Book Review: Annamaria Viterbo, Sovereign Debt Restructuring: The Role and Limits of Public International Law

By:

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Covid-19 has had an unprecedented impact on the regions of the global south. These regions are not only struggling with the virus itself, but with its severe economic consequences. The Latin America experience illustrates some of the grimmer economic realities of the pandemic and shows worrying signs of a hard economic downturn (here). In the absence of financial resources and any regional effort to pull resources together as in the European case, countries from the global south will go down the road of more sovereign debt.

The book, *Sovereign Debt Restructuring: The Role and Limits of Public International Law,* by Annamaria Viterbo (see here) was released a few weeks ago, in the city of Turin, Italy. The book offers an updated and comprehensive view of the status of the different legal regimes that govern sovereign debt

operations. While this book was not written with the outbreak in mind, it provides unique insights into the legal challenges that states and policy makers from the global south ought to consider when facing the challenges of the post Covid-19 world. The following post offers some takeaways from the book.

The standpoint of international public law on the analysis of Sovereign debt

The book is based on the premise that one of the systemic deficiencies of the current financial architecture is the absence of established mechanisms for restructuring sovereign debt—defined in the book as 'debt owed, guaranteed or secured by the government of a State to public or private creditors.' Unlike domestic legal systems, which offer options within the scope of bankruptcy laws at the global level, there is no single established course of action covering sovereign defaults. On the contrary, there is considerable fragmentation among the legal mechanisms that may be applied. The reason for this fragmentation is that creditors differ in terms of their legal nature and, when debt restructuring becomes unavoidable, different legal vehicles come into play depending on the nature of the creditor.

In the book, at least four clusters of restructuring vehicles are studied: Multilateral debts, official bilateral debts, commercial bank loans, and sovereign bonds. Among those clusters, in order to cope with the noted systemic deficiency, there is a tendency to implement a 'contractual approach' strategy, characterized as an attempt to avert official intervention by appealing to soft law mechanisms, such as 'best practices', 'principles' and 'codes of conduct' for creditors. This approach has overtaken the opposite strategy, referred to as a 'statutory approach', which instead aims for a permanent global sovereign debt dispute mechanism.

International public law offers a convenient methodological approach to analyzing these strategies for two reasons: First, it allows the author to use the vocabulary of public law to map out the landscape of legal regimes involved in sovereign debt operations. The book takes a historical perspective, beginning from the 19th century, on how different legal clusters have emerged to regulate 'sovereign debt restructuring'—the term is defined by the author as

operations through which debtor countries seek debt relief in the form of extensions, value reductions, or lower interest rates.

Second, the prism of international public law allows the author to analyze the normative strategies of the different actors involved in debt restructuring operations. This makes it possible to track the development of the various financial legal regimes through interactions between international organizations, as well as in the dynamics of transnational networks, such as financial industry associations.

The role of transnational networks in debt restructuring operations

One of the book's most salient contributions is shedding light on the role that financial industry associations have in the law-making process of sovereign debt restructuring operations. While the importance of inter-governmental networks, such as the Basel Committee on Banking Supervision, has already been acknowledged in the literature, there is still much to learn about the real impact of financial industry associations on debt operations.

The book turns its attention to three associations: The Institute of International Finance (IIF), the International Capital Market Association (ICMA), and the International Swaps and Derivatives Association (ISDA). Although each of these varies in its composition, they also share some common features, such as their hybrid nature—they are all composed of both private and public financial institutions. In addition, these bodies produce documents that have usually been categorized as non-binding or 'soft law', which nevertheless have the potential to influence how debt restructuring operations will be performed, how governments can act, and how 'hard law' will be drafted in the future.

Illustrative in this regard is the evolution of the IIF's *Principles for Stable Capital Flows and Fair Debt Restructuring* described in the book. The IIF released those principles in 2004 (here) as a voluntary code of conduct to be implemented by sovereign debt issuers.

Even though the principles are entirely voluntary, they have impacted how debt has been restructured in recent years. First, they were endorsed by other important global governance structures, such as the G20 and the Paris Club.

Second, they were able to shape the conceptual categories of debate over the following years. More significantly, IIF's work had an impact on the Greek crisis some years later, when the senior offices of the IIF facilitated informal negotiations within the 'Private Sector Involvement agreement'.

Transnational networks, such as the IIF and the other institutions analyzed in the book, have increasingly exercised authority in the sovereign debt restructuring process. As the author points out, this raises questions about transparency, legitimacy, and accountability.

A turning point for Sovereign Debt Restructuring?

In confronting this complex scenario, the author does not offer a 'silver bullet' solution for defragmenting the different legal clusters formed around sovereign debt restructuring. Neither does she offer a specific solution for the Global South. However, she does put forward the idea that 'soft' principles have a direct impact on the discipline and expresses her deep concern that a 'market-oriented' strategy is gaining ground bringing with it an undesirable pro-creditor bias that influences the development of such principles.

If her conclusion is accepted, another question immediately emerges from reading the book: How can developing countries, with their limited bargaining power and technical capabilities, find their voice in the Sovereign Debt debates occurring in the private/public hybrid zones of transnational networks? There is no obvious answer to this question, but a first step is to recognize the existence of this hybrid zone, where building a legal narrative is fundamental to gaining some influence.

In sum, *Sovereign Debt Restructuring: The Role and Limits of Public International law* by Annamaria Viterbo is an important contribution for academics and policymakers working on the challenges of the post-Covid-19 global financial architecture.

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