

## **Report on the Workshop ‘World Bank, IMF and Human Rights’**

- held at Tilburg University, The Netherlands, on 20-21 April 2012
- funded by the European Science Foundation, as part of the ESF Research Networking Programme (RNP) ‘Beyond Territoriality: Globalisation and Transnational Human Rights Obligations (GLOTHRO)’

**Ref. Nr of the Science Meeting: 4212**

### **1. Set-up and aim of the meeting**

The workshop on WB, IMF and Human Rights took place on Friday 20 April and Saturday 21 April 2012. Venue: Montesquieu Building, Law School, Tilburg University (20 April), and Auberge du Bonheur, Tilburg (21 April).

The focus of the workshop was as follows (text taken from the invitation):

- Stocktaking on what the World Bank and the IMF are doing in the field of human rights – civil and political as well as well economic, social and cultural rights – in the present era of globalization combined with an economic and financial crisis. More concretely: to what extent does this ‘changing external environment’ lead to new (types of) violations of human rights and how do both International Financial Institutions (IFIs) react to that, on paper as well as through their daily activities/projects?-
- Discuss the human rights obligations of the two IFIs, looking at such obligations through the lens of the knowledge now available. IFIs are by their very nature operating across borders, while from the perspective of the ‘owners’ of both banks, these activities can be seen as extraterritorial, at least in most cases. Relevant legal elements would of course include Article 2, par. 1, ICESCR: 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 (...).” (Italics added.) In that context, it would also be interesting to systematically apply the typology of the “obligations to respect, protect and fulfill” to both IFIs.
- Discuss an update of the 2003 ‘Tilburg Guiding Principles on WB, IMF and Human Rights’, in light of today’s challenges and of the growing body of knowledge on extraterritorial obligations. The aim of the workshop would *not* be to make another book, as was the case in 2002-2003, but to write an accessible explanatory note (say 10-20 pages), followed by an updated version of the Guiding Principles.

The meeting was attended by: Barros, Ana Sofia; Clapham, Andrew; Curtis, Josh; Daelman, Charline; Eide, Asbjorn; Erdem Türkelli, Gamze; Fujita, Sanae; Genugten, Willem van; Goodwin, Morag; Ho, Tara van; Jägers, Nicola; Letnar Černej, Jernej; Mathews, Susan; Perez Bustillo, Camilo; Radi, Yannick; Skogly, Sigrun; Vandenbogaerde, Arne; Vandenhole, Wouter.

At the meeting, introductory talks were given by the convener, Prof. Willem van Genugten, and one of the participants, Prof. Camilo Perez-Bustillo, followed by a general discussion as well as intense and high-level debates on separate Guiding Principles.

While the core aim of the Workshop was to update the 2003 Guiding Principles in light of the progress made in the field of the extraterritorial application of human rights obligations (*i.e.*, adapt it to GLOTHRO's 'core business'), it soon became clear that the participants were willing to start a more ambitious trajectory.

## 2. Additional aims

During the workshop, the idea came up not to stick to a revision of the Guiding Principles 'only', but to also add commentaries to clusters of Principles. Such commentaries are absent in the 2003 version of the Principles. The convener accepted this way forward, because of a) the expertise available and b) the willingness of the participants to spend extra time to make this new trajectory work.

After the workshop, ten participants confirmed their willingness to redraft one or more Guiding Principles, to add new ones where needed, and to write draft commentaries on one or more issues which according to the participants would deserve further consideration/research.

What follows is a list of such topics, as suggested during the workshop (roughly drafted):

- Split legal obligations of WB/IMF on the one hand and Member States on the other. 'Legal obligations' means: obligations in the field of general international law and in the field of human rights law.
- Criminal responsibility WB/IMF? ('crimes against humanity'; complicity?)
- What would be needed to bring WB and IMF under the UPR?
- Can ILO procedures be used for WB/IMF?
- Ibid: Permanent Court of Arbitration?
- Is there empirical (quantitative and/or qualitative) systematic research on the HR impact of WB and IMF activities?
- What would be a good description of HR impact assessment of WB and IMF activities?
- How about the legal relation WB/IMF -> States -> subcontractors (esp. private companies)?
- Does the ESC-committee refer to WB and IMF? In its General Comment(s)? In reaction to specific States' reports?
- What would be a good description of 'effective remedies'?
- How is the follow-up to WB and IMF reports organized? How to avoid repetition of bad practices? Is there any systematic evaluation within both organizations?
- A Memorandum of Understanding exists between OHCHR and UN Specialized Agencies, but not between OHCHR and IFIs. To be developed?
- Add a para. on 'the type of macro-economic policies which are best for ESC-rights' (incl. division public-private etc.)?
- .....

Each of the topics fits into the research separate participants are already conducting. However, while linking the way forward to the expertise available and thus saving time, the new approach also asks for a new timeline and some thoughts on the question how to organize it.

## 3. The way forward

The way forward would entail four steps:

- Delivery of comments and drafts by the participants, before 1 October 2012.
- Redraft the Guiding Principles, add and revise the commentaries delivered, and draft the Explanatory Note, before the end 2012.
- Consult the participants, as well as a selection of other experts, not falling within the ESF rules (the names of ten such experts have already been identified), before 1 April 2013.
- Adopt the Principles and develop a strategy for Endorsement, before the Summer of 2013.

#### **4. Request as to Finances**

As can be seen in the financial report, the money available for the workshop has not been fully spent. Because the new approach will take quite some extra time and comes with new tasks, I would like to be allowed to use the money left for a) administrative support, b) the organization of a small meeting *en marge* of a regular GLOTHRO meeting to discuss the interim results, and c) the hiring of an expert for the final editing of the Principles and the Explanatory Note. If so desired, I can provide you with a breakdown of the budget.

Prof. dr. Willem van Genugten

17 June, 2012