forces the reader to focus on the structural legal challenges of WTO law – which is indispensable for the development of trade law in today's complex society.

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Yvonne Wong, *Sovereign Finance and the Poverty of Nations: Odious Debt in International Law*, Cheltenham, Edward Elgar Publishing, 2012, 176 pp, ISBN 9780857935021 (hb), £65.00, (online) £58.50.
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In what is a very timely contribution to the literature, Yvonne Wong critically revisits the origins of the international-law concept of odious debt and its evolution. She lays out in detail her own theory of a New Approach Odious Debts Doctrine (NAODD) and delineates how such a revised concept could operate in practice. The book's declared goal is 'to contribute to the doctrine's evolution into law' (p. 3).

In international law, the theory of odious debt holds that the national debt incurred by a regime for purposes that do not serve the best interests of the debtor state's population, and without the latter's consent, should be considered void *ab initio*. The theory of odious debt was originally formalized in 1927 by Alexander Sack, a Paris-based legal theorist of Russian origin. As reasoned by Sack at the time, whenever a despotic regime contracts a debt, not for the needs or in the interests of the state, but rather in order to strengthen itself or to suppress a popular insurrection, etc., this debt is 'odious' for its own people. As a consequence, this debt does not bind the nation; it is a debt of the regime, a personal debt contracted by the ruler, and consequently it falls with the demise of the regime. Thus, following a regime change, odious debt could only be reclaimed from the former ruler as personal debt but could no longer be treated as national debt.

Clearly and logically structured into eight substantial chapters plus a general introduction and conclusive remarks, and written in a very clear and concise manner, despite a certain tendency to use overly dramatic language, Wong's analysis, though essentially legal in nature, relies also successfully on political science and economic concepts.

In the opening chapter of her book, Wong provides a brief discussion of the origins of the concept of odious debt and its three salient features according to Sack, namely that (i) the debt has not received the general consent of the nation, (ii) the borrowed funds are contracted and spent in a manner that is contrary to the interests of the nation, and (iii) the creditor lends in awareness of these facts. While acknowledging that the concept of odious debt has featured prominently in recent transactional debt restructurings and in debt forgiveness campaigns, Wong concludes very convincingly that a legally recognizable doctrine of odious debt, amounting to one of the sources of international law under Article 38 of the Statute

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of the International Court of Justice (ICJ), does not exist at present. In this context, while Wong's review of relevant jurisprudence is highly insightful, the objective reader is left a bit puzzled by the author's efforts to disqualify Alexander Sack as being one of the most highly qualified publicists of the various nations in the sense of Article 38(1)(d) of the Statute of the ICJ when it comes to the odious debts doctrine. Even assuming Wong is right in observing that Sack 'ended his days penniless in the Bronx in a retirement home built for the previously wealthy' (p. 18), it is difficult to see how the economic success of a scholar could possibly be relevant for judging the value of his or her writings for the evolution of the law. Clearly, while not every single piece produced by a revered scholar may amount to a source of international law in the sense of Article 38(1)(d) of the Statute of the ICJ, even an isolated piece of research by a lesser-known scholar with a less-than-perfect academic and personal life could in principle have such a tremendous impact on the evolution of the law on a given topic to amount to a formal source of international law.

Over the course of the three following chapters, the reader is provided with a highly insightful review of the various sources of sovereign funds and the different investment incentives to which sovereign lenders are subject (Chapter 2), a succinct overview of key aspects of the history of sovereign finance with a more detailed focus on the sovereign debt accumulated by Iraq under the regime of Saddam Hussein (Chapter 3), and a balanced discussion of the link between excessive debt and the poverty of nations (Chapter 4). Wong shows that a comprehensive legal framework for sovereign debt does not exist at present. Instead, the general principle of *pacta sunt servanda* is still the governing feature and informal *ad hoc* negotiations between the debtor and the creditor-driven Paris and London clubs continue to be the means of preference for resolving debt disputes. Because sovereign debt is intergenerational in nature, with no bankruptcy mechanisms as for private persons being available, and is often contracted for extra-commercial reasons, it can quickly become unsustainable. To the extent that debt forgiveness cannot be obtained, this can lead to a devastating debt spiral with increasing portions of new debt being earmarked for interest-rate payments. In this context, Wong does not omit to provide the reader with a succinct presentation of the extrajudicial ways in which the international community currently deals with the unsustainable debt of the world's poorest nations, such as, notably, the Heavily Indebted Poor Country (HIPC) Initiative, put into place jointly by the World Bank and the International Monetary Fund (IMF) in 1996.

Subsequently, Wong presents and discusses three game-changing events, which, according to her, have created a new landscape for sovereign finance (Chapter 5). These events include the emergence of a new set of creditors, notably Chinese sovereign wealth funds; the innovation in communication through contemporary information technology; changing societal expectations for government transparency and accountability, and the increasing popularity of debtor-led debt audits. Most notably, the reader is provided with a critical and balanced discussion of the first official, debtor-led debt audit, conducted in Ecuador. In December 2008, Rafael Correa, president of Ecuador, had declared Ecuador's national debt illegitimate odious debt, based on the argument that it was contracted by corrupt and despotic

prior regimes. In the end, Ecuador did not repudiate its entire debt but preferred to negotiate a significant reduction of its debt volume with the bondholders, thereby safeguarding Ecuador's reputation as a reliable sovereign debtor. Wong mentions only very briefly that, inspired by Ecuador's experience, and in light of the ongoing sovereign debt crisis afflicting several members of the eurozone, academics and civil society have made proposals for independent debt audits to be conducted also for Ireland and Greece. Wong rightly points out that, unlike Ecuador's debt audit, the ones suggested for Greece and Ireland have not been sanctioned by the governments of these states. Indeed, the Troika of IMF, European Central Bank (ECB), and European Commission would likely not be amused by such unilateral moves by Athens and Dublin. While Wong's choice not to enter into the details of Greece's exploding debt is perfectly understandable in light of her efforts to maintain the focus of her book on the evolution of the concept of odious debt, time will show to what extent there is need for further research on the potential relevance of the odious debt doctrine to one or several European states that are being kept in the eurozone at all cost – with this cost likely having to be borne by several future generations.

Based on her intermediary conclusion that 'odious debt' language is currently being used in an unpredictable and inconsistent manner in sovereign debt negotiations and that there are no clear rules as to what constitutes odious debt or when it can be used as a basis for unilateral repudiation, Wong considers the time ripe for a revision of the existing framework for sovereign debt. While the actual original contribution is made in the final Chapter 8 of the book, setting forth in detail the earlier mentioned NAODD, Chapters 6 and 7 further prepare the ground for the presentation of the revised concept.

Thus, Chapter 6 very convincingly discusses several reasons or justifications, such as efficient process and optimal liability considerations, for why the concept of odious debt should be explicitly incorporated into the international legal framework for sovereign debt. It is precisely against these justifications that Chapter 7 demonstrates the shortcomings of the three main existing proposals for how the odious debts doctrine could apply in practice – the reliance on tribunals to assess *ex post* whether debt qualifies as odious, the odious regimes approach relying on an *ex ante* qualification of a given regime as odious, and an approach favouring maximum political margin of manoeuvre. For purposes of illustration, Wong tests each of the existing reform proposals against the case of Iraq presented in detail earlier in the book, which greatly helps the reader to focus on the key aspects of her arguments.

With her revised concept, the NAODD, presented in detail in Chapter 8 of the book, Wong suggests a procedural mechanism for the eradication of odious debts. The NAODD imposes a duty on lenders to register on a publicly accessible website, thereby disclosing the salient terms of funds loaned to sovereign debtors. Information required to be disclosed would include a statement of how funds will benefit the population of the debtor state. Under Wong's revised concept, where financiers fail to discharge their duty to transparency, the presumption should be that the debt contract is odious and thus invalid. It is suggested that a tribunal could assist in settling disputes after the fact as to whether a sovereign financier has properly discharged its duties to the population of the debtor state. In order to ensure broad

participation in the new mechanism, Wong suggests making adherence to the mechanism a precondition for membership in existing multilateral organizations such as the United Nations or the World Trade Organization (WTO).

As explained very convincingly by Wong, imposing specific due-diligence, disclosure, and monitoring obligations on the investor does not necessarily increase the costs of investments for financiers as it may well enable investors to make better investment decisions thanks to greater certainty regarding contract enforceability. Wong seems right to observe that her suggested framework would not create an excessive or novel burden on financiers, as they would only be expected to show the same kind of diligence and care that they would typically apply towards non-sovereign borrowers.

As with any novel proposal relying on innovative and partly provocative arguments, it is, of course, possible to come up with counterarguments to the NAODD as proposed by Wong. In light of the fact that one of the key objectives of her book is to provide a framework for debate and to stimulate future research on the many complex issues involved, this is neither surprising nor necessarily a bad thing. Due to lack of space, this review limits itself to pointing out merely two shortcomings of the NAODD.

First, making participation in the suggested new sovereign debt framework a precondition for membership in multilateral organizations makes little sense at a time when organizations such as the United Nations, the IMF, or the World Bank already possess almost universal membership. Adding the suggested precondition would amount to rewriting the terms of membership of existing members and could only take the form of formal, cumbersome amendments of the respective multilateral treaties. In the case of the WTO, which probably still has a couple of dozen potential new entrants, one could in theory imagine the suggested precondition to take the form of a 'WTO-plus' commitment enshrined in the acceding member's accession protocol. However, in order not to overburden the accession process with issues unrelated to WTO law *stricto sensu*, and for the sake of avoiding an excessive fragmentation of the WTO legal framework, the WTO membership would seem well advised not to pursue this path.

Second, Wong goes as far as to suggest that there may be a need for an appeals process to be put into place to review the decisions on enforceability of contested sovereign debts. While the book does not pretend to provide an exhaustive analysis of this issue, it mentions several potential candidates that might be considered for the responsibility of ultimate reviewer: the ICJ, the International Centre for the Settlement of Investment Disputes (ICSID), the WTO Dispute Settlement Body, or ad hoc arbitration tribunals. Unfortunately, the book does not leave this question open to debate but expresses a clear preference for relying on the WTO Appellate Body as final review instance since 'it has in place a clear and effective set of procedural rules and is well versed in international trade issues, which are not so far removed from issues pertinent to international finance' (p. 157). Certain narrow conceptual linkages between international monetary/financial law and international trade law notwithstanding, it seems that less would have been more regarding this issue. At a time when the legislative branch of the WTO is entirely paralysed, expanding

the jurisdictional scope of the WTO Appellate Body to a whole new branch of international law does not only seem entirely unrealistic but may well damage the only remaining part of the WTO that really functions well by overburdening it.

Overall, Wong's book is a very timely and highly stimulating contribution to a branch of the literature whose substantial development began only a few years ago. It is expected that readers both familiar and unfamiliar with the concept of odious debt will find this book to be an enjoyable, insightful read which is definitely worth the reader's time.

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