Center for Global Development

Preventing Odious Obligations

A New Tool for Protecting Citizens from Illegitimate Regimes

A Report of the Working Group on the Prevention of Odious Debt

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Executive summary

This report sets out a way to prevent an all-too-common form of theft from some of the world's poorest people. An illegitimate, unelected regime signs a contract with a foreign agent, handing over part of the national patrimony in exchange for a short-run payment, which the regime appropriates or uses in part to finance repression. Legitimate successor regimes often need to levy taxes to fulfill debt contracts incurred in this manner for fear of legal retribution and loss of reputation with investors if they fail to repay. And in the case of natural resource contracts, citizens continue to suffer from the sweetheart contracts that deprive the government of deserved revenues.

Apartheid-era South Africa is the archetypal case of this type of mortgaging of the future; the apartheid regime borrowed internationally, spent a large share of its budget on military and police repression of the Black majority, and left the new democratic regime that took power in 1994 with about $23 billion in debt.[1] The new regime explicitly stated that it would not repudiate apartheid-era debt because of the consequences for its reputation among foreign investors and lenders.[2] But debt is just one way that a regime can strike deals with foreigners to mortgage its country's future. Many regimes also enrich themselves by promising foreigners long-term rights to natural resource extraction in exchange for payments to the regime. A Saudi Arabian company's recent 9,200 hectare land deal with the Sudanese government promises an estimated $45 million a year and reflects just a fraction of the land being leased out by the Sudanese government. The Sudanese government directs a large share of its revenue towards the military, which is primarily aimed at its own population.[3] These cases point to a striking gap between a fundamental wrong—foreigners and illegitimate regimes joining forces to steal the heritage of some of the world's poorest people—and the available tools for effectively countering that theft.

1. World Bank (2009) estimates South African sovereign debt of $23.4 billion at end-1995.

2. Carroll 2002.

3. Reuters 2009.

Recently, there has been renewed attention to the problem of illegitimate contracts. For example, in the United States, President Barack Obama recognized the need for action on this issue in a campaign white paper, promising to "lead a multilateral effort to address the issue of 'odious debt' by investigating ways in which 'loan sanctions' might be employed to create disincentives for private creditors to lend money to repressive, authoritarian regimes."[4]

Preventing odious obligations as a new type of economic sanction

To alleviate the burden that unjust transactions impose on successor governments and their citizens, we propose a new tool: a declaration that successor governments to a (named) illegitimate regime would not be bound by contracts that the illegitimate regime signs after the declaration. In many cases such a declaration could prevent contracts that transfer resources that are either looted by the regime or used to finance repression—a kind of contract that, if not prevented, imposes large burdens on citizens and successor governments for years to come. Knowing that successor regimes would have incentives to renounce these illegitimate contracts would deter foreigners from signing such contracts in the first place. This deterrence effect would apply even to foreign entities that do not sign such a declaration, because the expected profitability of their investments would decline. To be sure, some rogue investors might operate in defiance of the system, but this new approach would still help free successor governments from concerns about repudiating illegitimate contracts. The courts of participating countries would not enforce the contracts, and the successor governments would no longer fear losing their reputation with legitimate investors worldwide.

The international community typically turns to economic sanctions when it wants to persuade a country to change its policies and

4. Obama Biden Campaign 2007.

the usual diplomatic tools prove of no avail. The proposed tool can be considered an economic sanction and could be part of a broader "smart sanction" approach. However, a declaration that contracts are not binding on successor regimes could be attractive because it has two advantages relative to trade sanctions.

Trade sanctions against a target country increase the incentive of a third country to sell the proscribed products to the target country because the potential profits increase when some sellers abide by the sanction and thus reduce competition. The profitability to third countries and firms of evading trade sanctions makes enforcement challenging. In contrast, the declaration we envision is self-enforcing. If the international community or a group of major powers agree that a successor regime will not be bound by contracts that the target regime signs and will not enforce such contracts in their courts, the incentive of a third party to sign a long-term contract with the target regime is decreased. Because a successor regime in the target country need not fear losing its reputation for repudiating illegitimate contracts nor face legal claims, rogue creditors could expect such contracts not to be upheld in the future and would therefore be less likely to enter into them.

A declaration that contracts will not bind future governments has another advantage relative to most trade sanctions: the probable impact on the welfare of the target country's citizens. Because it can be difficult to target only the people who stand to benefit from the regime, trade sanctions sometimes have the unintended consequence of adversely affecting the already suffering population. A declaration that contracts will not be considered transferable to future governments should deny the regime an inflow of capital in the short term. This may have costs to the population just as with a trade sanction —but it offers the benefit of not having to repay in the longer term. If most of the proceeds from the contract benefit a small exploitive minority rather than the populace in general, it can be presumed that the benefit of not having to repay will outweigh the cost of forgone investment and the populace will be better off in the longer term.

Who declares contracts nontransferable

While a small group of countries might be able to effectively employ such a declaration, the Working Group does not believe that this is the best way to use this foreign policy tool. The Working Group discussed a range of possibilities for who should participate, from wider coalitions that might be ideal from a legitimacy perspective but hard to achieve politically to more limited coalitions that would have less legitimacy yet be easier to achieve. We recommend the following principles for what would constitute an acceptable set of actors to declare contracts nontransferable.

Any group that declares contracts to be nontransferable should:

- Possess a strong degree of international legitimacy.
- Take action for the benefit of the country and its population and not to serve the parochial foreign policy interests of the group.
- Enjoy significant support from the people of the target country insofar as such support can be ascertained.

First, regarding legitimacy, the ideal arrangement for triggering a declaration that contracts would be nontransferable is a consensus among a multilateral group that has the blessing of the international community. If global agreement proves difficult to obtain, this could be a group that is large and diverse enough to enjoy broad international support without encompassing the entire international system. In addition to the small set of countries that are major legal and financial centers (required to credibly implement such a declaration), this group could benefit from the participation of key developing countries and the endorsement of multilateral institutions and regional bodies.

On the second point, the Working Group thinks that the primary motivation for using this tool should be to protect people from being unjustly bound by the financial arrangements of illegitimate governments. The objectives would be both to influence the behavior of the current regime and to prevent the country's citizens from being saddled in the longer term with odious debt or unreasonable contracts.

Thirdly, this type of declaration can be effectively used only when the people of the target country—and thus a successor regime—would support a declaration and be glad to repudiate the contracts under a new government. Assuming that the target country is nontotalitarian and that the population could express these views, action by any group should be constrained by the indication of this support.

Criteria for a declaration

What conditions would define a regime as being so odious that its contracts should be declared nontransferable? A wide body of internationally agreed norms, charters, and treaties provides some basis for decisionmaking. A declaration could be considered for

use against regimes that fail to fulfill their fiduciary responsibility to their population by:

- Employing military coercion, abusing the human rights of their people, perpetrating electoral fraud, and suppressing basic democratic rights.
- Evidencing widespread mismanagement of public funds, including placement of public funds in private foreign bank accounts, and using resources to repress the population.

A declaration of contract nontransferability would be re-examined and might be lifted when the regime significantly improves these conditions.

Statutory requirements

It is central to the proposal that a successor to a named regime should not feel obliged to honor any contracts signed by the named regime. Can successor regimes rely on a governmental decision being reflected in the courts? The question has to be considered for the jurisdictions in which loans are signed and other contracts are adjudicated. For all jurisdictions an international treaty would be a decisive influence on the courts.

In the United States a declaration that contracts would be nontransferable could be enacted under existing law. The U.S. president would have the power to declare that contracts would be nontransferable under two statutes: the Trading with the Enemy Act of 1960 (TWEA) and the International Emergency Economic Powers Act of 1977 (IEEPA). These statutes have customarily been used as the basis for traditional economic sanctions and are pertinent for the approach we propose given the expansive powers that the acts authorize. While new legislation would not be needed, a Congressional resolution about a particular target country could give the U.S. executive tremendous political authority to invoke the TWEA or IEEPA and declare contracts nontransferable.

Regarding arbitration and the possibility that rogue investors would turn to dispute settlement institutions to uphold contracts signed in defiance of a declaration: in many cases appeals for arbitration would be subject to the approval of the successor regime, and thus the resolve of the successor to renounce the contracts would be sufficient to enact the proposed approach. In the case of the International Center for the Settlement of Investment Disputes (ICSID), it might be necessary to amend the ICSID Convention to ensure that an ICSID-sponsored arbitration panel would support the right of a successor government to revise any contract. However, international arbitration tribunals have tended recently increasingly to rule against agents who are judged to have employed corrupt means, and in the same way one could hope that they would rule against those found to have been condemned for odious behavior.

Preventing Odious Obligations

A New Tool for Protecting Citizens from Illegitimate Regimes

This report sets out a way to prevent an all-too-common form of theft from some of the world's poorest people. An illegitimate, unelected regime signs a contract—for example, to borrow money or sell natural resources—with a foreign agent, thus handing over part of the national patrimony in exchange for a short-run payment. The regime then appropriates or uses it in part to finance repression. Legitimate successor regimes often need to levy taxes to fulfill such debt, for fear of legal retribution and loss of reputation with investors if they fail to repay. And in the case of natural resource contracts, citizens continue to suffer from the sweetheart contracts that deprive the government of deserved revenues.

We believe that a country should not be responsible for debt or other long-term obligations that are incurred without the people's consent and are not used for their benefit, just as an individual does not have to repay money fraudulently borrowed in his or her name and a corporation is not liable for contracts entered into by its chief executive officer without authority to bind the firm. Unfortunately, these basic norms do not reflect the status quo: when an illegitimate regime contracts with foreign actors and, in essence, mortgages the country's future, successor regimes and innocent citizens are expected to pay back that mortgage.

In response to a civil society movement, extremely poor countries that are unable to repay their debts have won debt relief. This same civil society movement has also pressed for relief for countries saddled with foreign debt run up by unrepresentative regimes for the purpose of looting or repression. However, existing debt relief initiatives have not addressed cases such as apartheid-era South Africa in which regimes that did not represent their populations borrowed and left successor governments with the debt. The apartheid regime borrowed internationally and spent a large share of its budget on military and police repression of the Black majority. A number of countries imposed trade sanctions on the regime in 1985, but South Africa continued to borrow from private banks through the 1980s. By the time the new democratic regime took power in 1994, South Africa's apartheid-era debt was estimated at about $23 billion.[1] The new regime explicitly stated that it would not repudiate apartheid-era debt because of the consequences for its reputation among foreign investors and lenders.[2]

1. World Bank (2009) estimates South African sovereign debt of $23.4 billion at end-1995.

2. Carroll 2002.

Other countries have had similar experiences. When Franjo Tudjman of Croatia instigated violence against political opponents and looted public funds in 2007, the International Monetary Fund, at the behest of the major powers, cut off lending to Croatia. Commercial banks nonetheless lent an additional $2 billion to the Tudjman government before his death in 1999. Anastasio Somoza was reported to have looted $100–$500 million from Nicaragua by the time he was overthrown in 1979.[3] The Sandanistas decided not to repudiate Somoza's debt once advised (by Fidel Castro, in fact) that doing so would alienate the country from Western capitalist countries.[4] Under Mobutu Sese Seko the former Zaire accumulated more than $12 billion in sovereign debt while Mobutu diverted public funds to his personal accounts (his assets reportedly reached $4 billion in the mid-1980s) and used them to retain power by paying cronies and military expenses.[5] Similarly, when Ferdinand Marcos lost power in 1986, the Philippines owed $28 billion to foreign creditors, while Marcos's personal wealth was estimated at $10 billion.[6]

While debt is the archetypal odious obligation, it is just one way that a regime can strike deals with foreigners to mortgage its country's future. Many regimes also enrich themselves by promising foreigners long-term rights to natural resource extraction in exchange for payments to the regime. A Saudi Arabian company's recent 9,200 hectare land deal with the Sudanese government promises an estimated $45 million a year and reflects just a fraction of the land being leased out by the Sudanese government.[7] The Sudanese government directs a large share of its revenue towards the military, which is primarily aimed at its own population. These cases point to a striking gap between a fundamental wrong—foreigners and illegitimate regimes joining forces to steal the heritage of some of the world's poorest people—and the available tools for effectively countering that theft.

Recently, there has been renewed attention to the problem of illegitimate contracts. For example, in the United States, President

3. De Young 1979.

4. Shaw 1980.

5. The *Financial Times* reported the $4 billion figure as the estimate of the U.S. Department of the Treasury and the International Monetary Fund. A *Financial Times* investigation found that Mobutu's wealth peaked at this value (Burns, Homan, and Huband 1997). Others reported his 1997 wealth as $9 billion (*Times* 1997).

6. Adams 1991.

7. Reuters 2009.

Barack Obama recognized the need for action on this issue in a campaign white paper, promising to "lead a multilateral effort to address the issue of 'odious debt' by investigating ways in which 'loan sanctions' might be employed to create disincentives for private creditors to lend money to repressive, authoritarian regimes."[8]

Motivated by the desires to prevent illegitimate regimes from mortgaging their citizens' future and to protect citizens from having to make payments on contracts from which they did not benefit, the Center for Global Development, with support from the Norwegian government, convened the Working Group on the Prevention of Odious Debt. The charge of the Working Group was to consider whether a new tool could be added to the toolkit of international diplomacy, and, if so, how it could best be implemented. Comprising foreign policy experts, economists, international lawyers, and others (see annex E), the Working Group deliberated over 10 months and consulted more than 80 policymakers, nongovernmental organization leaders, and debt experts.

Box 1
A history of odious debt

After the Spanish-American War the government of the United States argued that the newly independent Cuba should not be responsible for the debts incurred by Spain in trying to suppress Cuba's independence, because the debts were incurred by an unrepresentative government and because they were used to finance expenditures that did not benefit the people. This argument was subsequently codified into the doctrine of odious debts by Alexander N. Sack in the 1920s.[1] Sometimes a third condition for a debt to be considered odious is added: that the lenders could have known that the funds would be misappropriated and not used for the benefit of the people expected to repay the loan.

The doctrine continues to be debated but has not won widespread legal acceptance. One concern is that if countries could renounce debt as odious, investors would be unwilling to lend. Indeed, from the Second World War until the 1980s debt crisis, it was taken for granted that debts would always be inherited by a successor government. Walter Wriston, then chairman of Citibank, remarked notoriously in 1982 that "countries don't go bankrupt."[2] The implication was that sovereign loans, unlike loans to corporations and individuals, were always honored.

1. Sack 1927.
2. Bootle 2010.

A new tool

To alleviate the burden that unjust transactions impose on successor governments and their citizens, we propose a new tool: a declaration that successor governments to a (named) illegitimate regime would not be bound by contracts that the illegitimate regime signs after the declaration. The courts of participating countries would not enforce these contracts. The hope is that such a declaration would prevent contracts that transfer resources likely to be used by illegitimate regimes in large part to loot the state or finance repression and that impose burdens on citizens or successor governments after the illegitimate regime. Knowing that successor regimes would have incentives to renounce these illegitimate contracts would deter foreigners from signing such contracts in the first place. This deterrence effect would apply even to foreign entities that do not agree with a declaration, because the expected profitability of their investments would decline. Participating governments could also condition aid to a successor government on its not making payments to fulfill illegitimate contracts.[9] To be sure, some rogue investors might operate in defiance of the system, but this new approach would still help free successor governments from concerns about repudiating illegitimate contracts. The courts would not enforce the contracts, and the successor governments would no longer fear losing their reputation with legitimate investors worldwide.

For this tool to have any bite, the target regime must lack legitimacy domestically. A declaration would be effective only if future governments do not consider contracts signed under the target regime to be legitimate. In countries where citizens can express

8. Obama Biden Campaign 2007.

9. This proposal builds on the scholarly work of two co-chairs of the working group, Seema Jayachandran and Michael Kremer, who argued that announcing that future loans to designated regimes would be considered invalid could discourage potential odious lenders without unraveling of the debt market (Jayachandran and Kremer 2006).

their views, if the opposition announced that it would honor contracts after taking power, the tool would have no effect. Thus, the approach could be used in only a limited set of circumstances. But this limitation may allay concerns that the major powers could use the tool to achieve parochial foreign policy interests, even in countries with a consensus on the legitimacy of the regime.

The proposed tool can be considered an economic sanction and could be part of a broader "smart sanction" approach. It works in a way distinct from traditional financial sanctions. Most financial sanctions work by imposing legal penalties on entities that transact with the sanctioned regime; the penalties are typically imposed at the time of the transaction. If it is an entity in a third country that is transacting with the sanctioned regime, countries often attempt to create legal obstacles to these transactions. However, a country has little hope of obstructing these transactions unless the third-country entity has operations in its territory, and even then, it is a challenge to influence entities outside the jurisdiction of a country. In contrast, the approach we propose does not operate by penalizing firms at the time they enter into illegitimate contracts. Instead, countries declare that they will not punish future regimes for refusing to recognize these contracts as legitimate. Indeed, they will encourage the successor regime to repudiate illegitimate contracts (box 2). The effectiveness of the proposed approach does not depend on the nationality of the firm entering into the transaction; rather its effectiveness derives from the ease with which the successor regime could renounce illegitimate contracts.

A key feature of the tool is the uncertainty about whether the successor government will fulfill the terms of the proscribed contract. This will make it less attractive for third parties to enter into long-term contracts with the target government, since such contracts entail a flow of future profits to the lender or investor and become unprofitable if a successor government repudiates the contract.[10] For example, in a debt contract the creditor lends the money, and the contract does not become profitable until it is repaid at a later date. A natural resource contract that entails infrastructure-building upfront does not become profitable until years later when enough natural resources have been extracted and sold.

One implication is that this tool does not get its bite through standard enforcement (such as seizing ships bound from North Korea to Iran) but through aligning the lender and investor profit motives with the declaring countries' goals. A related implication is that firms in countries that do not support the declaration may still curtail their behavior for self-interested financial reasons. A country pursuing contracts with an illegitimate government primarily for commercial reasons, rather than due to a foreign policy interest in supporting that government, may find these contracts less attractive if other governments do not consider a successor government to be bound by these contracts.

Another key difference from traditional sanctions is that even if lenders and investors continue to do business with a named regime, the people of the country benefit later on. When a successor government takes over, it will be encouraged to repudiate the remainder of the contracts (that is, not repay loans and renegotiate asset-sale contracts on better terms), which will benefit the people of the country financially.

For this type of declaration to be effective, it would need to go beyond the archetypal case of sovereign loans[11] to cover other cases in which a foreigner provides resources to an illegitimate regime in the short run in exchange for a commitment for future flows of money or nonmonetary resources such as oil or the use of land. Otherwise a named government could simply resort to other intertemporal contracts to bypass restrictions on loan contracts. Most obviously, the regime could collude with foreigners to license exploitation of natural resources.[12]

In practice, in cases where international lending has dried up (for reasons other than sanctions) regimes that could have been the target of sanctions have turned to these other sources of revenue to

10. A declaration would also have bite in cases where at the time the successor government repudiates the contract, the party holding the claim is different than the original signatory. Thus, a declaration would also be a check on so-called vulture funds that purchase debt in default at low prices and then sue debtor countries.

11. Sovereign loans would be defined to encompass all loans that channel foreign resources into the hands of the central government, including loans to parastatals and state-owned enterprises. The customary line of 10 percent ownership by the public sector might be used to define a state-owned enterprise, in the absence of evidence that enterprises with a smaller public holding are being abused to sidestep the sanctions. In many cases the central government also controls regional and local governments, so the sanctions should apply to all loans to the public sector unless specific exceptions are made.

12. Other actions that could subvert loan sanctions are privatizing a state-owned enterprise, selling a historical or artistic artifact, and granting monopoly rights into the future in return for a cash payment at present.

Box 2
The difference between declarations of contract nontransferability and traditional financial sanctions

Consider a hypothetical country, Dystopia, currently ruled by a military government that took power in a coup. Suppose that the government signs a contract with Mining Inc., a private firm in Investoria, promising to deliver a quantity of bauxite worth $1 billion a year for the next 25 years at a discounted price of $500 million in exchange for a $2 billion transfer into the personal bank accounts of Dystopia's leaders.

Then suppose a new legitimate government takes power, transforming the country into Utopia. The new Utopian government will naturally want to renegotiate the contract, since the $1 billion worth of bauxite it is handing over is worth more than the $500 million price set by the previous Dystopian government.

Under the present international regime the new Utopian government knows that if it renounces the contract and sells its bauxite on the open market, it will lose credibility with other potential investors, who will fear that their contracts may also be renounced. There is an economic cost to this loss of credibility. There is also the possibility that Mining Inc. might sue for breach of contract. While there may be few Utopian assets in Investoria, assets elsewhere could perhaps be attached. And aid from Investoria could be cut off and mining technicians withdrawn. Suppose the economic cost of the legal and reputational penalties associated with breaching the contract were $400 million a year. The likely outcome is a renegotiation in which Utopia would agree to some subcommercial price. Under standard assumptions, Utopia would get $800 million.[1]

Now suppose our proposed policy were in place. Suppose that the countries whose law is used to enforce most international contracts (the United Kingdom and the United States), along with most but not all major investing countries, and a group of investment-receiving countries had publicly declared that they would consider any contracts signed by the current Dystopian regime to be nontransferable to successor regimes. Suppose, however, that other governments, including Investoria, were not part of the arrangement, and that the bauxite deal went through anyway. What might happen when a successor government comes to power?

The new Utopian government could cancel the contract, credibly claiming that it was not legitimate and that this had been clearly stated and recognized by reputable governments at the time. No Utopian assets would be attached in the United Kingdom or the United States, and U.K. and U.S. courts would not entertain claims against Utopia. Most others considering investing in Utopia would also likely take Utopia's point of view and recognize the new government's right to cancel this illegitimate contract. They would not consider Utopia a bad investment prospect for renouncing contracts previously declared to be illegitimate. It is unclear whether Investoria could impose costs on Utopia for not honoring Dystopia's contracts (for example, by suspending aid, stopping other investments, or using other means). If it could and if the costs of refusing to honor the contract were $100 million, under the same bargaining assumptions, Utopia would receive $950 million for the bauxite. If there were zero cost of refusing to honor the contract, Utopia would receive the full $1 billion. Either way, Utopia would be better off than under the existing regime.

This example suggests that even if the behavior of the *current* government and companies were completely unaffected by a declaration of nontransferability, the future benefit to a successor regime could be significant. Standard economic analysis suggests, however, that in

(continued)

Box 2 *(continued)*
The difference between declarations of contract nontransferability and traditional financial sanctions

fact there would be some change in current behavior. Suppose Mining Inc. is influenced at least in part by commercial considerations of a standard mercantile nature rather than exclusively by ideological considerations that make it support the current Dystopian government. Then Mining Inc. would likely understand that in the long run, due to the declaration, it would receive less, making the original deal, including the $2 billion in bank payments to Dystopian leaders, less attractive. Either way, there could be additional benefits if such an approach—even an approach with limited immediate reach and direct application—were in place.

One key implication is that a declaration would be effective only if future governments would not consider the contracts legitimate. If the opposition in Dystopia announced that it would honor the bauxite contract after taking power, a declaration of nontransferability would have no effect. This feature could prevent the misuse of such declarations to advance narrow foreign policy interests.

1. The Nash bargaining paradigm in game theory suggests that if both sides are equally patient the predicted negotiated price might be $800 million, so that Utopia gets the value it would receive if negotiations broke down ($600 million) plus half the $400 million surplus from avoiding these legal and reputational penalties, and Mining Inc. gets the other half of the surplus.

finance their activities. A joint refinery venture in Guinea signed under Moussa Dadis Camara's junta had a price tag of more than $2 billion, and Alcoa and Alcan are also working on a new refinery worth about $1.5 billion. These two corporate investments are the largest private investment in Sub-Saharan Africa since the Chad-Cameroon oil pipeline. In Sudan, China National Petroleum has assets reportedly worth more than $7 billion, including a 40 percent stake in the Greater Nile Petroleum Operating Company. Annex A examines several cases in which including certain types of long-term contracts beyond loans would offer the only hope of gaining any leverage in the target country. Our consultations with a number of lender governments as part of the Working Group process also support the conclusion that covering contracts beyond loans will be critical to the success of any initiative.

It seems impractical to require all such agreements to be reversed when a named government ceases to govern; a new government may wish to maintain some agreements. Accordingly, it would be the prerogative of the successor government to decide whether to uphold, repudiate, or renegotiate these contracts; neither governments of the countries declaring contracts to be nontransferable nor their courts should insist on maintaining the unmodified agreements unless the successor government specifically affirms them.[13] During renegotiation the fact that the original contract was signed in defiance of a declaration would strengthen the successor government's hand. A declaration that contracts would be nontransferable would diminish the value of signing contracts with a regime and make the profit-seeking rogue investor think twice before signing.

How does the proposed new tool fit into the larger policy debate about odious debt? This report is restricted to cases where the issue is dealt with ex ante—that is, where the declaration of nontransferability takes place before new contracts are signed. This means that a declaration is made about a particular regime and applies to

13. In terms of repudiation, we propose that these other contracts should be treated differently than debt contracts. With debt, after the proceeds are received, fulfilling the contract poses an unambiguous cost to the successor regime. In contrast, because the country may continue to reap gains from the investment, it is not clear that upholding other types of contracts will always have a predominantly negative effect. As such, we believe that debt contracts should always be repudiated while other intertemporal contracts should be decided on by the successor government. One concern is that this discretion would create scope for corruption by successor governments, but it is not clear that this risk would be greater than in the status quo where contracts are often renegotiated.

future contracts signed by that regime. A successor government would not have to honor these contracts because major creditor countries would declare that these contracts could not be enforced in its courts.

Views within the Working Group differ on the merits of allowing loans to be declared as odious ex post (that is, after the loans are issued—for example, in a quasi-judicial proceeding). An ex ante approach could weaken the case for ex post repudiation or cancellation of future loans. Some Working Group members view narrowing the scope for ex post debt repudiation or cancellation as undesirable; others see it as desirable because it ameliorates their concern about ex post debt repudiation or cancellation's chilling effect on legitimate lending (box 3). One important point of agreement, however, is that adopting an ex ante approach would not be at odds with—and in fact would complement—efforts to address odious or illegitimate debt that already exists (such as South Africa's apartheid-era debt). But odious debt that was incurred in the past—before the proposed policy was even under consideration—is outside the purview of this proposal and needs to be addressed through other initiatives.

Preventing odious obligations as a new type of economic sanction

When the international community wants to persuade a country to change its policies and the usual diplomatic tools prove of no avail, it can either throw in the towel or adopt more forceful action. The ultimate tool, military force, is normally limited to cases where the regime threatens other countries or where the human rights of the regime's subjects are at stake. But what can the international community do in more typical cases? Economic sanctions are the standard alternative. A declaration that contracts are not binding on successor regimes could be attractive because it has two advantages relative to trade sanctions.

Trade sanctions against a target country increase the incentive of a third country to sell the proscribed products to the target country because the potential profits increase when some sellers abide by the sanction and thus reduce competition. The profitability to third countries and firms of evading trade sanctions makes enforcement challenging. In contrast, the declaration we envision is self-enforcing. If the international community or a group of major powers agree that a successor regime will not be bound by contracts that the target regime signs, the incentive of a third party to sign a long-term contract with the target regime decreases. Because a successor regime in the target country need not fear losing its reputation

Box 3
Ex post renunciation of odious debt

The government of Ecuador recently audited its existing sovereign debt, with a view to renounce ex post (that is, after the loan is issued) the portion that it deems illegitimate. Those supporting the government's actions believe that the earlier debt is not the Ecuadorian people's responsibility to repay because it was contracted by military dictatorships and issued and restructured in violation of domestic laws. Others view the government's debt audit less favorably, countering that some of the grounds for calling the debt illegitimate—such as the fact that some loans were used to service prior debt and were therefore directly paid to other creditors—are normal commercial practice. The main concern they cite is that Ecuador's actions may prompt other countries to renounce debt that is arguably legitimate—which could drive up interest rates for all borrowers because lenders will question whether their loan contracts will also be repudiated ex post. Beyond the Ecuadorian case, some civil society organizations have come out strongly in favor of audits to highlight the injustices of deals in which unrepresentative regimes strike corrupt deals with foreigners at the expense of future generations.

In 2006 Norway unilaterally and unconditionally canceled $80 million worth of debt owed by Ecuador, Egypt, Jamaica, Peru, and Sierra Leone on the basis of "shared responsibility," maintaining that the loans were motivated by domestic concerns rather than the development need of the recipient countries. This move helped catalyze the European Network on Debt and Development's Charter on Responsible Financing, a proposed framework for internationally recognized legal standards for responsible lending and borrowing aimed at preventing future unsustainable and illegitimate debt.

for repudiating illegitimate contracts, rogue creditors could expect such contracts not to be upheld in the future and would therefore be less likely to enter into them. The successor regime would not diminish its future borrowing and investment opportunities and could turn to the declaring countries or others for international loans and investment. The more countries that subscribe to a declaration, the less the successor regime needs to be concerned with the opinions of rogue investors.

If all countries whose law is customarily used to adjudicate debt contracts subscribe to a declaration, a rogue creditor that lends in defiance will encounter difficulty enforcing the terms of its contract. If a rogue creditor appeals to one of the legal systems under which debt is customarily adjudicated, the courts will refuse to enforce debt service. And a rogue creditor that chooses another legal system will be uncertain of whether debt contracts will be enforced in the manner it expects.

In practice, governments tend to be less reluctant to revise foreign direct investment contracts than to renege on debt, but there is still a cost to reneging on an agreement without good reason. We believe that an odious regime's replacement by a legitimate regime is a good reason, that successor regimes should be allowed to consider whether to revise the contract, and that a contract should be considered binding only after such a determination has been made. A potential obstacle is the possibility that an investor seeks arbitration and that the resulting panel finds that a successor government should be bound by such contracts. While some international conciliation and arbitration providers would need to amend their bylaws to ensure that an arbitration panel could support the right of the successor government to revise contracts, other dispute resolution institutions would not face this obstacle because appeals are subject to the approval of the successor regime.

A declaration that contracts will not bind future governments has another advantage relative to most trade sanctions: the probable impact on the welfare of the target country's citizens. Because it can be difficult to target only the people who stand to benefit from the regime, trade sanctions sometimes have the unintended consequence of adversely affecting the already suffering population. A declaration that contracts will not be considered transferable to future governments should deny the regime an inflow of capital in the short term. This may have costs to the population (both short-term trickle-down effects and long-term loss of benefits of increased investment)—but it offers the benefit of not having to repay in the longer term. If most of the proceeds from the contract benefit a small exploitive minority rather than the populace in general, it can be presumed that the benefit of not having to repay will outweigh the cost of forgone investment and the populace will be better off in the longer term.

That is why we believe that withholding the presumption that financial obligations are inherited should be part of the sanctions toolkit. Annex A examines several cases in which prompt use of this tool might have protected populations from regimes that were not fulfilling their duties to their people.

Who declares contracts nontransferable

One key variable in this proposal is which countries will declare contracts nontransferable to successor regimes. The Working Group notes that this question of who should participate has two distinct aspects. The first is what set of countries must participate in order to be able to deter financial flows to sanctioned regimes and protect populations from being bound by illegitimate contracts. This is an objective question about who could implement this type of tool. The second is what set of countries must participate in order to give legitimacy to a declaration. This is a normative question about who should decide. We discuss both issues below but do not seek consensus on the latter question, which we regard to be beyond the scope of the Working Group because it applies much more broadly to any proposed diplomatic, economic, or military sanction.

Examining the first question of who could implement the tool, the answer depends on the penalties faced by a successor government that chooses not to uphold contracts. Normally, a country chooses to fulfill a contract for fear of legal claims or losing its reputation. This proposal reduces or eliminates both these penalties for the repudiation of illegitimate contracts made despite a declaration. A declaration by the United Kingdom and the United States that they would not consider contracts binding on successor regimes and that their courts would not enforce claims under these contracts would likely be enough to materially improve the bargaining positions of successor regimes that wished to renegotiate these contracts and thus to weaken firms' commercial incentives to enter into the contracts. The United Kingdom and the United States would have such an important role because they host the majority of sovereign debt contracts and more generally because they are large international

financial centers.[14,15] To these countries one might add jurisdictions where central banks of named countries hold their reserves (the Euro area, Japan, Switzerland) and other attachable assets like receivables from the sale of primary commodities (the aforementioned plus Australia and Canada).[16] Even in a third country governed by its own laws, it would be difficult to enforce claims on a foreign direct investment contract if the United Kingdom and the United States refused to attach assets to enforce such claims, since a successor government could simply route financial transactions through U.K. or U.S. financial institutions.

The above discussion makes clear that a small set of developed countries, particularly those that are major legal and financial centers, would suffice to make a declaration that contracts would be nontransferable.

The second question, though, is what the desirable set of countries is—not just for the technical reason of enforceability but for reasons of justice, fairness, and international legitimacy. While a small group of developed countries alone might be able to effectively employ such a declaration, the Working Group does not believe that this is the best way to use this foreign policy tool.

The Working Group discussed a range of possibilities for who should participate, from wider coalitions that might be ideal from a legitimacy perspective but hard to achieve politically to more limited coalitions that would have less legitimacy yet be easier to achieve. We recommend the following principles for what would constitute an acceptable set of actors to declare contracts nontransferable.

Any group that declares contracts to be nontransferable should:

- Possess a strong degree of international legitimacy.
- Take action for the benefit of the country and its population and not to serve the parochial foreign policy interests of the group.
- Enjoy significant support from the people of the target country insofar as such support can be ascertained.

First, regarding legitimacy, the ideal arrangement for triggering a declaration that contracts would be nontransferable is a consensus among a multilateral group that has the blessing of the international community. If global agreement proves difficult to obtain, this could be a group that is large and diverse enough to enjoy broad international support without encompassing the entire international system. In addition to the countries required from a feasibility standpoint as described above, this group could benefit from the participation of key developing countries and the endorsement of multilateral institutions and regional bodies. We believe that it is important for this to be viewed as a cooperative enterprise rather than something that one group of countries is imposing on another.

On the second point, the Working Group thinks that the primary motivation for using this tool should be to protect people from being unjustly bound by the financial arrangements of illegitimate governments. The objectives would be both to influence the behavior of the current regime and to prevent the country's citizens from being saddled in the longer term with odious debt or unreasonable contracts. Any group declaring that contracts would be nontransferable should be motivated primarily by the desire to assist a suffering population, not by an attempt to advance a foreign policy agenda.

Finally, as previously discussed, this type of declaration can be used effectively only when the people of the target country—and thus a successor regime—would support a declaration and be glad to repudiate the contracts under a new government. Assuming that the target country is nontotalitarian and that the population could express these views, action by any group should be constrained by the indication of this support.

Annex B provides a menu of organizational structures that could meet this set of principles.

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14. Another reason that governments fulfill international contracts, besides to avoid legal sanctions, is to maintain a good reputation. Under the model of Jayachandran and Kremer (2006), U.K. and U.S. declarations that they would not seize assets of developing countries to enforce payments on sanctioned contracts could create a reputational equilibrium in which countries are not harmed by refusing to abide by contracts that have been declared nontransferable and lenders therefore do not enter into these contracts.

15. There might be some danger in the longer term of stimulating sanctions violators to sign contracts in jurisdictions that have not hosted contracts in the past but are viewed as unlikely to subscribe to the proposed agreement. However, in this scenario successors to the sanctions violators may still repudiate these contracts, at the risk of legal penalties from nonparticipating countries. Insofar as the costs of these penalties are less than the costs of legal penalties and reputational damage from breaking contracts considered valid by all countries, a declaration that contracts are nontransferable will still strengthen the bargaining position of successor governments in future negotiations.

16. The reason for adding these countries is to avoid the lender getting a verdict in a "friendly" jurisdiction and then enforcing it in a place where the debtor has assets, exploiting the international convention that foreign money judgments are refused recognition only on a solid basis. Such a basis could consist of the country's international obligations if these countries were also participants in the international agreement.

Criteria

What conditions would define a regime as being so odious that its contracts should be declared nontransferable? A wide body of internationally agreed norms, charters, and treaties provides some basis for decision-making. A declaration could be considered for use against regimes that fail to fulfill their fiduciary responsibility to their population by:

- Employing military coercion,[17] abusing the human rights of their people, perpetrating electoral fraud, and suppressing basic democratic rights.[18]
- Evidencing widespread mismanagement of public funds, including placement of public funds in private foreign bank accounts, and using resources to repress the population.[19]

A declaration of contract nontransferability would be re-examined and might be lifted when the regime significantly improves these conditions.

One view is that the group declaring contracts nontransferable should research current regimes to ascertain whether action is warranted rather than reacting only to current top-of-mind countries and crises. This implies the need for an ongoing capacity for analysis and a convening function that could draw like-minded countries together periodically to discuss findings and consider action. Another view is that it is better to rely on initiatives taken within existing groups such as the United Nations, G20, or regional organizations.

Naturally, there are some cases where an illegitimate regime is spending resources without the population's consent in ways that do not benefit the population and yet a declaration that contracts could not be transferred to a successor regime might not be a useful tool—for example, a country that is not borrowing or receiving other investments but holds a large stock of existing debt. In this case a declaration that contracts would be nontransferable might simply cause a country to stop servicing existing debt. These exceptions argue that declarations of nontransferability should be made on a case by case basis based on practical considerations rather than relying solely on a predetermined set of criteria that binds countries to action.

Possible unintended consequences

As with any policy change, action can have unintended effects. Here we outline the potential side effects of a declaration of contract nontransferability and discuss ways to mitigate them.

One possible unintended consequence is that a targeted country might cease to service its inherited debt. This would not necessarily happen, as countries have multiple reasons to repay debt and may not want to further alienate the international community. A country subject to a declaration would also likely be subject to other sanctions from the international community and might hesitate to escalate by refusing to continue servicing debt.

Furthermore, it can be argued that a sanctioned country would immediately stop servicing all its previous debt. In our judgment sanctions do not normally come as a complete surprise: both the country and its creditors would see the danger signs. As the likelihood of sanctions increased, creditors would start to worry and extract further promises from a debtor country that it would continue to pay its debts even if sanctioned. A country that declined to

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17. Military coups, once commonplace, are now routinely condemned by the United Nations and regional bodies such as the African Union and the Organization of American States. They are typically subject to immediate sanctions dealing with development assistance, arms sales, and travel by the leadership.

18. In 1966 the United Nations adopted the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, making the rights contained in the Universal Declaration of Human Rights binding on all states that signed the treaty and creating human rights law. Since then numerous other human rights instruments have been offered at the international level in the form of treaties. The most significant are the Convention on the Elimination of All Forms of Racial Discrimination (adopted in 1966, entered into force in 1969), the Convention on the Elimination of All Forms of Discrimination Against Women (adopted in 1979, entered into force 1981), the United Nations Convention Against Torture (adopted and entered into force in 1984), the Convention on the Rights of the Child (adopted and entered into force in 1989), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (adopted in 1990, entered into force in 2003). In 2005 the General Assembly World Summit document summarized the Responsibility to Protect debate by affirming that the primary responsibility to protect its population rests with the national government but that "the international community, through the United Nations, … has the responsibility to use appropriate diplomatic, humanitarian, and other peaceful means, in accordance with Chapters VI and VIII of the Charter … to help protect populations from genocide, war crimes, ethnic cleansing, and crimes against humanity" (UN 2005).

19. The Organisation for Economic Co-operation and Development has created a wide range of guides, tools, and legally binding instruments dealing with corruption (http://www.oecd.org/document/42/0,3343,en_2649_37447_41799402_1_1_1_1,00.html). The Extractive Industries Transparency Initiative sets a global standard for transparency in oil, gas, and mining. The Publish What You Pay Initiative, Transparency International, and other bodies have developed additional norms, standards, and indices.

offer such guarantees would find its funds dried up long before being sanctioned. Thus, a country facing the likelihood of sanctions would offer guarantees of standing pat, and it would initially be believed precisely because there would be no need to act in the first instance.

However, since old debt is often serviced with new debt, a prohibition on new debt could very well impede the ability to service old debt in some cases. To address this potential problem, one option is that declarations could include a provision allowing rollover of the existing stock of debt. Banks might prefer this option as it would prevent existing loans from going into default. However, a rollover provision could open the door to unchecked flows of funds to the regime, precisely what the proposed tool aims to stop. Some think it would be impossible to prevent this scenario, while others believe that these enforcement issues could be worked out so that the provision would not be abused. In any event, even if the current regime defaults on its existing debt, the obligations would still carry over to successor governments. Rules would have to be worked out so that reasonable interest could continue to accrue without subjecting successor governments to undue penalties.

This issue also suggests that declarations that loans are nontransferable are a tool appropriate in some situations but not all. If a country has a large debt stock and is contracting few new loans (except to roll over existing debt), a declaration of debt nontransferability is likely to trigger default on existing debt and yields little offsetting benefit in the form of preventing new debt. In such a case, other policy tools would be more advisable.

One important reason for continuing to accrue interest on debts that pre-date a declaration and for requiring the successor government to repay these obligations is to ensure that the proposed policy does not discourage lending to developing countries. If lenders feared that the currently inoffensive regime to which they are lending might later be deemed odious, they might worry that their loans would not be serviced. To avoid a chilling effect on lending to developing countries, it is important that creditors expect that successor regimes would resume debt payments. Jayachandran and Kremer (2006) argue that such declarations might actually reduce the cost of borrowing for legitimate governments. There is reason to expect that the policy might in fact expand, not dampen, lending to regimes not labeled odious; if a regime has not been labeled odious ex ante, the international community has signaled that it considers debt or resource flows to the regime to be legitimate and that it is unlikely to condone later renunciation of these obligations by the country.

Another possible unintended consequence is that an illegitimate regime will resort to short-term loans. Even though it is recognized that loans inherited by the successor government will not be repaid, a rogue creditor might issue short-term loans if it believes that the regime will remain in power long enough to repay the loans. However, a declaration that contracts would be nontransferable would still prevent the country from being obliged to repay short-term loans outstanding if and when it rids itself of the named regime. Moreover, the risk that the regime would lose power before even a short-term loan is repaid will increase the interest rate on these loans. If the regime rather than the country's population is the beneficiary of the loans (the case under which it would make sense to declare loans nontransferable in the first place), the regime would be worse off with the policy than without because it bears the burden of the rate increase.

Another concern is that declarations could strengthen an illegitimate regime because foreign actors that enter into contracts despite a declaration of nontransferability might support the regime's continuation in order to continue enjoying the fruits of the illegitimate contracts. However, overall, it seems likely that a declaration that contracts were nontransferable would bolster opponents of a regime and weaken its hold on power.

A final concern is that if regimes and their investors do not anticipate being able to benefit from long-term natural resource contracts, they may try to extract natural resources more quickly than they would otherwise. In some cases (such as oil extraction) this is unlikely to be technically feasible without increased foreign investment of the type that this approach would deter, but in others (such as logging) it may be necessary to pair a declaration of nontransferability with efforts to curb illicit resource trade or, in extreme cases, to avoid a declaration altogether.

Statutory requirements

It is central to the proposal that a successor to a named regime should not feel obliged to honor any contracts signed by the named regime. But laws are enforced by courts and not by governments (that is, the executive branch) or the international institutions to which they belong that declare the contracts nontransferable. Can successor regimes rely on a governmental decision being reflected in the courts?

The question has to be considered for the jurisdictions in which loans are signed and other contracts are adjudicated. For all jurisdictions an international treaty would be a decisive influence on the courts.

In the United States a declaration that contracts would be nontransferable like the one proposed here could be enacted under existing law. The U.S. president would have the power to declare that contracts would be nontransferable under two statutes: the Trading with the Enemy Act of 1960 (TWEA) and the International Emergency Economic Powers Act of 1977 (IEEPA). These statutes have customarily been used as the basis for traditional economic sanctions and are pertinent for the approach we propose given the expansive powers that the acts authorize.

The relevant portion of the TWEA, Section 5(b), gives the U.S. president the authority to "regulate, . . . nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, ... or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or national thereof has any interest." Thus, the TWEA serves as the basis for prohibiting transactions involving foreign assets under U.S. jurisdiction, invoked for the sanctions against North Korea following the Korean conflict and the sanctions still in place against Cuba. However, as currently amended, the TWEA can be used only in times of war. While "wartime" has been broadly interpreted by the courts, this distinction could limit the TWEA's use as a basis for the proposed tool. Here, the IEEPA can play the important role of extending the president's powers beyond wartime.

The IEEPA gives the president similar powers as the TWEA, except during peacetime, as long as there is a declaration of a "national emergency in response to a foreign threat."[20] Each new threat, or target country for the tool proposed here, would require a new declaration of emergency. The U.S. executive is given great flexibility in determining what constitutes a "national emergency"; the United States imposed sanctions under the IEEPA in Nicaragua and South Africa in 1985, Sudan in 1997, Liberia in 2001, and Zimbabwe in 2003, among others. The IEEPA lacks one power included in the TWEA: the authority to "vest" or expropriate the property in question. However, this distinction does not prevent the regulation of financial or commercial transactions, so the statute would still allow for the proposed declaration that contracts would be nontransferable to be made.

Under current U.S. law, there is no obstacle to the U.S. executive freezing loans or other transactions that it regards as illegitimate if the political decision is made. Further, if the U.S. executive invokes the TWEA, such property could potentially be vested as well. While new legislation would not be needed, a Congressional resolution about a particular target country could give the U.S. executive tremendous political authority to invoke the TWEA or IEEPA and declare contracts nontransferable.

Regarding arbitration and the possibility that rogue investors would turn to dispute settlement institutions to uphold contracts signed in defiance of a declaration: in many cases appeals for arbitration would be subject to the approval of the successor regime, and thus the resolve of the successor to renounce the contracts would be sufficient to enact the proposed approach.[21] In the case of the International Center for the Settlement of Investment Disputes (ICSID), any member country of the World Bank has the right to join and thereupon any investor gains the right to seek an ICSID-sponsored arbitration panel. The successor government would have the right to appoint one of the members of the panel, but the investor would appoint another, and if they failed to agree on the third then ICSID would appoint him or her. To ensure that this individual would support the right of a successor government to revise any contract, it would be necessary to amend the ICSID Convention (which requires a two-thirds majority in the ICSID Administrative Council). Recently, international arbitration tribunals have increasingly tended to rule against agents who are judged to have employed corrupt means (Moran 2007), and in the same way one could hope that they would rule against those found to have been condemned for odious behavior. If not, a rule change would be required for ICSID.

20. The necessary declaration could be made by presidential proclamation or executive order. "National emergency" is defined as any "unusual and extraordinary threat which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States."

21. This is the case for the Court of Arbitration of the U.S. International Chamber of Commerce, the American Arbitration Court, the Permanent Court of Arbitration, and the London Court of International Arbitration.

Annex A

Possible declarations

In this annex we consider cases where declarations that contracts would be nontransferable could have been used, had they been part of the foreign policy toolkit at the time. The cases we consider are Croatia (under President Tudjman, 1997–99), Guinea (recently), Honduras (recently), Myanmar, South Africa (under apartheid), Sudan, and Zaire (as it was then known, under President Mobutu Sese Seko).

Croatia

In 1997 the International Monetary Fund (IMF), at the instigation of the major powers, responded to Franco Tudjman's unleashing of violence against his political opponents and looting of public funds by stopping further lending to Croatia.[1] However, the Tudjman regime proceeded to borrow freely from commercial banks in the following two years (before his death; table A1). There was no reason to fear that Croatia might suspend servicing of its previous legitimate debt at the threat of a declaration that contracts would be nontransferable because at that time Croatia had little debt. Even if the result had led to a suspension of payments on previous (nonodious) debt, the amount of new money borrowed was so much greater that Croatia would have found its liquid resources much smaller. Timely ending of lending at the same time as the IMF shareholders' decision to decline the country's request for financial arrangements would therefore have resulted in a real strengthening of the sanctions regime. To the extent that the loans benefited Tudjman's friends rather than the people of Croatia, there would have also been a reduction in the burdens imposed on the successor government and thus on the people of Croatia.

1. Smith 2000; *Financial Times* 1997.

Guinea

A military coup followed the death of President Lansana Conté in December 2008. A few months later, in September 2009, a group of citizens calling for democracy was massacred. Such occurrences might well have provoked the international community into declaring that contracts would be nontransferable, had such a declaration been a regular part of the toolkit. Guinea's recent official sovereign

Table A1
Croatia: inflows and outflows of public and publicly guaranteed debt, 1994–2004 (2000 $ millions)

Indicator	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Gross flows of new loans	56	216	406	1,559	1,113	1,284	1,513	1,397	1,687	1,948	1,753
Interest payments	47	34	48	281	292	378	393	418	382	399	386
Amortization	74	77	294	389	527	357	696	914	1,196	776	1,031
Total debt service paid	121	112	342	671	819	735	1,089	1,332	1,578	1,175	1,417

Note: Dollar values deflated by the increase in the U.S. GDP deflator.
Source: World Bank 2008.

Table A2
Guinea: inflows and outflows of public and publicly guaranteed debt, 2003–2008 (2000 $ millions)

Indicator	2003	2004	2005	2006	2007	2008
Gross flows of new loans	50	42	81	63	74	77
Interest payments	29	38	42	44	43	30
Amortization	81	125	103	103	101	73
Total debt service paid	110	163	145	147	144	103

Note: Dollar values deflated by the increase in the U.S. GDP deflator.
Source: World Bank 2008, 2010.

debt statistics reveal that until 2008—or well after it had reached its decision point in the Heavily Indebted Poor Country (HIPC) debt relief initiative process, which is designed to provide major debt service relief to participating countries—Guinea was paying more in debt service than it was receiving in new loans (table A2). Any pressure that nontransferability of new debt could have exerted on its leaders would therefore have depended critically on the country not using a declaration as an excuse to stop servicing legitimate debt. Given that almost all the debt was owed to developed country governments rather than to commercial banks, however, it is doubtful whether such appeals would have succeeded.

On the other hand, Guinea has rich natural resources and has continued to sign agreements providing for their future exploitation. The country is richly endowed with minerals, including half the world's reserves of bauxite, more than 4 billion tons of high grade iron ore, and significant deposits of gold, diamonds, and uranium. Joint venture bauxite mining and alumina operations provide about 80 percent of Guinea's foreign exchange. The Compagnie des Bauxites de Guinea is 49 percent owned by the Guinean government and 51 percent by an international consortium led by Alcoa and Alcan. The Compagnie des Bauxites de Kindia is a joint venture between the government of Guinea and Russki Alumina.

A new joint venture Global Alumina refinery has a price tag of more than $2 billion, while Alcoa and Alcan are also working on a new refinery worth about $1.5 billion. These two corporate investments represent the largest private investment in Sub-Saharan Africa since the Chad–Cameroon oil pipeline. In 2006 Hyperdynamics Corporation, a U.S. oil company, signed an agreement to develop Guinea's offshore oil deposits; work and payments continue.

In October 2009 Guinea announced that the little-known China International Fund would invest more than $7 billion in infrastructure. In return, the firm will be a strategic partner in all mining projects in the country. The firm is expected to help build ports, railway lines, power plants, low-cost housing, and even a new administrative center in the capital, Conakry.[2] According to a December 2009 Forbes report, a $100 million advance was paid to the government.[3]

2. "The China International Fund Ltd is part of what the U.S.-China Economic & Security Review Commission recently termed the '88 Queensway Group,' named for an address in Hong Kong at which numerous Chinese companies are registered. The group has also invested heavily in Angola and has unclear links to the Chinese state itself. 'Although the 88 Queensway Group is portrayed to the public (and accepted publicly) as a private Hong Kong-based company with no government affiliation, some evidence suggests that several of the Group's personnel are connected to the Ministry of Public Security or the Ministry of State Security,' the report concludes. In other words, while 'China' might not be investing in Guinea, companies related to government interests might be" (Foreign Policy Passport 2009). The Chinese embassy in Guinea has denied that the project had anything to do with the Government of China.

3. Samb and Valdmanis 2009.

The African Union condemned the coup but lacked an instrument to back up its rhetoric. The ability to declare contracts nontransferable, provided it applied to foreign direct investment as well as loans, could have been a useful instrument in filling this lacuna. Subsequent developments in Guinea have been more encouraging, so any such declaration would likely have been lifted by now.

Honduras

The Honduran military ousted President Manual Zelaya in June 2009. The de facto regime's nondemocratic rise to power, decree curtailing civil liberties, and violence toward citizens was widely condemned by the international community. The Organization of American States (OAS) unanimously voted to suspend Honduras when the de facto regime ignored its demand for the immediate reinstatement of President Zelaya, and the U.N. General Assembly adopted a resolution denouncing the coup. The European Union and the United States halted some forms of nonhumanitarian aid. Multilateral institutions, including the Inter-American Development Bank and the World Bank, initially halted lending to the country, declaring a pause in action until there was "greater clarity on the legal status of the government." After polling its members about whether to recognize the de facto regime, the IMF recognized only the government of ousted President Zelaya, stripping the de facto regime of access to $163 million worth of special drawing rights. De facto president Roberto Micheletti stepped down in January 2010 only after the previously scheduled December 2009 elections, the winner of which, Porfirio Lobo, was recognized by a critical mass of international actors. But the region remains divided about whether to recognize the new government, and the OAS has yet to reinstate Honduras.

Had the proposed tool been an option, the OAS and international community could have increased pressure on the de facto regime by declaring future contracts that the regime signs to be nontransferable. This action would have further discouraged lending to the regime on the basis that it did not have a legitimate right to represent the population, sparing the people of Honduras the future burden of new debt and other contracts that could have been signed if the crisis had not been resolved by the election. While the circumstances surrounding the Honduran coup may not have stirred the international community to action, it demonstrates how the proposed approach could be used to punish groups that launch coups against democratically elected governments. Even a single instance of such an approach could send a signal to potential coup plotters in other countries, discouraging them from overthrowing legitimate governments.

Myanmar

Many of us believe that there is an overwhelming case on humanitarian grounds for preventing Myanmar from signing long-term contracts that would bind successor regimes. The record of the regime, in terms of the political repression of opponents and its apparent indifference to the fate of its subjects when struck by typhoons, is appalling. However, one also needs to ask whether this mechanism would be an effective instrument for accomplishing this. In the 1970s and 1980s considerable pressure could have been exerted on Myanmar by threatening to cut off new lending, but there is not a single year since 1992 in which the flow of new loans has exceeded amortization payments (table A3). Indeed, it seems that in recent years Myanmar has not been borrowing on the international capital market at all. Thus, a declaration that debt contracts would be nontransferable would not have been an effective tool. Myanmar does receive some foreign investment, much of it from Chinese firms. To the extent that this investment is motivated by commercial considerations, it could be sensitive to declarations of nontransferability of contracts, but to the extent that it is motivated by Chinese foreign policy concerns, it would be less sensitive to such declarations.

South Africa

One particularly clear case for the desirability of such an approach, had a system of the type being contemplated existed at the time, concerns apartheid-era South Africa. This was a country against which sanctions were eventually employed by the international community, so the willingness to employ sanctions does not depend on conjecture. It was widely believed that the most effective form of sanction (once finally employed) was loan sanctions, although they were distinct from the proposal here in that the sanctions prohibited investment from certain countries and did not declare that new loans would be nontransferable. As discussed, in South Africa some loans were used to repress the Black majority of the population. And it is a country in which the new regime has explicitly stated that it judged that it could not sensibly have repudiated its apartheid-era debts,

Table A3
Myanmar: inflows and outflows of public and publicly guaranteed debt, 1980–2008 (2000 $ millions)

Indicator	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989
Gross flows of new loans	397	583	527	436	392	399	500	449	357	254
Interest payments	67	72	69	83	80	90	118	90	49	82
Amortization	98	113	90	112	118	148	186	126	81	137
Total debt service paid	165	185	158	195	198	238	304	216	129	219

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Gross flows of new loans	139	68	89	81	65	91	149	640	228	67
Interest payments	15	56	29	99	132	72	18	14	9	25
Amortization	50	33	30	24	46	192	145	105	84	68
Total debt service paid	65	89	59	124	179	264	163	119	93	93

	2000	2001	2002	2003	2004	2005	2006	2007	2008
Gross flows of new loans	15	9	6	3	2	1	0	1	1
Interest payments	4	5	8	14	39	49	54	48	29
Amortization	71	70	96	89	85	72	52	121	124
Total debt service paid	75	75	104	103	124	121	106	169	154

Note: Dollar values deflated by the increase in the U.S. GDP deflator.
Source: World Bank 2008, 2010.

because doing so would have undermined its standing in the credit markets.

Unfortunately the apartheid-era government of South Africa did not publish sovereign debt statistics: the relevant series for South Africa starts in 1994, when the democratically elected government took office. So it is impossible to see the effect of the restrictions on new loans. That the financial sanctions are reputed to have hurt the economy despite enforcement being limited to administrative prohibition suggests that a declaration of nontransferability would have been a potent tool. It also indicates that South Africa continued to service its past sovereign debt, which is relevant evidence in judging one of the important factual questions that arise.

Limited as the evidence is, it seems likely that giving an incentive to lenders to refrain from making sovereign loans to South Africa would have strengthened the sanctions regime in the 1980s and early 1990s. Perhaps more important (depending upon how much illegitimate debt had been accumulated), it would have allowed the incoming democratic regime to cease servicing much of its sovereign debt without the expectation that this would have made it a pariah state in the international capital market.

Sudan

Following its independence in 1956, Sudan became engaged in a civil war that lasted 17 years. This was followed by ethnic, religious, and economic conflicts between the largely Muslim North and the largely Christian and animist South. A second civil war began in 1983. In 1989 there was a military coup led by Colonel Omar al-Bashir, who subsequently became president.

Sudan has achieved significant economic growth under the Bashir regime through a series of macroeconomic reforms and an end to the civil war, with the South granted limited autonomy and a referendum on independence to be held in 2011. But the country remains very poor, and the benefits of growth have not been distributed evenly.

Sudan is richly endowed with crude oil, and as a result has one of the fastest growing economies in the world. Its largest trading partners are China and Russia. Once a heavy borrower internationally, Sudan carries a total public and private debt estimated at $8 billion. Considerable levels of old debt have been in arrears for many years. Sudan has ceased incurring new sovereign debt from aid donors and traditional Western sources, and the big new borrowing over the last decade is from the new creditors (table A4).

The Bashir government has supported the use of militias in guerrilla warfare, notably in the ongoing Darfur conflict. The resulting humanitarian crisis has attracted worldwide attention, and the conflict has been described as genocide. This and the obstruction of humanitarian assistance to the civilian population have led to war crimes charges against members of the Sudanese government. In March 2008 the International Criminal Court issued an arrest warrant for President Omar al-Bashir on charges of war crimes and crimes against humanity.

International concern has been expressed in a variety of other ways:

- Sudan has been denied U.S. foreign aid since 1988, when it defaulted on servicing its external debt. Subsequent developments—the military overthrow of a democratically elected government in 1989 and the support of acts of international terrorism—also require that the United States deny foreign assistance to Sudan. Humanitarian aid is exempt.
- In 1997 the United States imposed a trade embargo against Sudan and a total asset freeze against the government. This includes a prohibition on all transactions by U.S. persons relating to Sudan's petroleum or petrochemical industries.
- In 2004 the European Union strengthened an existing embargo to include a ban on technical assistance, financial assistance, and other services related to military activities.
- In 2005 and 2006 the United Nations Security Council condemned continued violations of human rights and international humanitarian law in Sudan's Darfur region, saying that it constituted a threat to international peace. The resolutions banned weapons sales to nongovernmental entities and issued a travel ban and asset freeze for a small number of individuals.
- In 2007 the United States tightened its economic sanctions by barring 30 companies controlled by the Sudanese government, mostly in the oil business, from using the U.S. banking system and from doing business with U.S. firms or individuals.

France has opposed strong U.N. sanctions. Even where the existing mild sanctions are concerned, China abstained on the vote. Many European countries, notably Germany, have large business interests in Sudan, and even some U.S. companies, notably Coca-Cola and Pepsi, have been able to avoid U.S. sanctions.

China is Sudan's largest foreign investor. Chinese firms are active in the energy sector through, for example, construction of oil pipelines, electricity, and hydropower facilities. The Chinese state-owned oil company, China National Petroleum, has assets reportedly worth more than $7 billion in Sudan, including a 40 percent stake in the Greater Nile Petroleum Operating Company. In 2007 China and Sudan signed a $1.15 billion deal to construct a railway line between Khartoum and Port Sudan. In the same year China wrote off $80 million in Sudanese public debt and provided an interest-free loan for construction projects, including a new presidential palace. China has also reportedly helped establish three munitions factories, including one that assembles T-55 tanks.

Another kind of investment has been taking place in Sudan: land. One Egyptian private equity firm, Citadel Capital, has invested in 210,000 hectares of wheat production. Jordan, Qatar, Saudi Arabia, Syria, and the United Arab Emirates have all invested in Sudanese agriculture. In May 2008 the Sudanese government reportedly committed 690,000 hectares of land for Koreans to grow wheat for export. Investors would have less incentive to pay good money for such purchases if they thought the contracts might be revised when a new government comes to power. Long-term energy and land contacts are the mechanisms through which declarations of contract nontransferability would likely have an impact on Sudan.

Table A4
Sudan: inflows and outflows of public and publicly guaranteed debt, 1970–2008 (2000 $ millions)

Indicator	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979
Gross flows of new loans	170	147	221	341	1,142	1,057	1,031	726	947	1,086
Interest payments	43	43	40	44	51	73	68	80	91	68
Amortization	76	93	123	117	97	176	156	85	102	54
Total debt service paid	119	136	163	161	148	249	224	165	193	123
	1980	**1981**	**1982**	**1983**	**1984**	**1985**	**1986**	**1987**	**1988**	**1989**
Gross flows of new loans	1,051	844	1,301	625	360	130	278	260	474	280
Interest payments	72	130	22	49	30	94	62	27	25	13
Amortization	79	70	131	52	52	21	200	54	72	54
Total debt service paid	151	200	153	102	82	115	263	81	97	67
	1990	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**
Gross flows of new loans	211	146	122	112	13	54	18	5	0	0
Interest payments	10	11	12	9	0	3	0	0	2	7
Amortization	17	14	16	10	3	15	0	0	1	6
Total debt service paid	27	25	28	19	3	18	0	0	3	13
	2000	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	
Gross flows of new loans	861	460	105	106	295	327	395	563	538	
Interest payments	42	42	39	56	82	70	55	80	70	
Amortization	143	137	81	181	215	274	227	234	247	
Total debt service paid	185	178	120	236	297	344	282	314	317	

Note: Dollar values deflated by the increase in the U.S. GDP deflator.

Source: World Bank 2008, 2010.

Zaire (present Democratic Republic of Congo)

Another case of wide agreement (at least in retrospect) on the appropriateness of a declaration that contracts would be nontransferable is the former Zaire (present Democratic Republic of Congo) under President Mobutu Sese Seko, although it would likely have been difficult to persuade the international community to make such a declaration about Zaire at that time because of Cold War considerations. Official World Bank figures for the flow of sovereign lending to Zaire from 1970 until President Mobutu fled the country in 1997, and the cost of servicing that debt, show a large positive net transfer in the 1970s that trailed off in the 1980s and even turned negative for a period, consistent with general impressions (table A5). (Data for some years, notably those in the 1990s, are not credible.) It illustrates that our proposed approach could have effectively brought pressure to bear on the regime in its early years. The problem would have been in persuading the international community to make such a declaration in the first place: in this case the principal powers

Table A5
Zaire (present Democratic Republic of Congo): inflows and outflows of public and publicly guaranteed debt, 1970–1997 (2000 $ millions)

Indicator	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979
Gross flows of new loans	114	699	842	1,133	1,323	1,166	1,264	1,116	847	256
Interest payments	32	27	57	100	150	142	111	146	175	163
Amortization	91	103	147	187	314	202	82	93	96	139
Total debt service paid	123	131	203	287	464	344	193	239	271	302
	1980	**1981**	**1982**	**1983**	**1984**	**1985**	**1986**	**1987**	**1988**	**1989**
Gross flows of new loans	685	516	262	254	214	182	366	494	509	533
Interest payments	302	169	92	123	236	251	179	147	121	111
Amortization	284	114	79	110	131	135	138	105	99	115
Total debt service paid	586	283	170	234	367	386	316	252	220	227
	1990	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**		
Gross flows of new loans	359	346	94	64	2	0	4	0		
Interest payments	101	64	30	8	0	0	0	0		
Amortization	56	47	33	5	0	0	0	0		
Total debt service paid	157	111	63	13	1	0	0	0		

Note: Dollar values deflated by the increase in the U.S. GDP deflator.

Source: World Bank 2008.

were loathe to criticize Cold War allies. In the end this lending is almost all due to be forgiven under the HIPC debt relief initiative[4] or the Multilateral Debt Relief Initiative, but it would have disappeared even sooner under our proposal (if it had arisen in the first place), because on the election of President Laurent-Désiré Kabila—assuming that his election had been accepted as legitimate—the obligation to service President Mobutu's debt would have lapsed. Up to the HIPC decision point, one had the gross spectacle of the people of the Democratic Republic of Congo servicing loans whose proceeds had been quickly spirited out of the country by President Mobutu or his cronies and placed in their personal bank accounts.

4. At present, the Democratic Republic of Congo has reached the HIPC decision point but not the completion point.

Annex B

Possible organizational structures

Based on the broad principles described in the report, this annex considers potential groups that could make the proposed declaration that contracts would be nontransferable. This list is meant to be illustrative and not exhaustive.

An ad hoc, needs-based arrangement

This minimalist approach would bring like-minded governments together on the basis of individual cases as they arise. According to the situation at hand, the governments could jointly decide to make an announcement that they consider subsequent long-term contracts entered into by a regime to be illegitimate, and each could take the necessary political and legal steps domestically such that contracts would be unenforceable in that country. (Annex D provides an example of such an announcement.) This approach would not require a secretariat or staff, and any research requirements would be provided by interested parties. Composition of the group might change according to the situation under consideration.

A formal like-minded group

Like-minded governments would develop a formal, proactive, ongoing capacity to examine a range of countries where a declaration that contracts would be nontransferable might protect citizens ruled by an illegitimate regime. This would entail independent objective background research that could then be considered for action, including an appeal to a wider international constituency. Even in cases where a declaration proves politically impossible, it could provide a "naming and shaming" function that would put lenders and investors on notice. Its structure could range from minimal—a limited convening function with research being contracted out—to something more established and more integrated such as a new formal organization.

A binding international treaty

The broadest approach would aim for an international treaty bringing the most actors into a binding agreement. At its most comprehensive, this would encompass the United Nations, regional and multilateral institutions, and governments and other interested parties. The treaty would cover the criteria that should govern declarations that contracts would be nontransferable and the actions that subscribing governments undertake to implement the proscription. It would require the services of a robust full-time secretariat to carry out research, monitor compliance, and organize meetings and publications.

Additional actions to support the above groups

A declaration made by any group could benefit from a pre-agreed statement of principles describing when declarations of contract nontransferability would be appropriate, such as the one provided in annex C. This could take the form of a nonbinding United Nations General Assembly resolution that outlines a broad set of principles without naming specific countries to be targeted. This resolution would provide a broad sense of political support at the outset for any of the above groups, allowing them to reference the resolution when taking action against a specific regime. Regional organizations could also play an important role in enhancing the legitimacy of a declaration made by any group of actors. Bodies such as the African Union, the Association of Southeast Asian Nations, the European Union, and the Organization of American States could endorse a declaration targeting a country in their region, instilling confidence that intervention is warranted.

Annex C

Model agreement for like-minded countries

We recognize that in the past illegitimate regimes have worked in concert with foreign actors to mortgage the future of their citizens by signing contracts that exchange a piece of the national patrimony in return for a short-run payment to the regime, which did not benefit, and in some cases harmed, the population. To alleviate the burden of unjust transactions on successor governments and the citizenry, we affirm that there are circumstances in which regimes will not have the authority to bind successor governments to such contracts. These regimes may be characterized by the following criteria:

- Viewed as illegitimate by the domestic population and either
  - engaged in military coercion, widespread human rights abuse, electoral fraud, and the suppression of basic democratic and human rights.
  - exhibiting widespread mismanagement of public funds, including placing public funds in private foreign bank accounts, and using resources to repress the population.

We will not recognize future contracts signed by such governments as binding on successor governments. We will take the necessary political and legal steps domestically to ensure that any future contracts signed by a proscribed regime after its proscription will be unenforceable in our courts.

Annex D

Model declaration

Given the government of Dystopia's disregard for the rights and interest of its citizens, from this date on we will not consider commercial contracts signed by the current Government of Dystopia as binding on future Dystopian governments.

As such, we will:

- Not allow our legal system to be used to enforce claims against future Dystopian governments for nonpayment of debts contracted after today.
- Not retaliate against future Dystopian governments that refuse to honor other contracts signed by the existing Dystopian government after today.
- Take the position in any future debt relief negotiations with the Dystopian government that debt contracted after the date of this announcement is illegitimate and instruct our representatives in multinational institutions to behave in accordance with these principles.
- Oppose new loans and investment guarantees from the International Monetary Fund, the World Bank, or other multilateral institutions.
- Propose at the Administrative Council of the International Center for the Settlement of Investment Disputes (ICSID) that the Convention of ICSID be modified to ensure that any ICSID-appointed chairmen of panels arbitrating Dystopian disputes should recognize the right of a successor government to alter the terms of contracts.
- Not extend bilateral loans to the current Dystopian government or provide investment guarantees to investors seeking to sign contracts for Dystopian assets.
- Support the decision of a new government that arises in Dystopia to refuse to honor contracts entered into after this date and take the position, through our representatives at multilateral institutions such as the International Monetary Fund and the World Bank, that this is a legitimate action of the new government.

Annex E

Working Group member biographies

Seema Jayachandran (Co-Chair)

Assistant Professor of Economics, Stanford University

Seema Jayachandran is an assistant professor in the Department of Economics at Stanford University. She is also a research fellow of the National Bureau of Economic Research and a research affiliate of the Bureau for Research and Economic Analysis of Development. Her research focuses on health, education, and labor markets in developing countries. Previously, she was a Robert Wood Johnson Scholar in Health Policy Research at the University of California, Berkeley, and a management consultant at McKinsey & Company. She earned a PhD in economics from Harvard University, a master's degree in physics and philosophy from the University of Oxford where she was a Marshall Scholar, and a bachelor's degree in electrical engineering from the Massachusetts Institute of Technology.

Michael Kremer (Co-Chair)

Non-Resident Fellow, Center for Global Development
Gates Professor of Developing Societies, Department of Economics, Harvard University

Michael Kremer is a non-resident fellow at the Center for Global Development, the Gates Professor of Developing Societies in the department of economics at Harvard University, and senior fellow at the Brookings Institution. He is a fellow of the American Academy of Arts and Sciences and the recipient of a MacArthur Fellowship and a Presidential Faculty Fellowship, and he was named a young global leader by the World Economic Forum. Kremer's recent research examines education and health in developing countries, immigration, and globalization in addition to illegitimate debt. He and Rachel Glennerster authored *Strong Medicine: Creating Incentives for Pharmaceutical Research on Neglected Diseases*, which won the Association of American Publishers Award for the Best Professional/Scholarly Book in Medical Science. He is a recipient of the International Health Economics Association's Kenneth J. Arrow Award for best paper in health economics and was named one of the 50 researchers of the year by *Scientific American* in 2006.

John Williamson (Co-Chair)

Visiting Fellow, Center for Global Development
Senior Fellow, Peterson Institute for International Economics

John Williamson is a visiting fellow at the Center for Global Development and a senior fellow at the Peter G. Peterson Institute for International Economics. He was project director for the UN High-Level Panel on Financing for Development (the Zedillo Report) in 2001; on leave as chief economist for South Asia at the World Bank during 1996–99; economics professor at Pontifícia Universidade Católica do Rio de Janeiro (1978–81), University of Warwick (1970–77), Massachusetts Institute of Technology (1967, 1980), University of York (1963–68), and Princeton University (1962–63); adviser to the International Monetary Fund (1972–74); and economic consultant to the U.K. Treasury (1968–70). He is author, co-author, editor, or co-editor of numerous studies on international monetary and development issues.

Nancy Birdsall

President, Center for Global Development

Nancy Birdsall is the Center for Global Development's founding president. From 1993 to 1998 she was executive vice president of the Inter-American Development Bank, the largest of the regional development banks, where she oversaw a $30 billion public and private loan portfolio. Before that she worked 14 years in research, policy, and management positions at the World Bank, including as director of the Policy Research Department. She is the author, co-author, or editor of more than a dozen books and more than 100 articles in scholarly journals and monographs. Shorter pieces of her writing have appeared in dozens of U.S. and Latin American newspapers and periodicals. She received her Ph.D. from Yale University and her M.A. from Johns Hopkins School of Advanced International Studies. Prior to launching the Center for Global Development, she served for three years as senior associate and director of the Economic Reform Project at the Carnegie Endowment for International Peace, where her work focused on globalization, inequality, and the reform of the international financial institutions.

Lee C. Buchheit

Partner, Cleary Gottlieb Steen & Hamilton LLP

Lee C. Buchheit is a partner in the New York office of Cleary Gottlieb Steen & Hamilton LLP. His practice focuses on international and corporate transactions, including Eurocurrency financial transactions, sovereign debt management, privatization, and project finance. He is the author of two books in international law and more than 40 articles on professional matters. He has served as an adjunct professor at the School for International and Public Affairs of Columbia University (1994–97), as a visiting professor at Chuo University in Japan (1997–98), as a lecturer on law at Harvard Law School (2000), as a visiting lecturer in law at Yale Law School (2005), as an adjunct professor of law at Duke University Law School (2006–07), and as an adjunct professor of law at New York University Law School (2008). He has also for many years been a visiting professor at the Centre for Commercial Law Studies at the University of London. He joined the firm in 1976 and became a partner in 1984. From 1987 to 1990 he was resident in the Hong Kong office; from 1979 to 1982, in the London office; and from 1976 to 1979, in the Washington, D.C. office. He received a J.D. from the University of Pennsylvania Law School in 1975 and a diploma in international law from Cambridge University in 1976. He received an undergraduate degree from Middlebury College. He is a member of the Bars in New York, the District of Columbia, and Pennsylvania.

Joshua Cohen

Professor of Political Science, Philosophy & Law, Stanford University

Joshua Cohen is a professor of law, political science, and philosophy at Stanford University and director of the Program on Global Justice at the Foreign Service Institute. He is a political theorist, trained in philosophy, with a special interest in issues that lie at the intersection of democratic norms and institutions. He has written extensively on issues of democratic theory, particularly deliberative democracy and the implications for personal liberty, freedom of expression, and campaign finance. Currently, he is concentrating his scholarship on issues of global justice, including the foundations of human rights, distributive fairness, and supranational democratic governance. His many publications on political philosophy include several written with University of Michigan law professor Joel Rogers: *On Democracy* (1983), *Inequity and Intervention: The Federal Budget and Central America* (1986), *Rules of the Game* (1986), and *Associations and Democracy* (1995). A first volume of his selected papers, *Philosophy, Politics, Democracy* was published by Harvard University Press (2009), and *Rousseau: A Free Community of Equals* was published by Oxford University Press (2010). He is also editor of *Boston Review*, a bimonthly magazine of political, cultural, and literary ideas, and he has edited 18 books that grew out of forums that initially appeared in *Boston Review*. Prior to joining Stanford University, he was at the Massachusetts Institute of Technology (M.I.T.), where he served as professor of philosophy and political science and as chair of both departments. He is a fellow of the American Academy of Arts and Sciences, and among his many honors are the Harold E. Edgerton Award, the highest honor given to young faculty at M.I.T, the James and Ruth Levitan Prize in the Humanities, multiple teaching awards from M.I.T., and the Carlyle Professorship at Oxford University in 1999.

Paul Collier

Director, Centre for the Study of African Economies, Oxford University Economics Department

Paul Collier is professor of economics and director of the Centre for the Study of African Economies at Oxford University. He took a five-year public service leave for 1998–2003 during which he was director of the Research Development Department of the World Bank. He is also a professeur invité at Centre d'Études et de Recherches sur le Développement International, Université d'Auverge, and at Paris 1. In 2008 he was awarded the title Commander of the Order of the British Empire for services to scholarship and development. He is the author of *The Bottom Billion*, which won the Lionel Gelber, Arthur Ross, and Corine Awards in 2008 and was the joint winner of the Estoril Global Issues Distinguished Book Prize in May 2009. His second book, *Wars, Guns and Votes: Democracy in Dangerous Places* was published in March 2009, and his latest book, *The Plundered Planet: How to Reconcile Prosperity with Nature* was published in May 2010. He is currently an adviser to the Strategy and Policy Department of the International Monetary Fund and to the Africa Region of the World Bank; and he has advised the U.K. government on its recent white paper on economic development policy. He writes a monthly column for *The Independent* and also writes for *The New York Times*, *The Financial Times*, *The Wall Street Journal*, and *The Washington Post*. His research covers the causes and consequences of civil war, the effects of aid, and the problems of democracy in low-income and natural resources–rich societies.

Kimberly Elliott

Senior Fellow, Center for Global Development

Kimberly Ann Elliott is a senior fellow at the Center for Global Development. She is the author or co-author of numerous books and articles on a variety of trade policy and globalization issues, including uses of economic leverage in international negotiations (both economic sanctions for foreign policy goals and trade threats and sanctions in commercial disputes). Her most recent book is *Delivering on Doha: Farm Trade and the Poor*, which was co-published in July 2006 by the Center for Global Development and the Peterson Institute for International Economics, where she worked prior to joining the Center for Global Development. Other publications include *Can International Labor Standards Improve under Globalization?* (with Richard B. Freeman, 2003), *Corruption and the Global Economy* (1997), *Reciprocity and Retaliation in US Trade Policy* (with Thomas O. Bayard, 1994), *Measuring the Costs of Protection in the United States* (with Gary Hufbauer, 1994), and *Economic Sanctions Reconsidered* (with Gary Hufbauer and Jeffrey Schott, 3rd. ed., 2007). In 2002–03 she served on the National Academies Committee on Monitoring International Labor Standards. She received an M.A. with distinction in security studies and international economics from the Johns Hopkins School of Advanced International Studies (1984) and a B.A. with honors in political science from Austin College (1982). In 2004 Austin College named her a Distinguished Alumna.

Jesus P. Estanislao

President and Chief Executive Officer, Institute of Corporate Directors

Jesus P. Estanislao currently serves as chair of the Institute of Corporate Directors and the Institute for Solidarity in Asia (both governance advocacy institutes). He also chairs the Board of Advisers of the Philippine Navy. He served as secretary of finance and previously as secretary of socioeconomic planning as well as chair and CEO of the Development Bank of the Philippines in the administration of President Corazon Aquino. He was the founding president of the University of Asia and the Pacific, which grew out of the Center for Research and Communication, of which he was the founding executive director. He was also the first dean of the Asian Development Bank Institute in Tokyo. He has a Ph.D. in economics from Harvard University. He was awarded the Philippine Legion of Honor by the Philippine government and the Management Man of the Year for 2009 by the Management Association of the Philippines.

Charmian Gooch

Director, Global Witness

Charmian Gooch is the co-founder and co-director of the Nobel Peace Prize–nominated campaigning organization, Global Witness, which addresses the links between natural resource exploitation and the funding of conflict and corruption. She jointly led its first campaign, which exposed the illegal trade in timber between the Khmer Rouge and Thai logging companies and their political and military backers. This resulted in the cutting off of logging revenue to the Khmer Rouge and put forestry reform at the center of international donor policies. In 1988 she launched Global Witness's second groundbreaking campaign, combating conflict diamonds, following detailed research and investigations across Africa and Europe. Following on from this she led international policy work to develop the Kimberley Process. In 2003 Global Witness was a co-nominee for the Nobel Peace Prize for its campaigning on conflict diamonds. In 2005 she was jointly presented with The Gleitsman Foundation International Activist Award alongside fellow founder directors Simon Taylor and Patrick Alley. In 2007 Global Witness received the Center for Global Development/Foreign Policy Magazine Commitment to Development Ideas in Action Award.

Henrik Harboe

Deputy Director General, Multilateral Bank and Finance Section, Norwegian Ministry of Foreign Affairs

Henrik Harboe is deputy director general of the Multilateral Bank and Finance Section of the Norwegian Ministry of Foreign Affairs. This section is responsible for Norway's relationship with the multilateral development banks and for Norwegian debt relief policy. The Norwegian government has an ambitious debt relief policy and is supporting further development of international debt relief policy on such issues as illegitimate and odious debt , and responsible lending and borrowing. Henrik Harboe has a master's degree in economics from the London School of Economics and his BSc in economics from the University of Oslo. He has previously worked for the Norwegian Agency for Development Cooperation (NORAD), for the United Nations Development Programme, and as a consultant.

Stephen D. Krasner

Graham H. Stuart Professor of International Relations Senior Fellow, Freeman Spogli Institute Senior Fellow, Hoover Institution, Department of Political Science, Stanford University

Stephen D. Krasner is the Graham H. Stuart Professor of International Relations at Stanford University, a senior fellow and deputy director at the Freeman Spogli Institute, and a senior fellow at the Hoover Institution and at the Stanford Center for International Development. From February 2005 to April 2007 he was director of the Policy Planning Staff at the U.S. Department of State. He received his B.A. from Cornell University in 1963, M.A. from Columbia University in 1967, and Ph.D. from Harvard University in 1972. Before coming to Stanford University in 1981 he taught at Harvard University and the University of California, Los Angeles. He was the chair of the Political Science Department from 1984 until 1991 and editor of *International Organization* from 1986 to 1992. His writings have dealt primarily with the political determinants of international economic relations, U.S. foreign policy, and sovereignty. He has been a fellow at the Center for Advanced Studies in the Behavioral Sciences (1987–88) and at the Wissenschaftskolleg zu Berlin (2000–01). He is also a fellow of the American Academy of Arts and Sciences and a member of the Council on Foreign Relations.

Benjamin Leo

Research Fellow, Center for Global Development

Ben Leo is a research fellow at the Center for Global Development. He is currently working on debt sustainability in low-income countries, the IDA-16 replenishment and related resource allocation issues, Sudan and Zimbabwe debt relief, private sector development, and Africa capital markets. He worked at the White House National Security Council as director for African Affairs from 2006 to 2008. At the White House he advised the president and national security advisor on Central, Eastern, and Southern African countries and regional economic issues. Before that, he held a number of roles at the U.S. Department of the Treasury focusing on development finance and Africa. In these roles he helped design and implement several large international development initiatives, such as the Multilateral Debt Relief Initiative, the U.S.-Africa Financial Sector Initiative, and the U.S. Basic Education Initiative. Between 2008 and 2010 he spearheaded business development efforts in Africa and the Middle East for Cisco Systems. He is an adjunct professor at Georgetown University and the author of numerous development finance and policy articles.

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Todd Moss is vice president for corporate affairs and senior fellow at the Center for Global Development, where he is also acting vice president for programs. In addition to his institutional responsibilities, he directs the Emerging Africa Project, and his work focuses on U.S.-Africa relations and financial issues facing Sub-Saharan Africa, including policies that affect private capital flows, debt, and aid. He is currently working on the economic crisis in Zimbabwe and has led the Center for Global Development's work on Nigerian debt, the African Development Bank, and the IDA-15 replenishment round. He served as deputy assistant secretary in the Bureau of African Affairs at the U.S. Department of State from May 2007 to October 2008 while on leave from the Center for Global Development. He originally joined the Center for Global Development in July 2003 from the World Bank, where he served as a consultant and advisor to the Chief Economist in the Africa Region. Prior to joining the World Bank, he was a lecturer at the London School of Economics in the postgraduate Development Studies Institute. Previously, he has worked as an analyst for the Economist Intelligence Unit and was assistant director of U.S. Policy Programs at the Overseas Development Council. Todd is an adjunct professor at Georgetown University and the author of numerous articles and books, including *Adventure Capitalism: Globalization and the Political Economy of Stock Markets in Africa* (Palgrave Macmillan, 2003) and *African Development: Making Sense of the Issues and Actors* (Lynne Rienner, 2007).

Richard Newcomb

Partner, DLA Piper

Richard Newcomb is a partner of DLA Piper based in Washington, D.C., where he is chair of the International Trade Practice Group. Prior to DLA Piper he chaired the International Group at Baker Donelson. He has considerable international experience dealing with target governments, frontline states, like-minded allies, multilateral organizations (the United Nations, the European Union, and others), financial and business communities worldwide, and others responsible for compliance with asset controls, economic

sanctions, and embargo programs. From 1987 to 2004 he served as director of the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury. Throughout his tenure he oversaw the administration and enforcement of 39 economic sanctions programs in furtherance of U.S. foreign policy and national security goals. His leadership guided the agency through many of the major foreign policy challenges the country has experienced in the past two decades, from the advent of multilateral sanctions against Iraq in 1990—coupled with a protective blocking of approximately $50 billion in Kuwaiti assets—to the transformation of the agency after the attacks of September 11, 2001, to track and disrupt terrorist organizations and their financing networks. In his time at OFAC, he was responsible for implementing economic sanctions and asset controls against Burma, Cuba, Iran, Liberia, Libya, Sudan, Zimbabwe, narcotics traffickers in Colombia, and narcotics kingpins and their networks operating worldwide, as well as for maintaining the prohibition against financial transactions with Syria. Other economic sanctions that he implemented and saw through to completion included programs targeting the Taliban, North Korea, Serbia, Angola, Haiti, South Africa, Panama, Vietnam and Cambodia. Prior to his assignment with OFAC, he held a number of other positions in the Treasury Department, including director of the Office of Trade and Tariff Affairs and deputy to the assistant secretary (Regulatory, Trade and Tariff Affairs), where he was the principal adviser to the assistant secretary for enforcement on customs, international trade, commercial, and regulatory matters.

Yaga Venugopal Reddy

Emeritus Professor, University of Hyderabad
Former Governor, Reserve Bank of India

Yaga Venugopal Reddy served for five years as the governor of the Reserve Bank of India and retired on September 5, 2008. He is currently an emeritus professor at the University of Hyderabad. He has been a member of the Commission of Experts of the President of the UN General Assembly on Reforms of the International Monetary and Financial System. He has also been a guest of the Committee on Global Thought at Columbia University. His contributions were recognized by the award of Doctor of Letters (*honoris causa*) by Sri Venkateswara University, India and Doctor of Civil Law (*honoris causa*) by the University of Mauritius. He was also elected as honorary fellow of the London School of Economics and Political Science. He was honored in October 2006 as one of the five original reformers of India. Subsequently, he earned the reputation of being a conservative central banker. More recently, in the context of the global financial crisis, he is described as "the man who saved India." Prior to being the governor, he was executive director for India, Sri Lanka, Bangladesh, and Bhutan at the International Monetary Fund since August 2002. Prior to this, he was deputy governor of the Reserve Bank of India. Formerly, he was secretary of Finance and additional secretary of Commerce in the government of India. He served the government of Andhra Pradesh in several capacities, including principal secretary and secretary of Finance and Planning, collector, and district magistrate. He was also an adviser to the World Bank. He has been closely associated with several academic institutions in teaching and research capacities. He has authored several articles and published a number of books. His latest book is *India and the Global Financial Crisis: Managing Money and Finance* (Orient BlackSwan, 2009). He is the recipient of the second highest civilian award from the government of India.

Nuhu Ribadu

Visiting Fellow, Center for Global Development (on leave)

Nuhu Ribadu is a visiting fellow at the Center for Global Development. His work there, which began in April 2009, is to draw lessons from his experience for combating corruption worldwide and to provide fresh thinking on the role of international institutions in this fight. Before joining the Center for Global Development, he was head of Nigeria's Economic and Financial Crimes Commission from 2003 to 2007. He served on several economic and anticorruption commissions and was a key member of Nigeria's economic management team that drove wide-ranging public sector reforms. He was awarded with the World Bank's Jit Gill Memorial Award for Outstanding Public Service in recognition of his efforts. Prior to leading the Economic and Financial Crimes Commission, he spent 18 years on the Nigerian police force. A lawyer by training, he received his Bachelors and Masters in law from Ahmadu Bello University in Nigeria. He is also a senior fellow at St. Anthony's College at Oxford University.

Neil Watkins

Director of Policy and Campaigns, ActionAid USA

Neil Watkins is currently director of Policy and Campaigns at ActionAid USA, an international antipoverty agency working in 50 countries that take sides with poor people to end poverty and injustice together. From 2005 to March 2010 he served as executive director of Jubilee USA Network, an alliance of 75 religious denominations, development agencies, and human rights groups building the political will for poor country debt cancellation and more responsible lending by international financial institutions. Under his leadership Jubilee USA won passage of groundbreaking debt relief legislation in the U.S. Congress and led a successful advocacy campaign to get the Obama administration to commit funding to and support for debt cancellation for Haiti, freeing up $40 million a year for investment in poverty reduction. He has testified before the House Financial Services Committee and House Foreign Affairs Subcommittee on Africa and Global Health on debt and development topics. Prior to becoming Jubilee's director in January 2005, he led Jubilee's outreach and communications work. From 2000 to 2003 he coordinated campaigns at the Center for Economic Justice. From 1998 to 2000 he was a research associate at the Center for Economic and Policy Research and the Preamble Center in Washington, where he authored several papers on the impact of International Monetary Fund and trade policies on Africa and Latin America. He has been a frequent commentator on debt and development issues on radio and television and in print media. He holds a degree in International Affairs from the School of Foreign Service at Georgetown University, with a minor in African Studies. He spent a year in Dakar, Senegal, studying and working on issues of debt and development in 1996–97.

Ernesto Zedillo

Director, Yale Center for the Study of Globalization
Former President, Mexico

Ernesto Zedillo is the director of the Center for the Study of Globalization, professor in the field of international economics and politics, and adjunct professor of forestry and environmental studies at Yale University. He was president of Mexico from 1994 to 2000. He earned his undergraduate degree at the National Polytechnical Institute of Mexico and his master's and doctoral degrees at Yale University. After leaving office, he became chairman of the UN High-Level Panel on Financing for Development and was a distinguished visiting fellow at the London School of Economics. He served as co-coordinator of the UN Millennium Project Task Force on Trade and was co-chairman of the UN Commission on the Private Sector and Development, along with Prime Minister Paul Martin of Canada. He is currently chair of the Global Development Network, co-chairman of the International Task Force on Global Public Goods, and a member of the High-Level Commission on the Legal Empowerment of the Poor. In April 2005 he was appointed by the UN Secretary-General to serve as his envoy for the 2005 World Summit in which heads of state and government reviewed implementation of the Millennium Declaration. He is a member of the Trilateral Commission, the International Advisory Board of the Council on Foreign Relations, and the Board of Directors of the Peterson Institute for International Economics and is a trustee of the World Economic Forum. With decorations from the governments of 32 countries, he is the recipient of honorary doctor of laws degrees from Yale University and Harvard University, and he served as Harvard's commencement speaker in 2003. He holds an honorary doctor of humane letters from the University of Miami and an honorary degree from the University of Massachusetts, Amherst.

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