*Foreword by Philip Alston**

This book should have been written a long time ago. The extent to which gross human rights violations are frequently underpinned by international financial structures was convincingly demonstrated in the 1970s, particularly in the cases of apartheid South Africa, and Chile. And some of the New International Economic Order debates of the same era were also premised on the assumption that international markets controlled by and in the interests of the North were incompatible with meaningful development in the South. But the intervening decades have seen all too little sustained pursuit of these insights, especially in terms of examining the ways in which the rules governing sovereign financing arrangements and those applying to human rights can be made more complementary.

The present volume of essays is thus especially welcome because it reflects the engagement of an impressive and diverse group of contributors with a broad range of issues under the rubric of sovereign financing and human rights. It is to be hoped that its publication marks the beginning of a new scholarly phase in which more sophisticated, financially literate, critical and informed analyses of the impacts of international economic and financial systems will be brought to bear upon efforts to promote respect for human rights by financial and other actors who have long been highly resistant to such concerns.

It must be said, however, that the financial community has hardly been under much pressure from the sources that one might expect to be in the forefront of insisting upon such linkages. Those sources would include, as a minimum, international lawyers, international development practitioners and international human rights bodies. It is instructive to note the extent to which each of these groups has avoided playing such a role.

Public international lawyers for their part have historically succeeded in carving out a space for themselves that did not require engagement in any systematic or meaningful way with the impact that the norms that they promoted and defended might have upon the private sphere, whether at the micro or macro levels. At the micro-level, the failure of states to reign in death squads or to respond to plagues of violence against women, could be ignored since these were matters that were within the *domaine reservé* of states. In such areas, international law shored up sovereignty and strengthened the hands of governments. And at the macro-level, international economic norms (private international law) and institutions and the conduct of private economic actors, were for the most part kept very separate from the mainstream of international law.

Many examples could be cited, but one will suffice to make the point. International law has, as any international lawyer will know, played a central role throughout the history of the Congo Free State (1884–1908), the Belgian Congo (1908–1960), the Republic of the Congo (1960–1971), Zaire (1971–1997), and the Democratic Republic of the Congo (1997–today). The issues that emerge from international law accounts of this evolving situation range from the annexation of territory, decolonization, self-determination and the succession of states, to the use of force, development and humanitarian assistance,

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the multiple roles of the United Nations and of its peacekeepers and litigation in the International Court of Justice. But the deeper story underlying this entire period is one of unremitting foreign economic exploitation of the vast mineral and other forms of wealth of the territory. On the international law balance sheet this dimension remains curiously neglected, or at least somehow separate, despite the fact that international legal norms and institutions variously facilitated, shielded, or approved much of what was going on, or alternatively provided support for claims that there was little that could be done about any activities which were clearly contrary to existing norms. The predations of the colonial powers, the massive foreign debt incurred by President Mobutu Sese Seko, and the continuing connivance by neighbouring states and other foreign actors to illegally exploit the DRC's resources – all accompanied by, and often contributing to, massive human rights abuses – are somehow matters to be addressed in other contexts and perhaps by other actors. The recent work of the expert group created by the Security Council's Sanctions Committee stands as a rare exception to the failure to explore some of the international law implications of this siloing of concerns.[1]

The international development sector is another source which we might expect to have generated sustained pressure on the sovereign financing community to reconcile their activities with professed adherence to human rights standards. But, as many of the contributors to this volume demonstrate, there has been an extraordinary dissonance in this area. In a nutshell, one could say that the UN, the World Bank, the International Monetary Fund and others seem to have been endlessly prescriptive about what actors in the South should do in terms of resource transparency, the rule of law, anti-corruption measures and so on, while being wondrously permissive in terms of what typically (although increasingly less so) Northern corporate interests are expected to do to contribute to achieving the same goals. Recent efforts under the auspices of UNCTAD, such as the adoption of the Principles on Responsible Sovereign Lending and Borrowing, have begun to redress part of the imbalance, but there is a long way to go.

Finally, it might reasonably have been assumed that international human rights bodies could be counted upon to have taken up these crucial linkages in a systematic manner, and to have identified measures that ought to be taken to promote a more constructive relationship. But in fact, all too little has been done. The major historical exception was the struggle against apartheid, in relation to which a range of United Nations bodies successfully linked various forms of sovereign financing and related arrangements to the ongoing repression in the country and helped to compel deep political change. But the case of Chile is perhaps more revealing. Because of the ready availability of abundant evidence pointing to the deep complicity of western financial interests in the overthrow of the democratically elected government of Salvador Allende in 1973, the UN's Sub-Commission on human rights launched a study in 1976 on 'the impact of foreign economic aid and assistance on respect for human rights in Chile'. The task was entrusted to Antonio Cassese who was later to become one of the key architects of the international criminal justice regime. In July 1978 he submitted a massive dossier which was highly critical of the role played by the financial sector in Chile.[2] Subsequently summing up his

[1] In its 2014 report, for example, the committee documented the extent to which 'minerals – particularly tin, tungsten and tantalum – continued to be smuggled from eastern Democratic Republic of the Congo through neighbouring countries, undermining the credibility and progress of international certification and traceability mechanisms'. UN Doc S/2014/42 (23 Jan 2014), pp 3–4.

[2] UN Doc E/CN/4/Sub.2/412, Vols I–IV (1978).

findings, he concluded that 'economic assistance to a very great extent permits the perpetuation [sic] of violations of human rights, and such violations, in turn, bring about the necessary conditions to obtain economic assistance'.[3] The study broke important new ground and the response from Western governments was prompt and efficient: Cassese failed in his bid for re-election to the Sub-Commission and the study disappeared from sight.

In 2000, the UN Commission on Human Rights signalled a change of direction by appointing an '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.' This in turn led to the Human Rights Council's endorsement in 2012 of a set of Principles on Foreign Debt and Human Rights, proposed by the Independent Expert. But the utility of such ambitious and abstract formulations, especially when adopted over the dissenting votes of many of the key states, is limited.

There is, of course, no simple remedy by which to achieve a more constructive and mutually reinforcing approach between sovereign financing arrangements and respect for human rights. What is required is a broad range of measures, some of which are admittedly unlikely to become politically palatable to global elites any time soon, along with many more limited measures which are already well within reach of effective global advocacy campaigns.

Two examples might be cited in relation to responses to gross human rights violations. They involve the increasing resort to the establishment of truth and reconciliation commissions at the national level and the creation of commissions of inquiry at the international level. While these mechanisms have become more professional and systematic in their approaches, they continue to be extraordinarily reluctant to 'follow the money' when it comes to reporting on and seeking to understand egregious human rights violations. The assumption appears to be that it is safer to leave those dimensions to others who will not draw uncomfortable human rights links, and who will confine themselves to expressing concern about the security or viability of the investment climate in a given country and suggest prudential measures to protect investors. This is not to suggest that all truth commissions and all commissions of inquiry should necessarily include a focus on the role of financial actors, but it is at least an option that should be pursued when it is clearly of major relevance.

The great merit of this volume is that its contributors place the spotlight on many of the measures that are available and argue that they are both feasible and essential.

[3] Antonio Cassese, 'Foreign Economic Assistance and Respect for Civil and Political Rights: Chile – A Case Study,' (1979) 14 *Texas International Law Journal* 251, at 263.

1

Placing Human Rights at the Centre of Sovereign Financing

JUAN PABLO BOHOSLAVSKY AND JERNEJ LETNAR ČERNIČ*

I OBSERVING THE INTERLINKS BETWEEN SOVEREIGN DEBTS AND HUMAN RIGHTS

SOVEREIGN DEBT is one of the most effective tools to implement domestic economic and social policy: public debt can fund human capital development and physical infrastructure projects, provision of basic goods such as water and food, education and social security transfers. It can mitigate the effects of temporary economic downturns and bad loans of state-owned banks and redistribute resources from future generations to the current one.[1] However, it can also facilitate large-scale, systematic and serious human rights violations, such as exacerbating global financial crises, throwing millions of people into poverty while sustaining celebrity lifestyles of narrow elites (not only, but particularly, in undemocratic regimes)[2] and consolidating authoritarian regimes running successful criminal campaigns.

How is this link between sovereign financing and human rights generally established? What are the most relevant cases in which sovereign debt can negatively affect human rights? Should international and domestic human rights law be applied in the sovereign debt realm? If so, under what conditions? Do non-state financial actors have any human rights obligations when they give out loans or is the provision of basic services a responsibility of the borrower state only? If so, what are these obligations and where do they derive from? Which forum can enforce these obligations and how? These are the central questions that contributors in this book deal with.

While political institutions (parliaments and ministries of finance, for example) shape sovereign borrowing, lending to sovereigns also shapes their political institutions and, transitively, the states' capacity to respect, protect and fulfil human rights. At the same time, and in more legalistic language, given the *erga omnes* effect of human rights obligations, the impact of sovereign debts over states' capacities to respect, protect and fulfil

* The views and conclusions reflected in this chapter are solely those of the authors and are in no way intended to reflect the views of any of the institutions with which the authors are affiliated. The authors wish to thank Sabine Michalowski for comments on drafts of this chapter.

[1] E Borensztein et al, *Living with Debt: How to Limit Risks of Sovereign Finance* (Washington DC, Inter-American Development Bank, 2006) 6.

[2] See, for instance, Human Rights Watch, 'World Report 2013, Equatorial Guinea': www.hrw.org/world-report/2013/country-chapters/equatorial-guinea, accessed 2 September 2013.

human rights is not something legally strange to lenders: they should look at the consequences of their loans in terms of affecting the state capacity (and will) to face human rights demands.

There are cases in which sovereign financing is closely linked to human rights violations, such as the cases of funding death squads[3] and death camps.[4] And there are some other cases in which this connection is less direct, such as the case of derivatives and their role in financial crises and poverty.[5] Falling into one or other category mainly relies on one factor: how much the human rights fulfilment depends on these funds (or how much other factors interact with these same rights). This variable is important in terms of allocating responsibilities.

Let us see some more examples of how sovereign financing can harm human rights. The current high debt-to-GDP ratio of a number of developed economies,[6] as a consequence and also as an aggravation of the financial crisis, has led to a slow-down in economic activity and consumer demand and more recently to a significant reduction in labour demand, particularly in North America and Europe. On the other hand, while it is true that extreme poverty levels have been significantly reduced in the south,[7] there are still millions of people living in these extreme conditions.[8] The poor usually suffer the most since they do not have the proper means to protect themselves against adverse income, employment shocks, inflation, currency depreciation and public expenditure cuts. What is more, most often they are left without any judicial recourse to effectively protect their rights. All this typically perpetuates income inequality and lack of respect for basic rights.[9] Financial decisions, poor public financial resources management, debt management and the ways in which crises are channelled and solved therefore have a notable impact on attaining the Millennium Development Goals (MDGs),[10] which translated into law means that all this has a serious impact in terms of economic and social rights.

Financial institutions and corporations play an important role in the realisation of the civil, political, economic, social and cultural rights of the society as a whole; particularly in the current scenario in which private lending to sovereigns plays an overwhelming role

[3] The original funding of Operation Bandeirante (OBAN), the Brazilian multi-agency military operation in charge of repressing people during the dictatorship in Brazil, mostly came from private business people of the state of Paulo who had given political support to the coup in 1964, supporting institutional and economic reforms promoted by the regime, see T Skidmore, *The Politics of Military Rule in Brazil, 1964–1985* (Oxford, Oxford University Press, 1988) 127–28; M Weichert, 'O financiamento de atos de violação de direitos humanos por empresas durante a ditadura brasileira' (2008) 21(2) *Acervo* 186.

[4] For example, Deutsche Bank provided loans to construction and chemical (IG Farben for instance) companies with contracts for facilities at Auschwitz, see H James, *The Nazi Dictatorship and the Deutsche Bank* (Cambridge, Cambridge University Press, 2004) 215.

[5] M Dowell-Jones and D Kinley, 'Minding the Gap: Global Finance and Human Rights' (2011) 25 2 *Ethics and International* Affairs 183–210.

[6] UNCTAD, 'Trade and Development Report, 2012', 2012, New York and Geneva, 23. See also Eurostat, Euro area government debt up to 92.2% of GDP, News release 114/2013, 22 July 2013, http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/2-22072013-AP/EN/2-22072013-AP-EN.PDF, accessed 30 July 2013.

[7] See '2013 Human Development Report', Unided Nations Development Programme, http://hdr.undp.org/en/reports/global/hdr2013/, accessed 30 July 2013.

[8] United Nations, 'Millennium Development Goal 8. The Global Partnership for Development: Making Rhetoric a Reality', MDG Gap Task Force Report, New York, 2012; UNCTAD (n 6) 61.

[9] See decomposition of world income inequality in UNCTAD (n 6) 64.

[10] United Nations Millennium Declaration, GA Res 55/2, UN GAOR, 55th Sess, Supp No 49, at 4, UN Doc A/55/49 (2000).

in financial markets.[11] They can become violators of economic, social and cultural rights, for example where the policies they support and facilitate lead to denial of access to water, food, housing, health and education. The primary responsibility for realising human rights remains with states. Yet, given the powerful position that financial institutions and corporations increasingly have and the consideration they should pay to human rights, as is argued in several chapters in this volume, they should carry an additional responsibility under human rights law.[12]

Another example of how lenders are crucial in terms of securing enjoyment of human rights: to remain in power and carry out a massive campaign of human rights violations a criminal regime has to be capable of facing economic constraints that secure a minimum political support (buying loyalties) and/or enable the bureaucratic (military particularly) machinery to function efficiently in order to control and repress. Reliable financial sources are necessary to support this policy for a certain period, coupled with disregard of basic needs of populations in these countries. Therefore, financial providers facilitate regimes' goal achievements.

All the aforementioned cases pose a great methodological challenge to human rights legal theory, which has historically used micro criteria to observe and understand the causal link between finance and human rights abuses, focusing almost exclusively on human rights as individual legal entitlements with all the requirements and conditions that this implies,[13] which usually entails a rigid and narrow view of the same causal link. This micro perspective needs to be integrated into and complemented by a macro approach, carrying out a holistic and interdisciplinary study of the link considering the broad context and driving forces operating over sovereign debts and human rights in a concrete case. Otherwise, cases such as financial derivative products generating more poverty or financial assistance consolidating criminal regimes would inevitably fall off of the radar of human rights law.

Contributors in this book have sought to explain how private, official and multilateral loans and financial aid can affect human rights in a broad range of causal scenarios. In some of them, such as project financing, a micro criterion can be used to isolate the link between the funds and, for example, the flood provoked by the dam financed. In some others a macro criterion is mandatory because only the economic, political and social backdrop helps us to understand interactions and outcomes, such as the case of debt restructurings or global financial architecture.

Once the causal link between sovereign financing and human rights has been identified – by using a macro or a micro approach – the next challenge is defining its legal implications. At this point the backwardness and underdevelopment of the legal theory addressing this link becomes evident. There is a notable gap, which obviously overlaps with the one that also characterises international finance more generally (capital adequacy, liquidity, risk

[11] In emerging market economies in 2011, private financial inflows (therefore excluding equity investment – which in any case reached US$598 billion) amounted US$548 billion while official inflows (bilateral and multilateral lenders) amounted only US$61 billion, *see* Institute of International Finance, 'Capital Flows to Emerging Market Economies', *IIF Research Note*, 26 June 2013.

[12] Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, UN Doc A/HRC/17/31 (21 March 2011) (by John Ruggie); 2011 Update of the OECD Guidelines for Multinational Enterprises, www.oecd.org/document/33/0,3746,en_2649_34889_44086753_1_1_1_1,00.html, accessed 30 July 2013.

[13] Dowell-Jones and Kinley (n 5) 187.

management, derivatives, financial modelling, ratings, and supervision are also issues in which human rights law has played an extremely marginal role).[14] In the next section the reasons for this gap and why it should be filled will be studied.

A Filling the Gap: Human Beings First

Even though it is politically, socially and economically relevant and timely, and intellectually challenging, not much has so far been written on the relationship between sovereign debt and human rights. Despite the growing attention paid to sovereign debt due to the recent crises in Greece, Ireland, Portugal, Slovenia and Spain, there has been little examination of the impact of sovereign debt crises on enjoyment of human rights. The majority of the literature tends to focus on either human rights or sovereign debt as unconnected concepts, or focus on specific kinds of lenders, or financial instruments or human rights abuses rather than studying common features of the link between debt and human rights generally.[15] One of the few probable exceptions reflecting on this issue from a comprehensive perspective is an article by Dowell-Jones and Kinley examining the inter-connection between these two fields.[16]

The reasons for this gap are multifaceted. First, this topic requires interdisciplinary examination from the perspective of political science, economics, sociology, law, history and other social sciences. Sovereign financing and human rights have historically been analysed in two separate boxes, without much interdependence and interrelation. Second, the relationship between sovereign financing and debt does not fall within politically correct topics and historically it has been neglected. It is obvious why it does not attract attention from financial centres of power. Moreover, besides the Equator Principles,[17] the political weight of the financial sector has managed to block the entrance of a minimum set of standards, which have already been accepted for other corporations. Third, there is the historical argument that considering human rights when taking decisions on loans or aid would be tantamount to unduly politicising financial decisions.[18] Fourth, there is an inherent difficulty in tracing money and then assessing its impact on a given human rights context, aggravated in part because international law has historically dealt exclusively with the nation state system and corporations have largely evaded oversight given their status in the cracks of that particular legal regime.[19] And fifth, only recently studies have showed that sovereign financing strongly affects the enjoyment of human rights.[20]

As seen, taking advantage of interdisciplinary approaches, the political momentum on the social dimension of the economic crisis and its growing academic interest, make the

[14] ibid.

[15] See D Bradlow, 'The World Bank, the IMF, and Human Rights' (1996) 6 *Journal of Transnational Law and Contemporary Problems* 47–90; S Michalowski, 'Sovereign Debt and Social Rights – Legal Reflections on a Difficult Relationship' (2008) 8 *Human Rights Law Review* 35–68; C Tan, 'Life, Debt, and Human Rights: Contextualizing the International Regime for Sovereign Debt Relief' in K Nadakavukaren Schefer (ed), *Poverty and the International Economic Legal System. Duties to the World's Poor* (Cambridge, Cambridge University Press, 2013).

[16] Dowell-Jones and Kinley (n 6) 184.

[17] See in detail at www.equator-principles.com/, accessed 30 July 2013.

[18] See this discussion in the context of international financial institutions in Bradlow (n 15) 81.

[19] See N Jägers, Chapter 12 in this volume.

[20] See J Letnar Černič, Chapter 10 in this volume.

goal of this book of reducing the gap between human rights and sovereign debt as much timely as relevant.

This book makes two fundamental claims: first, that human rights law helps to understand, unravel, denounce and recompose asymmetric power relations that operate underneath sovereign debts that produce and reproduce human suffering; and second, that human rights law applies and offers solutions in sovereign debt contexts and can prevent human rights abuses and provide judicial and/or non-judicial relief to victims. Behind these claims there is a conception that the outcome of sovereign debt should benefit the population not the privileged, undemocratic elites.[21] This argument is translated into legal language in the following way: valid debt contracts should be in the interest of the sovereign and as human rights play an important role in defining popular sovereignty,[22] sovereign debt that will presumably and potentially translate into serious damage for the borrower's population potentially violates human rights law,[23] which includes social, economic, political or civil rights, as it requests that at least a core of every right should be respected in all situations, while recognising the limitations and pitfalls of the concept of a core of human rights.[24]

States are traditionally asked to protect human rights within their territory. And international law protects sovereign states' rights in their territory and at international level.[25] However, states cannot convincingly justify violations of human rights on the basis of state sovereignty. Actually, human rights violations may form one of the reasons which would justify the lifting of an absolute sovereign paradigm.

International human rights law particularly requests states and other actors to ensure respect for the core of every human right. The United Nations Committee on Economic, Social and Cultural Rights (ESCR) developed in General Comment number 3 the doctrine of a minimum core of each economic and social right, which every individual should enjoy. It argued that 'a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party'.[26] States are therefore obliged to provide minimum levels of food, water, housing, education and healthcare.[27] Though not perfect, particularly in relation to positive

[21] Arbitration *Tinoco Case (Gr. Britain v Costa Rica)* (1923) 1 *R Int'l Arb Awar*ds, 369, reprinted in (1924) 18 *American Journal of International Law*, 147. See comments on this award in O Lienau, 'Who is the "Sovereign" in Sovereign Debt?: Reinterpreting a Rule-of-Law Framework from the Early Twentieth Century' (2008) 33(1) *Yale Journal of International Law* 63.

[22] M Reisman, 'Sovereignty and Human Rights in Contemporary International Law' (1990) 84 *American Journal of International Law* 866.

[23] See generally O Lienau, *Rethinking Sovereign Debt: Debt and Reputation in the Twentieth Century* (Cambridge, MA, Harvard University Press, forthcoming).

[24] P Alston, '"Core Labour Standards" and Transformation of International Labour Rights Regime' (2004) 15(3) *European Journal of International Law* 457–521.

[25] Max Huber in the capacity of arbitrator at the Permanent Court of Arbitration noted in the *Island of Palmas* case that 'the development of the national organization of States during the last few centuries and, as a corollary, the development of international law, has established [the] principle of the exclusive competence of the State in regard to its own territory in such a way as to make it the point of departure in settling most questions that concern international relations', *Island of Palmas Case (or Miangas), United States v Netherlands*, Award (1928) II RIAA 829, ICGJ 392 (PCA 1928), 4 April 1928, Permanent Court of Arbitration.

[26] Committee on Economic, Social and Cultural Rights, General Comment 3, The Nature of States Parties' Obligations (Fifth session, 1990) UN Doc E/1991/23, annex III at 86 (1991), para 10.

[27] KG Young, 'The Minimum Core of Economic and Social Rights: A Concept in Search of Content' (2008) 33 *Yale Journal of International Law* 113. See also P Alston and G Quinn, 'The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights' (1987) 9 *Human Rights Quarterly* 156, and K Tomaševski, 'Has the Right to Education a Future within the United

obligations,[28] the minimum core model can, jointly with the 'reasonableness test' developed by the South African Constitutional Court in the *Grootboom* case,[29] effectively address the obligations of public and private lenders in the sovereign financing field. Yeshanew observes that the minimum core model 'more or less concentrates on the content of the rights to identify minimum obligations', while the reasonableness test 'focuses on the obligations of states or measures to realize rights'.[30] The two-tiered approach can effectively address deficiencies of both approaches. In the same way, courts and human rights bodies can apply such an approach towards negative and positive obligations under social and economic rights.[31] At the same time, a robust list of international conventions[32] requires that bilateral, multilateral and private lenders pay due attention to the fundamental civil and political rights externalities of their decisions when lending to sovereigns.

Sovereign debt has deep intergenerational and global redistributive implications, which lead us to the problem of global distribution of political authority and economic growth. As international human rights law can (and should)[33] contribute to understanding and transforming the global political economy, it is not surprising that the link between finance and human rights is becoming increasingly relevant on a global scale. One piece of evidence of this is offered by the fact that the United Nations Human Rights Council endorsed in 2012 the report elaborated by the 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.[34] Yet, this resolution was mostly endorsed by developing countries, whereas so-called developed states ignored it.[35]

Nations? A Behind-the-Scenes Account by the Special Rapporteur on the Right to Education 1998–2004' (2005) 5 *Human Rights Law Review* 205. However, it should be noted that there have been disagreements on whether the Committee's views are binding or not. For comprehensive discussion see M Sepúlveda, *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights* (Cambridge, Intersentia, 2003).

[28] S Lienberg, 'Socio-Economic Rights: Revisiting the Reasonableness Review/Minimum Core Debate' in SC Woolman and M Bishop (eds), *Constitutional Conversations* (PULP, Pretoria, 2008) 303.

[29] *Government of the Republic of South Africa and Others v Grootboom and Others* (CCT11/00) [2000] ZACC 19; 2001 (1) SA 46; 2000 (11) BCLR 1169 (4 October 2000).

[30] SA Yeshanew, *The Justiciability of Economic, Social and Cultural Rights in the African Regional Human Rights System* (Cambridge, Intersentia, 2013) 294.

[31] ibid.

[32] See eg Charter of the International Military Tribunal, 82 UNTS 280, Article 6; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc A/39/51 (1984), Article 4; International Convention on the Suppression and Punishment of the Crime of Apartheid, UN Doc A/9030 (1974), Article III(b); Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 226 UNTS 3, Article 6; Convention on the Prevention and Punishment of the Crime of Genocide, 78 UNTS 277, Article 3e; Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, available at: www.oecd.org/dataoecd/4/18/38028044.pdf, Article 1(2); United Nations Convention Against Transnational Organized Crime, UN Doc A/45/49 (Vol I) (2001), Article 5(1)(b); International Convention for the Suppression of the Financing of Terrorism, UN Doc A/54/49 (Vol I) (1999), Article 2(5)(a); International Convention for the Suppression of Terrorist Bombing, UN Doc A/52/49 (1998), Article 2(3)(a); Rome statute of the International Criminal Court, 2187 UNTS 90, Article 25(3); and Statutes of the International Criminal Tribunals for Rwanda, 33 ILM 1598, Article 6; and for the former Yugoslavia, UN Doc S/25704 at 36, annex (1993) and S/25704/Add 1 (1993), Article 7. These conventions do not pay much attention to whether the accomplice is a human being or a legal entity, be it private or State.

[33] D Kennedy, 'Law and the Political Economy of the World' (2013) 26(1) *Leiden Journal of International Law* 7–48.

[34] A/HRC/RES20/10, 18 July 2012. See in detail Lumina's Chapter 16 in this volume.

[35] ibid.

This book seeks to contribute to enhancing the dialogue and interaction between both human rights and sovereign debt dimensions. A better understanding of the conditions under which international human rights law can operate effectively[36] is based, in turn, on a better understanding of the ways in which sovereign financing impacts on human rights. This helps to design a more nuanced toolkit to deal with debt issues in the light of human rights commitments. Painting a clearer picture of how sovereign financing affects human rights also offers those working on debt issues a more compelling, sophisticated and complete set of data that can be incorporated into their reasoning and financial decisions so that they fulfil international human rights law without being exposed to major legal risks.[37]

B A Bottom-up Approach

This book seeks a better understanding of the causal link between sovereign debt and human rights in a variety of financial scenarios, and to enhance the discussion on how public debt and human rights can be adequately integrated so that human rights always benefit most in this encounter. In this latter regard, making sovereign debt have a positive (or at the very least neutral) impact in terms of human rights asks for a novel approach, one that necessarily takes into consideration not only rights of sovereign debtors and their creditors, but also human rights of ordinary people, who are living ordinary lives, but are affected by a causal chain in which sovereign debt is a determinant link. In order to achieve this, it is pertinent to consolidate the change of the paradigm of traditional international law, which is created by states for state and non-state actors, and take a thorny road of creating international law also through legal sources more receptive to a broad range of stakeholders' views and interests, including, centrally, those of the citizens. Here it is clear how representation, consultation and deliberation are able to foster the normative legitimacy and acceptance of international human rights law in sovereign financing.

In order to promote a link between sovereign financing and human rights that is in line with a human-being-based sovereign financing approach, a bottom-up strategy would be appropriate, which would take into account mainly the needs of the ordinary people. Levit notes that 'bottom-up lawmaking at once debunks the perceived hegemony of official, top-down international lawmaking – lawmaking that often occurs beyond the physical and metaphysical reach of its subjects – and showcases an alternative route to law that is inherently grounded and pluralist',[38] namely law that is not created far away from

[36] R Goodman, D Jinks and A Woods, '*Social Science and Human Rights*' in Goodman, Jinks and Woods (eds), *Understanding Social Action, Promoting Human Rights* (Oxford, Oxford University Press, 2012).

[37] See, elaborating on this but from a broader perspective of international finance, M Dowell-Jones, 'International Finance and Human Rights: Scope for a Mutually Beneficial Relationship' (2012) 3(4) *Global Policy* 467–70.

[38] J Koven Levit, 'Bottom-Up International Lawmaking: Reflections on the New Haven School of International Law' (2007) 32 *Yale Journal of International Law* 393, 409. See also B Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge, Cambridge University Press, 2003); KW Danish 'International Environmental Law and the "Bottom-Up" Approach: A Review of the Desertification Convention' (1995) 3(1) *Indiana Journal of Global Legal Studies*. See also J Koven, 'A Bottom-Up Approach to International Lawmaking: The Tale of Three Trade Finance Instruments' (2005) 30 *Yale Journal of International Law* 125.

ordinary people's lives in different ivory towers, but which arises from the participation in various private and public initiatives.

What may appear problematic, or at least highly complex, in adopting a bottom-up approach to legalisation at the international level[39] of the link between human rights and sovereign debt is that stakeholders of sovereign financing and human rights are not only different and fall into a variety of categories, but they also operate in different arenas and speak different languages. Human rights stakeholders most often include states, non-governmental organisations, public interest groups, victims' organisations, trade unions, student organisations, consumer groups, academics and also international organisations. They work in a broad range of fora (national and international courts, education, national and international non-governmental organisations, culture, mass media) and speak a common and plain human rights language. On the other hand, sovereign financing organisations include – besides sovereign borrowers – organisations of creditors, being multilateral organisations, states or private creditors. They interact and negotiate in rather closed frames and organisations (ministries of finance, Bretton Woods institutions, Paris Club, London Club, G20) while communicating through a self-contained and financially sophisticated language.

The bottom-up approach can bridge the abyss between stakeholders from financial and human rights sectors by bringing human rights considerations to the often aloof and highly technical field of sovereign financing by offering (and forcing when necessary) communication in a common language. This approach has implications in terms of legitimacy and effectiveness.

On the one hand, input and output legitimacy of the normative outcomes of this dialogue is reinforced twice. First, adopting a broader representation, consultation and deliberation will enhance the legitimacy of the law-making process, which interprets and produces the legal meaning of the link between sovereign debt and human rights.[40] Second, considering that sovereign debt should be contracted in the citizens' interest,[41] giving special consideration to human rights law when dealing with debt issues reinforces the substantive legitimacy of this normative outcome.[42]

On the other hand, this approach would enhance the respect for human rights, first, because it should allegedly lead to a change in the benefits and costs rational calculations of business operations of potential financial human rights abusers. Financial profits at the expense of human suffering would not be as easily justified as it used to be; and second, because a better understanding of, and making more visible, the link between

[39] This means 'a process of adding to, changing or subtracting from the body of law and the legal system over time': K Abbott and D Snidal, 'Law, Legalization and Politics: An Agenda for the Next Generation of IR-IL Scholars' in J Dunoff and M Pollack (eds), *Interdisciplinary Perspectives on International Law and International Relations: The State of the Art* (Cambridge, Cambridge University Press, 2012).

[40] H Keller, 'Codes of Conduct and their Implementation: the Question of Legitimacy' in R Wolfrum and V Röben (eds), *Legitimacy in International Law* (Heidelberg, Springer, 2008) 297.

[41] JP Bohoslavsky and M Sudreau, 'Does Legitimacy Matter in Sovereign Debt Governance? The Case of The UNCTAD's Principles on Responsible Sovereign Financing' paper presented at the conference on 'The Legitimation and Delegitimation of Global Governance Organizations', 11–13 September 2013, University of Bremen.

[42] A Bogdandi and M Goldmann, 'Sovereign Debt Restructurings as Exercises of International Public Authority: Towards a Decentralized Sovereign Insolvency Law' in Esposito et al (eds), *Sovereign Financing and International Law: The UNCTAD Principles on Responsible Sovereign Lending and Borrowing* (New York, Oxford University Press, 2013) 39.

sovereign financing and human rights would compel financial actors to behave under more commonly agreed beliefs and values underpinning the concept of human rights.

There are at least three United Nations initiatives tackling some of the problems arising from the encounter of human rights and sovereign financing that have adopted the bottom-up approach presented here: first, the Guiding Principles on Foreign Debt and Human Rights mentioned earlier;[43] second, the Principles on Responsible Sovereign Lending and Borrowing elaborated in the context of the United Nations Conference on Trade and Development, which explicitly link sovereign lending and borrowing to the feasibility of the MDGs;[44] and finally, the Guiding Principles on Business and Human Rights,[45] which have been developed from the bottom up or at least with some involvement of civil society and provide in paragraph 11 that corporations should respect human rights, which 'means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved'.[46]

To a lesser or greater extent, these three initiatives took seriously the notions of representation, consultation and deliberation as catalysts of international law legitimacy, so that stakeholders (civil society, labour unions, affected people, etc)[47] had their say during the formation of those standards.

Some may argue that a bottom-up approach could create problems of enforcement. However, as Deva answers, 'if norms of international law can be developed "bottom-up" by the participation of non-state actors, the same could be said about the enforcement of such norms by informal means and by using social sanctions'.[48] Such actions could include internal and external pressure on sovereign borrowers but also on lenders in the form of demonstrations, boycotts, media campaigns, pressure through social media, civil disobedience, lobbying in the public administration structures and other forms of social pressures: it is a concrete, practical and pragmatic strategy to implement human rights in the field of sovereign financing.[49]

Some examples of this kind of enforcement are worth mentioning:

[43] Guiding Principles on Foreign Debt and Human Rights (n 34).

[44] See the preamble of these Principles at www.unctad.info/en/Debt-Portal/News-Archive/Our-News/UNCTAD-Releases-Consolidated-Principles-on-Responsible-Sovereign-Financing-310112/, accessed 30 July 2013.

[45] Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework, UN Doc A/HRC/17/31 (21 March 2011) (by John Ruggie).

[46] ibid, para 11.

[47] H Keller, 'Codes of Conduct and their Implementation: the Question of Legitimacy' in *Wolfrum and* Röben *(eds) (n 40) 297*.

[48] S Deva, 'Keynote Address, Multinationals, Human Rights and International Law: How to Deal with the Elephant in the Room?' in J Letnar Černič and Tara Van Ho (eds), *Direct Human Rights Obligations of Corporations* (The Hague, Wolf Legal Publishers, forthcoming 2014) 14.

[49] On how to make law and power work in tandem in the context of human Rights, see generally E Hafner-Burton, *Making Human Rights a Reality* (Princeton, Princeton University Press, 2013).

- mass claims processes before governmental commissions and courts particularly in the context of Holocaust litigation in Austria,[50] Belgium,[51] France,[52] Germany,[53] the Netherlands[54] and the United States;[55]
- the social, media and political pressure around the claims filed by victims of Nazi Germany;[56]
- the crucial role played by international and American NGOs in denouncing human rights abuses in Latin American dictatorships during the Carter administration and the enactment of legislative financial initiatives to curtail those abuses;[57]
- influential role of civil society organisations in Central and Eastern Europe in pressuring governments to compensate the victims of communist regimes, particularly the return of nationalised property, including banks, and their attempts to reconcile divided societies;[58]
- the participation of civil society in the administration and monitoring of sovereign wealth funds;[59]
- the civil society (Jubilee 2000) campaign in the 1990s, which eventually led to adoption and implementation of the International Monetary Fund and World Bank Heavily Indebted Poor Countries (HIPC) Initiative;[60]

[50] See cases under the Austrian General Settlement Fond, http://de.nationalfonds.org/, accessed 3 September 2013.

[51] See Belgian Jewish community Indemnification Commission, www.combuysse.fgov.be/en/index.html, accessed 3 September 2013.

[52] French Commission for the Compensation of Victims of Spoliation Resulting from the Anti-Semitic Legislation in force during the Occupation, www.civs.gouv.fr/, accessed 3 September 2013.

[53] See German Foundation 'Remembrance, Responsibility and Future', www.stiftung-evz.de/start.html, accessed 3 September 2013.

[54] See The Netherlands' Foundation for Individual Bank Claims Shoah, www.ushmm.org/information/exhibitions/online-features/special-focus/holocaust-era-assets/the-netherlands, accessed 3 September 2013.

[55] *Bodner v Banque Paribas*, 114 F. Supp. 2d 117 (EDNY 2000) (settled); *In re Holocaust Victim Assets Litigation*, 105 F. Supp. 2d 155–57 (settled). See also the official website of the Swiss Banks Settlement: *In re Holocaust Victim Assets Litigation*, www.swissbankclaims.com/, accessed 30 July 2013. See also MT Allen, 'The Limits of Lex Americana: The Holocaust Restitution Litigation as a Cul-de-Sac of International Human-Rights Law' (2011) 17 *Widener Law Review* 1; and MJ Bazayler, *Holocaust Justice: The Battle for Restitution in America's Courts* (New York: New York University Press, 2003). See further SA Bilenker, 'In Re Holocaust Victms' Assets Litigation: Do the US Courts Have Jurisdiction Over the Lawsuits Filed by Holocaust Survivors Against the Swiss Banks?' (1997) 21 *Maryland Journal of International Law & Trade* 251; and L Bilsky, 'Transnational Holocaust Litigation' (2012) 23(2) *European Journal of International Law* 349–75; MJ White, 'Asbestos and the Future of Mass Torts' (2004) 18(2) *Journal of Economic Perspective* 183–204. See also the International Bureau of the Permanent Court of Arbitration (ed), *Redressing Injustices through Mass Claims Processes* (Oxford, Oxford University Press, 2006).

[56] S Eizenstat, *Imperfect Justice: Looted Assets, Slave Labor, and the Unfinished Business of World War II* (Cambridge, Perseus Books Group, 2003).

[57] JM Griesgraber, 'Implementation by the Carter Administration of Human Rights Legislation Affecting Latin America' (1983) PhD thesis, Georgetown University (on file with authors).

[58] Central and Eastern European countries introduced after democratisation in the 1990s policies of denationalisation, which aimed to return nationalised, confiscated and robbed property, including financial property (banks and financial corporations), to its rightful owners. The denationalisation process is yet to be concluded in most of the CEE countries. See, for instance, concurring opinion of judge of the Constitutional Court of Slovenia, Lovro Šturm, in case U-I-121-97, 23 May 1997. See also P Jambrek (ed), *Crimes Committed by Totalitarian Regimes*, (Brussels, Ljubljana Slovenian Presidency of the Council of the European Union, 2008) 11–85. www.crce.org.uk/lessons/Articles/eu_hearing.pdf, accessed 30 July 2013.

[59] See A Cummine, Chapter 11 in this volume.

[60] 'The Birth of Jubilee 2000', Jubilee Debt Campaign, 16 May 1998, available at www.jubileedebtcampaign.org.uk/The3720birth3720of3720Jubilee37202000+282.twl, accessed 3 September 2013.

- the audit carried out in 2007–08 by Ecuador to verify the details of its sovereign debt portfolio with broad civil participation;[61]
- the participation of taxpayers and public employees in the debt restructuring process of US municipalities under chapter 9 of the Bankruptcy Code, seeking debt agreements that protect both creditors' rights and the public interest;[62]
- Iceland's referendum (and eventually rejection) in 2010 on a plan to repay Britain and the Netherlands $5 billion from a bank crash.[63]

At a later stage, informal methods or collaborative enforcement, which started at the bottom close to ordinary people, could gradually turn into more formalised domestic and international procedures and institutions. However, once formalised, it cannot be guaranteed that those mechanisms will adequately address individual rights.[64] That is why broad citizenship participation in the processes of designing sovereign debt policies and enforcing human rights should always be an available tool to make sure that debt and human rights work together.

Contributing to the discussion on how sovereign financing can be incorporated into the field of human rights and/or how human rights can be included in sovereign financing is one objective of this book. It is argued here that rules (and their interpretation) touching upon sovereign debt and human rights should be developed bottom-up instead of top-down as they have actually been developed in the last decades. As sovereign financing is usually conceived, negotiated and executed at a very high political level, far away from daily human rights concerns of ordinary people, an approach that promotes and facilitates a serious legal and political consideration of state borrowers' and their lenders' human rights obligations in sovereign financing should be adopted.[65] In terms of legal interpretation and development, the bottom-up approach would provide arguments to employ systemic integration of human rights in the sovereign financing field or vice versa in order for the rights of individuals to be acknowledged and respected.[66]

II PRESENTATION OF THE CONTENTS OF THE BOOK

Contributors of this book include well-known professors, practitioners, international experts and vigorous young scholars from around the world coming from a variety of academic and professional backgrounds including human rights law, financial law, international law, corporate law, international organisations, economics and history, and a geographical background, covering all continents. This interdisciplinary and pluralistic approach of the book allows the borrowing of questions from different disciplines in

[61] See information available at www.auditoriadeuda.org.ec, accessed 10 September 2013.

[62] See cases in J Spiotto et al, 'Municipalities in Distress? How States and Investors Deal with Local Government Financial Emergencies' (Chapman and Cutler LLP attorneys, Chicago, 2012).

[63] S Lyall 'Iceland Voters Set to Reject Debt Deal', *New York Times*, 5 March 2010, available at www.nytimes.com/2010/03/06/world/europe/06iceland.html?_r=0, accessed 15 September 2013.

[64] LM Carzola Prieto, 'La articulación jurídica del gobierno de la globalización financiera' in F Gómez Isa, A I Herrán, Alberto Atxabal (eds), *Retos del Derecho ante una economía sin fronteras* (Bilbao, Universidad de Deusto, 2012) 199–54.

[65] See the Maastricht principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, 29 February 2013, www.fian.org/fileadmin/media/publications/2012.02.29_-_Maastricht_Principles_on_Extraterritorial_Obligations.pdf, accessed 30 June 2013.

[66] See, for example, B Simma, 'Foreign Investment Aribitration: A Place for Human Rights?' (2011) 60(3) *International Law and Comparative Law Quaterly* 584.

order to forge a legal theory more receptive to the complex financial context in which human rights law is supposed to work.

Besides this introductory chapter, the book is divided into five parts. Part A deals with sovereign financing and gross violations of political and civil human rights. In Chapter 2 Juan Pablo Bohoslavsky and Abel Escribà Folch argue that more funds to criminal regimes are usually translated into their consolidation. They explain this link by providing statistical data and using a rational choice approach based on incentives of authoritarian governments and private and official lenders. Then they study the current (rudimentary) response provided by international law to financial complicity, and discuss the policy and legal implications of the empirical findings. In Chapter 3 Patricia Pinto Soares analyses how UN sanctions can safeguard and/or undermine human rights. She reviews the limitations of the Security Council when imposing economic (specifically financial) sanctions, using Iran as a case study to show that these sanctions can also have negative externalities in terms of human rights. She proposes guidelines aimed at reconciling different demands and interests, promoting human rights and at the same time ensuring that the necessary leeway for the achievement of sanctions' purposes and their recognised utility is left open. In Chapter 4 Dustin Sharp discusses the implications of sovereign debt of countries in transition. He explains that problems created by high levels of sovereign debt are typically addressed through a prism of debt management and sustainability, while neglecting human rights and social justice consideration. He first explores the linkages between sovereign debt and human rights, paying special attention to debt forgiveness. He then looks at the role to be played by transitional justice mechanisms in bringing questions of economic violence and sovereign financing into the policy foreground. In Chapter 5 Nadia Bernaz explores establishing criminal liability for complicity of financial corporations in international crimes at the international level. She first examines the potential legal basis for prosecution of corporate complicity in international crimes and thereafter turns specifically to financial complicity, drawing examples from the Nuremberg trials. Finally, she draws upon experience and insight from international law on financing of terrorism.

Part B deals with debt crises and social and economic rights. In Chapter 6 Matthias Goldmann studies the relevance of human rights law in the context of sovereign insolvencies. He starts by highlighting the historical (and current) asymmetry in the relationship between the rights of citizens in the insolvent state and the rights of creditors. Then he explains the impact of sovereign insolvencies on human rights, particularly economic and social rights, and explores the avenues for reconciling human rights with adjustment policies. He also discusses which lenders are bound by human rights law and finally discusses how human rights impact assessments, among other procedural tools, might help in reconciling the rights and interests of people living in insolvent states with creditors' rights and interests. In Chapter 7 Kunibert Raffer explores the links between sovereign debt, human rights and the MDGs. The main argument is that unsustainable debt burden compromises the full enjoyment of human rights, in particular economic, social and cultural rights. In the case of state insolvency, the MDGs can and should play an important role protecting the debtor, human rights and human dignity. In Chapter 8 August Reinisch and Christina Binder analyse the state of necessity defence when dealing with debts. They state that such a defence is already available for economic emergencies (even vis-à-vis non-state actors), and discuss the complexities of its prerequisites and implementation, concluding that it might be preferable for states to aim at sovereign debt

restructuring as a durable – and not just temporary – solution. In Chapter 9 Rosa Lastra discusses the need to take human rights into account in the shaping of the evolving international financial architecture. The author explains that even though financial law has grown exponentially in recent years and its regulations are highly technical and specialised, general principles of law and function within an ethical framework of accepted values and principles do need to be considered. She then also argues that the interplay between hard law and soft law in international financial law can provide a fundamental key to improve the attention of the global financial architecture to human rights issues. The IMF and other international financial institutions, and non-state lenders as well, should recognise and protect human rights. In Chapter 10 Jernej Letnar Černič addresses emerging corporate responsibility for economic and social rights in the sovereign debt context, noting that not only states but also financial corporations have obligations to respect, protect and fulfil those rights. More specifically, he argues that financial corporations must primarily ensure that they will not violate the reasonable minimum core of economic and social rights of individuals during the whole period of the debt cycle. He proposes a bottom-up approach in establishing accountability of corporate actors.

Part C deals with specific financial actors and instruments, and novel approaches as well. In Chapter 11 Angela Cummine examines the relationship between sovereign wealth funds and human rights. She argues that sovereign wealth funds should be obliged to observe human rights in their operations and discusses the form and content of such obligations. Finally, she examines ethical sovereign fund investments in practice and provides the example of New Zealand as a potential role model of sovereign investors considering human rights. Part D of the book presents several chapters dealing with particular financial actors and instruments in connection to human rights. In Chapter 12 Nicola Jägers studies finance and human rights obligations of non-state actors. She makes the case that the emerging framework (soft law, standards and regulations) on corporate human rights responsibilities is relevant in the context of adverse human rights effects of sovereign financing, even though she highlights some of the challenges in terms of operationalisation. In Chapter 13 Sheldon Leader discusses the interaction between project financing and human rights, examines their advantages and disadvantages and proposes how notions of project financing and human rights can at first be reconciled. Further, he studies the place of corporate social responsibility in the management of project financing risks and examines the example of the Chad–Cameroon oil pipeline and the health of local populations. He concludes that project financing can offer valuable insights for the field of human rights and business. In Chapter 14 Giuseppe Bianco and Filippo Fontanelli explore the potential accountability of the IMF's compliance with human rights. They focus on its role as protector of global public goods and in doing so analyse its accountability *within*, but also its accountability in relation to, its external policies, particularly giving out loans on the basis of a policy of conditionality and argue that some of the steps towards greater compliance with human rights are encouraging, although the Fund is not responsible for its activities yet. In Chapter 15 Fozia Lone analyses the implications of extraterritorial human rights violations when they are associated with irresponsible sovereign financing. She argues that the *mother states* of financial corporations should be responsible for regulating and monitoring the activities of companies registered on their territories which may incur liability if this responsibility is not fulfilled. In Chapter 16 Cephas Lumina presents and analyses the link between sovereign debt and human rights from the unique perspective of the United Nations 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. His chapter discusses the practice of the UN Human Rights Council and human rights treaty bodies, paying special attention to the UN Guiding Principles on Foreign Debt and Human Rights. He argues that sovereign debt directly affects the ability of states to respect, protect and fulfil human rights.

Part D presents several case studies describing in detail how, in different contexts and referring to a diversity of financial instruments, human rights have been negatively affected by sovereign debt. In Chapter 17 Dan Kuwali explores interactions between foreign (especially sovereign) finance and armed conflicts in Africa. He explores what impact finance has on armed conflicts in this region and the belligerent parties. In this way, he recommends steps to limit financial profiteering from armed conflict in Africa. In Chapter 18 Surya Deva analyses the likely negative consequences of the investment/finance-driven model of development, from an Indian perspective. He discusses two case studies: the Enron corporation's power project in Dabhol (Maharashtra) and the Vendata corporation's activities in the state of Orissa. He argues that current private financing of development projects is not human rights compliant and therefore a more holistic approach is needed to both financial and human rights considerations. In Chapter 19 Robert Bejesky and Juan Pablo Bohoslavsky describes the Carter administration's efforts to elicit human rights improvements from the authoritarian governments in Uruguay, Chile and Argentina. The US government curtailed financial (bilateral and multilateral) aid to these states because of the human rights situation. The authors explain how these historical facts meaningfully contribute to the current debate on financial complicity. In Chapter 20 Andreas Follesdal offers insights in the operations of the Norwegian government pension fund as a model of socially responsible investment and argues that its disinvestment approach has showed great promise in terms of promoting human rights in the countries receiving their financial support. In Chapter 21 Ingrid Gubbay studies lessons learnt from the apartheid litigation in the US using the Alien Torts statute based on the notion that financial complicity with the apartheid regime signals prospects for future claims of foreign plaintiffs. She examines different approaches to establishing complicit liability of commercial lenders for atrocities committed by state actors and provides some proposals for alternative avenues.

As shown by the chapters described above, the book seeks to cover a wide, but not comprehensive, range of possible interlinks between sovereign financing and human rights. A variety of actors, financial instruments and human rights are studied by the contributors, but in all of them the red thread is there: sovereign financing negatively affecting human rights. With the expectation of finding common roots, patterns and characteristics in the problems illustrated by the contributors, this book offers an in-depth starting point for future discussions while seeking to contribute to a better understanding of the colossal encounter of sovereign financing and human rights, dilemmas that such a relationship triggers and proposals for discussion of conceptual tools to make this relationship work in favour of the human beings, always.