

A De Man

Coordinator: Advocacy
Division, Free State
Centre for Human Rights,
University of the Free
State
ORCID: <http://orcid.org/0000-0003-2026-5797>

M Bello

Lecturer, Bayero
University, Kano
ORCID: <http://orcid.org/0000-0002-3958-4221>

DOI: <https://dx.doi.org/10.18820/24150517/JJS46.i1.3>

ISSN 0258-252X (Print)
ISSN 2415-0517 (Online)

Journal for
Juridical Science
2021:46(1):57-88

Date Published:
11 October 2021

PRIORITISING SOCIO-ECONOMIC RIGHTS IN SOVEREIGN DEBT GOVERNANCE: THE OBLIGATIONS OF PRIVATE CREDITORS*

SUMMARY

Over the past few decades, sovereign debt crises have become recurring phenomena across the world. Studies have shown the devastating impacts of these crises on the realisation of socio-economic rights. Sovereign debtors constantly face an “obligatory dilemma” of simultaneously satisfying multiple contractual and treaty obligations owed to different constituencies, including to their citizens and private creditors. Unfortunately, there is currently no binding legal framework to deal with sovereign debt crises and, consequently, creditors are unwilling to compromise. Therefore, using Waldron’s theory of socio-economic rights, this article argues for the prioritisation of socio-economic rights considerations during debt crises. It observes a convergence between the areas of business and human rights and sovereign debt restructuring regimes and suggests the employment of the former to achieve this prioritisation. This can be done by taking advantage of the efforts to develop a binding instrument on business and human rights.

1. INTRODUCTION

Holding private creditors accountable for human rights violations remains one of the most debated topics in the field of business and human rights (BHR). It raises issues of governance and legitimacy and challenges the creditor-biased character of the current sovereign debt regime. In particular, the place of debtors’ citizens, especially the fulfilment of their socio-economic rights, is often considered extraneous to the two-sided, creditor-debtor matrix of a typical debt relationship. However, there is growing discontent against this approach. For instance, in reflecting on the 2008 global financial crisis (GFC), the United Nations (UN) Commission of Experts on the Reform of the International Monetary and Financial System observed that “the existing system of protracted,



Published by the UFS
<http://journals.ufs.ac.za/index.php/jjs>

© Creative Commons With Attribution
(CC-BY)



creditor-biased resolution of sovereign debt crises is not in the global public interest and far from the interests of the poor”.¹

Indeed, the COVID-19 pandemic has re-echoed this sentiment, bringing to the fore the complex relationship between sovereign debt and socio-economic rights. As the pandemic ravages the global economy, credit markets have frozen and the level of debt distress has increased, creating “a surge of debt without precedent”.² Debt reliefs have, once again, become tools for achieving global equality and for fulfilling the promise of socio-economic rights. In the 2020 G20 meeting, the International Monetary Fund (IMF) and the World Bank (WB) recommended a pause on debt repayments to poor and emerging countries by official and private creditors.³ The IMF has provided debt reliefs to some of its members, using the Catastrophe Containment and Relief Trust Fund.⁴ Private creditors have, however, remained largely silent.

Following decades of work by the United Nations Commission on Human Rights (UNCHR) and the United Nations Human Rights Council (UNHRC), the relationship between sovereign debt and socio-economic rights has now been well documented.⁵ The landmark Guiding Principles on Business and Human Rights⁶ (GPs) were adopted almost at the same time as the UNHRC’s Guiding Principles on Foreign Debt and Human Rights⁷ (Guiding Principles on Foreign

* We would like to thank the editor and the anonymous reviewers for their insightful observations and comments. The usual *caveat* applies.

1 UN General Assembly (UNGA) 2009:122.

2 Lazard “Government debt in rough waters: A navigation guide”, <https://www.lazard.com/media/451399/20200929-whitepaper-en-final.pdf> (accessed on 29 January 2021).

3 Gelpern *et al.* “Debt standstills can help vulnerable governments manage COVID-19 crisis”, https://www.piie.com/blogs/realtime-economic-issues-watch/debt-standstills-can-help-vulnerable-governments-manage-covid#_ (accessed on 29 January 2021).

4 IMF “IMF executive board approves immediate debt relief for 25 countries”, <https://www.imf.org/en/News/Articles/2020/04/13/pr20151-imf-executive-board-approves-immediate-debt-relief-for-25-countries> (accessed on 29 January 2021).

5 See reports of UN Independent Expert on the effects of foreign debt and other related international financial obligations of states on the full enjoyment of all human rights, particularly economic, social and cultural rights for the period 1998-2018, <https://www.ohchr.org/en/issues/development/iedebt/pages/iedebtindex.aspx> (accessed on 27 August 2020).

6 UN “Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie – Guiding principles on business and human rights: Implementing the United Nations ‘Protect, Respect and Remedy’ framework”, UN Doc A/HRC/17/31, https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.31_en.pdf (accessed on 27 August 2020).

7 UN 2012. “Report of Independent Expert on the effects of foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephias Lumina”, UN Doc A/HRC/20/23, https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-23_en.pdf (accessed on 27 August 2020).

Debt). The UNHRC has also adopted the Guiding Principles on Human Rights Impact Assessment (HRIA) of Economic Reforms.⁸

These evolving trends seem to be manifesting a gradual convergence between BHR and the sovereign debt regime. They could shape the global efforts toward, and debates on the development of an internationally binding instrument on BHR.⁹ One of the core links driving this gradual convergence appears to be socio-economic rights. Sovereign debt crisis, by its nature, puts enormous strain on the debtor's resources. This raises the fundamental question of simultaneously fulfilling obligations owed to multiple constituencies or stakeholders. Thus, scarcity of resources, in the face of competing demands, brings to the fore the question of prioritisation of these demands and its theoretical implications for the idea of justice.

This article thus sets out to offer some theoretical justification for prioritising socio-economic rights in sovereign debt governance and to identify some substantive and procedural responsibilities of private creditors as possible candidates for incorporation into a future BHR treaty.

With these objectives in mind, the next section of the article provides a theoretical foundation, by contextualising the "justice concerns" prompting prioritisation of socio-economic rights. Section three proceeds to examine the existing BHR and sovereign debt governance standards and the extent to which they embrace socio-economic rights. Section four proposes certain obligations for private creditors worthy of consideration in the debate on a BHR treaty framework. Section five reflects on some of the doctrinal and practical hurdles, and section six offers some concluding remarks.

2. SOCIO-ECONOMIC RIGHTS AND THE IDEA OF "JUSTICE" IN SOVEREIGN DEBT GOVERNANCE

It is important to start by contextualising the concepts 'sovereign debt governance', 'private creditors' and 'socio-economic rights'.

2.1 Citizens in sovereign debt governance

'Sovereign debt' is sometimes called 'public debt', 'national debt' or 'external debt'. It is a debt owed or guaranteed by a government of a sovereign state.

8 UN 2018. "Guiding principles on human rights impact assessments of economic reforms - Report of the Independent Expert on the effects of foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights, Juan Pablo Bohoslavsky", UN Doc A/HRC/40/57, <https://digitallibrary.un.org/record/1663025?ln=en> (accessed on 27 August 2020).

9 UN Office of the High Commissioner for Human Rights (OHCHR) "Legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises", <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/DraftLBI.pdf> (accessed 27 August 2020). A draft of the treaty has been made public in July 2019. See https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/OEIGWG_RevisedDraft_LBI.pdf (accessed on 29 January 2021).

According to the International Law Association (ILA), an “external debt is expressed in some foreign currency, typically payable abroad, governed by some external law and subject to the jurisdiction of external courts”.¹⁰ It comes from either official or private sources. Bilateral and multilateral lenders are not private creditors and, therefore, fall beyond the scope of this article. Private creditors are non-official creditors. They are purely business-oriented financial institutions and bondholders.¹¹

Sovereign debt involves multiple interests. Arguably, the most important interests are those of the debtor’s citizens who enjoy a fiduciary relationship with their government.¹² Although citizens are not directly involved as primary parties, they expressly and impliedly empower their governments (as agents) to engage in such transactions on their behalf. Bantekas succinctly captures the multi-stakeholder perspective in the context of adjudication:

Sovereign debt is not simply a contractual assumption of debt by the state through a loan transaction, but is largely conditioned by other extraneous factors. These include, among others: The many and varied purchasers of government bonds; ... [and] *taxpayers that will be forced to forego some of their bank deposits or pay discriminatory taxes towards reviving the economy.*¹³

In the same vein, Sudreau and Bohoslavsky argue that in “sovereign debt contracting ... sovereign actions [should] be in citizens’ interest”.¹⁴ This, they argue, is founded

on a notion of sovereignty intrinsically linked to human rights and the *erga omnes* (rights or obligations owed towards all) effect of human rights obligations so that the impact of sovereign debt over states’ capacities to promote and protect human rights is not something (legally) unfamiliar to lenders.¹⁵

Therefore, the legitimacy of a sovereign debt is largely defined by the interests and well-being of the citizens.¹⁶ In the words of Rasmussen, “a country is simply an investment vehicle for its citizens”.¹⁷ States borrow, because they have a primary constituency expecting, legitimately, that its interests would be advanced. As Rasmussen aptly points out, “[t]he needs of a state’s citizens are actually part of the reason why sovereign borrowing is justified in the first instance”.¹⁸

‘Sovereign debt governance’ is a process of interaction among actors in the sovereign debt regime. It is a mixture of public and private, national

10 ILA’s Sovereign Insolvency Study Group 2010:9.

11 However, the case of *Law Debenture Trust Corp plc v Ukraine* [2017] EWHC 655 reveals the danger of misusing sovereign wealth funds for geopolitical ends.

12 UN Conference on Trade and Development (UNCTAD) 2012:principle 1.

13 Bantekas 2014:161-163 (emphasis supplied).

14 Sudreau & Bohoslavsky 2015:624.

15 Sudreau & Bohoslavsky 2015:624.

16 Lienau 2016:157-172.

17 Rasmussen 2004:7, 18.

18 Rasmussen 2004:7, 18-19.

and international rules. Using these rules, sovereign debt governance seeks to balance, align and reconcile the interests of creditors, debtors and other stakeholders. Thus, it recognises the diversity of interests and the difficulty of aligning them.

Notably, official bilateral creditors, often the home states of private creditors, and international financial institutions (IFIs) have assumed a central role in this governance process.¹⁹ Without a centralised global authority, the IMF, multilateral development banks, the Paris Club, creditor and bondholder groupings, and formal and informal groupings of countries (for example, G20 and G77) have all played significant roles in this governance process.

The IMF, by its Articles of Agreement, lends to its members experiencing a balance of payments crisis “under adequate safeguards”.²⁰ A balance of payments crisis usually triggers macroeconomic uncertainties. It is often caused by a member’s excessive indebtedness. The IMF’s intervention is thus designed to enable such a member to regain access to the debt market to be able to continue servicing the debt according to the original terms.²¹ Thus, IMF interventions are usually catalytic in nature, in other words, comprising belt-tightening economic reforms.²² However, where the debt is unsustainable, further belt-tightening might be unfeasible; hence, the IMF’s intervention would require debt restructuring supported by a debt sustainability analysis.²³ For private creditors, the restructuring is usually implemented at the outset of the IMF intervention.

IFIs have, over the years, supported indebted countries. In September 1996, for instance, the IMF, the WB and regional development banks approved a debt relief programme targeting Heavily Indebted Poor Countries (HIPC).²⁴ This was a well-coordinated initiative designed to address the excessive debt burdens of these countries.²⁵ Although an *ad hoc* multilateral initiative, it also included 6 per cent private sector debts.²⁶

Most of the players in the sovereign debt regime are largely interest driven. Naturally, there would be conflicts or disagreements among them. Unfortunately, the regime is not coherent enough to help resolve these conflicts in an orderly fashion.²⁷

19 Buchheit 2005:333.

20 IMF Articles of Agreement:art. 1.

21 IMF “The funds lending framework and sovereign debt – further considerations”, <https://www.imf.org/external/np/pp/eng/2015/040915.pdf> (accessed on 29 January 2021).

22 IMF 2015:1.

23 IMF 2015:1.

24 Enrique 2010:248.

25 IMF 2016:1-3.

26 WB & IMF 2010. *Heavily Indebted Poor Countries (HIPC) Initiative and Multilateral Debt Relief Initiative (MDRI) Status of Implementation*, www.worldbank.org/debt (accessed on 20 July 2018).

27 Gelpert 2016:94.

Therefore, there is a crucial objective of “justice” embedded in the notion of sovereign debt governance, due to the desire to ensure the alignment of the multiple interests, the objectives of, and the public elements inherent in such debts. However, the idea of “justice” is inherently problematic. Naturally, a creditor’s notion of “justice” in this context would not be the same as the debtor’s. In addition, the multiplicity of interests means the notion of “justice” must not be reduced to a two-sided creditor-debtor matrix.

The use of either public or private law are two major approaches to sovereign debt governance.²⁸ Under the former, sovereign debt governance is contract-based governance; in other words, it is the parties’ agreed private-governance and, therefore, the “justice” of this regime is to be located within the contractual instruments that structure, define and govern such a relationship from beginning to end.²⁹

A classic example of how this approach influenced the shape of the sovereign debt regime is the waiver of immunity by sovereign debtors, enabling creditors to enforce debt contracts largely through domestic courts.³⁰

However, recent events show that a private law paradigm may not suitably and effectively address all issues or grievances arising from the interaction between or among a multitude of stakeholders. In the words of Bantekas,

the contractual construction of sovereign debt is a fiction and is not reflective of the multitude of sovereign, intergovernmental and private actors that have a direct interest as a result of the impact of debt on existing rights and obligations.³¹

Not surprisingly, the public law approach to sovereign debt governance counters the private law approach. There are a number of perspectives. For instance, Tan offers a development-based perspective.³² She conceives sovereign debt governance as “a set of disciplinary discourses” or “regulatory conversations” or “communicative interactions” that are part of governance through development.³³ Tan rejects the private law approach that establishes a governance architecture based on the fundamental principles of sanctity of contract.³⁴ These principles effectively shut out citizens from any sovereign debt governance.³⁵ It is only by deconstructing this dominant narrative that citizens can be placed within the development objective of sovereign debt.³⁶

28 Goldmann 2018:331-363.

29 Chukwu 2016:3.

30 UN General Assembly (UNGA) Convention on Jurisdictional Immunities of States and their Property (adopted on 2 December 2004, opened for signature on 17 January 2004 but yet to enter into force).

31 Bantekas 2014:163.

32 Tan 2014:254, 268.

33 Tan 2014:254, 268.

34 Tan 2014:254-257.

35 Tan 2014:254.

36 Tan 2013:307-324.

The most influential public law perspective thus far is the ‘international public authority’ (IPA) perspective.³⁷ IPA is defined as “the law-based capacity of any international institution to legally or factually limit or otherwise affect other persons’ or entities’ use of their liberty”.³⁸ It extends the meaning of “publicness” by focusing on the consequences of a particular decision or conduct of an actor or institution on citizens. Bogdandy and Goldmann use this tool to de-emphasise the informality and discretionary character of the sovereign debt regime, while simultaneously emphasising issues of institutional legitimacy arising from the impact of the actions or inactions of decision-making institutions, especially on the citizens of sovereign debtors.³⁹

Importantly, the IPA perspective has been shaping the current consensus-generating “incremental approach” through the influential works of the United Nations General Assembly (UNGA) and the United Nations Conference on Trade and Development (UNCTAD).⁴⁰ This is partly because it accommodates human rights-based principles. In particular, it aligns with the concerns for, and the underlying philosophy of socio-economic rights.⁴¹ Beside their responsibilities as businesses, private creditors’ associations (with IFIs in the case of sovereign debt restructuring (SDR)), may have human rights obligations arising from the effects of their actions. This might translate into a duty to respect socio-economic rights.⁴²

Finally, Bantekas advances what he calls

a new social-contract [perspective] based on the idea of a legitimate and accountable government whose constitutional mandate will under no circumstance be the (fictitious) salvation of the state from insolvency but the wellbeing of its people, as well as the wellbeing of people of other nations.⁴³

This perspective seems to neatly situate the interests of the rights-holders within the sovereign debt regime.

Although the public law approach has its shortcomings in the context of global governance, it seems to have a broader, all-inclusive answer to the challenges facing the sovereign debt regime.⁴⁴ Indeed, from the above, it is evident that there is a growing paradigm shift in favour of a multi-stakeholder, human rights-sensitive one.⁴⁵ The multi-stakeholder approach is grounded in realism and, therefore, it ignores the artificial construct embedded in the contractual instrument. As Gelpert notes, “public debt cannot be left entirely

37 Von Bogdandy *et al.* 2017:132.

38 Von Bogdandy & Goldmann 2014:47.

39 Bohoslavsky & Goldmann 2016:13-42.

40 Bohoslavsky & Goldmann 2016:13-42.

41 Bohoslavsky & Goldmann 2016:13-42.

42 Goldmann 2014b:79-100.

43 Bantekas 2014:170-173.

44 Zumbansen 2013:117-138.

45 Bohoslavsky 2016:177-199.

or even mostly to private ordering ... [as] it has too many core constituencies outside the four corners of the contract".⁴⁶

In addition, the primary beneficiaries of any legitimate sovereign debt are the citizens of the sovereign debtor. They are the actual "sovereigns" behind the sovereign debtor.⁴⁷ Interestingly, as the actual sovereigns, they are also the rights-holders in international human rights law.

The private, contractualist approach is, arguably, narrowly constructed to exclude or de-emphasise the place of individual citizens in the sovereign debt scheme. However, citizens of creditor nations are also important stakeholders in sovereign debt governance. Sovereigns often bail out financial firms using tax-payers' money, especially during a financial crisis. During the Euro debt crisis, for instance, the European Commission, the European Central Bank and the IMF offered lifelines for European governments in debt distress.⁴⁸ The main justification for bailouts is to inject liquidity into the banks to avoid contagion and a broader, systemic collapse of the financial system.⁴⁹ Thus, bailing out governments in debt default and continuous debt servicing to creditors are intertwined. Within a macroeconomic framework, bail out is often used to rescue failing financial firms to avert systemic collapse.⁵⁰ Thus, it can restore confidence in the financial system and drive macroeconomic stability.

However, bailouts and continuous debt servicing become problematic when they undermine the bailor's international obligations of delivering critical, life-sustaining public goods to its citizens. The Euro debt crisis has shown that creditor nations are not immune from the consequences of debt crisis, especially in a highly integrated monetary union. Interestingly, both debtor and creditor nations are state parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁵¹ They are also members of multilateral lending institutions such as the IMF and the WB. These institutional lenders play crucial roles in the sovereign debt regime, especially as lenders of last resort. Their debt relief programmes, like the HIPC and Multilateral Debt Relief initiative (MDR), illustrate the power of "international assistance and cooperation" as envisaged by the ICESCR.

2.2 Theorising socio-economic rights

Socio-economic rights theorising raises concerns for "justice" and "prioritisation" with respect to certain competing claims, especially as the said rights require resources – which are often in limited supply – to become meaningful or realisable.⁵² This is bound to be problematic, particularly where

46 Gelpern 2018:22, 28.

47 Rasmussen 2004:18-23.

48 Dermine 2019:108-121.

49 Posner & Casey 2015:481.

50 Posner & Casey 2015:481.

51 International Covenant on Economic, Social and Cultural Rights (adopted on 16 December 1966, entered into force on 3 January 1976).

52 Waldron 2010:25.

these resources or part thereof are privately owned or are to be sourced wholly or partly from one segment of the society through taxation.

While arguing for the emergence of a theory of socio-economic rights from theories of justice, Waldron defines these rights as “rights calculated to ensure that those in a society who are materially radically disadvantaged are, if possible, raised by collective provision above the level of radical disadvantage”.⁵³ With insights from Nozick’s and Rawls’ theories of justice, respectively, he offers some theoretical justifications for these rights, characterising them as “inherently budgetary” as they consist of rights that “compete with one another and with other demands for funding” in the society.⁵⁴ This means that “there needs to be some sorting, balancing and prioritization among these demands [but it] does not follow that one subset of the demands (socio[-]economic rights) must be abandoned in advance as impossible”.⁵⁵ Waldron argues thus:

[Nozick’s “reverse” theory] gives priority to the right not to have one’s material situation worsened ... It gives these rights priority in exactly the sense that the “reverse” theory is supposed to give priority to socio[-]economic rights: property entitlements must work round them and no such entitlements are recognized if they are incompatible with these rights.⁵⁶

Although Waldron only offers a general proposition, it might help in prioritising specific expenditures in the face of resource constraint occasioned by a sovereign debt crisis. If resources are scarce relative to competing demands or the resources are privately owned, then a theory of justice must be deployed “to provide a general matrix for considering and reconciling these competing claims”.⁵⁷

Thus, for present purposes, socio-economic rights are entitlements of individuals and communities to enjoy or have access to basic, minimum and dignified conditions necessary for their well-being and survival, as provided under the Universal Declaration of Human Rights (UDHR)⁵⁸ and the ICESCR and reflected in, or reinforced by customary international law, general principles, judicial decisions and soft law instruments.⁵⁹

This is not merely an abstract formulation. The injustice created by financialisation puts millions below the “level of radical disadvantage”. Interestingly, Waldron’s “level of radical disadvantage” aligns with the minimum core threshold as recognised in different theories, laws and instruments relating to socio-economic rights.⁶⁰ It consists of the basic minimum requirements for

53 Waldron 2010:39.

54 Waldron 2010:46.

55 Waldron 2010:28.

56 Waldron 2010:31.

57 Waldron 2010:24.

58 Universal Declaration of Human Rights (adopted on 10 December 1948).

59 Alston & Quinn 1987:229.

60 Young 2008:113-175.

human survival and well-being. In this context, the basic minimum threshold performs certain functions:

- First, it integrates or unites socio-economic rights, thereby avoiding the competing demands for resources to satisfy or fulfil some or all of these rights (*i.e.* inter-socio-economic rights' prioritisation).
- Secondly, it offers assistance to those deserving of assistance, thus narrowing the inequality gap. Support for this could be found in Rawls' "difference principle" which has been interpreted to mean "when we are designing or ... reforming the network of rules and procedures that constitute the institutional structure of an economy, we should do so in a way that is oriented towards the advantage of the worst-off group".⁶¹ Indeed, Rawls' second principle of justice is that "social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantage and (b) attached to positions opened to all under conditions of equality of opportunity".⁶²
- Thirdly, the minimum threshold has a compelling moral force that gives priority to these rights above other competing, non-rights demands for resources in a deserving situation. This is because a person at or below "the level of radical disadvantage" loses his/her dignity. Thus, it could be relevant to the sorting, balancing and prioritisation of the multiple interests during a sovereign debt crisis. This could also be rationalised using the example of the COVID-19 pandemic, in which debt relief has been granted to debtors so that they can deal with the crisis by giving priority to citizens' health-based rights and employment benefits.

Importantly, the above analysis is deliberately silent on duty-bearers. Although there are different theories of rights, there is widespread consensus among scholars that the idea of "right" is a relational construct.⁶³ A right-holder has some general expectations because his/her *right* imposes duties on others to act towards him/her in a certain manner.⁶⁴ Under the dominant state-centric view of international human rights law, only states qualify as duty-bearers. History certainly favours this view. Human rights treaties, including the ICESCR, were virtually framed in the shadow of this dominant view. This is understandable, because the ICESCR and other human rights treaties were conceived as part of the universal legal response to the undignified treatments meted out to individuals by states during the Second World War.⁶⁵ Therefore, these treaties were designed primarily to address the propensity of states to indulge in similar practices of violating the rights of their citizens, hence the primary duty-bearers are considered to be the states.⁶⁶

61 Waldron 2010:29, 39-40.

62 Rawls 1999:206-207.

63 Leif 2005:223-252.

64 Singer 1982:987.

65 Morsink 1999:88-91.

66 Bessom 2015:244-268.

In addition, the indignity of poverty was a major concern for the framers of the post-war socio-economic rights framework.⁶⁷ Thus, upon accession to the ICESCR, a sovereign debtor or its bilateral creditor counterpart, as the case may be, shall

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 recognised in the covenant by all appropriate means including adoption of legislative measures.⁶⁸

The Committee on Economic, Social and Cultural Rights (CESCR) has officially interpreted this provision, by identifying a number of obligations for state parties.⁶⁹ In particular, state parties assume three forms of obligation: *to respect, to protect and to fulfil* the socio-economic rights of their citizens.⁷⁰ Accordingly, every state party shall take steps towards progressively realising the socio-economic rights provided for under the ICESCR. *Progressive realisation* entails a gradual, resource-determined implementation, without adopting regressive measures that could hamper the implementation process designed to fully realise these rights.⁷¹ The framers of the ICESCR, therefore, were mindful of the reality of scarce resources and the competing demands/claims on these resources.⁷²

The notion of “maximum available resources” brings socio-economic rights to the top of the priority list. It entails that a state party must optimally mobilise and channel its domestic resources towards socio-economic rights and, where domestic resources are acutely scarce, obtain international assistance and borrow funds for this purpose.⁷³

The concept of “progressive realisation”, in a sense, recognises the “invariance” of the minimum core obligations, thereby allowing contextual flexibility, due to differential resource endowments of states.⁷⁴ The “immediacy” element inherent in the minimum core obligation concept invariably raises the question of prioritisation of multiple state obligations.⁷⁵ Thus, a state’s failure to satisfy its minimum core obligation may be excused where it can “demonstrate that every effort has been made to use all resources that are at its disposition in an effort to satisfy, as a matter of priority, those minimum obligations”.⁷⁶ Thus, the minimum core concept and progressive realisation go hand in hand. In a sovereign debt context, for instance, using institutional (e.g. IMF) emergency loans for a debt servicing purpose rather than for satisfying minimum core obligations would negate the “progressive realisation”

67 Morsink 1999:36-38.

68 ICESCR:art. 2(1).

69 CESCR 1990:paras. 1-14.

70 Eide 1989:35-51.

71 Warwick 2016:249-265.

72 CESCR 1990:paras. 9, 11-12.

73 CESCR 2007:paras. 5-6.

74 Tasioulas 2017:2.

75 Tasioulas 2017:12.

76 CESCR 1990:par. 10.

obligation. The dynamics of a debt relationship can thus undermine the fulfilment of ICESCR's obligations.

In conclusion, it is important to note that ICESCR obligations bind both the debtor and the creditor state parties. They must satisfy the minimum core based on the resource-constraints recognised by the ICESCR.

3. SOCIO-ECONOMIC RIGHTS, BUSINESS AND HUMAN RIGHTS AND SOVEREIGN DEBT GOVERNANCE

As noted earlier, for centuries, private creditors have been playing a significant role in sovereign financing, and there is a growing consensus that they, at least, bear some negative socio-economic rights obligations.⁷⁷ Indeed, it has been argued that businesses also have obligations to *protect* and *fulfil* socio-economic rights.⁷⁸ They are increasingly becoming violators of socio-economic rights, sometimes in complicity with the state, and may, therefore, be held accountable especially using the domestic legal system.⁷⁹ As is to be expected, there has been some form of resistance at the international level,⁸⁰ because, under the state-centric vision of international human rights law, businesses are only secondary bearers of responsibility.⁸¹ This "circuitous, indirect imputability" approach has been severely criticised, because it leaves an accountability gap.⁸²

3.1 Contextualising private creditors in business and human rights

The UN has become one of the major agenda-setters in the field of BHR. However, bringing businesses within the accountability parameters of international human rights law has always faced stiff resistance, mainly on the basis of state-centrism.⁸³ The first attempt, initiated by the UN Economic and Social Council, only produced a draft Code of Conduct for multinational corporations, which, unsurprisingly, faded into oblivion.⁸⁴ Another attempt to fill this accountability gap, initiated by the UN Secretary-General, produced the UN Global Compact (UNGC).⁸⁵ However, the UNGC has failed to address the accountability gap.⁸⁶

In addition to the UNGC initiative, the UN Sub-Commission on the Promotion and Protection of Human Rights launched a new initiative under the rubric UN Norms on the Responsibilities of Transnational Corporations

77 OHCHR 2018.

78 Cernic 2014:139, 154-155.

79 Backer 2017:417-504.

80 Kinley & Tadaki 2004:933.

81 Bilchitz 2016:143-170.

82 Bilchitz 2016:143-170.

83 Bilchitz 2016:143-170.

84 Feeney 2009:162.

85 Rasche 2009:511-537.

86 Nolan 2005:445-466.

and other Business Enterprises with regards to Human Rights (the Norms) in 2003.⁸⁷ The Norms adopted a direct responsibility approach, attempting to address the accountability gap through public international law.⁸⁸ In a repeated scenario, playing out like a tug-of-war, the human rights community hailed the Norms while the business community vehemently rejected it.⁸⁹

In 2005, the UN revived its resolve to fill the accountability gap by appointing John Ruggie as the Secretary-General's Special Representative on Business and Human Rights (SRSG).⁹⁰ In light of the failed efforts of the past, the SRSG opted for a "principled pragmatism" in order to generate better consensus in producing a multilayered, polycentric framework along the line of global governance.⁹¹ Consequently, the SRSG produced the famous "Three-Pillars Framework" of "protect-respect-remedy" in 2008.⁹² This was adopted by the UNHRC in 2011 as the GPs.⁹³ The GPs embody three cardinal principles: the state's duty to protect, businesses' responsibility to respect, and the obligation of both states and businesses to ensure accessible and effective remedies for victims of human rights violations.⁹⁴ In 2014, the UNHRC established an intergovernmental working group to commence deliberation on a legally binding treaty on BHR.⁹⁵

Several self-regulatory organisations, including some private creditors, have endorsed the GPs.⁹⁶ However, the tug-of-war continues, as critics reject the GPs for, allegedly, failing to effectively close the accountability gap.⁹⁷ They only focus on the character of the actors and not their actions.

The GPs are significant for two reasons: they cover all businesses without sectoral considerations, and they cover all human rights. They have also implicitly embraced the underlying philosophy behind socio-economic rights

87 Weissbrodt & Kruger 2003:901-922.

88 Weissbrodt & Kruger 2003:901-922.

89 Feeney 2009:161-175.

90 UNCHR 2006. "Interim report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises", UN Doc/E/CN.4/2006/97. <https://digitallibrary.un.org/record/569408?ln=en> (accessed 27 August 2020).

91 UNCHR 2006. "Interim report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises", UN Doc/E/CN.4/2006/97, <https://digitallibrary.un.org/record/569408?ln=en> (accessed on 27 August 2020):par. 70.

92 UNHRC 2008. "Protect, respect and remedy: A framework for business and human rights – Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie", UN Doc/A/HRC/8/5, <https://digitallibrary.un.org/record/705860> (accessed on 27 August 2020).

93 UNHRC 2011a.

94 UNHRC 2011a:principles 1-11, 22, 25, 29, 31.

95 UNHRC 2014. "Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights", Res A/HRC/RES/26/9, <https://www.ihrb.org/pdf/G1408252.pdf> (accessed on 27 August 2020).

96 Bradlow 2016:216-225.

97 Okoloise 2017:209.

in sovereign debt governance. It should be noted that the robust debate generated by the GPs prior to, during and after its adoption, has contributed towards moving the corporate human rights accountability agenda forward. In addition, in the context of sovereign financing, some have argued that corporate responsibility might arise where a creditor contributes to an excessively unsustainable debt.⁹⁸ The latter may, arguably, amount to an irresponsible lending practice.⁹⁹ Following the GPs, in 2017, the CESCR issued a General Comment to, among others, help businesses appreciate their socio-economic rights responsibilities and elaborate on state parties' obligations in the context of business activities, including businesses operating transnationally.¹⁰⁰ State parties must prevent violations of these rights abroad by companies domiciled in their jurisdictions regardless of the place of incorporation or "statutory seat, central administration or principal place of business".¹⁰¹ Without explicit territorial delimitation of socio-economic rights obligations, the ICESCR has given implicit recognition to this and other extra-territorial obligations.¹⁰² The International Court of Justice has recognised the extraterritorial reach of human rights obligations.¹⁰³ In addition, state parties have explicit obligations to ensure "international assistance and cooperation" towards the realisation of socio-economic rights.¹⁰⁴

In 2016, the CESCR also issued a statement clarifying the obligations of state parties and IFIs in the context of public debt.¹⁰⁵ For instance, a sovereign debtor must ensure that conditions attached to loans do not result in adopting retrogressive measures that "unreasonably reduce its ability to respect, protect and fulfil the Covenant rights".¹⁰⁶ Multilateral creditors and their member states also have a corresponding obligation to ensure that they do not force debtors to adopt retrogressive measures that undermine the realisation of the rights under the ICESCR.¹⁰⁷

3.2 Socio-economic rights and sovereign debt governance standards

In the past two decades or so, a number of standards have emerged on the role of private creditors in sovereign financing. However, while some of these standards are sensitive to socio-economic rights, others almost entirely advance creditor interests. While some are specific on sovereign debt, others are not.

98 Jagers 2014:188-198.

99 Lone 2014:233-249.

100 CESCR 2017:par. 3.

101 CESCR 2017:par. 26.

102 CESCR 2017:par. 27.

103 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion (2004) I.C.J. Reports:paras. 109-112.

104 ICESCR:art. 2(1).

105 CESCR 2016:par. 1.

106 CESCR 2016:par. 4.

107 CESCR 2016:paras. 7-10.

3.2.1 Guiding Principles on Foreign Debt and Human Rights

Arising from the extensive studies and reports of various independent experts, the UNHRC adopted the Guiding Principles on Foreign Debt at roughly the same period as the GPs.¹⁰⁸ This is, perhaps, the most far-reaching instrument to date with specific, extensive provisions on SDR and socio-economic rights.¹⁰⁹ As noted earlier, it seeks to “complement”, among others, the GPs and the Principles for Responsible Sovereign Lending and Borrowing (PRSLB).¹¹⁰ It also seeks to assist parties to sovereign debt contracts in balancing their contractual obligations with their obligations to respect, protect and fulfil, among others, socio-economic rights.¹¹¹ Thus, it clearly extends to private creditors.

In particular, the instrument reaffirms the individual and collective responsibilities of all debtors and creditors to “respect, protect and fulfil human rights”, so that their lending and borrowing activities – especially the negotiation and implementation of loan agreements, debt servicing, restructuring and provision of debt relief – “do not derogate from these obligations”.¹¹² Accordingly, private creditors have “a duty to refrain from formulating, adopting, funding and implementing policies and programmes which directly or indirectly contravene the enjoyment of human rights”.¹¹³ It also imposes an obligation on creditors to carry out HRIAs.¹¹⁴

With regards to SDR, the Guiding Principles on Foreign Debt recognise that, while contractual terms must be honoured, circumstances making the debt unpayable may warrant changes to original obligations.¹¹⁵ Hence, restructuring must not compromise a debtor’s obligation to fulfil its socio-economic rights obligations.¹¹⁶ In addition, a change of circumstances may warrant a debt moratorium, covering “principal, interests, commissions and penalties”.¹¹⁷ The Guiding Principles also affirm the sovereignty of debtors,¹¹⁸ and recommend the establishment of an independent, impartial SDR mechanism to fairly resolve sovereign debt disputes.¹¹⁹

From the above, there is no doubt that the Guiding Principles on Foreign Debt explicitly prioritise socio-economic rights in SDR and propose a fairly balanced restructuring regime. Not surprisingly, private creditors have not indicated much interest in them.¹²⁰

108 Lumina 2014:260-268.

109 UNHRC 2011b:par. 70.

110 UNHRC 2011b:par. 17.

111 UNHRC 2011b:paras. 1-2.

112 UNHRC 2011b:par. 6.

113 UNHRC 2011b:par. 9.

114 UNHRC 2011b:paras. 10-14, 40.

115 UNHRC 2011b:par. 52.

116 UNHRC 2011b:par. 53.

117 UNHRC 2011b:par. 58.

118 UNHRC 2011b:par. 80.

119 UNHRC 2011b:par. 80.

120 Bradlow 2016:216-225.

3.2.1.1 Guiding Principles on Foreign Debt and the Guiding Principles on Business and Human Rights

As noted earlier, the GPs are not peculiar to any industry or sector. However, some industry peculiarities might require a special approach. The UNHRC recognises this fact through its adoption of the Guiding Principles on Foreign Debt. It is, therefore, important to draw the connections between the latter and the GPs. Cephas Luminas, the independent expert who drafted the Guiding Principles on Foreign Debt, views them as “complementary” to the GPs.¹²¹ There appears to be no hierarchy, because both have the same legal status as non-binding legal instruments (often called “non-legal soft law”).¹²² In fact, since they are “complementary”, it seems that there would be hardly any or no room for conflict. Nonetheless, in the context of socio-economic rights responsibilities of private creditors in sovereign debt governance, the Guiding Principles on Foreign Debt would, arguably, take precedence over the GPs, because the latter are general, while the former are specific.¹²³ Unfortunately, while many private creditors have subscribed to the GPs, they are not so enthusiastic about the Guiding Principles on Foreign Debt.¹²⁴ In addition, while the GPs deal with both civil and political rights and economic, social and cultural rights, the Guiding Principles on Foreign Debt give more attention to the latter.

3.2.2 The UN Basic Principles on SDR Processes (Basic Principles)

Since the early 1970s, the UNGA has become a major platform for interrogating the global economic architecture with its creditor-biased sovereign debt regime.¹²⁵ Indeed, the majority of its members have been pushing for a multilateral framework on SDR.¹²⁶ Consequently, the UNGA, by Resolution 69/319, adopted the Basic Principles in September 2015.¹²⁷ This was not, however, without the traditional resistance from the most influential creditor nations whose jurisdictions, literally, constitute the hub for private creditors’ activities, including litigation by holdouts (*i.e.* creditors who refused to accept restructuring proposals, and hope to get full repayment in terms of the original debt) and vulture funds.¹²⁸

The Basic Principles essentially consist of nine principles including the “right” to SDR (anchored in the overarching principle of sovereignty), good

121 UNHRC 2011b:par. 17.

122 Chinkin 1989:851.

123 *Case Concerning the Right of Passage over Indian Territory (Portugal v. India) (Merits) I.C.J. Reports 1960*, 6 at 44 (where the International Court of Justice held that a “particular practice must prevail over any general rules”).

124 See, however, Banktrack 2013 “Thun group paper on banks and human rights”, <https://www.ohchr.org/Documents/Issues/Business/ForumSession2/Contributions/BankTrack.pdf> (accessed on 27 August 2020).

125 UN Declaration on the Establishment of a New International Economic Order (adopted on 1 May 1974).

126 Guzman & Stiglitz 2016:1.

127 UNGA 2015.

128 UNGA 2015. See also UNGA 2014; UNHRC 2009.

faith, transparency, impartiality, equitable treatment of creditors, sovereign immunity, legitimacy, sustainability, and majority restructuring.¹²⁹ A debtor's "right" to restructure its debts¹³⁰ is, however, limited by the debtor's other international commitments such as the IMF Articles of Agreement.¹³¹ Although the Basic Principles are silent on prioritising socio-economic rights in the SDR process, they implicitly endorse the underlying philosophy of these rights in the context of sovereign debt crisis.

3.2.3 The Principles for Responsible Sovereign Lending and Borrowing (PRSLB)

In the wake of the Eurozone debt crisis, the UNCTAD came up with the PRSLB.¹³² This is perhaps the most prominent intervention by UNCTAD so far.¹³³ It broadly consists of fifteen principles couched in the forms of duties of both creditors and debtors. The creditor has, among others, the following responsibilities: To recognise that "government officials involved in sovereign lending and borrowing transactions are responsible for protecting the public interest (of the State and its citizens, for which they are acting as agents)" (principle 1) and to make a realistic assessment of debtor's repayment capacity (principle 4).

On the other hand, the government of a sovereign debtor has, among others, the following responsibilities: To protect the interests of its citizens in loan contracts (principle 8); to establish and follow a transparent legal framework for borrowing, as taxpayers would ultimately be responsible for repayment of such debt (principle 10), and to make full and universal disclosure (including to its citizens) of the terms and conditions of any loan (principle 11). It recognises that "economic necessity can prevent the borrower's full and/or timely repayment".¹³⁴

Although very concise, the PRSLB's simplistic, polarised approach has reduced sovereign debt governance to the usual two-sided framework. In other words, it reinforces the dominant two-sided creditor-debtor construct. Nevertheless, it implicitly recognises the debtor's resource constraint and the imperative for suspending debt servicing during debt crisis.

3.2.4 Private creditors-based standards

Importantly, there are additional industry frameworks developed largely by the private creditors, but they do not embrace the prioritisation of any interests beside those of creditors.

129 UNGA 2015:principles 1-9.

130 UNGA 2015:principles 1-4.

131 Paliouras 2017:115-136.

132 UNCTAD 2012.

133 See the collection of articles in Esposito *et al.* 2014:87-112.

134 UNGA 2015:principle 9.

Examples of these standards include the Equator Principles (EPs).¹³⁵ These are financial industry-based self-regulatory standards. Although the EPs predate the GPs, they fall far below the GPs' protect-respect-remedy framework.¹³⁶

In 2004, the Institute of International Finance (IIF) adopted the Principles for Stable Capital Flows and Fair Debt Restructuring (Principles for Capital Flow). The IIF consists of over 300 commercial banks, asset managers, investment banks, banking associations, multilateral lenders, and a few central banks.¹³⁷ The principles include "closed debtor-creditor dialogue and cooperation to avoid restructuring" and that "[s]ubject to their voluntary amendment, contractual rights must remain fully enforceable".¹³⁸

There is hardly any doubt about the creditor-biased nature of the above principles. Indeed, they were adopted to counter the growing resistance to the creditor-biased SDR regime.¹³⁹ There is, therefore, no room for socio-economic rights.

In the recent debt crises experienced by Greece, Jamaica and Belize, the principles were deployed and the IIF was actively involved in the restructuring processes.¹⁴⁰ However, in the case of Greece, the loan facility agreements imposed conditions requiring that "the money from these loans was to be used exclusively for the repayment of debts to the country's creditors, as opposed to meeting domestic needs, such as the payment of salaries and pensions".¹⁴¹ In addition, structural reforms and austerity measures were imposed. These were considered preconditions for Greece to regain market access and attain debt sustainability.¹⁴²

Thus, the situation simply reincarnated the age-long tension between socio-economic rights implementation and debt-servicing. It was a matter of priority. Expectedly, "creditors' justice" prevailed.¹⁴³

135 Equator Principles 2017 "Equator Principle III", http://equator-principles.com/wp-content/uploads/2017/03/equator_principles_III.pdf (accessed on 27 August 2020).

136 Bohoslavsky & Cernic 2014:4.

137 IIF 2013 "Principles for stable capital flows and fair debt restructuring: Report on implementation by the principles consultative group", https://www.iif.com/Portals/0/Files/content/Regulatory/2013_IIF_PCG_Report.pdf (accessed on 28 August 2020):15.

138 IIF 2013 "Principles for stable capital flows and fair debt restructuring: Report on implementation by the principles consultative group", https://www.iif.com/Portals/0/Files/content/Regulatory/2013_IIF_PCG_Report.pdf (accessed on 28 August 2020):38-40.

139 Bianco 2017:16.

140 Bianco 2017:11-16.

141 Bantekas 2013:318.

142 IIF 2013 "Principles for stable capital flows and fair debt restructuring: Report on implementation by the principles consultative group", https://www.iif.com/Portals/0/Files/content/Regulatory/2013_IIF_PCG_Report.pdf (accessed on 28 August 2020):9-10.

143 Greek Truth Committee on Public Debt 2015 "Preliminary report", <https://auditoriacidada.org.br/wp-content/uploads/2014/06/Report-Greek-Truth->

4. SOCIO-ECONOMIC RIGHTS OBLIGATIONS OF PRIVATE CREDITORS: A PROPOSAL

From the above, it seems that the spirit of socio-economic rights – especially the element of resource availability – has made inroads into the evolving non-creditor-based sovereign debt governance standards. However, concretising these rights within the sovereign debt regime would, arguably, require a definitive intervention. As a BHR treaty has been mooted (it is, in fact, being considered at the time of writing), this is perhaps the best opportunity to intensify the convergence between the evolving sovereign debt governance regime and BHR. The following are some of the possible candidates for consideration.

4.1 Recognising debt moratorium as a responsibility to respect

There have been several proposals along this line but, to our knowledge, none have been framed in a human rights context.¹⁴⁴ Interestingly, both creditor-based and non-creditor-based standards examined earlier recognised the significance of a standstill during restructuring. This is a suspension of debt repayment obligation as originally agreed. The GPs also recognise the imperative for prioritising human rights obligations of states in their commercial undertakings.¹⁴⁵ It implicitly requires prioritisation of action by businesses to mitigate severe outcomes.¹⁴⁶ Indeed, the Principles for Responsible Contracts, a key outcome of the SRSG's work, requires affording states some policy space in their commercial undertakings.¹⁴⁷

A moratorium on debt offers a temporary protection to the debtor to focus on dealing with the impacts of debt crisis on its economy. These are pressing issues deserving priority over continuous debt-servicing. The IMF's COVID-19 pandemic reliefs are examples. The IMF is, however, an official creditor. Without this, private creditors may resort to adjudications at the appropriate fora, with the attendant costs on the debtor and its citizens.¹⁴⁸ The implication would be a prolonged debt market "blockade" and more hardships for citizens.¹⁴⁹

Where temporary protection is afforded to the debtor as a matter of legal responsibility, the negatives arising from "abusive" creditor activities would

Committee.pdf (accessed on 28 August 2020):3.

144 Goldmann 2014a "Necessity and feasibility of a standstill rule for sovereign debt workouts". https://unctad.org/en/PublicationsLibrary/gdsddf2014misc4_en.pdf (accessed on 28 August 2020).

145 UNHRC 2011a:principles 5, 6, 9, 24.

146 UNHRC 2011a:principle 24.

147 OHCHR 2011 "Report of the Special Representative of the Secretary General – Principles for responsible contracts: Integrating the management of human rights risks into state-investor contract negotiations: Guidance for negotiators", <https://www.ohchr.org/Documents/Issues/Business/A.HRC.17.31.Add.3.pdf> (accessed on 28 August 2020):paras. 31-39.

148 Weidemaier & Gelpert 2014:189-218.

149 Mahmud 2010:86-90.

be minimised, if not eliminated. The victims, usually socio-economic rights-holders below Waldron's "disadvantaged level", would suffer less adverse impacts. This means that affording opportunity for economic recovery to debtors by private creditors will be part of their separate and collective obligation to respect socio-economic rights. It would also mean prioritising socio-economic rights obligations of the debtor during a debt crisis.¹⁵⁰ The challenge would be in the time frame and the uncertainties in the recovery process. A binding BHR treaty can clarify this and make affording space a legal obligation.

4.2 Due diligence and Human Rights Impact Assessment (HRIA) obligations

The CESCR considers requiring HRIA as part of states' obligation to respect socio-economic rights, while ensuring due diligence by businesses as part of the "obligation to protect".¹⁵¹ This is perhaps less controversial. There has been a growing consensus on the need for creditors to have a responsibility to carry out a HRIA, especially in project financing.¹⁵² HRIA is a systematic process of measuring the potential impact of a project on human rights.¹⁵³ It is rooted in international human rights law, as "human rights are regarded as both the end goals and the guiding principles of an activity or project".¹⁵⁴

Under the Guiding Principle on HRIA, private creditors must carry out human rights due diligence, in order to prevent and mitigate the adverse impacts of their activities on human rights.¹⁵⁵ In particular, it provides that "[p]rivate creditors have to ensure that the terms of their transactions respect human rights, and do not compel debtor States to compromise on their human rights obligations directly or indirectly".¹⁵⁶

Accordingly, private creditors have a responsibility to foresee the possible adverse effects of their loans on socio-economic rights and this should inform post-default activities such as debt relief negotiations. The downside, however, is that the obligation may not be relevant to non-project financing loans. In particular, imposition of this responsibility on thousands of extraterritorial bondholders might present some challenges. Some scholars have advocated the imposition of the HRIA obligation based on the nature of the proposed project and the amount of money advanced.¹⁵⁷

150 UNHRC 2018:principle 11, comment 3.

151 CESCR 2017:paras. 13, 16.

152 Organisation for Economic Co-operation and Development Global Forum on Responsible Business Conduct 2014 "Due diligence in the financial sector – Adverse impacts directly linked to financial sector operations, products or services by a business relationship", <https://mneguidelines.oecd.org/global-forum/GFRBC-2014-financial-sector-document-1.pdf> (accessed on 28 August 2020).

153 Villaroman 2011:2.

154 Villaroman 2011:2-4.

155 UNHRC 2018:commentary on principle 5.

156 UNHRC 2018:principle 5.

157 Villaroman 2011:4.

4.3 Obligations to participate and cooperate in SDR processes

These obligations are natural extensions of the standstill obligation (*i.e.* temporary pause or suspension of debt repayment) arising from the debtor's right to restructure its debt as examined earlier. Like the latter, several proposals, both market-based and in terms of public law, have been made along this line although without injection of a human rights flavour. These obligations can be found in some domestic bankruptcy regimes and, therefore, could qualify as general principles applicable to sovereign debt relationships.

Upon commencement of renegotiation following a default, all private creditors should be obligated to participate and cooperate in the restructuring process. The existence of bodies such as the IIF would minimise the usual collective action problem. Participation is not necessarily the same as cooperation. For a human rights-sensitive framework, however, non-participation is a pointer to holdout litigation which, over the years, has been shown to frustrate smooth debt restructuring and prolong return to debt sustainability. This can negatively impact the economy and those at the radically disadvantaged level. Therefore, framing private creditors' participation as part of the responsibility to respect has the advantage of averting this challenge, while further entrenching transparency in SDR.

Cooperation in SDR is not the same as compelling creditors to accept debt restructuring terms. However, with a debt moratorium and potential SDR, private creditors might implicitly recognise the resource constraints being faced by their debtor and the imperative to prioritise its expenditures in a way that will preserve its internal order, critical security interests and continued existence, especially during debt crisis or any emergency.¹⁵⁸ The past decades have shown the chaos that often greets non-prioritisation of expenditures by debtors during debt crises.¹⁵⁹ Citizens' agitations and protests tend to symbolise debt crisis and shape restructuring. Thus, the obligation also derives further support from the right-holders' participatory rights, which is a cardinal principle of international human rights law.¹⁶⁰

4.4 Reporting and disclosure obligations

Disclosure promotes transparency.¹⁶¹ Although the majority of private creditors participating in the debt markets commit themselves to these standards, it was

158 See letter dated 16 May 2012 addressed by the Chairperson of the CESCR to States Parties to the International Covenant on Economic, Social and Cultural Rights (2012) (UN reference CESCR/48th/SP/MAB/SW); CESCR Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights 2020, <https://undocs.org/E/C.12/2020/1> (accessed on 29 January 2021).

159 For example, IIF 2013 "Principles for stable capital flows and fair debt restructuring: Report on implementation by the principles consultative group", https://www.iif.com/Portals/0/Files/content/Regulatory/2013_IIF_PCG_Report.pdf (accessed on 28 August 2020):4-38.

160 ICESCR:art. 15(1)(a); International Covenant on Civil and Political Rights (adopted on 16 December 1966 and entered into force on 23 March 1976):arts. 19-22.

161 Narine 2015:1-59.

not framed in a human rights context until relatively recently.¹⁶² Indeed, the dominant private law paradigm considers disclosure a debtors' responsibility to enable creditors to take appropriate credit decisions.¹⁶³ Of course, debtors must disclose information to the creditors. However, nothing stops both parties from demanding disclosure, especially given the value of information to global financial stability. In addition, the experience of the GFC calls for a more specific, sector-based standard, which should include creditors' disclosure to the whole world.¹⁶⁴ It should be noted that non-disclosure of loans often raises legitimacy and legality concerns.¹⁶⁵ In addition, framing the disclosure standard as a human rights obligation will support global efforts to tackle secret debts and sanitise the financial system. It may also give the citizens of debtor countries more say in financial transactions affecting their well-being.¹⁶⁶ This is further supported by citizens' right to have access to information.¹⁶⁷ A transparent debt transaction aligns with this human right.

4.5 Other obligations

As noted earlier, the GFC and the wave of sovereign debt crises have offered compelling reasons to critically re-examine the existing global economic governance architecture and make it more accountable and human rights sensitive. A socio-economic rights governance approach is one alternative worthy of consideration.¹⁶⁸

For instance, without directly providing for a positive obligation requiring creditors to finance socio-economic rights programmes, a BHR treaty may impose some obligations on private creditors to ensure that they do not benefit from diversion of resources away from state commitments on these rights. It may prohibit banks and other financial institutions from engaging in illicit financial transactions with states.¹⁶⁹

Secondly, there have been proposals for the establishment of a social insurance or similar global fund to serve as automatic shocks in the event of crises. This could help minimise the impacts of debt crises or global public health emergencies such as the COVID-19 pandemic.¹⁷⁰ Payments may come

162 UNHRC 2011a:principle 21.

163 IIF 2013 "Principles for stable capital flows and fair debt restructuring: Report on implementation by the principles consultative group", https://www.iif.com/Portals/0/Files/content/Regulatory/2013_IIF_PCG_Report.pdf (accessed on 28 August 2020):principle 1.

164 OHCHR 2014 "Report on financial complicity: Lending to states engaged in gross human rights violations", <https://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/FinancialComplicity.aspx> (accessed on 28 August 2020).

165 Lumina 2009:37-42.

166 Lumina 2009:40.

167 ICESCR:art. 12; UDHR:art. 19; ICCPR:art. 19(2).

168 Heintz & Balakrishnan 2012:387-409.

169 UNHRC 2017 "Switzerland needs to step up work to curb illicit financial flows – UN Expert", <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22198&LangID=E> (accessed on 28 August 2020).

170 UNGA 2009.

from a certain percentage of profits made by private creditors through their home states.¹⁷¹ This will minimise the cost of bailout, forestall future contagion of debt crises and reduce competing demands on scarce resources available to states. To be sure, this may create a moral hazard. However, with the appropriate balance, this could be averted.

Finally, private creditors may share in the responsibilities of their home state where the latter failed to uphold its responsibility to protect individuals from the harms inflicted by the former.¹⁷² As noted in 3.1 above, states have extraterritorial obligations and this may cover the inability or refusal to adequately and effectively regulate the reckless lending activities of its registered private creditors.

5. THE CHALLENGES

The formulation of a binding BHR treaty is clearly a daunting task, not least because of the tenacious adherence to age-old doctrinal positions. Thus, the above propositions are likely to face a number of challenges.

The first major limitation is the broad scope of the proposition, as it appears to have mixed norm-based propositions with process-based and execution-based ones. Prioritising socio-economic rights over debt repayment requires concrete, well-defined processes that are realistic and practicable. Instances of the HIPC, MDR and COVID-19 debt relief initiatives seem to offer some hope in this regard. These, however, remain *ad hoc* initiatives with hardly any or no private sector participation.¹⁷³

The second potential challenge is state-centrism. A cardinal doctrine of traditional international law is that only states are primary bearers of human rights obligations.¹⁷⁴ Indeed, the scepticisms about a BHR treaty are largely based on this ground.¹⁷⁵ However, as noted earlier, the state-centric position has created an accountability gap with respect to other non-state actors that continuously undermine human rights without compunction. This and other criticisms have forced state-centrism into a conceptual dilemma.¹⁷⁶

Thirdly, the private law approach to sovereign debt governance has been defended, if not protected, by the major creditor nations. However, it is important to emphasise that this approach has been struggling for relevance largely because of the inherent public character of sovereign debt.¹⁷⁷

171 European Commission 2013 “Proposal for a Council directive implementing enhanced cooperation in the area of financial transaction tax”, https://ec.europa.eu/taxation_customs/system/files/2016-09/com_2013_71_en.pdf (accessed on 20 September 2021).

172 Lone 2014:233-249.

173 WB & IMF 2010.

174 Lafont 2010:198.

175 Ford 2015. “Business and human rights: Bridging the governance gap”, Royal Institute of International Affairs Research Paper, https://www.researchgate.net/publication/283663635_Business_and_Human_Rights_Bridging_the_Governance_Gap (accessed on 28 August 2020).

176 Lafont 2010:199.

177 Gelpern 2018:22-28.

A fourth, more practical challenge is the incentive factor. Private creditors are essentially in business for profit, and, like many businesses, their lending activities are usually influenced by this objective. However, incentive-driven behaviours have always been resistant to regulatory controls, while simultaneously posing a significant danger to global financial stability and to human rights, as the GFC has demonstrated. Importantly, legitimate business objectives are not necessarily inherently incompatible with human rights. Arguably, human rights responsibilities support, rather than undermine businesses, because they can potentially add reputational value and help them mitigate risks in their operations.¹⁷⁸

Finally, a more substantive challenge is that of establishing a causal connection between private creditors' lending activities and the violation or undermining of socio-economic rights arising from a particular sovereign debt crisis. Fixing responsibility where it rightly belongs is intrinsic to the idea of justice. Moral culpability for a legal wrong is a compelling ground for liability. However, this is a complex issue in sovereign debt relationships, because a loan's positives might actually outweigh its negatives. In other words, the presence or absence of the loan has to be linked to the enjoyment or deterioration of socio-economic rights conditions of the citizens. Even in the event of official intervention by IFIs, the lending programme and its conditionalities might advance the enjoyment of socio-economic rights in the long run but could result in a deterioration of the situation in the short term.¹⁷⁹ This could be an obstacle to socio-economic rights obligations of private creditors, as proposed earlier.

However, as is clear from the proposed obligations, context is important, because the causality question will not arise in all of them. Under the ICESCR, a state party may be held responsible for socio-economic rights by a private creditor, where such creditor is directly under its control or it adopts the creditor's "conduct".¹⁸⁰

6. CONCLUSION

This article has attempted to contribute to the debate on the content of the substantive and procedural obligations of private creditors in the evolving BHR framework to partly address the global economic governance gaps in SDR. Using Waldron's notion of socio-economic rights *vis-à-vis* theories of justice, the article advanced the primacy of socio-economic rights over competing demands within a public law paradigm of sovereign debt governance. Using the open-ended scope of the BHR regime and the current moves towards developing a binding legal instrument, the article proposed the imposition of certain specific obligations on private creditors and then identified the doctrinal and practical hurdles that might affect this proposition.

178 CESCR 2017:par. 5.

179 Tooze 2002:230.

180 CESCR 2017:par. 11.

From the analysis, it can be concluded that recurring sovereign debt crises have become normalised in the fragmented market-driven global financial system, with the attendant consequences of widening inequality and increasing poverty. Private creditors and other agents of financialisation continue to make profits out of this disorganised system. Thus, their lending activity is portrayed as a private contract, despite the public character of the borrower and the events of default. Scarce public resources are deployed to rescue private creditors, but a defaulting debtor with millions of citizens behind it and insufficient resources to meet other more compelling demands would be required to pay them first, in order to regain access to the debt markets.

Arguably, this cannot be the idea of justice in sovereign debt governance. Therefore, a theory of socio-economic rights in sovereign debt governance is required. As part of this endeavour, private creditors should have obligations framed in such a manner as to recognise the imperative to accord priority to socio-economic rights-based concerns. There may be some gaping holes to be filled in this proposition. Advantage should be taken of the efforts to develop a BHR treaty, as such a treaty has a more realistic chance of being passed when compared with a specific statutory SDR mechanism.

BIBLIOGRAPHY

ALSTON P & QUINN G

1987. The nature and scope of states parties' obligations under the International Covenant on Economic, Social and Cultural Rights. *Human Rights Quarterly* 9(2):156-229. <https://doi.org/10.2307/762295>

BACKER LC

2017. Shaping a global law for business enterprises: Framing principles and the promise of comprehensive treaty on business and human rights. *North Carolina Journal of International Law* 42(2):417-504.

BANKTRACK

2013. *Thun group paper on banks and human rights*. <https://www.ohchr.org/Documents/Issues/Business/ForumSession2/Contributions/BankTrack.pdf> (accessed on 27 August 2020).

BANTEKAS I

2013. Exceptional recognition of governments and political parties in respect of sovereign loans: The Greek case. *Nordic Journal of International Law* 82(2):317-328. <https://doi.org/10.1163/15718107-08202005>

2014. The emergence of an international law of sovereign debt and insolvency. *International Human Rights Law Review* 3(1):159-177. <https://doi.org/10.1163/22131035-00301002>

BESSOM S

2015. The bearers of human rights duties and responsibilities: A quiet revolution. *Social Philosophy and Policy* 32(1):244-268. <https://doi.org/10.1017/S0265052515000151>

BIANCO G

2017. How neutral is the law of sovereign debt restructuring? *ESIL Conference Paper Series* 9(3):3-30.

BILCHITZ D

2016. Corporations and the limits of state-based models for protecting fundamental rights in international law. *Indiana Journal of Global Legal Studies* 23(1):143-170. <https://doi.org/10.2979/indjglolegstu.23.1.143>

BOHOSLAVSKY JP

2016. Economic inequality, debt crises and human rights. *Yale Journal of International Law* 41(2):177-199.

BOHOSLAVSKY JP & CERNIC JL (EDS.)

2014. Placing human rights at the center of sovereign financing. In JP Bohoslavsky and JL Cernic (eds.) 2014:1-14.

2014. *Making sovereign financing and human rights work*. Oxford: Hart Publishing.

BOHOSLAVSKY JP & GOLDMANN M

2016. An incremental approach to sovereign debt restructuring: Sovereign debt sustainability. *Yale Journal of International Law* 41(2):13-42.

BRADLOW D

2016. Can parallel lines ever meet? The strange case of the international standards on sovereign debt and business and human rights. *Yale Journal of International Law* 41(2):201-239.

BRITISH BROADCASTING CORPORATION (BBC)

2013. *Eleven EU states say they wish to move ahead with the introduction of a financial transaction tax*. <https://www.bbc.com/news/business-15552412> (accessed on 28 August 2020).

BUCHHEIT LC

2005. The role of the official sector in sovereign debt workouts. *Chicago Journal of International Law* 6(1):333-343.

CERNIC JL

2014. Sovereign financing and corporate responsibility for economic and social rights. In JP Bohoslavsky and JL Cernic (eds.) 2014:139-162.

CHINKIN CM

1989. The challenge of soft law: Development and change in international law. *International and Comparative Law Quarterly* 38(4):850-866. <https://doi.org/10.1093/icljaj/38.4.850>

CHUKWU F

2016. Sovereign debt restructuring: A contract theory perspective. Society of International Economic Law, Fifth Biennial Global Conference, 6-9 July 2016 Johannesburg: Society of International Economic Law.

COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (CESCR)

1990. *General comment no. 3: Nature of state parties' obligations*. Geneva: UN Office of High Commissioner for Human Rights.

2007. *An evaluation of the obligation to take steps to the "maximum of available resources" under an optional protocol to the covenant*. <https://www2.ohchr.org/english/bodies/cescr/docs/statements/Obligationtotakesteps-2007.pdf> (accessed 9 April 2021).

DERMINE P

2019. Out of the comfort zone. The ECB, financial assistance, independence and accountability. *Maastricht Journal of European and Comparative Law* 26(1):108-121. <https://doi.org/10.1177/1023263X18822793>

EIDE A

1989. Realization of social and economic rights and the minimum threshold approach. *Human Rights Law Journal* 10(2):35-51.

ENRIQUE CP

2010. Paris Club: Intergovernmental relations in debt restructuring. In Barry H et al (eds.) 2010:231-255. <https://doi.org/10.1093/acprof:oso/9780199578788.003.0009>

ESPOSITO C, YI L & BOHOSLAVSKY JP (EDS.)

2014. *Sovereign financing and international law: The UNCTAD principles on responsible sovereign lending and borrowing*. Oxford: Oxford University Press.

EQUATOR PRINCIPLES

2017. *Equator Principle III*. http://equator-principles.com/wp-content/uploads/2017/03/equator_principles_III.pdf (accessed on 27 August 2020).

FEENEY P

2009. Business and human rights: The struggle for accountability in the UN and the future direction of the advocacy agenda. *SUR – International Journal on Human Rights* 6(11):161-175.

FORD J

2015. *Business and human rights: Bridging the governance gap*. Royal Institute of International Affairs Research Paper. https://www.researchgate.net/publication/283663635_Business_and_Human_Rights_Bridging_the_Governance_Gap (accessed on 28 August 2020).

GELPERN A

2016. Sovereign debt: Now what? *Yale Journal of International Law* 41(2):45-95.

2018. The strained marriage of public debts and private contracts. *Current History* 117(795):22-28. <https://doi.org/10.1525/curh.2018.117.795.22>

GELPERN A, HANAGAN S & MAZAREI A

2020. Debt standstills can help vulnerable governments manage COVID-19 crisis. https://www.piie.com/blogs/realtime-economic-issues-watch/debt-standstills-can-help-vulnerable-governments-manage-covid#_ (accessed on 29 January 2021).

GREEK TRUTH COMMITTEE ON PUBLIC DEBT

2015. *Preliminary report*. <https://auditoriacidada.org.br/wp-content/uploads/2014/06/Report-Greek-Truth-Committee.pdf> (accessed on 28 August 2020).

GOLDMANN M

2014a. *Necessity and feasibility of a standstill rule for sovereign debt workouts*. https://unctad.org/en/PublicationsLibrary/gdsddf2014misc4_en.pdf (accessed on 28 August 2020).

2014b. Human rights and sovereign debt workout. In JP Bohoslavsky and JL Cernic (eds.) 2014:79-100.

2018. Public and private authority in a global setting: The example of sovereign debt restructuring. *Indiana Journal of Global Legal Studies* 25(1):331-363. <https://doi.org/10.2979/indjglolegstu.25.1.0331>

GUZMAN M & STIGLITZ J

2016. *A soft law mechanism for sovereign debt restructuring based on UN principles*. Friedrich-Ebert-Stiftung. <https://library.fes.de/pdf-files/iez/12873.pdf> (accessed on 27 August 2020).

HEINTZ J & BALAKRISHNAN R

2012. Debt, power, and crisis: Social stratification and the inequitable governance of financial markets. *American Quarterly* 61(3):387-409.

INSTITUTE OF INTERNATIONAL FINANCE (IIF)

2013. *Principles for stable capital flows and fair debt restructuring: Report on implementation by the principles consultative group*. https://www.iif.com/Portals/0/Files/content/Regulatory/2013_IIF_PCG_Report.pdf (accessed 28 August 2020).

INTERNATIONAL LAW ASSOCIATION'S SOVEREIGN INSOLVENCY STUDY GROUP (ILA)

2010. *Revised report – State insolvency: Options for the way forward*. London: International Law Association.

INTERNATIONAL MONETARY FUND (IMF)

2015. *The funds lending framework and sovereign debt – further considerations*. <https://www.imf.org/external/np/pp/eng/2015/040915.pdf> (accessed on 29 January 2021). <https://doi.org/10.5089/9781498344739.007>

2016. *Strengthening the contractual framework to address collective action problems in sovereign debt restructuring*. <https://www.imf.org/external/np/pp/eng/2014/090214.pdf> (accessed on 27 August 2020). <https://doi.org/10.5089/9781498342797.007>

2020. *IMF executive board approves immediate debt relief for 25 countries*. <https://www.imf.org/en/News/Articles/2020/04/13/pr20151-imf-executive-board-approves-immediate-debt-relief-for-25-countries> (accessed on 29 January 2021).

JAGERS N

2014. Sovereign financing and human rights responsibilities of private creditors. In JP Bohoslavsky and J Cernic (eds.) 2014:179-198.

KINLEY D & TADAKI J

2004. From talk to walk: The emergence of human rights responsibilities for corporations at international law. *Virginia Journal of International Law* 44(4):931-1023. Lafont C

2010. Accountability and global governance: Challenging the state-centric conception of human rights. *Ethics & Global Politics* 3(3):193-215. <https://doi.org/10.3402/egp.v3i3.5507>

LEIF W

2005. The nature of rights. *Philosophy and Public Affairs* 33(3):223-252. <https://doi.org/10.1111/j.1088-4963.2005.00032.x>

LIENAU O

2016. The challenge of legitimacy in sovereign debt restructuring. *Harvard International Law Journal* 57(1):151-214.

LONE FN

2014. Extraterritorial human rights violations and irresponsible sovereign financing. In JP Bohoslavsky and JL Cernic (eds.) 2014:233-249.

LUMINA C

2009. Illegitimate debt and human rights. In M Mader & A Rotherbühler (eds.) 2009:37-42.

2014. Sovereign debt and human rights: The UN approach. In JP Bohoslavsky and JL Cernic (eds.) 2014:251-268.

MADER M & ROTHENBÜHLER A (EDS.)

2009. *How to challenge illegitimate debt: Theories & case studies*. Basel: Aktion Finanzplatz Schweiz.

MAHMUD T

2010. Is it Greek or *déjà vu* all over again? Neoliberalism, and winners and losers of international debt crises. Seattle University School of Law Paper Series No. 10-33. *Loyola University Chicago Law Journal* 42:1-90.

MORSINK J

1999. *Universal Declaration of Human Rights: Origins, drafting and intent*. Philadelphia, PN: University of Pennsylvania Press.

NARINE M

2015. Disclosing disclosure's defects: Addressing corporate irresponsibility for human rights impacts. *Columbia Human Rights Law Review* 47(1):1-59.

NOLAN J

2005. UN Compact with business: Hindering or helping the protection of human rights. *University of Queensland Law Journal* 24(2):445-466.

OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR)

1998-2018. *Independent experts on the effects of foreign debt and other related international financial obligations of states on the full enjoyment of all human rights, particularly economic, social and cultural rights*. <https://www.ohchr.org/en/issues/development/iedebt/pages/iedebtindex.aspx> (accessed on 27 August 2020).

2011. *Report of the Special Representative of the Secretary General – Principles for responsible contracts: Integrating the management of human rights risks into state-investor contract negotiations: Guidance for negotiators*. <https://www.ohchr.org/Documents/Issues/Business/A.HRC.17.31.Add.3.pdf> (accessed on 28 August 2020).

2014. *Report on financial complicity: Lending to states engaged in gross human rights violations*. <https://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/FinancialComplicity.aspx> (accessed on 28 August 2020).

2018. *Legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises*. <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/DraftLBI.pdf> (accessed on 27 August 2020). Okoloise C

2017. Contextualising the corporate human rights responsibility in Africa: A social expectation or legal obligation? *African Human Rights Yearbook* 1:191-220. <https://doi.org/10.29053/2523-1367/2017/v1n1a10>

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT GLOBAL FORUM ON RESPONSIBLE BUSINESS CONDUCT (OECD)

2014. *Due diligence in the financial sector – Adverse impacts directly linked to financial sector operations, products or services by a business relationship*. <https://>

mneguidelines.oecd.org/global-forum/GFRBC-2014-financial-sector-document-1.pdf (accessed on 28 August 2020).

POGGE T (ED.)

2010. *Freedom from poverty as a human right: Theory and politics*. Oxford: Oxford University Press.

PALIOURAS V

2017. The right to restructure sovereign debt. *Journal of International Economic Law* 20(1):115-136. <https://doi.org/10.1093/jiel/jgx005>

POSNER E & CASEY A

2015. A framework for bailout regulation. *Notre Dame Law Review* 91(2):479-536.

RASCHE A

2009. A necessary supplement: What the UN Global Compact is and is not. *Business & Society* 48(4):511-537. <https://doi.org/10.1177/0007650309332378>

RASMUSSEN R

2004. Integrating a theory of the state into sovereign debt restructuring. Vanderbilt University Law School, Law & Economics, Working Paper No. 04-16.

RAWLS J

1999. *A theory of justice*. Cambridge, MA: Harvard University Press. Ruggie JG

2017. The social construction of the UN Guiding Principles on Business and Human Rights. Harvard University Corporate Responsibility Initiative, Working Paper No. 67.

SCHEFER KN (ED.)

2013. *Poverty and the international economic legal system: Duties to the poor*. Cambridge: Cambridge University Press.

SINGER JW

1982. The legal rights debate in analytical jurisprudence from Bentham to Hohfeld. *Wisconsin Law Review* 1982(6):975-1060.

SUDREAU M & BOHOSLAVSKY JP

2015. Sovereign debt governance, legitimacy, and the sustainable development goals: Examining the principles on responsible sovereign lending and borrowing. *Washington International Law Journal* 24(3):613-634.

TAN C

2013. Life, debt and human rights: Contextualizing the international regime for sovereign debt relief. In KN Schefer (ed.) 2013:307-324.

2014. Reframing the debate: The debt relief initiative and new normative values in the governance of third world debt. *Journal of Law in Context* 10(2):249-272. <https://doi.org/10.1017/S1744552314000056>

TASIOULAS J

2017. *Minimum core obligations: Human rights here and now*. Washington: World Bank.

TOOZE J

2002. Aligning states' economic policies with human rights obligations: The CESCR's quest for consistency. *Human Rights Law Review* 2(2):229-263. <https://doi.org/10.1093/hrlr/2.2.229>

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD)

2012. *Principles on promoting responsible sovereign lending and borrowing*. New York: United Nations.

UNITED NATIONS COMMISSION ON HUMAN RIGHTS (UNCHR)

2006. *Interim report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises*. UN Doc/E/CN.4/2006/97. <https://www.ohchr.org/EN/Issues/TransnationalCorporations/Pages/Reports.aspx> (accessed on 27 August 2020).

UNITED NATIONS GENERAL ASSEMBLY (UNGA)

1974. *Declaration on the Establishment of a New International Economic Order* New York: United Nations.

2009. *Report of the commission of experts of the President of the United Nations General Assembly on reforms of the International Monetary and financial system*. New York: United Nations.

2014. *Towards the establishment of a multilateral legal framework for sovereign debt restructuring processes*. Res A/68/308.

2015. *Basic principles on sovereign debt restructuring process*. Res 69/319.

2018. *Promotion of international cooperation to combat illicit financial flows and strengthen good practices on assets return to foster sustainable development*. <https://www.un.org/development/desa/financing/document/draft-ga-resolution-ac273119-promotion-international-cooperation-combat-illicit-financial> (accessed on 28 August 2020).

UNITED NATIONS HUMAN RIGHTS COUNCIL (UNHRC)

2008. *Protect, respect and remedy: A framework for business and human rights - Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie*. UN Doc/A/HRC/8/5. <https://documents-ddsny.un.org/doc/UNDOC/GEN/G08/128/61/PDF/G0812861.pdf?OpenElement> (accessed on 27 August 2020).

2009. *Report of independent expert on the effects of foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights*. Res 12/119.

2011a. *Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie – Guiding principles on business and human rights: Implementing the United Nations “Protect, Respect and Remedy” framework*. UN Doc A/HRC/17/31. https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.31_en.pdf (accessed on 27 August 2020).

2011b. *Report of Independent Expert (IE) on the effects of foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephias Lumina*. UN Doc A/HRC/20/23. https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-23_en.pdf (accessed on 27 August 2020).

2011c. *Human rights and transnational corporations and other business enterprises*. Res A/HRC/RES/17/4. <https://www.ohchr.org/EN/Issues/Business/Pages/ResolutionsDecisions.aspx> (accessed on 27 August 2020).

2014. *Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights*. Res A/

HRC/RES/26/9. <https://www.ihrb.org/pdf/G1408252.pdf> (accessed on 27 August 2020).

2017. *Switzerland needs to step up work to curb illicit financial flows – UN Expert*. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22198&LangID=E> (accessed on 28 August 2020).

2018. *Guiding principles on human rights impact assessments of economic reforms – Report of the Independent Expert on the effects of foreign debt on the full enjoyment of all human rights, particularly economic, social and cultural rights, Juan Pablo Bohoslavsky*. UN Doc A/HRC/40/57. <https://digitallibrary.un.org/record/1663025?ln=en> (accessed on 27 August 2020).

VILLAROMAN N

2011. *Loan agreements and human rights: The role of human rights impact assessments*. Paper presented during the Regional Consultation on the Draft General Guidelines on Foreign Debt and Human Rights, Doha, 31 January-1 February 2011. <https://www.ohchr.org/Documents/Issues/IEDebt/impactassessments/Loan%20Agreements%20and%20HR%20-%20The%20Role%20of%20HRIAs.pdf> (accessed on 28 August 2020).

VON BOGDANDY A & GOLDMANN M

2014. Sovereign debt restructurings as exercises of international public authority: Towards a decentralized sovereign insolvency law. In C Esposito, Y Li & JP Bohoslavsky (eds.) 2014:39-70.

VON BOGDANDY A, GOLDMANN M & VENZKE I

2017. From public international to international public law: Translating world public opinion into international public authority. *European Journal of International Law* 28(1):115-145. <https://doi.org/10.1093/ejil/chx002>

WALDRON J

2010. Socioeconomic rights and theories of justice. In T Pogge (ed.) 2010:21-49.

WARWICK B

2016. Socio-economic rights during crisis: A changed approach to non-retrogression. *International & Comparative Law Quarterly* 65(1):249-265. <https://doi.org/10.1017/S0020589315000494>

WEIDEMAIER WMC

2014. Sovereign immunity and sovereign debt. *University of Illinois Law Review* 1:67-114.

WEIDEMAIER WMC & GELPERN A

2014. Injunctions in sovereign debt litigation. *Yale Journal on Regulation* 31(1):189-218.

WEISSBRODT D & KRUGER M

2003. Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights. *The American Journal of International Law* 97(4):901-922. Young K. <https://doi.org/10.2307/3133689>

2008. The minimum core of economic and social rights: A concept in search of content *Yale Journal of International Law* 33:113-175.

ZUMBANSEN P

2013. Transnational private regulatory governance: Ambiguities of public authority and private power. *Law and Contemporary Problems* 76(2):117-138.