

Sovereign Financing and International Law. The UNCTAD Principles on Responsible Sovereign Lending and Borrowing. Edited by **Carlos Espósito, Yuefen Li and Juan Pablo Bohoslavsky** (OUP, Oxford, 2013) 403 pp.

This book contains some of the contributions to the Conference on 'Responsible Sovereign Financing: The Search for Common Principles' organized by the Universidad Autónoma de Madrid (UAM) and the United Nations Conference on Trade and Development (UNCTAD) in Madrid on 2 March 2012 in which I had the honour to participate. I had great pleasure in listening to all the outstanding contributions in the Conference, but this enjoyment has been surpassed by the reading of this fascinating and timely collective book which reaches a level of quality very difficult to achieve.

Two central events justify the Conference and the book. Firstly, the global financial crisis of 2007-2008 that brought later as corollary the debt crisis in some countries of the Eurozone. The economic relevance of some of the countries whose public debt was subject to speculative attacks entailed a serious threat to the stability of world financial markets and to the continuation of the European monetary union. Secondly, the UNCTAD, as the focal point of the United Nations system for debt issues, finally published in January 2012 a set of 'Principles on Promoting Sovereign Lending and Borrowing' (UNCTAD Principles), as the continuation of a work that began in 2009 with the political and financial support of the Norwegian government. By identifying the institutions and procedures that should be established for debt crisis prevention and resolution in a responsible way, and taking into account the need to respect the essential interests of both creditors and debtors, UNCTAD makes a very valuable contribution to the ordering of these processes in the international Community. These Principles are still open to discussion and debate, and this book is a significant contribution to this process. It remains to be seen what will be the practical consequences of this initiative and whether it will (hopefully) have a significant impact in the diminution of episodes of debt crises derived from irresponsible government behaviour.

The subject matter of this contribution is particularly important for the governance of global financial markets. The close connection between national capital markets, and the boost in the volume of government debt in the hands of financial operators in the last 30 years have increased the risk of contagion of national debt crises and the rapidity with which the spread takes place. In spite of these international repercussions, sovereign lending has been regulated until now basically by national law. This generates numerous legal distortions, as shown by the decisions of U.S. District Judge Thomas Griesa with regard to the Argentinean external debt payments during the summer of 2014, and has made sovereign lending more unpredictable depending on a great number of hazardous circumstances: sovereign decisions of the borrower, national jurisdictions involved, expectations of the markets, the implication of certain hedge/vulture funds, the existence of treaty obligations, etc. Several of the contributions to this book emphasize the urgent need to compile rules and basic principles of international law applicable to sovereign financing and to develop a set of best practices to put an end

to a rather chaotic scenario. This is precisely the objective of the UNCTAD Principles that constitute the axis around which the different contributions of this collective book gravitate.

The work is divided in seventeen chapters: the first three have a general and introductory nature; chapters four to ten provide an in depth analysis of the UNCTAD Principles from many different points of view; chapters eleven to fourteen develop two case studies (China and the Eurozone); and the last three chapters conclude the study with transversal reflections related to implementation issues and to the nature of international norms in the field of sovereign financing.

After a clarifying first Chapter/Prologue by the editors, Yuefen Li and Ugo Paizza discuss in Chapter two the economic rationale for establishing the UNCTAD Principles and try to demonstrate that the implementation of such Principles would bring about a shift in the incentives of the various players in the sovereign debt market minimizing the cost and frequency of debt crises caused by irresponsible policies and increasing the countries resilience to crises. According to them, this could pave the way towards a future 'structured mechanism for the resolution of debt crises' (page 37). In Chapter three, Armin von Bogdandy and Mattias Goldmann analyse sovereign debt restructurings from the paradigm of public law and identify the elements of international public authority exercised in those processes. With this founding, they apply to debt restructurings their theory on the need to frame global governance with a set of public legal rules not only to guarantee their legitimacy but also to improve their efficiency. Even if they recognize that this objective 'involves a daunting task', they see the UNCTAD Principles as 'a necessary and important step on the road towards a decentralized (...) international insolvency law' (page 70).

As already said, Part II and III of the book investigate different issues which stem from the UNCTAD Principles. Juan Pablo Bohoslavsky and Carlos Espósito not only examine the legal status of the Principles (as soft law) but embark on an interesting analysis of international legal instruments and state practice to conclude that this legal nature (which they qualify as 'dynamic' 'making regulation more likely' as it does not imply 'institutional reforms' [page 86]) will not determine the Principles' application more than their capacity to persuade stakeholders of their efficacy to solve global problems (Chapter four). Michael Weibel provides a learned study of the traces of UNCTAD Principles in customary international law. His analysis demonstrates that those Principles that reflect 'to a considerable degree' state practice 'are generally not accompanied by *opinio juris*' and that the rest of the Principles should be considered as a 'progressive development of international law'. He expresses then his hope for greater normativity in a field which has been driven until now by a combination of foreign policy interests, domestic politics and economic interests' (page 110) (Chapter five). Mathias Goldmann shows the same hope in Chapter six, but is more optimistic when he states that the UNCTAD Principles 'reproduce and confirm existing trends in domestic and international law' (page 131). He submits that the Principles exercise an important 'consolidative function' after a case analysis of two matters of fiscal policy: transparency in policy-making and substantive restrictions to borrowing. In Chapter seven, Antonis Bredimas, Anastasios Gourgourinis and Georges Pavlidis show some antagonisms and some elements of convergence between standards of domestic insolvency law and international investment protection law. Departing from a historical analysis, Kunibert Raffer points out the improvements that the UNCTAD Principles bring about as regards

many sovereign debt problems, but considers that the position of debtors has worsened and warns about the negative consequences that the discrimination against private creditors may have (Chapter eight). Juan Bautista Justo explores the interconnections between the UNCTAD principles and the UN Convention against corruption, a body of hard law that may help to implement some of the Principles (Chapter nine). José Oyola and Marie Sudreau characterize governments as agents of the state in order to identify and allocate responsibilities in sovereign debt contracting. Their comparative analysis drives them to the conclusion that 'fiduciary relationships are pervasive and play a critical role in ensuring the effectiveness and efficacy of sovereign debt operations' (page 234).

Parts IV and V of the book are more specific as they deal with a couple of relevant case studies that help us to better understand the new roles that two very relevant economic powers are playing in today's sovereign financing. On the one hand, Meibo Huang and Dandan Zhu write about China's Government Preferential Loans (Chapter eleven), and Xiuli Han studies the utility of UNCTAD Principles for China as a crisis prevention tool taking into account its position as sovereign creditor (Chapter twelve). On the other hand, Lee Buchheit, Mitu Gulati and Ignacio Tirado analyse debt restructuring mechanisms in the European Union (Chapters thirteen and fourteen).

Mark Weidemaier turns back in Chapter fifteen to a historical review of different attempts to influence lending practices through the adoption of model contracts and other initiatives designed to reach consensus between creditors and debtors as the basis on which to speculate on the potential effects of the UNCTAD principles in indirect ways (i.e. as a tool of interpretation in legal proceedings), as he expects them to have only a 'limited impact' in contract terms (page 343). Anna Gelpern departs from a modern perspective of the role played by soft law norms in the present global governance to make a prospective projection of the potential implementation of UNCTAD Principles, and argues that this flexible approach has more possibility of influencing stakeholders' behaviour through peer assessment, evolutionary interpretation and eventually adaptation (Chapter sixteen). Finally, in Chapter seventeen Robert Howse offers some very brief but interesting conclusions from the perspective of international law. He identifies and comments on two major (even revolutionary) contributions of the UNCTAD Principles: first, they qualify or limit a sovereign debtor's obligation to repay in full when there is a situation of economic necessity, and second, they help to qualify the contentious notion of odious debt, so that if the lender is aware of certain circumstances it might lose the entitlement to full repayment. He finally foresees a 'bright future' for UNCTAD principles in line with Anna Gelpern's arguments about the wonders of flexibility in this field.

In sum, the expertise of the authors and the quality of the contributions in this collective book make it a very practical and indispensable tool for the understanding of sovereign lending and borrowing nowadays. One can only congratulate the editors for their skill in selecting the authors and for the coherence of the work. As for the UNCTAD Principles, a timely and useful initiative, I would like to wish them a bright future (as does Robert Howse), even if I fear that in this delicate terrain political pressures, economic interests, private contractual terms and regulatory arbitrage will continue to play a very relevant role for a long time.

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