



### Science Meeting – Scientific Report

***Proposal Title:*** *Exploring Common Principles for Multi-Duty Bearer Responsibility in International Human Rights Law*

***Application Reference N°:*** *5281*

#### 1) Summary (up to one page)

On 3-4 February 2014, the University of Antwerp hosted the GLOTHRO workshop on Exploring Common Principles for Multi-Duty Bearer Responsibility in International Human Rights Law. The workshop and the ensuing GLOTHRO final publication will consolidate the results of the workshops and conferences held by GLOTHRO since 2010.

The overall aim of the workshop was to bring together the findings of the GLOTHRO research strands and to explore possible common principles for the attribution and distribution of responsibility across the different fields of human rights obligations of foreign states, transnational corporations and international organizations. Inspirational building blocks for such common or overarching principles that govern the human rights obligations of new duty-bearers were sought also in other fields of study, in particular in protection regimes of common interest in international law and legal philosophy/global ethics.

The workshop had two main parts. One part of the workshop zoomed in on the state of the art of extraterritorial human rights obligations and emerging regimes of direct human rights obligations of international financial institutions, but also looked forward to how these regimes may evolve in future and inspire each other (three presentations). Particular attention was paid to how questions of attribution and distribution of obligations (and responsibility for violations) could be addressed. The workshop also contained two cross-cutting presentations: one in which the topic was addressed from the perspective of law enforcement, and one in which potential (quasi-) judicial application of the emerging frameworks was explored.

The other part of the workshop was geared towards the identification of common principles that may underpin a human rights legal regime that incorporates obligations of extraterritorial states as well as of non-state actors. One scholar mapped the different options for human rights law to respond to the challenges of economic globalisation; two other presentations explored the relevance of

insights from legal philosophy and ethics, and from public international law on the common interest for developing a framework that can inform the identification of foundational principles for a revisited human rights regime. Particular attention was again paid to principles and concepts that can help to attribute and apportion obligations and responsibility in a multi duty-bearer setting.

2) Description of the scientific content of and discussions at the event (up to four pages)

- Background

Human rights have traditionally been framed in a vertical perspective with the duties of States confined to their own citizens or residents. Obligations beyond this 'territorial space' have been viewed as either being non-existent or minimalistic at best. This territorial paradigm has achieved particular prominence in political philosophy, but also in the interpretation of international human rights treaties. However, the territorial paradigm has now been seriously challenged. For one thing, the ability of States and other actors to impact human rights far from home – both positively and negatively – has never been clearer. Moreover, economic globalisation has highlighted and arguably heightened socio-economic disparities across the world. The often decentred position of the territorial state and the increased power and impact of corporations and international organisations (among other actors), 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 changing realities. Conceptually, the displacement 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 incumbent on the territorial state. Human rights law has to move beyond territoriality as the main criterion for assigning human rights obligations.

Considerable work has been done in recent years on human rights obligations of extra-territorial or foreign states, and of e.g. international financial organizations and business enterprises. Scholarly work on extraterritorial human rights obligations gained momentum in the mid-2000s, and attention was increasingly directed at defining the legal basis, nature and scope of extraterritorial human rights obligations (mainly but not exclusively in the area of economic, social and cultural rights), either by looking at it right-by-right, or by investigating cross-cutting issues of causation, attribution and distribution of responsibility, and accountability and remedies. There equally emerged a small but important body of work on extraterritorial human rights obligations in the area of civil and political rights, sometimes with a particular focus such as migration. Furthermore, the question of extraterritoriality in the area of children's rights was examined. In addition, questions of accountability and amenability of extraterritorial obligations to litigation have been addressed, in particular under the OP-ICESCR. Following the adoption of the Maastricht Principles on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights in 2011, recent work has road-tested the application of these Principles, either in real-life cases or in hypothetical legal opinions and judgments.

Important work has equally been done on direct human rights obligations of individual non-state actors such as international (financial) organisations or companies. Guiding Principles, albeit of a different legal and political standing,

have been adopted for both types of actors: the UN Guiding Principles on Business and Human Rights in 2011; and the Tilburg Guiding Principles on the World Bank, IMF and Human Rights in 2003.

Understanding the relative legal and institutional strength of human rights obligations incumbent on States may help consider how the nascent regime of human rights obligations for other actors should be further developed. However, attempts to identify key concepts and principles that guide human rights obligations of non-state actors across the board remain rare. The overall aim of the workshop and the envisaged edited volume was to map the state of the art with the purpose of identifying foundational principles for the attribution and distribution of responsibility across the different fields of human rights obligations of foreign states, transnational corporations and international organisations. Inspirational building blocks for such common or overarching principles that govern the human rights obligations of these new duty-bearers are sought in other fields of study, in particular in regimes of common interest in international law and legal philosophy and global ethics.

The workshop and volume build upon the results of a series of workshops and conferences held by GLOTHRO in the 2010-2013 period. The contributions to the volume have been commissioned mainly to workshop conveners of the GLOTHRO RNP.

- Scientific Content

The first session of the workshop focused on inspirational building blocks for foundational principles. In his presentation Koen De Feyter presented an alternative view of international law, that is, a system of law that reflects the general conscience of the international community (a concept not limited to States), aimed at achieving the common (global) interest. De Feyter discussed to what extent new schemes to protect the common interest in the various fields of international law can inspire efforts to move human rights law from a system based on territorial sovereignty to a system based on shared responsibilities among States (and possibly among other actors). In the second part of the first session, George Pavlakos focused on addressing the fundamental questions of responsibility that are linked to obligations of global justice. In his presentation he sought to articulate concrete legal arguments with an eye to modelling legal codification of regimes of global responsibility.

The second session of the workshop zoomed in on the obligations and responsibility of foreign States and IFIs. Ian Seiderman and Ashfaq Kalfan inquired whether the ETO Principles provide useful guidance for the development of a multi-duty bearer framework. Questions posed were: can some of the Principles be applied by analogy to non-State actors too? How to delineate obligations of States from those of non-State actors? In his contribution, Willem van Genugten sought to answer how the 2003 Tilburg Principles on international financial institutions may evolve and be further developed to give more substantive guidance on the direct human rights obligations of IFIs. He focused in particular on the attribution and distribution of responsibility amongst the IFIs and their member States.

The third session of the workshop dealt with the cross-cutting issues of migration control and law enforcement, and litigating transnational human rights

obligations. Jens Vedsted-Hansen reflected on the continued viability of traditional human rights law in the face of e.g. offshore detention schemes, private military contractors and the exercise of migration control abroad. He outlined a first attempt to address under what circumstances human rights violations carried out by private actors give rise to corporate responsibility, directly or indirectly, or to State responsibility. The second presentation by Mark Gibney examined how adjudicatory fora engage with multi duty-bearer involvement. Gibney looked into experiences with litigating extraterritorial human rights obligations in real and fictitious cases, and discussed how attribution and distribution of obligations and responsibility has happened in cases of potential multi duty-bearer involvement. At the penultimate session on common principles, Wouter Vandenhoele provided ideas to identify overarching principles in the different fields of human rights obligations of foreign states, transnational corporations and international organisations in order to propose foundational principles for a multi duty-bearer human rights regime of the future. In his presentation, Vandenhoele built on the findings of the earlier presentations and made suggestions for foundational and overarching principles.

During the last session, Margot Salomon critically assessed the perceived need for overarching principles in the present era of globalization. She discussed the challenges and pitfalls of such an approach and raised the question whether there any alternative ways for human rights law to remain effective.

### 3) Assessment of the results and impact of the event on the future directions of the field (up to two pages)

The envisaged final publication, of which first drafts were presented and discussed at the workshop, builds upon the results of a series of workshops and conferences held by GLOTHRO in the 2010-2013 period. Most of these workshops have resulted in a publication on their own. The proposed edited volume will contain fundamentally new work, in that it is geared towards the identification of foundational principles for the attribution of obligations and the apportioning of responsibility in case of violations, based on the output of these workshop trajectories.

The chapters in this final publication have been commissioned to leading members of the GLOTHRO Research Networking Programme and its affiliates, and their first drafts were thoroughly discussed at the meeting. Commentators had been assigned to offer expert comments on each presentation. Subsequent to the meeting, the authors will present their contribution and final results at the concluding GLOTHRO conference (27-29 March 2014, Institute for Human Rights, Åbo Akademi University). Final chapters are expected within four months after the conference. Routledge has agreed to publish the edited volume.

The workshop was set up as an authors' meeting of the final GLOTHRO book publication. The presentations typically reflect on the work done in a particular workshop trajectory over the past years. The presentations and discussions were therefore invariably of a very high quality.

GLOTHRO is the first attempt to re-design the duty-bearer side of human rights law in order to align it with new developments and challenges on the ground. In identifying foundational principles for the attribution and distribution of

responsibility across the different fields of human rights obligations of foreign states, transnational corporations and international organisations, it offers a point of reference for all those working on specific human rights issues in which a multiplicity and variety of actors are involved. The final publication as the output of this workshop and the overall GLOTHRO RNP will also set the research agenda in this field for the next five to ten years. For notwithstanding the advances made in developing interesting ideas and concepts, it also became clear that there are many questions remaining.

4) Annexes 4a) and 4b): Programme of the meeting and full list of speakers and participants

Annex 4a: Programme of the meeting

**GLOTHRO WORKSHOP | Exploring Common Principles for Multi-Duty Bearer Responsibility in International Human Rights Law  
Programme**

**3 FEBRUARY 2014**

Venue: University of Antwerp, [Room E207, building E](#).

**12h00** WELCOME LUNCH at [Agora Café](#), Grote Kauwenberg 2, 2000 Antwerpen

**13H00** Welcome word by Dirk Vanheule, Dean of the Faculty of Law

**SESSION ON INSPIRATIONAL BUILDING BLOCKS**

Chair: Wouter Vandenhole

**Conceptual building blocks in legal philosophy & global ethics**

Paper presenter: George Pavlakos

Respondent: Martin Scheinin

**The common interest in international law**

Paper presenter: Koen de Feyter

Respondent: Elina Pirjatanniemi

**15h00** **BREAK**

**15h30** **SESSION ON ACTORS**

Chair: Mark Gibney

**Foreign states**

Paper presenter: Ian Seiderman

Respondent: Maija Mustaniemi-Laakso

**International Financial Organizations**

Paper presenter: Willem van Genugten

Respondent: Martin Scheinin

**Transnational Corporations**

Paper presenter: Jernej Letnar Cernic (pre-recorded presentation)

Respondent: Margot Salomon

**18h30 CLOSURE OF FIRST DAY**

**4 FEBRUARY 2014**

Venue: University of Antwerp, [Room E207, building E.](#)

**9h00 SESSION ON LAW ENFORCEMENT AND LITIGATION**

Chair: Willem van Genugten

**Transnational Law Enforcement and Migration Control**

Paper presenter: Jens Vedsted-Hansen

Respondent: Tara van Ho

**Litigating transnational human rights obligations**

Paper presenter: Mark Gibney

Respondent: Sisay Alemahu

**11h00 BREAK**

**11h30 SESSION 'TOWARDS COMMON PRINCIPLES'**

Chair: Elina Pirjatanniemi

**Foundational principles for attributing obligations and apportioning responsibility in a multi duty-bearer human rights regime**

Paper presenter: Wouter Vandenhole

Respondent: Ian Seiderman

**13h00 LUNCH**

**14h00 SESSION ON CHALLENGES OF ECONOMIC GLOBALIZATION & OVERALL DISCUSSION**

Chair: Jens Vedsted-Hansen

**You say you want a revolution: Challenges of economic globalization for the human rights regime**

Paper presenter: Margot E. Salomon

Respondent: Koen de Feyter

**16h00 CLOSURE OF THE WORKSHOP**

## **Annex 4b: Full list of speakers and participants**

<b>Sisay Alemahu</b>	<b>Abo Akademi University</b>
<b>Koen De Feyter</b>	<b>University of Antwerp</b>
<b>Mark Gibney</b>	<b>University of North Carolina - Asheville</b>
<b>Ashfaq Khalfan</b>	<b>Amnesty International</b>
<b>Maija Mustaniemi-Laakso</b>	<b>Abo Akademi University</b>
<b>Elina Pirjatanniemi</b>	<b>Abo Akademi University</b>
<b>George Pavlakos</b>	<b>University of Antwerp</b>
<b>Margot Salomon</b>	<b>London School of Economics</b>
<b>Martin Scheinin</b>	<b>European University Institute</b>
<b>Ian Seiderman</b>	<b>International Commission of Jurists</b>
<b>Arne Vandenbogaerde</b>	<b>University of Antwerp</b>
<b>Wouter Vandenhoele</b>	<b>University of Antwerp</b>
<b>Willem van Genugten</b>	<b>University of Tilburg</b>
<b>Tara van Ho</b>	<b>University of Essex</b>
<b>Jens Vedsted-Hansen</b>	<b>University of Aarhus</b>