University Institute, Italy)
- Benedict Wray (European University Institute, Italy)
- Krit Zeegers (University of Amsterdam, NL)