Foreword

If a private creditor gives a loan to a private person, knowing that the money is used to finance a crime, a civil court would declare the credit contract as nil and void. Contract law provides legal rules such as „void for illegality“ and principles of “good faith“ or “boni mores” to deal with such odious debts. This level of civilization achieved in private law has never been reached in international relations. If a sovereign state takes up an international credit to finance an aggressive war, an apparatus of oppression or to channel the money into the private coffers of office holders the rule of succession requires that a subsequent government has to honor the debt. This applies even if the creditor was aware of how the money was used and no matter what hardship this implies for the people in the debtor country. There are exceptions to this rule, which states treat like black boxes. After the Spanish Cuban war of 1898 independent Cuba was forgiven the debt from Spanish Government bonds, as they were odious as stated in the peace treaty between the USA and Spain. The same argument applied for German bonds used in territories, which became part of the new Republic of Poland after World War I. And after the dethronement of Saddam Hussein in Iraq creditors forgave most of their debts to Iraq under heavy political pressure from the IMF and the USA. However, these cases -regardless of how legitimate the outcomes may be- reflect not so much decisions based on the rule of law but more the distribution of power after a war. South Africa was not forgiven any of its international debts, even though some of the money financed apartheid and everybody knew it. South Africa after apartheid did not want to agonize creditors and a judicial routine to cope with the problem did not exist. When it comes to odious debts international relations are better conceptualized by an analysis of the Hobbesian state of nature than by a concept of law, based on fair rules and principles.

Over the last decade the scientific community and especially scholars of law and economics have rediscovered this problem anew. It lay almost idle for about 60 years after a discussion in the 1920s on the legitimacy of the Soviet Union’s decision to cancel Czarist government bonds. Stephania Bonilla’s doctoral thesis is an important contribution to the current debate. She wrote it as a student in the doctoral law and economics program “Graduiertenkolleg Recht und Ökonomik” at the University of Hamburg. The research was financed by the German Research Foundation. Many of the issues discussed in this book in the context of odious debt are key issues, which will need to be addressed in order to move towards a more sustainable financial system, including ethics in finance and most notably, the issue of responsible lending and borrowing and finding solutions, which address the problem effectively without hampering the mechanism of international credit relations.

Odious debt is also a timely topic as it touches on the complicit role of creditors and the issue of lender responsibility, while also raising the question about how to deal with repressive and autocratic borrowing governments who act against the interest of

their people. These are timely issues particularly this year as the Middle East revolutions are taking place. Among other issues, one will see how new governments and regimes in these countries will deal with their past financial obligations.

This book analyzes, why sovereign debtors generally tend to service their foreign debts, whether odious or not and how states consider their reputation in the sovereign debt field and in international law when making their decision. It looks at the incentives of parties and different creditors in distinct sovereign debt relations, and the implications that the incentive structures can have on reputation and odious debt.

The book also provides an economic analysis on distinct facets of the odious debt issue, which are relevant for international economic governance as a whole. It looks at the players and the drivers of change at the policy level in the field of sovereign debt and in the current odious debt debate.

It also deals with the question of whether an ex ante or ex post approach is more feasible to solve the problem efficiently. The latter would –as in private contract law- cancel an odious debt contract after a government has taken up the credit. This might lead to legal uncertainty for a considerable span of time and might negatively influence international credit. The former would legitimize an international body to declare future credits to a particular country as odious. It is obvious that the ex ante approach would impose the least legal uncertainty and not much disrupt international credit markets.

The book is highly recommendable for lawyers, economists and political scientists working in the field. But it is also attractive for a larger audience interested in an important aspect of international financial relations.

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