SOVEREIGN DEBT GOVERNANCE, LEGITIMACY, AND THE SUSTAINABLE DEVELOPMENT GOALS; EXAMINING THE PRINCIPLES ON RESPONSIBLE SOVEREIGN LENDING AND BORROWING

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Abstract: In the context of the Sustainable Development Goals ("SDGs") negotiation, this article questions to what extent legitimacy matters in sovereign debt governance and, if so, under what conditions. How can one recognize legitimate governance instruments when informality of governance process and practice is regarded as an important goal? This article sees the implementation of SDGs in the global financial arena as facilitated by legitimate normative instruments that reflect general public interest and demonstrate respect for human rights. The implementation of informal norms should give rise to substantive outcomes that are both sustainable and legitimate, thereby complementing the procedural dimension of any normative instrument. This article evaluates this assumption by reviewing the development and implementation of the United Nations Conference on Trade and Development's Principles on Responsible Sovereign Lending and Borrowing. We conclude that legitimacy is not only a key component in the construction of well-grounded informal laws, but also forms part of a desirable legal framework for the implementation of SDGs.

I. INTRODUCTION

Sovereign debt governance is an important field in the realm of sustainable development, yet states have not formally agreed to bind themselves to rules ensuring a sustainable global financial path. In the preparation of the post-2015 Development Agenda and the Third International Conference on Financing for Development to be held in July 2015 in Addis Ababa, the international community faces reconciling the imperatives of sovereign states that need financing to provide the conditions necessary for the well-being of their citizens with the purely profit-oriented imperatives of financial markets. At the same time, these markets provide financial space for sovereign borrowers with rapid, albeit risky, development perspectives. This reconciliatory exercise amounts to a search for legitimacy in sovereign debt governance.

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Legitimacy—which is when rules have moral force because of their lawfulness[1]—is a concept generally associated with identity, interest, and practice, or with an institution's norms, rules, and principles. Like all concepts meant to express an objective reality, legitimacy is the fruit of a balancing act between subjective financial interests and a general interest in human rights.[2] This balancing act, frequently expressed in considerations linked with sustainability, ultimately leads to a compromise that is acceptable to societal stakeholders.

The question of legitimacy in sovereign debt governance is relevant not only in relation to the authorities responsible for regulating this field but also to the normative instruments that are used for this purpose. This article does not focus on the intrinsic quality of authorities but rather on what they produce and how,[3] thereby implying a reflection on norm properties rather than institutional legitimizing mechanisms. This methodological decision is grounded in the determination that the definition of international authority and related acceptance, especially in regard to debt issues, goes well beyond the definition of state actors. Currently, international authorities are defined more by their production than by their classical legal definition. In practice, many of the international public authorities making financial decisions with worldwide impact would not pass any Westphalian test.

Having defined the scope of this article within those boundaries, one would be in a position to assess the legitimacy of financial decisions made by lenders and borrowers, irrespective of their type of governments. The same question can be answered according to the criteria of input and output legitimacy, regardless of the actor. Under this framework, Saddam Hussein could have made exceptionally legitimate decisions when he channeled international funds towards the needs of his population,[4] while some of the loans taken—for example, by a democratic European state and its lenders—could be considered illegitimate in light of the recent events in the eurozone and their impact on the population. As the above discussion indicates, any legitimacy assessment is complex and involves procedural and substantive components that can be deeply entwined.

This article questions the relevance and understanding of legitimacy as applied to informal normative initiatives in sovereign debt governance,

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[1] BLACK'S LAW DICTIONARY 1040 (10th ed. 2014).

[2] *See* SIMONE PETER, PUBLIC INTEREST AND COMMON GOOD IN INTERNATIONAL LAW (2012).

[3] *See, e.g.*, Jean D'Aspremont & Eric De Brabandère, *The Complementary Faces of Legitimacy in International Law: The Legitimacy of Origin and the Legitimacy of Exercise*, 34 FORDHAM INTERNATIONAL LAW JOURNAL 101, 101 (2010).

[4] *See* U.N. Human Rights Council, Report on Financial Complicity: Lending to States Engaged in Gross Human Rights Violations, 28th Sess., Mar. 2-27, 2015, U.N. Doc. A/HRC/28/59 (Dec. 22, 2014).

which will ultimately facilitate the Sustainable Development Goals ("SDGs"). In doing so, this article attempts to include the widest range of possible options in reviewing elements that could give rise to legitimacy in this context. It argues that in addition to the procedural (ex ante) dimension of legitimacy, substantive outcomes stemming from the implementation of informal norms also constitute an important dimension of norm legitimacy in sovereign debt governance. This, in turn, should facilitate the achievement of the SDGs. The promotion of macro-economic and financial sustainability is embedded in the realization of substantive outcomes. This latter component of normative legitimacy makes well-grounded informal norms central to the development of responsible financial practices in the field of sovereign debt. This article looks to how this practice manifested in the United Nations Conference on Trade and Development ("UNCTAD") Principles on Responsible Sovereign Lending and Borrowing [5] ("the Principles")—a specific and informal normative initiative in sovereign debt governance—and whether this makes any difference in terms of effectiveness and actual acceptance by relevant stakeholders in sovereign debt governance.

The scope of this article is limited to assessing the legitimacy of informal norms like the Principles in the field of sovereign debt governance. This assessment occurs while acknowledging that international finance dynamics are impacted by distributive tensions, there is a large space in which non-cooperative or abusive behavior is possible and even foreseeable, and an international treaty in this area is not realistic in the short- and mid-term. Yet even under these constraints, seeking procedural and substantive legitimacy through informal legal instruments could contribute to feasible, agreeable, and well-grounded rules in sovereign debt governance aimed at achieving the SDGs.

Part II of this article provides context on the relationship between sovereign debt governance, legitimacy, and SDGs, and highlights the mutually reinforcing nature of legitimacy and sustainability in sovereign debt governance. Part III analyzes the theoretical means of deriving legitimacy in sovereign debt governance. Part IV provides a concrete example of how legitimacy may be assessed within the context of the Principles. This article concludes by addressing some of the implications of our conclusions on the SDGs.

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[5] Press Release, U.N.C.T.A.D., UNCTAD Releases Consolidated Principles on Responsible Sovereign Financing, U.N. Press Release (Jan. 31, 2012), *available at* http://www.unctad.info/fr/Debt-Portal/News-Archive/Our-News/UNCTAD-Releases-Consolidated-Principles-on-Responsible-Sovereign-Financing-310112/.

II. THE RELATIONSHIP BETWEEN SOVEREIGN DEBT GOVERNANCE, LEGITIMACY, AND SDGS

A. Sovereign Debt and SDGs

Unsustainable debt burdens compromise the full enjoyment of human rights, particularly economic, social, and cultural rights.[6] In the case of sovereign insolvency, the development goals should be able to play a role in promoting human rights by protecting the population against unacceptable retrogressive measures and facilitating the economic conditions for sustainable, inclusive growth.[7]

The post-2015 sustainable development agenda is currently being drafted, so its final version has not yet been determined.[8] However, it has now been acknowledged that in contrast to the Millennium Development Goals ("MDGs"), the SDGs should not repeat the mistake of failing to differentiate between goals and financial measures required to fund those goals (as happened with Goal 8 on the Global Partnership). The instruments to be approved in the forthcoming Third International Conference on Financing for Development should also facilitate the success of the future SDGs.

The preparatory negotiations of this conference seem to indicate that there is a growing consensus around the fact that unsustainable debts threaten states' efforts to fulfill their human rights obligations.[9] One of the proposed ideas is to "adhere to UNCTAD Principles on Responsible Sovereign Lending and Borrowing."[10] These principles, in addition to similar guidelines promoting more responsible financial behaviors, would shape global sovereign debt governance in the direction of ensuring sustainable development.

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[6] *See* Office of the High Commissioner for Human Rights, *Resolutions and Decisions on the Mandate*, UNITED NATIONS HUMAN RIGHTS (2014), http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/Resolutions.aspx.

[7] Kunibert Raffer, *A Sovereign Debt Overhang, Human Rights and the MDGs: Legal Problems Through an Economist's Lens*, *in* MAKING SOVEREIGN FINANCING AND HUMAN RIGHTS WORK 101 (Juan Pablo Bohoslavsky & Jernej Letnar Černič, eds. 2014). *See International development financing: "It's not just about more resources" – UN human rights expert*, UNITED NATIONS HUMAN RIGHTS (May 26, 2015), http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16004&LangID=E.

[8] U.N. Economic and Social Council, Millennial Goals and Post-2015 Development Agenda, http://www.un.org/en/ecosoc/about/mdg.shtml.

[9] Rep. of Intergovernmental Comm. of Experts on Sustainable Dev. Fin., U.N. Doc. A/Conf.216/16, chapter 1, resolution 1 (Aug. 2014).

[10] U.N. Dept. of Economic and Social Affairs, *Preparatory Process for the Third International Conference on Financing for Development*, Annex E (Jan. 21, 2015).

B. Why Legitimacy in Sovereign Debt Governance?

Legitimacy is frequently treated as a side question—one only concerning to scholars, which should not interfere with the economic and financial considerations constituting the core of sovereign debt transactions. Legitimacy is a term that has been historically excluded from the vocabulary of sovereign debt restructurings because of a lack of legal grounding. The legal and banking professions have a particular dislike for legitimacy questions because legitimacy is conceptual, not codified, and therefore unpredictable. The sovereign debt arena is predominantly occupied by actors who dislike legitimacy questions, and are also generally satisfied with the status quo.

This conservative attitude is characterized by the weight of events and destructive patterns brought along with increased financial globalization. The eurozone debt crisis, the vulture fund litigation against African countries eroding the fiscal space generated under the Heavily Indebted Poor Countries ("HIPC") Initiative, and the recent Argentine litigation saga[11] highlight a few marking episodes of sovereign debt governance issues, which require adequate—and thus legitimate—international regulation.

One important development contributing to moving the lines of norm-making in this area is the impact of individuals' expectations and voices across nations (mostly though their governments and interest groups) asking for legitimate governance in sovereign debt. As Professor Robert Howse points out, "sovereign debt crises are now a matter of intense public contestation and debate. It is no longer a negotiation among small group of elite actors, governmental and private sector managers, lawyers, and international financial institutions' officials where the broader social consequences are marginalized and the solutions regarded as technical."[12] The media interest generated by these issues is directly linked to the threat of a vanishing welfare-state, which constitutes the incarnation of protection at the national level.[13] Social aspirations therefore appear to be a key point in the growing claims not only for nations that are currently facing massive

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[11] NML Capital v. Republic of Argentina, 17 N.Y.3d 250 (2011).

[12] Robert Howse, *Concluding Remarks in Light of International Law*, *in* Sovereign Financing and International Law: UNCTAD PRINCIPLES ON RESPONSIBLE SOVEREIGN LENDING AND BORROWING (Carlos Espósito, Yuefen Li, & Juan Pablo Bohoslavsky, eds. 2013).

[13] FRANÇOIS EWALD, L'ETAT PROVIDENCE 2 (1986).

budget cuts but also for those fighting to make basic rights (e.g., access to education for all) a reality.

From a structural perspective, the demand for legitimacy in sovereign debt governance is directly linked with the flexibility and informality that seems to be required in rapidly evolving and increasingly complex fields such as the global financial sector. The recent attempt of the Group of 77 ("G-77") to promote the creation of a multilateral framework for debt restructuring processes through a U.N. General Assembly Resolution[14] have created tensions between developed and developing countries, highlighting once again the challenge generated by the idea of formulating international formal law in this field. The current governance of sovereign debt indeed reflects this challenge. Some examples of international financial entities include the World Bank, the International Monetary Fund, UNCTAD, and the Paris Club—all institutions concerned with sovereign debt governance and constituted through international law—govern through informal means, including guidelines, informal discussions, and official deliberations (e.g., U.N. General Assembly).[15] This is not to mention purely ad-hoc governing institutions such as the Group of 7 ("G7") and Group of Twenty ("G20"), known to be some of the most important fora for decision-making and regulation on financial governance issues (though not specifically on sovereign debt). Most instruments governing sovereign debt at the global level are produced by informal international means and are considered soft law;[16] the relevance of their legitimacy is paramount but not only in relation to their theoretical grounding. Legitimate laws exert a compliance pull[17] compelling states to implement policies in line with the public interest.[18] This in turn affects people who tend to be more honest when they are reminded of the morality of their actions.[19] Informal law is taken seriously if it is persuasive enough to influence the behavior of the involved stakeholders, affect the interpretation, application, and development of other rules of law, or become recognized as a legal rule.

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[14] G.A. Res 68/304, U.N. Doc A/Res 68/304 (Sept. 14, 2014).

[15] *See* Chris Brummer, *Why Soft Law Dominates International Finance - And Not Trade*, 13 J. INT'L ECON. L., 623 (2010).

[16] Jean D'Aspremont, *Softness in International Law: A Self-Serving Quest for New Legal Materials*, 19 *Eur. J. Int'l L.* 1075, 1075-76 (2008).

[17] Andrew T. Guzman, *A Compliance-Based Theory of International Law*, 90 CALIF. L. REV. 1823, 1832 (2002).

[18] Oona A. Hathaway, *Between Power and Principle: An Integrated Theory of International Law*, 72 U. CHI. L. REV. 469, 482-83 (2005).

[19] DAN ARIELY, PREDICTABLY IRRATIONAL: THE HIDDEN FORCES THAT SHAPE OUR DECISIONS 231 (2010).

The fact that sovereign debt contracts constitute the preferred means of regulating sovereign debt transactions does not take away the political component of such transactions, nor the necessity of having legitimate rules or principles guiding sovereign debt practices at the international level.

C. Legitimacy and SDGs

This article makes an explicit link between the need to give a greater consideration to legitimacy issues in the context of sovereign debt governance and the SDGs. In this respect, a few remarks should be made. First, legitimacy is not inherent in sustainability; not everything that is sustainable is legitimate and vice versa. Second, SDGs constitute an objective, not a norm. Thus, the analysis that is undertaken in this article does not apply to these goals as such but rather focuses on the legal instruments to achieve them. Therefore, this article addresses the legitimacy of norms in the international sovereign debt field that should be desirable or functional for the purpose of implementing SDGs. Third, while sustainability constitutes an important financial dimension of what needs to be achieved in terms of development, SDGs cannot be reduced to the concept of sustainability alone. The SDGs embody a global will and spirit to embrace a common path that puts the well-being of individuals in harmony with their environment and avoids self-destructive patterns. This spirit can be associated with legitimate procedures and outcomes, which, as argued here, in turn constitute the defining components of legitimate informal norms at the international level. The outcome orientation of informal norms in sovereign debt governance is likely to make SDGs more attainable. More compelling and efficient norms should make a difference to achieve development goals.

III. LEGITIMACY IN SOVEREIGN DEBT GOVERNANCE

A. Sources of Legitimacy and Sovereign Debt Governance

The increasing demand for legitimacy in sovereign debt governance runs parallel to the evolution of international law.[20] The increasing production of informal norms at the international level is directly associated with the need to protect both the sovereignty of sovereign borrowers and to

[20] MICHAEL WAIBEL, SOVEREIGN DEFAULTS BEFORE INTERNATIONAL COURTS AND TRIBUNALS 170-206 (2013) (Waibel points out the difficulty that sovereign creditors face in obtaining protection under international law).

adapt to the fast changing terms of debt contracts in line with market evolutions.

The sources of legitimacy in international law are also shifting because of the proliferation of these informal norms. This field has indeed witnessed an increase of scholarship about the sources of authority and normative means affecting behaviors at all levels of society.[21] Scholars have attempted to describe this shift in many ways. Professor Anne-Marie Slaughter talked about the emergence of sub-national cross border networks of authorities (including diplomats, judges, legislators, etc.) that enable the creation of norms amongst these networks to form global governance.[22] In the mid-2000s, legal scholars began questioning the sources of international law in an attempt to open them to more informal normative undertakings, thereby finally attempting to mirror the undergoing social evolution.[23] Such transformation brought along an additional way of legitimizing international normative undertakings in the form of ex-post assessment.[24]

Building on this research, this section seeks to provide more insight into the sources of legitimacy in the field of sovereign debt, which is characterized by informal norm-making. This task involves assessing the role of formal international law within the field of sovereign debt to clarify whether the sources of legitimacy embedded in traditional sources of international law do not also apply to this field. If this hypothesis is verified, it is worth inquiring whether informal lawmaking can borrow from formal lawmaking processes in the creation of its own means of legitimization.

1. Formal Law and Consent-Based Legitimacy

The rules characterizing formal international law, and from which legitimacy is derived, are well known: the Vienna Convention, customary international law, and the general principles of international law. The rules, requiring express and explicit consent are (mostly) stated in the Vienna Convention on the Law of Treaties. However, these have a limited significance. Since international normative initiatives, especially in financial governance, tend to manifest in the absence of formal agreement

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[21] *See, e.g.*, JOHN BRAITHWAITE & PETER DRAHOS, GLOBAL BUSINESS REGULATION (2000).

[22] *See* ANNE-MARIE SLAUGHTER, A NEW WORLD ORDER (2005).

[23] JOSÉ E ALVAREZ, INTERNATIONAL ORGANIZATIONS AS LAW-MAKERS 586-650 (2006).

[24] Nico Krisch, Liquid Authority: Institutions, Law, and Legitimacy in Global Governance, Dasturzada Dr Jal Pavry Memorial Lecture in International Relations, Oxford University (2012) (audio recording available at http://www.politics.ox.ac.uk/podcast-series/2012-dasturzada-dr-jal-pavry-memorial-lecture-in-international-relations.html).

between parties,[25] contractual standards are not applicable. Formal international law can also materialize in the form of customary international law and general principles of international law. These strands of law have their own legitimizing standards, although they differ on the matter of consent manifestation.

Customary international law is derived from state practices and the legal belief that these are consistent with the law.[26] In practice, this entails determining whether a practice constitutes generally accepted law, and then ascertaining whether there is consistency with that law. The key issue implicated with identifying legitimizing instruments is that the criteria used to identify these practices are problematic and subject to debate. This is indeed one of the most controversial issues among international law scholars, who are trying to determine whether such criteria should be backward-looking or forward-looking, and whether opinio juris is even necessary for the enactment of customary law independent from state practices.[27] In addition to this problem, the lack of recognized state practices in the field of sovereign debt governance makes the examination of customary law legitimizing standards particularly complex.[28]

The creation of general principles of international law[29] relies mainly on legal comparison and judicial application of domestic rules, with an inherent universal logic deemed to go beyond cultural disparities. The approach used is analytical and has to take into account the rationale behind the way domestic law responds to a particular problem. This requires an intrinsic evaluation of the principles founded in domestic systems that provide the best solution for the case, rather than a mechanical or statistical search of predominant rules.[30] General principles of international law can sometimes rely on judicial decisions, which are considered secondary sources. Even in this context, it is worth noting that case law in the debt area is rather limited, mixed, and sometimes contradictory.[31]

Not only is formal law not easily applicable to the issues that emerge in sovereign debt governance, but also the elements necessary to create such law are too sporadic to claim its existence on a consistent basis. Thus

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[25] Brummer, *supra* note 15, at 630.

[26] Mitu Gulati, How Do Courts Find International Custom? (May 30, 2013) (unpublished manuscript) (on file with authors).

[27] *See generally* 21 Duke J. Comp. & Int'l L. 1 (2010) (special issue discussing debate); Symposium, *The Role of Opinio Juris in Customary International Law*, Duke-Geneva Institute in Transnational Law (July 12-13, 2013).

[28] *See* WAIBEL, *supra* note 20.

[29] *See* Article 38 of the Statute of the International Court of Justice.

[30] TAKIS TRIDIMAS, THE GENERAL PRINCIPLES OF EU LAW 38 (2d ed.1999).

[31] *See* WAIBEL, *supra* note 20.

informal law in sovereign debt governance is both necessary and potentially legitimate. There is a possibility that informal law may borrow from legitimate sources found in formal law's creative processes such as systematic observation of domestic practices and rules, legal comparison, and abstract transposition into principles.

2. Informal Law and Other Sources of Legitimacy

Beyond consent, the sources of legitimacy in international law can be ex-ante for procedural or input legitimacy (e.g., transparency, participation, representation) and ex-post for substantive legitimacy (e.g., results of governance and sustainability, respect for equity, human rights, etc.). Both are subject to public perceptions, also called the sociological dimension of legitimacy.[32] This dimension is discussed here through examples of how stakeholders received the Principles.[33]

The differences in using legitimizing sources for formal and informal law must to be acknowledged. In the case of formal law, the comparative methodology is applied in a judicial context involving a specific institutionalized channel with means of enforcement. In the case of informal law, however, this happens in an informal context that mostly involves experts relying on their knowledge of domestic practices and their beliefs as to what the law should be like for the common good.[34] The deliberation process is thus fed by this knowledge and belief. Hence, without conferring upon them a law-making role, experts and scholars are of crucial importance in the creation of informal law. In some cases, informal law can also be strengthened by a consistent legal effort to show how its rules are being implemented on a systematic basis at the domestic level. This effort constitutes an important enhancer of informal law's legitimacy without being essential to its creation, which is unlike formal law when embodied in general principles. Indeed, the effectiveness of soft law is translated, ex-post, through the exemplification of implementation. Here too, the deliberation process is enabled by and gains value through this systematic legal approach, which grounds discussions into reality. Comparable methodological traits can thus be used in different ways to foster the

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[32] *See* Daniel Bodansky, *Legitimacy in International Law and International Relations* (Aug. 1, 2011), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1900289 (identifies normative and sociological legitimacy).

[33] *See infra* Part IV.

[34] Incidentally, reliance on knowledge of state practices and belief that what is suggested (normatively) is in the common good i.e. respects the intent of the law, recalls the criteria used by lawyers to determine customary law. *See* Krisch, *supra* note 24.

legitimate process of international law's creation both on formal and informal planes. In the case of informal law, the consideration of domestic rules filters through expertise, deliberation, and effectiveness. As Professor Anne Peters stated, "scientific legitimacy is not sufficient for the exercise of public authority"; norms need to be socially necessary as reflected not only by the participation of the affected people but also by the effectiveness of these norms, also known as the substantive aspect.[35]

Due to the scarcity of formal legal sources specifically applicable to debt issues and the negative effect of debt problems on the provision of global public goods, this article mainly draws on the International Public Authority theory. This theory focuses on international normative undertakings having a public effect and thus being receptive to politics of de-formalization of international law.[36] This choice translates an attempt to be sufficiently flexible and broad to cover the actions and consequences that are relevant in the study of norm legitimacy in sovereign debt governance.[37] In the context of such theory and based on normative properties, three elements can be used to assess the procedural legitimacy of exercises of international public authority: a) expertise and knowledge that feed the informal law instrument; b) intensive deliberation around the existence, contents, scope, and goal of the principles; and c) the degree of effectiveness of the principles (grounded in domestic sources).[38] Other sociological elements are based on public perception and rely on perceived participatory quality and effectiveness. Relying on perceptions, the latter elements are at the crossroad between procedural and substantive legitimacy.

As to substantive aspects of norm-making legitimacy, we need to turn to the purpose of the law in order to assess the effectiveness, efficiency, and sustainability of the norm at stake. In doing so, we run into questions of morality, ethics, and objectives such as fairness, justice, and the public interest. Such objectives are then translated into policies and norms, which are likely to have an impact on subjects.[39] Legitimate international norms are those which not only have such impact, but also create the conditions of efficient policy outcomes in relation to the objectives. Such objectives are ideals embodying the general interest. It is thus in their nature to be general

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[35] Anne Peters, *Realizing Utopia as a Scholarly Endeavour*, 24 EUR. J. INT'L L. 533, 539 (2013).

[36] Armin Von Bogdandy, Philipp Dann & Matthias Goldmann, *Developing the Publicness of Public International Law: Towards a Legal Framework for Global Governance Activities*, 9 GER. L. J. 1375, 1386 (2008), *available at* http://papers.ssrn.com/abstract=1348809.

[37] Other standards used in the assessment of legitimacy tend to refer to institutions (e.g. accountability) and are not applicable here.

[38] Helen Keller, *Codes of Conduct and Their Implementation: The Question of Legitimacy*, *in* 194 LEGITIMACY IN INTERNATIONAL LAW 219, 266-270 (Rüdiger Wolfrum & Volker Röben eds., 2008).

[39] *See generally* JOHN RAWLS, A THEORY OF JUSTICE (2005).

and subject to interpretation. Deciding on the objectives or ideals against which to assess normative undertakings is the first step in evaluating substantive legitimacy.

A basic—but important—objective is to acknowledge an outcome orientation governing sovereign debt contracting, which requires that sovereign actions (such as borrowing and lending) be in citizens' interest.[40] This idea is based on a notion of sovereignty intrinsically linked to human rights[41] 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.

Paying increasing attention to human rights should have spillover effects on sovereign debt standards, development goals, and the means to achieve them. Sovereign financing is crucial for promoting and protecting citizens' human rights, the link between sovereign debt and human rights becomes relevant and potent in terms of legitimacy.[42] This seems to be corroborated by the fact that in 2012 the United Nations Human Rights Council endorsed the Guiding Principles on Foreign Debt and Human Rights.[43]

Jus cogens norms[44] are recognized as those prevailing over all others and as such, could theoretically be used as objectives.[45] The issue here is that these norms are in constant evolution and there is no consensus on what they encapsulate.[46] Moreover, with the only exception of situations in which an authoritarian government engaged in a systematic campaign of human

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[40] *See* ODETTE LIENAU, RETHINKING SOVEREIGN DEBT: POLITICS, REPUTATION, AND LEGITIMACY IN MODERN FINANCE (2014); *see also* Anne Peters, *Humanity as A&O of Sovereignty*, 20 EUR. J. INT'L L. 513, 524 (2009).

[41] W. Michael Reisman, *Sovereignty and Human Rights in Contemporary International Law*, 84 AM. J. INT'L L. 866, 875 (1990).

[42] *See* U.N. Office of the High Commission for Human Rights, *Towards a Multilateral Legal Framework for Debt Restructuring: Six Human Rights Benchmarks States Should Consider* (Jan. 25, 2015), *available at* http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/ViewsIEConventiontoregulatedebt.aspx

[43] Human Rights Council Res. 20/10, Rep. of the Human Rights Council, 20th Sess., (June 18-July 6, 2012), A/HRC/RES 20/0 (July 18, 2012).

[44] *Jus cogens* norms transform primordial social values into legal imperatives through judicial determination. *See* Carnegie Endowment for International Peace "The Concept of Jus Cogens in International Law" *Lagonissi Conference: Papers and Proceedings* (Washington, D.C.: Carnegie Endowment for International Peace, 1967): 11.

[45] Vienna Convention of the Law of Treaties art. 53, May 23, 1969, 1155 U.N.T.S. 331 (A treaty between two states is void if it is in conflict with peremptory norms. Given the universal applicability of *jus cogens* norms, this principle is indeed not limited to treaties but it also applies to contracts between states and privates).

[46] *See* Mary Ellen O'Connell, *Jus Cogens: International Law's Higher Ethical Norms*, The Role of Ethics in International Law 89 (Donald Earl Childress III ed., 2011).

rights abuses is supported financially, jus cogens standards are not applied to debt standards because they are not relevant in the context of sovereign debt governance. Instead, international human rights law seems to offer a broader and more skillful set of substantive criteria against which substantive legitimacy may be assessed, [47] as suggested by the United Nations Human Rights Council in 2011[48] and 2012.[49] The recent Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights seem to corroborate this view.

In order to gain normative efficiency, the first step of identifying quantifiable objectives needs to be complemented by a second step entailing some form of monitoring. With legitimacy, for good or bad reasons, contestation seems to be the most significant form of monitoring. [50] Perceived illegitimacy is indeed a strong catalyst for change through popular contestation. Still, contestation often is a response to the implementation of a policy translated into a norm as opposed to a response to the norm itself. In monitoring the concerned norms, attention should be devoted to assessing not only their effectiveness, but also their sustainability.

IV. ASSESSING THE PRINCIPLES ON RESPONSIBLE SOVEREIGN LENDING AND BORROWING

A. Legitimacy Through Expertise, Stakeholders' Participation, and Deliberation

This section examines whether the Principles on Responsible Sovereign Lending and Borrowing comply with the selected elements of international legitimacy. As far as input legitimacy is concerned, let us examine expertise, stakeholder participation, and deliberation one by one.

The level of expertise required in the formulation of the Principles constituted a fundamental pillar of this normative undertaking. The Principles have been drafted by an expert group of highly regarded professionals in this field. [51] Legal and economic minds coming from reputed universities and private law firms in the field of sovereign debt restructuring were particularly active in the drafting process. Experts relied

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[47] BOGDANDI ET AL., *supra* note 31.

[48] *See* Human Rights Council Res. 17/4, 17th Sess. May 30-June 17 2011, A/HRC/RES/17/4 (July 6, 2011).

[49] *See* Human Rights Council Res. 20/10, Rep. of the Human Rights Council, 20th Sess., June 18-July 6, 2012, A/HRC/20/L.17 (July 22, 2012).

[50] Christian Reus-Smit, *International Crises of Legitimacy*, 44 INT'L POL. 157, 159 (2007).

[51] For detailed information about this UNCTAD initiative, see http://www.unctad.info/en/Debt-Portal/.

both on their scientific and theoretical knowledge, and their professional experience relating to sovereign debt contracting practices all over the world. The participation of the IMF, the World Bank, and the Paris Club as observers meant that the articulation of concepts—and ultimately, principles—going into the draft was always kept in check with the reality and experience of lending practices at the multilateral and bilateral levels. Expertise was communicated through regular face-to-face meetings and through rounds of written comments, thereby offering prepared thoughts in addition to the spontaneous remarks made during meetings.

In terms of participation in the drafting process, the members of this expert group were carefully selected to reflect all the parties affected by sovereign lending and borrowing and to be as inclusive as possible. The idea behind this selection process was to combine the wide-ranging views of all the stakeholders involved and potentially impacted by irresponsible sovereign debt governance. Given the importance of basic taxpayers' interests in this issue, members of international civil society were adequately represented. In fact, Afrodad, Eurodad, Latindad, Jubilee Network, Erlassjahr, and Slug were all invited to be part of the expert group. Private interests were also heard through bond markets associations' representatives (International Capital Market Association and EMTA) and private lawyers. Giving a voice to such disparate stakeholders could theoretically have prevented any kind of consensus on the formulation of the Principles. However, faced with the urgency to deal with the absence of universal principles in the field and with the opportunity to address different ideas with other stakeholders' realities, participants engaged in meaningful discussions rooted in mutual tolerance.

As to the process through which the Principles received support, the adopted formula was deliberation based on extensive consultation. The consensus building process began with the drafting exercise among the members of the expert group meeting in which they exposed the points to be addressed in the principles. Based on these points, the secretariat elaborated a draft of the Principles. During 2011 and 2012, six regional consultative meetings with countries took place in Buenos Aires, Bangkok, Luanda, Geneva, Jeddah, and Punta Cana in order to get governmental feedback from U.N. member states on the design and the possible implementation process. Around seventy-five countries provided their views. After a series of bilateral and high level regional governmental consultations and subsequent refinements introduced by the project's Expert Group, the consolidated version of the Principles was launched in Doha in April 2012 on the occasion of UNCTAD XIII, inaugurating the phase of endorsement and

implementation. To date, twelve countries have explicitly endorsed the Principles.

Deliberation thus took place through several means. First, once launched into the public sphere, all delegations were informed and given the opportunity to reply and comment on the Principles.[52] Second, in regional consultative meetings, the U.N. Secretariat took an active approach in collecting the national views of those engaged in the borrowing and lending of sovereign funds. Third, on several occasions the Principles were discussed in open fora (inter alia General Assembly meetings, central bankers meetings, general auditors' meetings, parliamentary conference, and debt managers conference) where participants were given the opportunity to speak for or against them. Members of the civil society were not shy in voicing their concerns, particularly on the question of illegitimate debts. The fact that stakeholders with different, and sometimes contradictory, interests openly debated problems and possible remedies not only improved the information available,[53] but also forced them to debate and argue their positions and look for feasible and balanced criteria to be accepted. [54] Deliberation [55] also potentially generated new ways to advance the stakeholders' goals through cooperation.[56]

B. Legitimacy Through Explicit and Implicit Consent

The idea of consent was not disregarded in formulating the Principles. Its significance remains important in two respects. First, most of the Principles can be considered as general principles of international law.[57] Apart from the similarities between private and state insolvencies,[58] there is a growing and broadening tendency to systematize principles distilled from domestic legal systems (especially taking Chapters 9 and 11 of the U.S. Bankruptcy Code as models) in order to build a new sovereign insolvency architecture. The notable similarities in domestic bankruptcy laws

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[52] *Id.*

[53] *See* Joshua Cohen, *Deliberation and Democratic Legitimacy*, *in* DELIBERATIVE DEMOCRACY: ESSAYS ON REASON AND POLITICS 67, 69 (James Bohman & William Rehg eds., 1997).

[54] JÜRGEN HABERMAS, THE THEORY OF COMMUNICATIVE ACTION.

[55] *See generally* Bernard Manin, *On Legitimacy and Political Deliberation*, 15 POLITICAL THEORY 338 (1987).

[56] Peter M. Haas & Ernst B. Haas, *Learning to Learn: Improving International Governance*, 1 GLOBAL GOVERNANCE 255, 270 (1995).

[57] *See generally* Matthias Goldmann, *Responsible Sovereign Lending and Borrowing: The View from Domestic Jurisdictions* (United Nations Conference on Trade and Development, Working Paper February 2012), *available at* http://www.unctad.info/upload/Debt%20Portal/RSLB_MGoldmann_02-2012.pdf.

[58] DOMINIQUE CARREAU, THE EXTERNAL DEBT 20 (1992).

facilitated the work to create the Southern Debt Restructuring Mechanism ("SDRM") proposed by the IMF in 2003, since, the standstill and approval of the reorganization plan are deeply-rooted institutions in domestic law. A broad comparative survey that includes fifteen representative jurisdictions[59] indicates that while most of the Principles already can be regarded as general principles of law, the rest can be categorized as guiding, emerging or structural principles.[60] In this sense, the creation of general principles of law through the transposition of widely shared domestic practices into the international legal context infers a degree of implicit consent.[61]

Second, consent constitutes an essential means of making the Principles "implementable." States' official declarations of support for the Principles ("endorsement") is crucial for their influence in the international arena. This is not because it would make them necessarily binding but because States' communication reflects their credibility and legitimacy on the international scene as well as on the domestic one. Consent does not work here as a legal instrument but as a political device belonging to reputational games that carry the weight of individuals' and citizens' scrutiny and tremendous potential for impact.

C. Legitimacy Through Substantive Outcomes

Substantive legitimacy in the field of sovereign debt is strongly connected to objective ideals of justice, fairness, and human rights. These ideals are all essential elements in the determination of substantive policy outcomes. These outcomes are the product of multiple outputs generated at various levels of the policy arena. At the macro level, policy makers consider theoretical approaches and ethical values to be assessed in the interpretation of general principles such as those included in constitutional laws, international conventions, or informal norms like the Principles. At the micro level, which entails looking at each individual principle in the sovereign debt area, outcomes are measured against results (outputs) that should stem from the realization of the purpose and intent of such principles. Finally, at the meso level, outcomes are determined by the behavior (output) of the institutions and stakeholders in the pursuit of more responsible sovereign financing practices. Naturally, all these outputs are a measure of

[59] The legal orders examined were Egypt, Nigeria, Tanzania, China, India, Japan, Russian Federation, Argentina, Brazil, Chile, Mexico, France, Germany, United Kingdom, and United States of America.

[60] Goldmann, *supra* note 57, at 8.

[61] On this function of the general principles, *see* M.C. Bassiouni, *A Functional Approach to General Principles of International Law*, 11 MICH. J. INT'L L. 768, 776 (1990); Elias Olufemi & Chin Lim, *General Principles of Law, Soft Law and the Identification of International Law*, 44 NETH. INT'L L. REV. 3, (1997).

efficiency, and efficient outcomes are an important component of sustainable goals.

Hence, beginning with the macro perspective, given the direct and positive impact that more responsible financial behaviors would have on economic growth and, consequently, on achieving the development goals,[62] the Principles can be viewed as generally functional and even as socially necessary.[63]

From a micro perspective, the Principles purport to achieve general ethical goals through specific legal means. First, lenders and borrowers should acknowledge the duty of government officials to protect public interest (of both the state and its citizens) (Principles 1 and 8). Second, Principle 6 establishes that lenders must not participate in transactions that violate, evade, or hamper U.N. sanctions. While this principle may seem obvious considering other international law norms, political and academic discussion on whether multilateral financial organizations are bound by the U.N. Security Council resolutions.[64] Third, Principle 9 (a general principle of law) established that debts should be honored, unless the economic circumstances of the borrower prevents full or timely repayment, or if a judicial authority acknowledges a legal defense.[65] In case a debt restructuring is unavoidable, this should be proportional to the sovereign's need and all stakeholders (including citizens) should share an equitable burden of adjustment or losses.[66]

Other principles insist on the consideration of a large range of implications, beyond the purely economic concerns of the creditors and debtors in debt transactions. For instance, when assessing project financing options, both lenders and borrowers should perform an ex ante and ex post investigation of the likely effects of the project, including its financial, operational, civil, social, cultural, and environmental implications.[67] Another example lies in Principle 14, where it is stipulated that while

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[62] *See* KUNIBERT RAFFER, DEBT MANAGEMENT FOR DEVELOPMENT: PROTECTION OF THE POOR AND THE MILLENNIUM DEVELOPMENT GOALS (2010).

[63] Peters, *supra* note 35, at 539.

[64] *See* Samuel Bleicher, *UN v. IBRD: A Dilemma of Functionalism*, 24 INT'L ORGANIZATION 31, (1970); EISUKE SUZUKI, *Responsibility of International Financial Institutions Under International Law*, *in* INTERNATIONAL FINANCIAL INSTITUTIONS AND INTERNATIONAL LAW 63, 69 (Daniel Bradlow & David Hunter eds., 2010).

[65] Two examples of these defenses are insolvency and corruption.

[66] United Nations Conference on Trade and Development, Consolidated Principles on Responsible Sovereign Financing, Principle 15, http://www.unctad.info/upload/Debt%20Portal/Principles%20drafts/SLB_Principles_English_Doha_22-04-2012.pdf.

[67] United Nations Conference on Trade and Development, Consolidated Principles on Responsible Sovereign Financing, Principles 5 and 12, http://www.unctad.info/upload/Debt%20Portal/Principles%20drafts/SLB_Principles_English_Doha_22-04-2012.pdf.

weighing costs and benefits of seeking sovereign loans, governments should consider if it would permit additional public or private investment, with a prospective social return at least equal to the likely interest rate. These calculations should be performed after internalizing relevant social and environmental costs and benefits. Because of its broad externalities, particularly for taxpayers, the process for obtaining financing and assuming sovereign debt obligations and liabilities should be transparent.[68]

From a meso perspective, the Principles allocate responsibilities to lenders and borrowers according to those who are best suited to take action to prevent losses, seeking to approach the optimal liability. In addition, the Principles reflect and reinforce the morality involved in each behavioral change they promote. Fiduciary responsibilities are probably their best example of this. As fair laws exert a compliance pull on states, the Principles seem to have a great potential in terms of implementation. The Principles could trigger a change in both values and interests of stakeholders involved in sovereign financing. Hence, since the externalities of the problems addressed by the Principles are reciprocal, successful cooperation is more likely.[69]

Behavioral changes are subtle and engrained in the participatory process of the Principles' elaboration. It begins with the willingness of certain stakeholders, who would not in theory be open to a dialogue on certain aspects of sovereign debt transactions (e.g., creditors), to participate in the discussions. Institutional responses of certain stakeholders—like that of the Institute of International Finance—in deciding to revise its own principles on sovereign debt, bear witness to the effective character of deliberative processes.[70] More generally, the mandate granted by the U.N. General Assembly to work on responsible sovereign lending and borrowing shows a widespread consensus of the international community on the necessity to strengthen debt crisis prevention and management on a global basis.[71]

Following the drafting process, the Principles took on a life of their own, influencing behaviors independently from UNCTAD initiatives. First,

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[68] United Nations Conference on Trade and Development, Consolidated Principles on Responsible Sovereign Financing, Principles 10 and 15, http://www.unctad.info/upload/Debt%20Portal/Principles%20drafts/ SLB_Principles_English_Doha_22-04-2012.pdf.

[69] Alan O. Sykes, *The Inaugural Robert A. Kindler Professorship of Law Lecture: When is International Law Useful*, 45 N.Y.U. J. INL'T L. & POL. 787, 810 (2013).

[70] In 2012, following numerous discussions among experts within the context of the Principles, the IIF decided to widen the target audience of its own principles from emerging countries to all countries.

[71] *See Documentation on Responsible Sovereign Financing*, UNCTAD, http://www.unctad.info/en/Debt-Portal/Project-Promoting-Responsible-Sovereign-Lending-and-Borrowing/About-the-Project/Principles-on-Responsible-Sovereign-Lending-and-Borrowing/Project-Documents/ (last visited May 30, 2015).

twelve member states endorsed the Principles, thereby indicating a willingness to be recognized as responsible borrowers and lenders at the international level. Evolving attitudes with regard to the endorsement of Principles was also noted at the G20 level. In 2013, under the Russian presidency, the Principles found a revived interest, leading UNCTAD to highlight the importance of having more countries recognize these Principles as a guiding tool in their economic and financial policies.[72] The current efforts aimed at having all U.N. member states politically endorse the Principles through the Financing For Development ("FFD") process bear witness to the consistent political consideration of this evolution on the international level.

Notwithstanding the political relevance of the endorsement process, changing behaviors also need to be examined in light of implementing initiatives. At this point, stakeholders have taken two major steps in this direction at the international level. First, the International Organization of Supreme Audit Institutions ("INTOSAI") recently discussed the technical aspects of incorporating the Principles into the international standards used by Auditors General to audit their countries' public debt.[73] This project, carried out by the INTOSAI Development Initiative ("IDI") ensures that Auditors General from various countries will be trained with a view to audit sovereign debts in line with the Principles. As a precursor of the initiative, Norway undertook an audit of developing countries' debts to the country on the basis of the Principles.[74] Second, a dissenting opinion in a recent International Centre for Settlement of Investment Disputes ("ICSID") arbitration decision on jurisdiction and admissibility mentioned the UNCTAD Principles as relevant law when deciding a dispute on public debt.[75]

In addition, the spread of ideas potentially has the ability to shape what societies see as legitimate and acceptable. The U.N. can play a

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[72] Press Release, United Nations Conference on Trade and Development, G20 High-Level Seminar on Sovereign Debt Public Debt Management Under Non-Conventional Conditions on Debt Markets (April 12, 2013), http://www.unctad.info/en/Debt-Portal/News-Archive/Our-News/G20-High-Level-Seminar-on-Sovereign-Debt-Public-Debt-Management-under-Non-Conventional-Conditions-on-Debt-Markets-2-3042013/.

[73] Press Release, United Nations Conference on Trade and Development, UNCTAD Principles to Be Incorporated in Auditing Standards for Sovereign Debts - A Major Step Forward (July 15, 2013), http://www.unctad.info/en/Debt-Portal/News-Archive/Our-News/International-auditing-standards-to-streamline-UNCTAD-Principles-on-sovereign-financing-21072013/.

[74] Press Release, United Nations Conference on Trade and Development, Norway to Audit Debt on Basis of UNCTAD Principles (Aug. 22, 2013), http://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=231.

[75] Ambiente Ufficio S.P.A. and Others v. Argentine Republic, ICSID Case No. ARB/08/9, ¶ 330 (May 2, 2013) (Bernárdez, dissenting), *available at* www.italaw.com/cases/1750 (bondholders' claims).

transcendental role in this particular regard. Specifically, the U.N. General Assembly approved Resolution 68/304 in September 2014, establishing an Ad Hoc Committee to elaborate a multilateral legal framework for sovereign debt restructuring processes:

> Stressing the importance of the Principles on Promoting Responsible Sovereign Lending and Borrowing issued by the United Nations Conference on Trade and Development on 4 May 2011, which aim to reduce the prevalence of sovereign debt crises, prevent unsustainable debt situations, maintain steady economic growth and help achieve the Millennium Development Goals, encouraging to that end responsible sovereign borrowing.[76]

UNCTAD is now the Secretariat of the Ad Hoc Committee established by the General Assembly (Resolution 69/247, December 2014) to implement Resolution 68/304.[77]

Change in political discourse constitutes one of the ways to detect evolutions in legitimate perceptions. With the Principles, a number of stakeholders started adopting the U.N. language in their work and sometimes even in their advocacy, thereby helping to reframe the debate on sovereign debt crisis prevention. Terms like "responsible sovereign lending and borrowing" or "co-responsibility" clearly indicate an attempt to depart from the traditional policies focused solely on the borrowing countries and embrace the idea that lenders and borrowers are jointly responsible in the debt transactions they conclude. The adoption of this idea in the U.N. General Assembly Resolution on External Debt (in 2010)[78] was then followed in other fora such as the ACP/EU trade negotiations[79] and the Inter-Parliamentarian Union.[80] Civil society representatives and scholars also played a crucial role in the dissemination of this language[81].

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[76] G.A. Res. 68/304, U.N. DOC. A/68/L.57/Rev.2, at 3 (Sept. 4, 2014).

[77] *See Debt Portal*, UNCTAD, http://www.unctad.info/en/Debt-Portal/ (last visited May 16, 2015).

[78] G.A. Res. 64/144, U.N. DOC. A/65/434/Add.3 (Dec. 3, 2010).

[79] Press Release, United Nations Conference on Trade and Development, Principles on Responsible Sovereign Lending and Borrowing Receive Parliamentary Support (Dec. 16, 2011), *available at* http://www.unctad.info/en/Debt-Portal/News-Archive/Our-News/Parliamentary-Support-of-the-Principles-on-Responsible-Sovereign-Lending-and-Borrowing-23112011/.

[80] *See 125th IPU Assembly and Related Meetings (Oct. 16-19, 2011)*, INTER-PARLIAMENTARY UNION, http://www.ipu.org/conf-e/125agnd.htm (last visited May 30, 2015).

[81] *See generally* European Network on Debt and Development [EURODAD], Responsible Finance Charter (2011), *available at* http://eurodad.org/uploadedfiles/whats_new/reports/charter_final_23-11.pdf.

The Principles have only been released for endorsement since April 2012 and, consequently, their potential for implementation has yet to be fully realized. Like many policy and normative outputs, the initiating institution rapidly becomes detached from its output for the benefit of a better appropriation by the stakeholders in need of providing a direction or a framework to their activities. In that respect, a study of changing lending and borrowing practices would be useful to get a sense of the breadth and financial sustainability of the Principles implementation. While it is difficult to study how changing practices link directly with the Principles, monitoring legitimacy perceptions constitutes a recognized way of indicating substantive outcomes. In terms of assessing legitimacy of international initiatives, this article provides for an illustration of why it is important to separate the analysis of the institution's (here, the U.N.) legitimacy in issuing norms and the norms' (here, the Principles) legitimacy itself.

V. CONCLUSIONS

The Principles integrate both procedural and substantive requirements of the norm making processes of informal law. While some of these elements can also be associated with formal law's legitimacy requirements, the particular attention paid to substantive outcomes makes this legitimization process informal-norm-specific. This is particularly important given the need to consistently link the SDGs to adequate financial means. Informal law in the field of sovereign debt desperately needs good results that are development and human rights-oriented.

On the one hand, robust discussions around the Principles strengthened their procedural legitimacy. Expertise, participation, and deliberation promoted and facilitated balanced and feasible rules in the concrete case of the Principles. On the other hand, genuine and qualified discussions help identify and crystallize rules that find trade-offs among the behavioral changes sought by these same rules. Making the Principles' concrete applications visible and understandable from the very beginning constitutes a useful way of providing public goods more effectively and efficiently—and in line with the SDGs and human rights—consolidating their legitimacy.

Legitimizing norms according to the above criteria is particularly suited to the area of sovereign debt due to the difficulty to obtain explicit inter-state consent in this field, as well as the number and power of non-state actors involved in sovereign lending and borrowing transactions. This is in

fact reflected in the state of formulation of traditional sources of international law in the field.

The draft General Assembly Resolution 68/34 initially submitted by the G-77 and China proposed the adoption of a multilateral convention. However, the text eventually adopted refers to efforts to establish not a multilateral convention, but a legal framework, echoing the call for a soft law approach. In terms of impact, the development implications of having legitimate norms in sovereign debt governance matter. For instance, the legitimacy of norms such as the Principles, which integrate (macro) financial sustainability as a key variable of norm efficiency, can in turn foster SDGs in a significant way. Indeed, by placing individuals at the center of decision making processes, even indirectly through democratic means, and by holding the global general interest as a key consideration in sovereign debt dispute resolutions, the intensity of disasters linked with the repayment of unsustainable debts or, more generally, with irresponsible lending and borrowing may be reduced.

The Principles are based on a productive interplay between constructivism and international legal theory. While conscious of the political and economic constraints existing in the international financial arena, the Principles do not dominate weak stakeholders so that they follow the rules made by the most powerful. On the contrary, the Principles reinforce sovereigns' will by incorporating general principles already in existence in domestic orders and to which thus implicitly consented. In addition, their general principles status implies that the Principles have been successfully tested at the domestic level, so that expectations from and familiarity with the Principles can potentially facilitate their adaptation and implementation at a global scale.