

## THE WORLD BANK GROUP, THE IMF AND HUMAN RIGHTS



THE WORLD BANK GROUP,  
THE IMF AND  
HUMAN RIGHTS

A Contextualised Way Forward

Willem VAN GENUGTEN



intersentia

Cambridge – Antwerp – Portland

Intersentia Ltd  
Sheraton House | Castle Park  
Cambridge | CB3 0AX | United Kingdom  
Tel.: +44 1223 370 170 | Email: mail@intersentia.co.uk

*Distribution for the UK:*  
NBN International  
Airport Business Centre, 10 Thornbury Road  
Plymouth, PL6 7 PP  
United Kingdom  
Tel.: +44 1752 202 301 | Fax: +44 1752 202 331  
Email: orders@nbninternational.com

*Distribution for the USA and Canada:*  
International Specialized Book Services  
920 NE 58th Ave. Suite 300  
Portland, OR 97213  
USA  
Tel.: +1 800 944 6190 (toll free)  
Email: info@isbs.com

*Distribution for Austria:*  
Neuer Wissenschaftlicher Verlag  
Argentinierstraße 42/6  
1040 Wien  
Austria  
Tel.: +43 1 535 61 03 24  
Email: office@nvw.at

*Distribution for other countries:*  
Intersentia Publishing nv  
Groenstraat 31  
2640 Mortsel  
Belgium  
Tel.: +32 3 680 15 50  
Email: mail@intersentia.be

The World Bank Group, the IMF and Human Rights. A Contextualised Way Forward  
Willem van Genugten

© 2015 Intersentia  
Cambridge – Antwerp – Portland  
www.intersentia.com | www.intersentia.co.uk

Artwork on cover: Circle of four colors according to Ostwald (Vierteiliger farbkreis nach Ostwald), anonymous student of the Bauhaus School Dessau/Berlin. Photographic reproduction © Centre Pompidou, MNAM-CCI, Dist. RMN-Grand Palais / Jacques Faujour

ISBN 978-1-78068-296-9  
D/2015/7849/35  
NUR 828

British Library Cataloguing in Publication Data. A catalogue record for this book is available from the British Library.

No part of this book may be reproduced in any form, by print, photoprint, microfilm or any other means, without written permission from the publisher.

# PREFACE

In 2009, the Steering Committee for the programme ‘Beyond Territoriality: Globalisation and Transnational Human Rights Obligations’ (GLOTHRO), funded by the European Science Foundation and led by Belgian Professor Wouter Vandenhoele, started a project on the human rights obligations of international financial institutions, most notably the International Monetary Fund (IMF) and the World Bank Group (WBG), which is composed of the International Bank for Reconstruction and Development (IBRD), the International Finance Corporation (IFC), the International Development Association (IDA), the Multilateral Investment Guarantee Agency (MIGA), and the International Centre for Settlement of Investment Disputes (ICSID). The project would build on a previous project, started in 2001 by the present author, which led to the publication of *World Bank, IMF and Human Rights* in 2003, containing the ‘Tilburg Guiding Principles on the World Bank Group, the IMF and Human Rights’.<sup>1</sup>

The present publication provides an extensive explanatory text to, and a make-over of, the 2003 Guiding Principles, now called the ‘Tilburg-GLOTHRO Guiding Principles on the World Bank Group, the IMF and Human Rights’ (see Annex I). These principles are adapted to new insights and developments in the domain of international human rights law over the last decade, with special emphasis on the extraterritoriality of human rights, as well as on developments taking place in the domain of the international legal responsibilities of international organisations and their Member States. The text does *not* discuss the extent to which the WBG and IMF, and other multilateral development banks to which the findings would apply *mutatis mutandis*, actually live up to their international human rights legal obligations in daily practice. The focus is on discussing and clarifying the underlying legal concepts.

The explanatory text is comprised of arguments substantiating the Guiding Principles, taken either from doctrine or legal authorities. The aim of the publication is to clarify by what norms of international human rights law the WBG, IMF, and other IFIs are bound in 2014. Both the Guiding Principles and the text are meant to (re)present the relevant existing international human rights law (*de lege lata*), while adding a number of

---

<sup>1</sup> Willem van Genugten, Paul Hunt and Susan Mathews (eds), *World Bank, IMF and Human Rights*, Nijmegen: Wolf Legal Publishers, 2003.

proposals with a view to the future law (*de lege ferenda*). The text is presented in a way that should be accessible, perhaps sometimes with determination, to non-IFI specialists. For this reason, legal technicalities have occasionally been rephrased in simpler terms, with care to retain their legal accuracy. The number of references is also kept to a minimum. Footnotes are used only in conjunction with direct quotes and in a few other cases, such as when referring to specific legal sources. A short bibliography at the end provides a number of core publications consulted during the project and relevant for further reading.

The format and text of the Principles were discussed at workshops at Tilburg University (20–21 April 2012) and in Geneva (28–29 November 2013), followed by discussions on further integrating the project into the larger aims of the GLOTHRO project at an authors' seminar in Antwerp (3–4 February 2014) and in the final GLOTHRO conference in Turku (27–29 March 2014). These meetings were attended by a range of people; some of them contributed by delivering text blocks or orally, and their contributions were used to revise the successive drafts. This relates most notably to *Wolfgang Benedek, Josh Curtis, Charline Daelman, Asbjørn Eide, Mary Footer, Ann Sofia Freitas de Barros, Tara van Ho, Yannick Radi, Cedric Ryngaert, Sigrun Skogly, Arne Vandenbogaerde, and Wouter Vandenhole*.

Over the course of the project a range of other people also participated in one way or another and influenced my thinking on the topic(s) discussed. They include: Daniel Augenstein, Andrew Clapham, Koen de Feyter (during the first project, 2001–2003), Cees Flinterman (first project), Bas de Gaay Fortman (first project), Paul Hunt (first project), Nicola Jägers, Jernej Letnar Čeranič, Ashfaq Khalfan, Cephaz Lumina, Susan Mathews (first project), Ruth Okediji, Camilo Pérez Bustillo (first project), Martin Scheinin, Ian Seiderman and Alfredo Sfeir-Younis (first project). Still others were not available to participate, but contributed strongly to the outcome of the project through their writing. See the bibliography and, more particularly, the authors referred to in the footnotes.

Having said that, it must be made clear that none of the persons mentioned above bear any responsibility for the final text; all shortcuts, unfinished arguments and mistakes are mine. Stating this is not a matter of false modesty: the domain is huge and complex, and the alternative would have been to write a lengthy handbook. *Quod non*.

Willem van Genugten  
Tilburg, December 2014

# CONTENTS

<i>Preface</i> .....	v
<i>List of Abbreviations</i> .....	ix
<b>Chapter 1. Introduction</b> .....	1
<b>Chapter 2. IFIs Positioning Themselves in the Human Rights Field</b> .....	3
2.1. Official WBG Position .....	3
2.2. Official IMF Position .....	5
<b>Chapter 3. Applicable Human Rights Obligations</b> .....	9
3.1. Introduction .....	9
3.2. The Links between IFI Mandates and International Human Rights Law .....	9
3.3. Incorporating IFIs in the Domain of International Human Rights Law .....	14
3.4. The ‘Political Prohibition’ on the World Bank .....	17
3.5. Human Rights Obligations of States Acting in the Context of IFIs ..	21
3.6. Obligations Following from (Legal) Relationships between the IFIs and Private Subcontractors .....	24
<b>Chapter 4. Attributing Unlawful Conduct to IFIs and their Member States</b> .....	27
4.1. Attribution and Responsibility .....	27
4.2. ‘In Control’ .....	29
4.3. Primary, Subsidiary and Shared Responsibility .....	33
<b>Chapter 5. Accountability and Redress</b> .....	37
5.1. Substantive and Procedural Standards .....	37
5.2. Human Rights Impact Assessment .....	43
5.3. Existing IFI Accountability Mechanisms .....	45
5.4. Arbitration, Mediation and Dialogue-Based Conflict Resolution ...	47

<b>Chapter 6. Concluding Remarks</b> .....	53
<i>Annex I. Tilburg-GLOTHRO Guiding Principles on the World Bank Group, the International Monetary Fund and Human Rights</i> .....	55
<i>Annex II. Draft Articles on the Responsibility of States for Internationally Wrongful Acts (2001) (excerpts)</i> .....	61
<i>Annex III. Draft Articles on the Responsibility of International Organizations (2011) (excerpts)</i> .....	69
<i>Annex IV. Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights (2011) (excerpts)</i> .....	79
<i>Annex V. UN Guiding Principles on Business and Human Rights (2011) (excerpts)</i> .....	87
<i>Bibliography</i> .....	95



# LIST OF ABBREVIATIONS

CAO	Compliance Advisor/Ombudsman (World Bank Group)
CESCR	Committee on Economic, Social and Cultural Rights
DARIO	Draft Articles on the Responsibility of International Organizations
DARS	Draft Articles on the Responsibility of States for Internationally Wrongful Acts
GLOTHRO	Globalisation and Transnational Human Rights Obligations
HRIA	human rights impact assessments
IEO	Independent Evaluation Office (IMF)
IFC	International Finance Corporation
IFI	international financial institution
IMF	International Monetary Fund
MDB	multilateral development banks
MIGA	Multilateral Investment Guarantee Agency
NGO	non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
PCA	Permanent Court of Arbitration
UN	United Nations
UNGPs	UN Guiding Principles on Business and Human Rights
WBG	World Bank Group

