UNIVERSITÉ PARIS 1
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Paris, le 22 novembre 2017

Madame le Professeure,

J'ai l'honneur de vous adresser l'autorisation de soutenance et les pré-rapports de soutenance de Monsieur Giuseppe BIANCO.

La soutenance aura lieu le Vendredi 1er décembre 2017, à 11h15 à l'Université d'Oslo, (Norvège).

Restant à votre disposition pour tout renseignement complémentaire, je vous prie d'agréer, Madame le Professeure, mes respectueuses salutations.

Po/ le Professeur Délégué aux Thèses
M le Professeur P. JOURDAIN

UNIVERSITÉ PARIS 1 PANTHÉON SORBONNE
ÉCOLE DE DROIT DE LA SORBONNE
Service de thèses
École Doctorale de Droit de la Sorbonne

Josiane RIGA

DECISION

Vu l'arrêté du 25 mai 2016 relatif à la formation doctorale,
Sur avis du directeur de l'Ecole doctorale,
Sur proposition de Mme HELENE RUIZ FABRI, directeur de thèse,

Le président de l'Université Paris 1 Panthéon - Sorbonne
autorise
M. GIUSEPPE BIANCO
à soutenir la thèse de doctorat, préparée sous la direction de Mme HELENE RUIZ FABRI, intitulée
La restructuration de la dette souveraine : entre créanciers privés et droit international
La soutenance aura lieu le 01 décembre 2017 à 11h15 Université d'Oslo, Karl Johans gate 47, 0162 Oslo.

Le professeur délégué aux thèses

Fait à Paris, le 20 novembre 2017

The Faculty of Law
University of Oslo
P.O. Box 6706 St. Olavs plass
0130 Oslo

Evaluation of the Dissertation *"Restructuring Sovereign Debt: Private Creditors and International Law"*, submitted by Giuseppe Bianco, June 1st 2017, in partial fulfilment of requirements for the degree of PhD, University of Oslo

Introduction

June 8th 2017 The Faculty of Law appointed the following adjudication committee for the evaluation of Giuseppe Bianco's dissertation, "Restructuring Sovereign Debt: Private Creditors and International Law":
Professor Inger Johanne Sand, University of Oslo (leader)
Professor Régis Bismuth, Sciences Po, Paris
Professor Attila Massimo Tanzi, Università di Bologna
Professor Jean-Marc Sorel, Université Paris 1 Pantheon-Sorbonne

The legal framework of the report

The Committee has received the "Regulations for the degree of Philosophiae Doctor (PhD) at the University of Oslo", adopted by the Board of the University of Oslo on 22 June 2010 pursuant to Act no. 15 of 1 April 2005 relating to universities and university colleges, §§ 3-3 and 3.9. In § 10.1, "Thesis requirements", the regulations state as follows:
The thesis shall be an independent, scientific work that fulfils international standards with regard to ethical requirements, academic standards and methodology.
The thesis shall contribute to the development of new scientific knowledge and must be of sufficiently high quality to merit publication as part of the scientific literature in the field.
The Committee has also received the "Guidelines for the evaluation of Norwegian doctoral degrees", approved by the Norwegian Council of Universities on 9 December 1996 and by the University board on 8 April 1997 for use by the University of Oslo (and updated for this purpose on 6 June 2006). In section 3.2 second paragraph the guidelines state as follows:
When evaluating the dissertation, focus shall be placed on whether the dissertation is an independent, cohesive scientific work of high academic merit as regards the formulation of research questions, methodology, theoretical and empirical foundation, documentation, treatment of the literature and form of presentation. Of particular importance is an evaluation of whether the material and methods used are suitable for addressing the questions posed in the dissertation and whether the arguments and conclusions presented are tenable. The dissertation shall generate new academic knowledge and be of sufficiently high quality that it could be published as part of the academic literature in the field.
This report consists of the academic evaluation of the dissertation, based on the criteria as defined in the above mentioned rules and guidelines.

Description and overview of the PhD thesis

The dissertation has the form of a monograph of 403 pages. The main aim of the thesis is to analyze the legal framework of sovereign debt restructuring in relation to private creditors and the role played by public international law in this field. The research questions stated are: *what role does and can public international law play in regulating this field.* A large part of the thesis concerns a discussion of and a comparison between the approaches of public international law and of contract law. A main thesis discussed in the dissertation is that public law has been given a too marginal place, while also contending that it should take a more significant role in the further development of the legal regulation of this field. The first part of the thesis is devoted to an analysis of the current legal framework. It assesses the extent to which public international law can be said to regulate this area. The second part focuses on the options available for reform, both *de lege lata* and *de lege ferenda.*

The Introduction gives a short, but precise overview of the field of research and the research questions. This includes the challenges of the field, in particular the dichotomy between the public and the private law approaches to regulation, the various interests and actors at play and methodical questions. *Ch.1* covers an historical overview, an overview of the main structure of the field with the main actors and a presentation of the main aspects of the present situation de lege lata with an emphasis on contractual techniques and collective action clauses (CACs) including the systematic differences between public and private law instruments. The historic overview shows the different factual and legal situations of sovereign debt restructuring over time. In the presentation of the main actors there is particular attention to the Institute of International Finance which is particularly valuable, as the institution has had a vital function in the evolution of the legal regulation of this area. It is exemplary of the hybridity between public and private law, and has previously not been sufficiently studied. Regulation vs self-regulation is discussed. Different international actors are discussed as well as the competition between different jurisdictions. The particular public character of sovereign bonds is emphasized.

Ch.2 offers a presentation of three types of procedural obstacles to the regulation of restructuring sovereign debt: the dematerialisation of financial instruments, the erosion of sovereign immunity and problems concerning the use of investment arbitration as a forum in cases concerning sovereign debt. Dematerialisation of legal bonds leads to an increased legal uncertainty and circulation of the trading of bonds. Jurisdictional questions become complex. The study of sovereign immunity shows the contradictory situation of on the one hand the strengths of legal immunity and on the other hand its erosion when confronted by contractual approaches. The systemic differences and incommensurability between public and private law approaches have led to a lack of communication between the two approaches and thus to an unclear position for the principle of immunity. The example of the Iraqi sovereign debt restructuring is however presented as a positive instance of the use of public international law. In the last part of the chapter the thesis argues that sovereign bonds do not fall within the definition of investment

under the ICSID Convention, and that investor-State arbitration thus is not appropriate for the solution of such cases.

The analysis of the way forward begins in *Ch.3* with the discussion of two forms of public international law shields for states: - the doctrine of odious debt, and the state of necessity. In keeping with a positivistic point of view, the thesis has found that the doctrine of odious debt is unclear and currently not sufficiently well-established to be relied upon to shield restructurings. It is however maintained that essential aspects of the doctrine could be used to inform negotiations. The discussion of the state of necessity highlights some interesting points. Domestic courts in debtor and creditor countries have often reached divergent conclusions. Cases in investment arbitration have further added to such diversity of opinions. In particular, restructurings before default could not be "shielded" by the state of necessity.

Ch.4 analyzes the competition for reform between the public and the private law approaches. It offers a detailed description of the procedures and decision-making processes of some of the vital attempts to create legal reforms on restructuring sovereign debt partly by the UN General Assembly and its committees, favouring a public international law approach, and partly by other actors favouring the contractual approach. The initiator of the latter has been the US Dept of Treasury which helped organize a Roundtable with several other states participating. The UN approach refers to several principles which are seen as vital. The Roundtable processes discuss the *pari passu* clause. The thesis describes the various processes involved in the attempts in parts to a highly detailed degree. This is however quite constructive in conveying the complexity involved politically, legally and economically in the balancing and combinations of the different interests and approaches at stake. The findings of the thesis highlight the considerable degree of competition at play between the actors involved in these respective processes and the distance between them. The thesis assesses the advantages and weaknesses of both the United Nations General Assembly's and the US Treasury's initiatives.

The analysis in the final *Ch.5* focusses on the search for new elements of a public law model for sovereign debt restructuring, emerging at different levels. The thesis highlights a discussion of a possible expansion of the concept of sovereignty, the impact of international human rights of the process, and the impact of EU regulation initiatives as well as other geo-political and geo-economic developments. The discussion of the difficult, yet crucial, issue of the concept of sovereignty emphasises the possibility for states to widen their margin of action, and analyzes options both for domestic legal systems and for international arenas. The study of the human rights aspect attempts to reconceptualise the framing of sovereign debt restructurings. The findings reveal the margin of appreciation that regional human rights courts are ready to acknowledge to debtor states that restructure their debt and thus limit private creditors' right to property. The consideration of the human rights of the debtor country is at times deemed to be able to tilt the balance in the legal discourse.

The investigation of the legal action adopted by the European Union, and especially the euro area, concludes the doctoral thesis. The findings underscore the importance of the "quasi-regulatory" set of measures which have involved public international law and supranational institutions in sovereign debt restructurings, while abiding by a contractual law paradigm. The thesis additionally analyses the geo-economic and geo-political evolutions at the global level which are considered to signal the potential for alternatives to the current framework.

The Committees overall evaluation

The analysis of Mr. Bianco's doctoral thesis shows a solid investigation of the research questions. The different parts, chapters and sections are consistently developed in order to analyse the research question over time, and the collected materials which are all relevant and representative. The research question and the various challenges it raises are all clearly formulated and well responded to. The thesis covers an extremely comprehensive theme, but which could be constructed in several ways. It has a clear structure, but the chapters cover quite different aspects of the theme and the links between them could in some instances have been better explained. The thesis is highly detailed on themes such as the Iraqi debt, the IMF conditionality and the UNGA processes. This does secure an interesting documentation on parts of the various attempts to create a legal framework, but the cross-cutting analysis could still be improved.

The thesis includes a comprehensive overview of the historical process of regulating the restructuring of sovereign debt and a more detailed description of the recent attempts partly from the UN and partly from a group of states led by the US Dept of Treasury. Restructuring sovereign debt as a legal area is torn between the principle and the protection of sovereignty and immunity for the state on the one hand and contractual approaches on the other hand. The interplay between these two approaches is highly complex. The social, political and economic changes over time which have been relevant for the questions of how to handle restructuring sovereign debt, are significant and have resulted in quite different factual scenarios and legal challenges over time in different regions of the world. The thesis is exemplary in being open to the complexities of the law of restructuring sovereign debt and of its social and historical context. De lege lata and de lege ferenda analysis are combined in an excellent way. The material presented is comprehensive, representative and sufficient for the thesis, but probably not exhaustive.

In the historical chapter the focus reserved the International Monetary Fund has unveiled the difficult management of relationships with private creditors and the evolution of conditionality policies. The emphasis on the Institute of International Finance represents original research and sheds light on an actor which so far has not been sufficiently studied, but which is important and has played a vital role in sovereign debt restructuring. The hybrid character of the institute with public as well as private association members and its application of private as well as public law

instruments illustrates the complexities of the combined public and private law character of the area in question. The close analysis of the different public and private actors involved and their complex interaction is a significant and highly valuable part of the thesis, partly because this is a vital aspect of this research area and partly because the interaction is particularly complex and intensive. Public and private law purposes interact and conflict without a given normative pattern or priority. The open, transparent and detailed documentation and argumentation throughout the thesis makes it easy to follow the historically and legally uneven development of this area.

The findings regarding the legal techniques employed for restructurings have emphasised the predominance of the contractual approach, but at the same time with the presence in the background of the principle of sovereignty. The legal landscape is however highly fragmented. Different actors have followed different legal approaches, at times in parallel and at the same time. Pragmatic expediency and geopolitical considerations are deemed to in some instances to have been more important than legal principles in shaping the restructurings. Nevertheless, the study of the London Agreement provides a significant example of the role of public international law in gathering all creditors and reaching a stable outcome.

The comparative study of the approach of domestic courts and arbitral tribunals has unveiled a high degree of uncertainty concerning the situs of sovereign bonds. The findings of the study of immunity have highlighted, on the one hand, the erosion of immunity from adjudication, both by contracts and by statutes, and, on the other, the continuing strength of immunity from enforcement. The thesis argues that these inconsistencies are immanent to the contractual approach and are bound to push private creditors to seek ever newer and more creative avenues for litigation and arbitration, thus deteriorating the prospects for fruitful negotiations. The example of the Iraqi sovereign debt restructuring is presented by the thesis as a positive instance of use of public international law. The considerable political and practical peculiarities of the case have however not been overlooked. The analysis of the Iraqi case is original and a valuable part of the thesis.

The reform processes under the UNGA and the Roundtable are presented and discussed in high detail and analysed in their full complexity in ch.4. The description of the processes tend to be too detailed and linear. The critical analysis could have been extended. The cases of Argentina and Greece are employed as examples and well analysed, but there is obvious much more work to be done here. The willingness to include and combine the public and the private law aspects of this area in all their complexity is a significant quality of the thesis.

The analysis of the resort to investor-State arbitration argues in favour of the inappropriateness of such a forum for vases of sovereign debt restructuring. *Ratione materiae,* the thesis has argued that sovereign bonds do not fall within the definition of investment of the ICSID Convention. *Ratione personae*, the tribunals can only hear claims brought by the bondholders having the nationality of one of the BIT State Parties, and thus disparity with other private creditors is produced. Furthermore, it is argued that mass claims bring about procedural difficulties which

ICSID tribunals are not institutionally prepared to solve. The analysis is detailed and precise and contributes to the quality of the thesis.

From a theoretical point of view, the research undertaken has spanned a host of legal and other disciplines. As dutifully acknowledged in the introduction, the work had to consider public international law, domestic contract law, international economic law, international organisations law, private international law, investment law and arbitration. The risk could have been an excessively broad, and thus superficial, study. However, the thesis has succeeded in combining a focused study of the areas concerned with a comprehensive consideration relevant to the overall investigation. The historical evolution of the area is combined with the willingness to address new aspects of the context and of the law of the application of sovereign bonds and of debt restructuring such as the dematerialization of bonds, the erosion of immunity, the use of hybrid actors and the increasing relevance of regional institutions.

From a practical perspective, the statutory, contractual, judicial and arbitral materials potentially to be analysed were overwhelming. A critique which could be made, is that the thesis has not considered several cases which could have suggested a slightly different answer to some sub-questions. At the same time, the choice of focussing on two case studies, Argentina and Greece, has provided the boundaries for a realistic and fruitful discussion.

The consideration of the procedural obstacles and the analysis of the reform processes represent two instances of research of significant quality. The comprehensive outlook and the comparative method have led to insightful remarks which will add to the scholarship in the field. These parts of the thesis are particularly original and are among the highlights of the doctoral dissertation.

A significant aspect of this thesis and a distinct part of the regulation of sovereign debt restructuring is the highly interesting interaction and interplay between the public law and the contractual approaches. The thesis documents vital contributions of the two forms of regulation, but to some extent the presentation of the interaction in the thesis may be seen as too dominated by a dichotomous approach as opposed to a more interactive and mutually dependent approach with significant connections the two forms of law. Sovereign debt contracts may even be seen as a public law technique.

Since the thesis focuses on the role of public international law in sovereign debt restructuring, a clearer normative framework should be set out at the beginning of the thesis, pointing out the critical issues involved. With the many studies of sovereign debt restructuring which have been published previously, in mind, this thesis could have included a more comprehensive meta-level discussion on the role of private creditors and on the possibility of developing improved international financial law standards in this area.

To conclude: the thesis has a well formulated research question, is well written and rich in its legal analysis as well as its contextual and procedural details. It is easy to follow the discussions and analysis. The candidate has shown a great ability to navigate among and combine several

different legal frameworks. With regard to the format and language of the thesis clarity and consistency have been ensured throughout the text. The structure, layout and footnotes are easy to follow. Language editing and proofreading have been effective. The thesis is a valuable contribution to the international literature on sovereign debt restructuring.

4. Recommendations for the publication

With a view to further publication as a monograph, several recommendations can be made.

A clearer elaboration of the relevant normative framework and of the critical issues from a public international law perspective is needed in the introductory part of the thesis.

A reference to the tools provided by global administrative law could also be introduced. Their relevance should be clearly explained.

The analysis of the Institute of International Finance could be extended to include the International Capital Market Association and potentially also the International Swaps and Derivatives Association (although for the latter the discussion on CDS would need to be developed – and this might increase the length of the work too much). Like the IIF, these institutions perform important activities in the debt restructuring field and have heretofore been subjected to relatively little academic research.

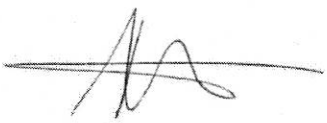
The analysis of the historical development of sovereign debt restructuring processes could benefit from a stronger emphasis on the existence of customary rules and general principles of law. Although the difficulty of finding in favour of their actual emergence is explained, an effort could be made at further discussing the arguments for and against.

In light of the differences in style between a doctoral thesis and a published monograph, several sections could be revised. The original passages from IMF documents in the discussion on conditionality, from arbitral decisions in the discussion of the state of necessity, and from UN documents in the discussion of the General Assembly reform process could be shortened. This change could also assist in reducing the overall length of the thesis, which could be excessive for a monograph.

5. Conclusions

In light of the findings above, the Committee considers (unanimously) that the dissertation satisfies the requirements for PhD dissertations at the University of Oslo, and that it should be approved for disputation.

Oslo/ Paris/Bologna September 19. 2017



Régis Bismuth	Attila Massimiliano Tanzi	Jean-Marc Sorel	Inger-Johanne Sand

(sign)

Names