
The new UN principles on SDR: Ways forward

CIGI/IPD, Sovereign Debt Restructuring, NY 22 September 2015

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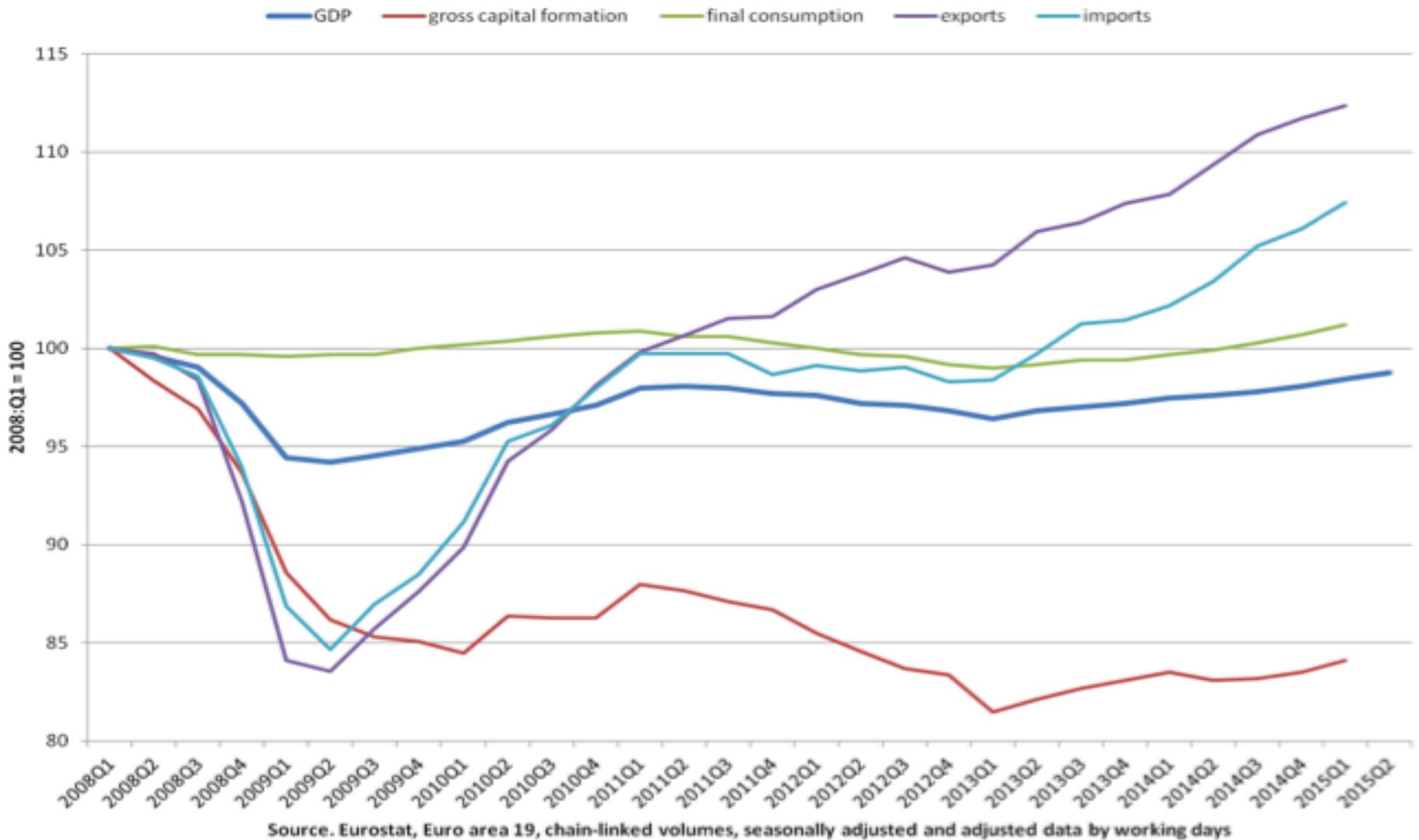
SDRM and the global economic context

- No prospect of substantial ‘recoveries’ in advanced economies: Spectre of secular stagnation (decline in wage share and income inequalities, meager prospects for world trade and export opportunities)
- The ‘new abnormal’: Growth driven by mounting debt levels and asset bubbles in a ‘financialised’ world economy
 - During the years of the Great Moderation (1985 - 2005), global debt levels rose from around US\$ 21 trillion in 1984 to US\$ 87 trillion by 2000 and a staggering US\$ 142 trillion by the end of 2007. Since the Global Financial Crisis another US\$ 57 trillion have been piled on top.

SDRM and the global economic context

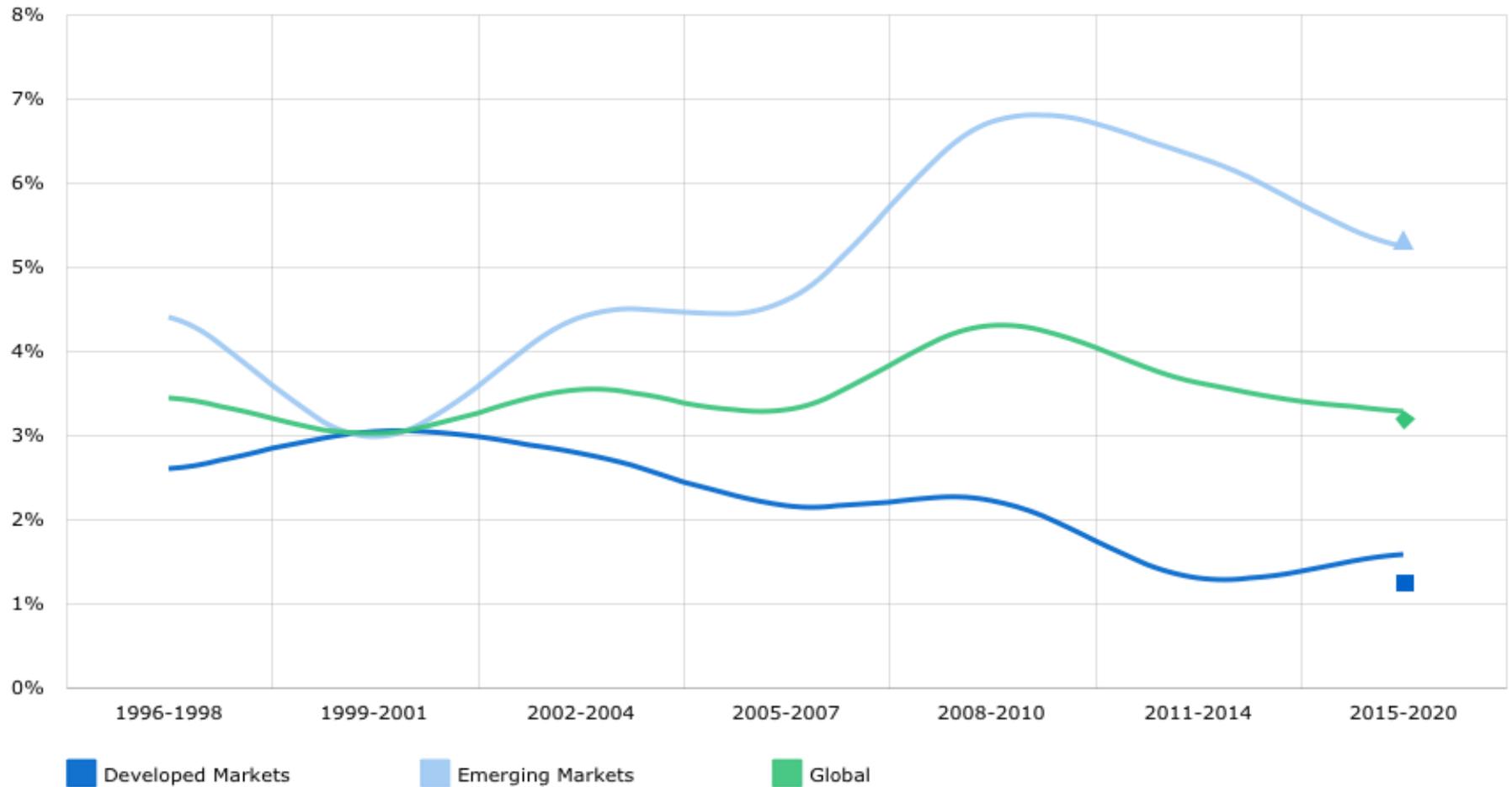
- Emerging market problems unchecked against a background of developing countries having contributed 75% of global growth since 2011.
- Growing vulnerability to sovereign debt crises in developing countries, including due to composition of debt rather than absolute levels of external debt (albeit with these rising).
 - Emerging market private corporate debt reaching USD 2.6 trillion in 2014, tripled since 2008.
- Pending sovereign debt crises of the ‘socialisation of bad private debt’ kind, rather than of the ‘irresponsible public profligacy’ type

Figure 1. The "recovery" in perspective



Source: J. Bibow (2015) Euroland Has No Plan B: It Needs An Urgent Recovery Plan, *Social Europe*, 07 September.

Potential Output Growth Headed Lower, Especially in Emerging Markets; Developed Markets Subdued



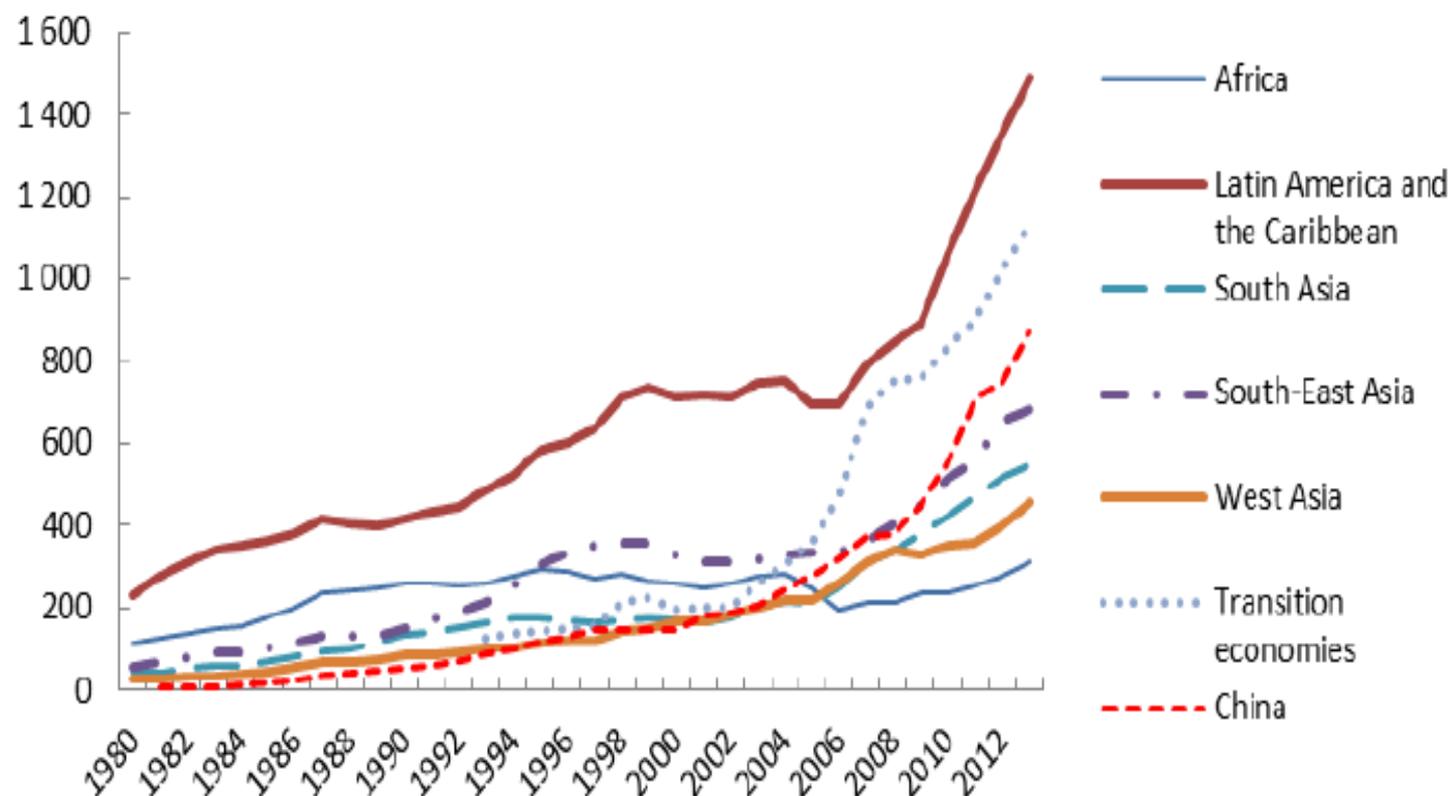
Source: IMF, Morgan Stanley Research forecasts

Taken from “Global Macro: Pros and Cons of Getting Stuck in the Middle,” Morgan Stanley Research, September 11, 2015; section entitled “Emerging-Market Drag.”



External debt in selected country-groups and China, 1980–2013

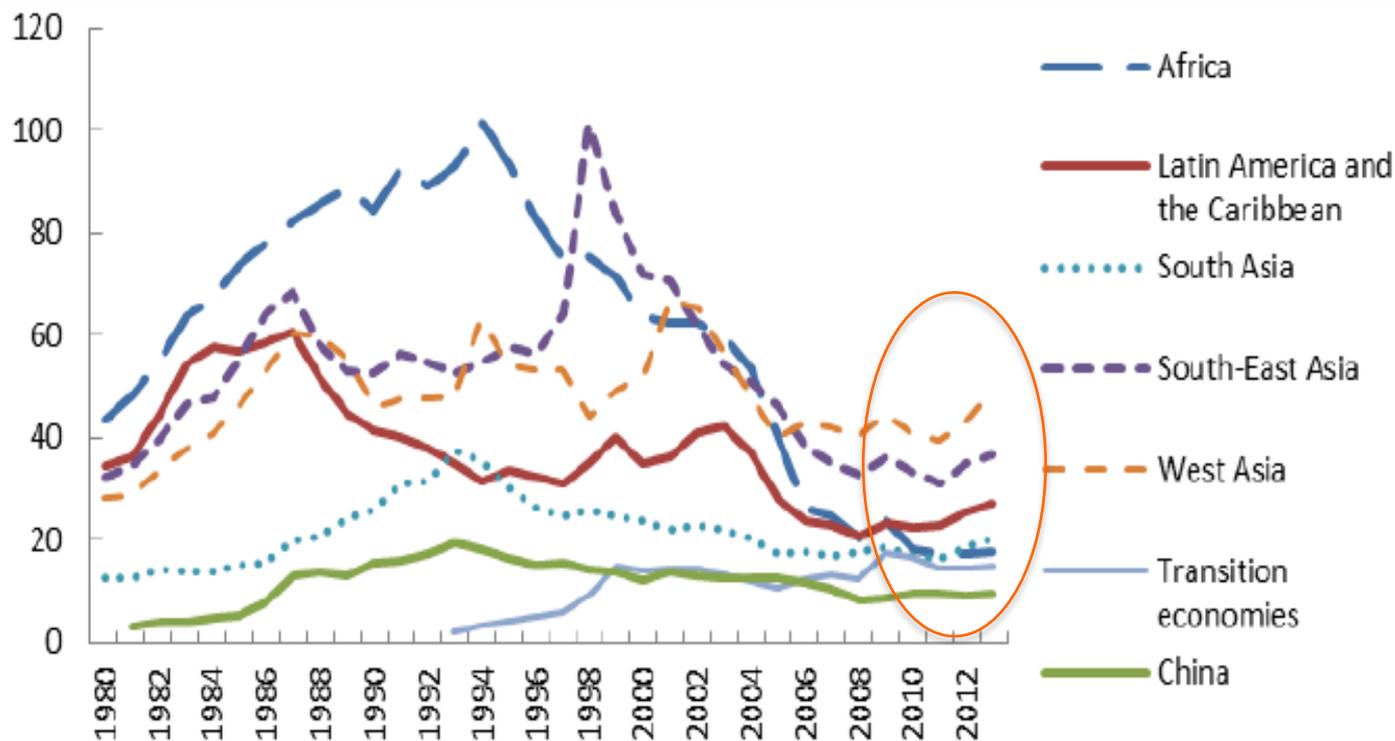
(Billions of current dollars)



Source: UNCTAD secretariat calculations, based on World Bank, *World Development Indicators* database; and national sources.

Note: Aggregates are based on countries that have a full set of data since 1980 (except for the transition economies where the cut-off date was 1993).

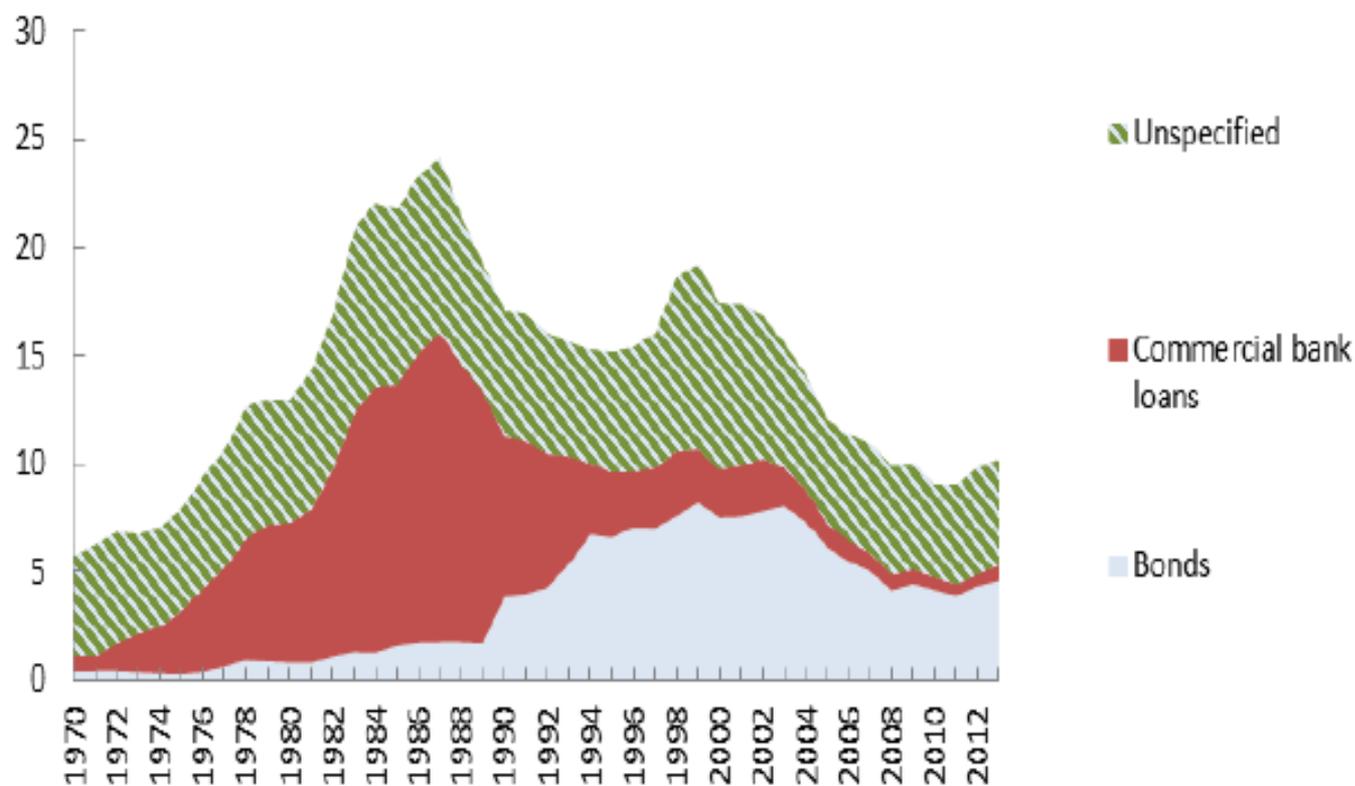
External debt stock as a proportion of GNI, selected country-groups and China, 1980–2013 (Per cent)



Source: UNCTAD secretariat calculations, based on *UNCTADstat*, and World Bank, *World Development Indicators* database; and national sources.

Note: See chart 1.

**Long-term external debt of developing countries owed by private creditors,
by type of debt, 1970–2013**
(Per cent of GNI)



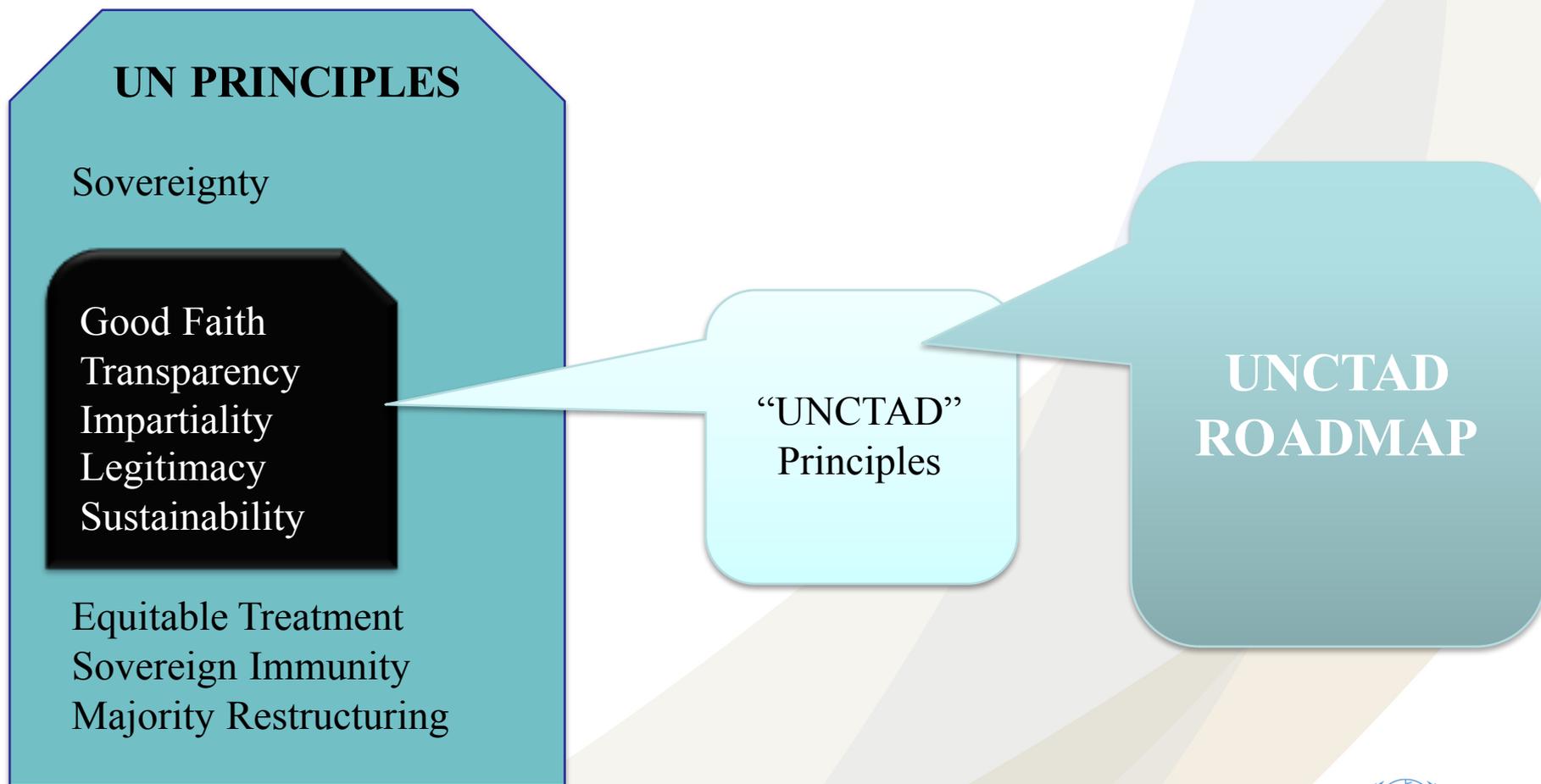
Source: UNCTAD secretariat calculations, based on *UNCTADstat*, and World Bank, *International Debt Statistics* database.

Note: Data refer to all disbursed and outstanding debt at year-end.

SDRM and the global economic context

- Sovereign debt crises should be prevented, not resolved
- Sovereign debt crises will always happen, in the best managed global system, but in the current global economic system they happen systematically.
- International/global SDRM has, of course, both resolution as well as prevention aspects, but remains a limited economic tool for prevention.

The new UN principles on SDR and the UNCTAD Roadmap



Core issues – next steps

- Legal status of “the Principles” on SDR
- Routes to implementation of “the Principles” on SDR
- ‘Translation’ of “the Principles” on SDR into specific steps and regulations for a SDRM (procedural)

Core issues – next steps

- Legal status – how binding/not binding are the nine UN principles on SDR?
 - “general principles of law”
 - an unwritten rule of behavior,
 - recognized in most, though not necessarily all, domestic legal systems
 - possibility of meaningful application in the context of international law
 - customary international law
 - recommendatory character (soft law)
 - Adoption of “the Principles” on SDR at national level?

Core issues – next steps

- Implementation routes:
 - Incorporation in private (market-based) arrangements
 - Advance incorporation into contract choice of law clauses
 - Soft guidelines for parties in their restructuring negotiations
 - Consideration by adjudicative bodies (i.e. domestic courts, arbitration tribunals)
 - Model-Law initiative

Core issues – next steps

- Implementation routes:
 - Semi-formal institutionalisation
 - Existing fora under oversight of an independent body established for this purpose (SDF/DWI): refine and promote internationally recognized debt workout rules and principles, develop expertise and a store accessible information on past negotiations and best practices
 - Ad hoc arbitration (adjudicative/judicial forum and applicable law determined by contract), with or without institutionalisation in permanent body/arbitration panel.

Core issues – next steps

- ‘Translation’ of SD principles into SD workout mechanism with preventative features (UNCTAD roadmap)
 - Three broad objectives:
 - help prevent financial meltdown in countries facing difficulties servicing their external obligations (loss of market confidence, currency collapse and interest rate hikes, large output and employment losses)
 - help facilitate an equitable restructuring of debt that can no longer be serviced according to the original contract.
 - should leave the debtor in a better position to grow, thereby reducing the likelihood of a future restructuring.

Core issues – next steps

- ‘Translation’ of SD principles into SD workout mechanism with preventative features (UNCTAD roadmap)
 - Decision to restructure
 - DSA by international institutions
 - Inclusion of domestic debt
 - Exclusion of short-term trade credits
 - Short-term liquidity provision
 - Standstill
 - Sanction by independent panel/institution (no creditors)?
 - Duration
 - Exemptions
 - Capital controls, Exchange rate controls

Core issues – next steps

- ‘Translation’ of SD principles into SD workout mechanism with preventative features (UNCTAD roadmap)
 - Venue and procedures
 - Ex-ante determined forum, Roundtable
 - Inclusiveness
 - Debt audit
 - Dispute resolution
 - Interim Financing
 - Conditionalities (IMF “debtor-in-possession” financing)
 - Exemption from comprehensive restructuring
 - Settlement and Exit (clear procedure)

Principle	Applications (ex)	Main impact
Sustainability	Decision to restructure DSA indicators and process Standstill Conditionalities Debt audits Contractual innovations (contingent payment provisions, contractual creditor coordination, CACs, etc)	Economic Efficiency Equity
Legitimacy	Independent (ad hoc) arbitration Procedural inclusiveness and predictability (SDRM: standstill, venue and procedures, debt audits) Anti-VF legislation Clarification of pari passu	Political Stability Economic Efficiency
Impartiality	Independent arbitration/oversight bodies DSA indicators and processes	Political Stability Economic Efficiency

Principle	Applications (ex)	Main impact
Transparency	Data transparency Institutional transparency	Equity Political Stability
Good faith	Anti-VF legislation Inter-creditor equality Standstill and stay of litigation Contractual innovations	Economic Efficiency Equity