
The new UN principles on SDR: Ways forward

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

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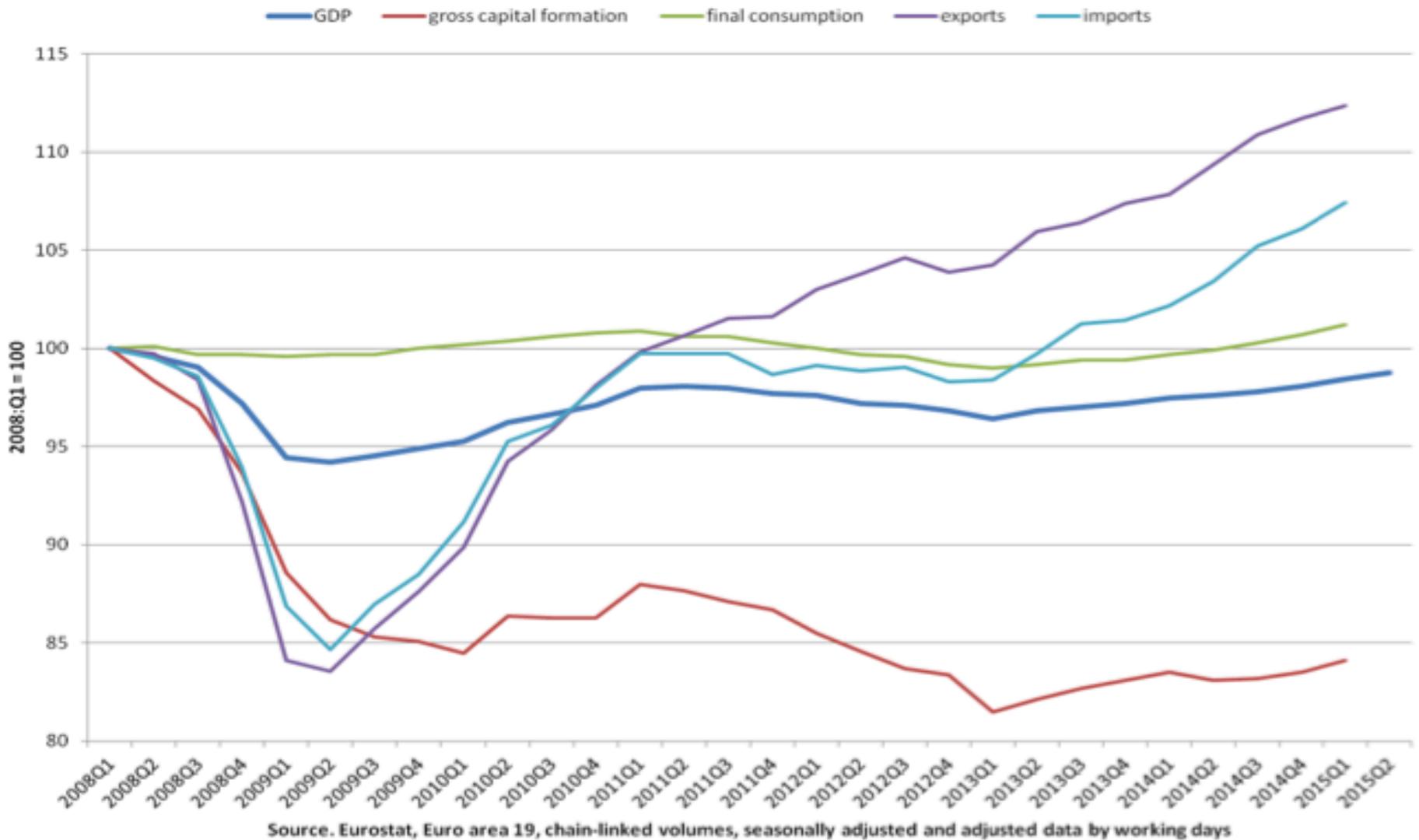
SDRM and the global economic context

- 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

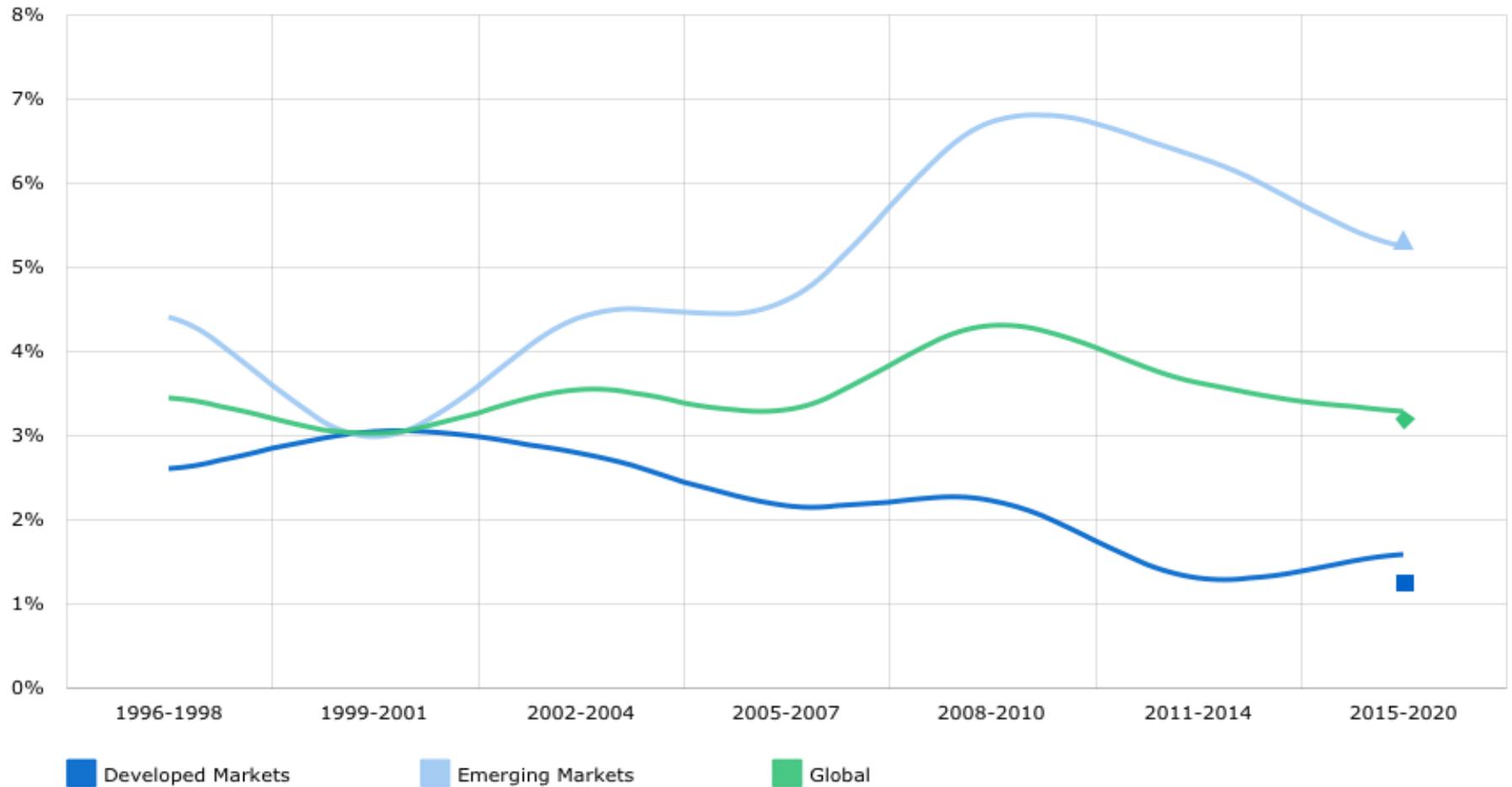
Figure 1. The "recovery" in perspective



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



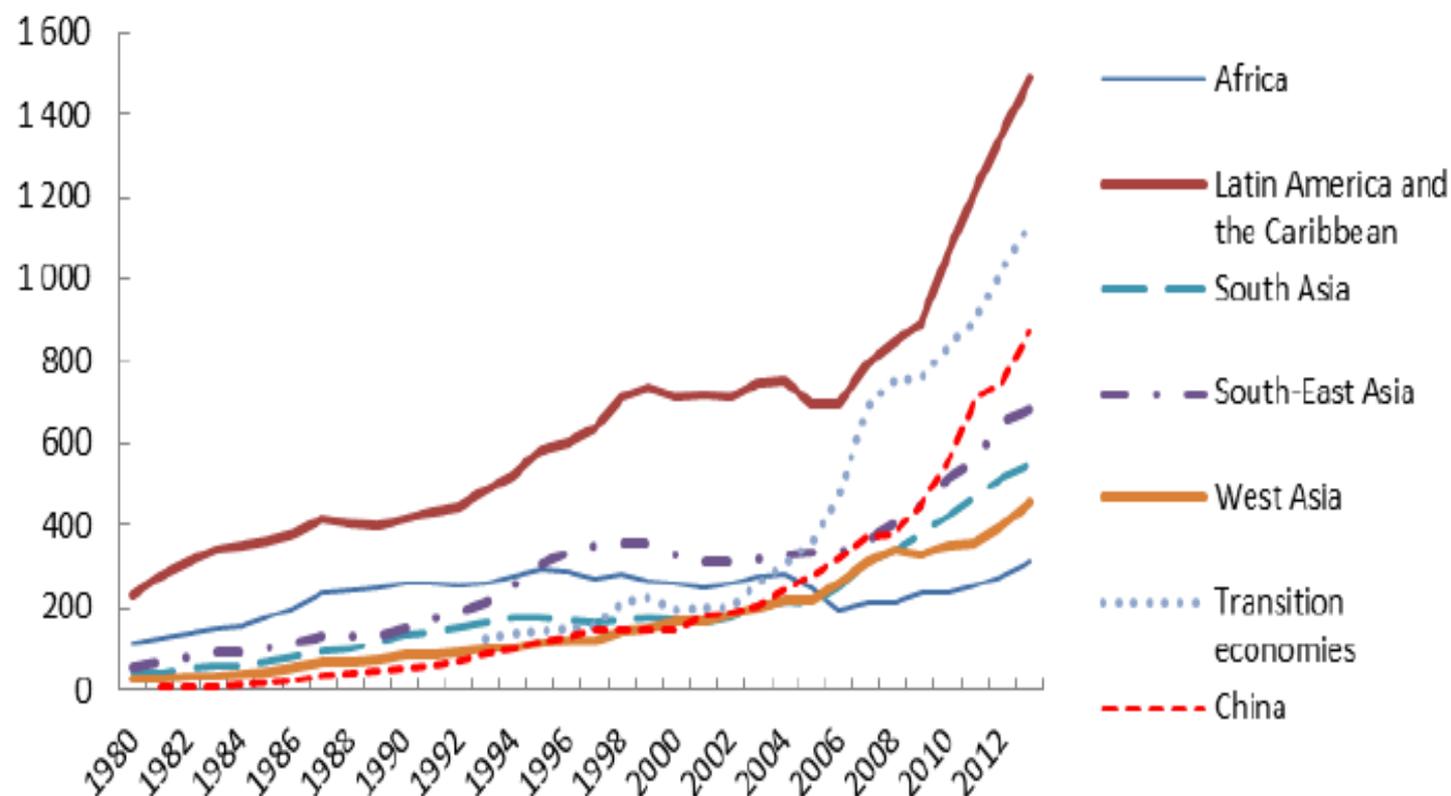
Source: IMF, Morgan Stanley Research forecasts

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

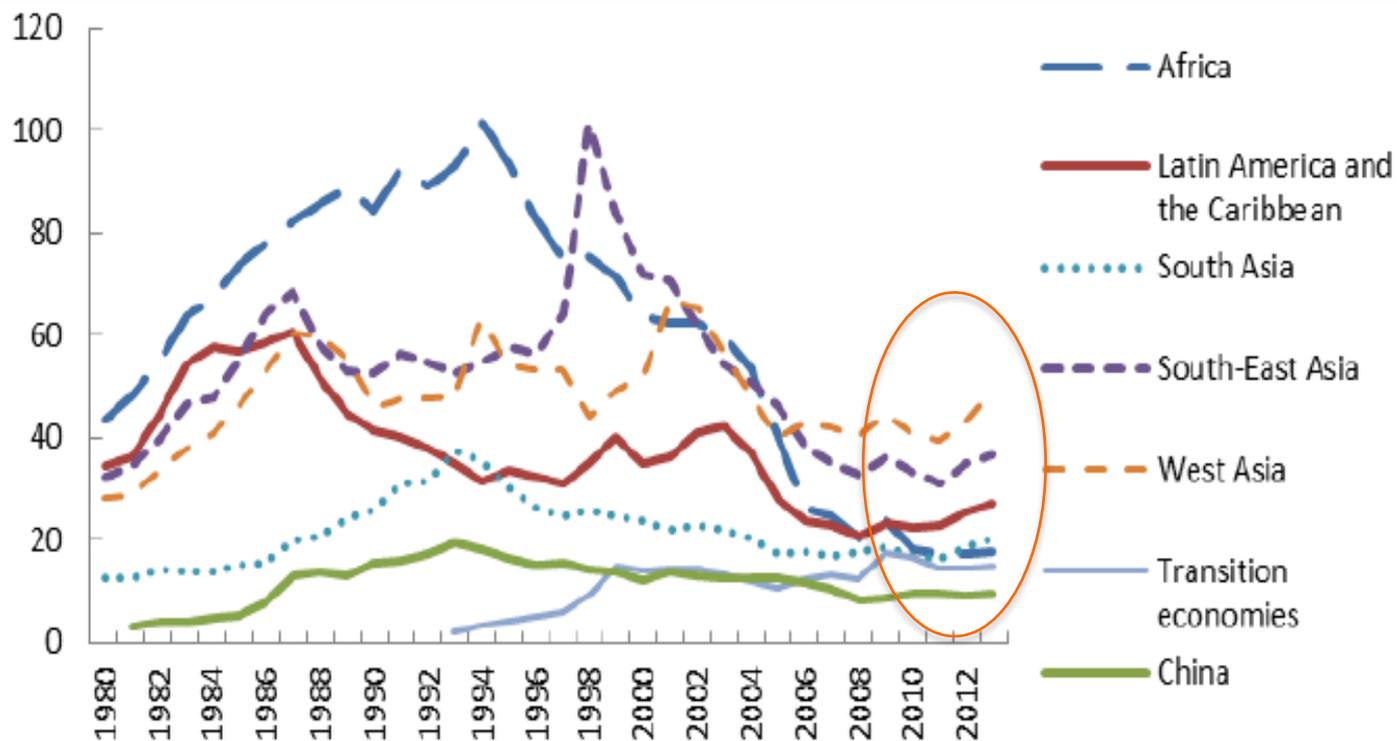
(Billions of current dollars)



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).

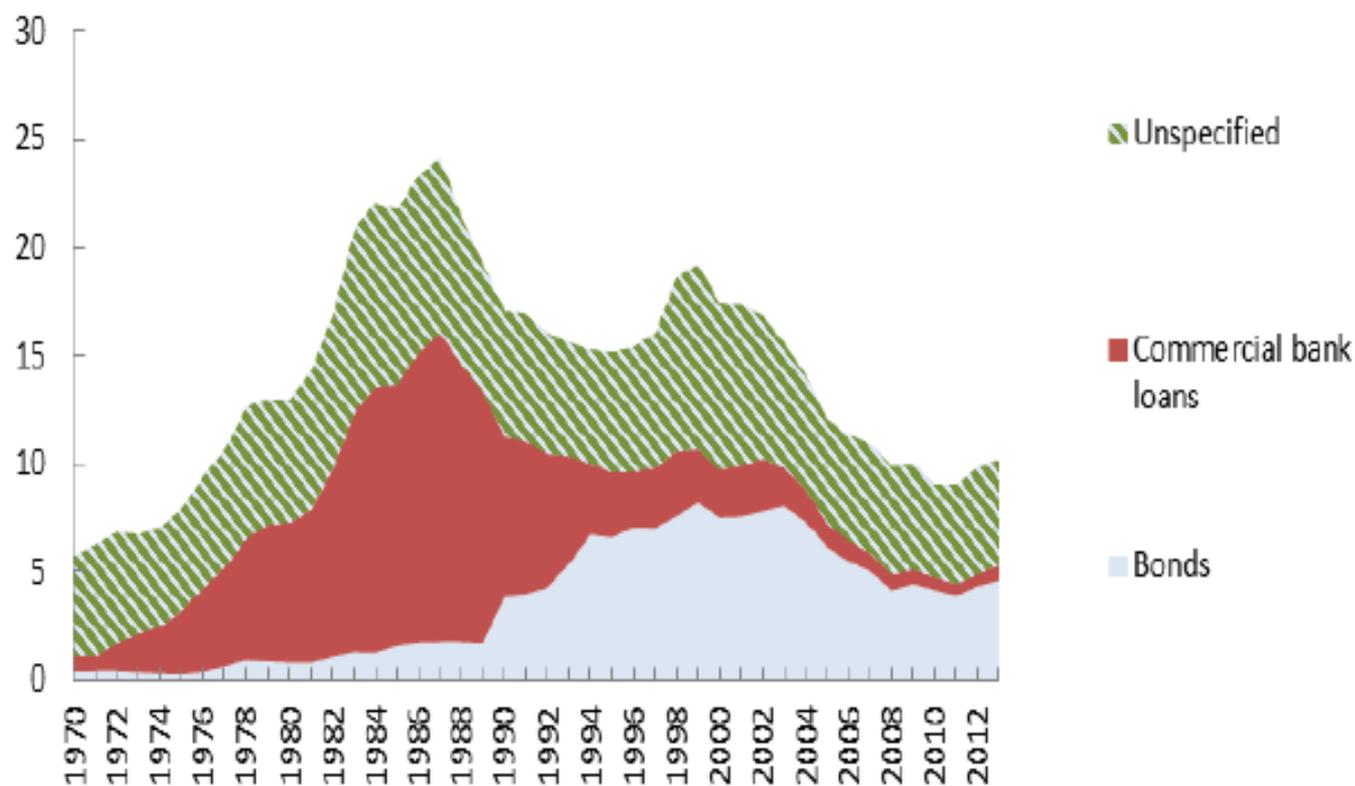
External debt stock as a proportion of GNI, selected country-groups and China, 1980–2013 (Per cent)



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)



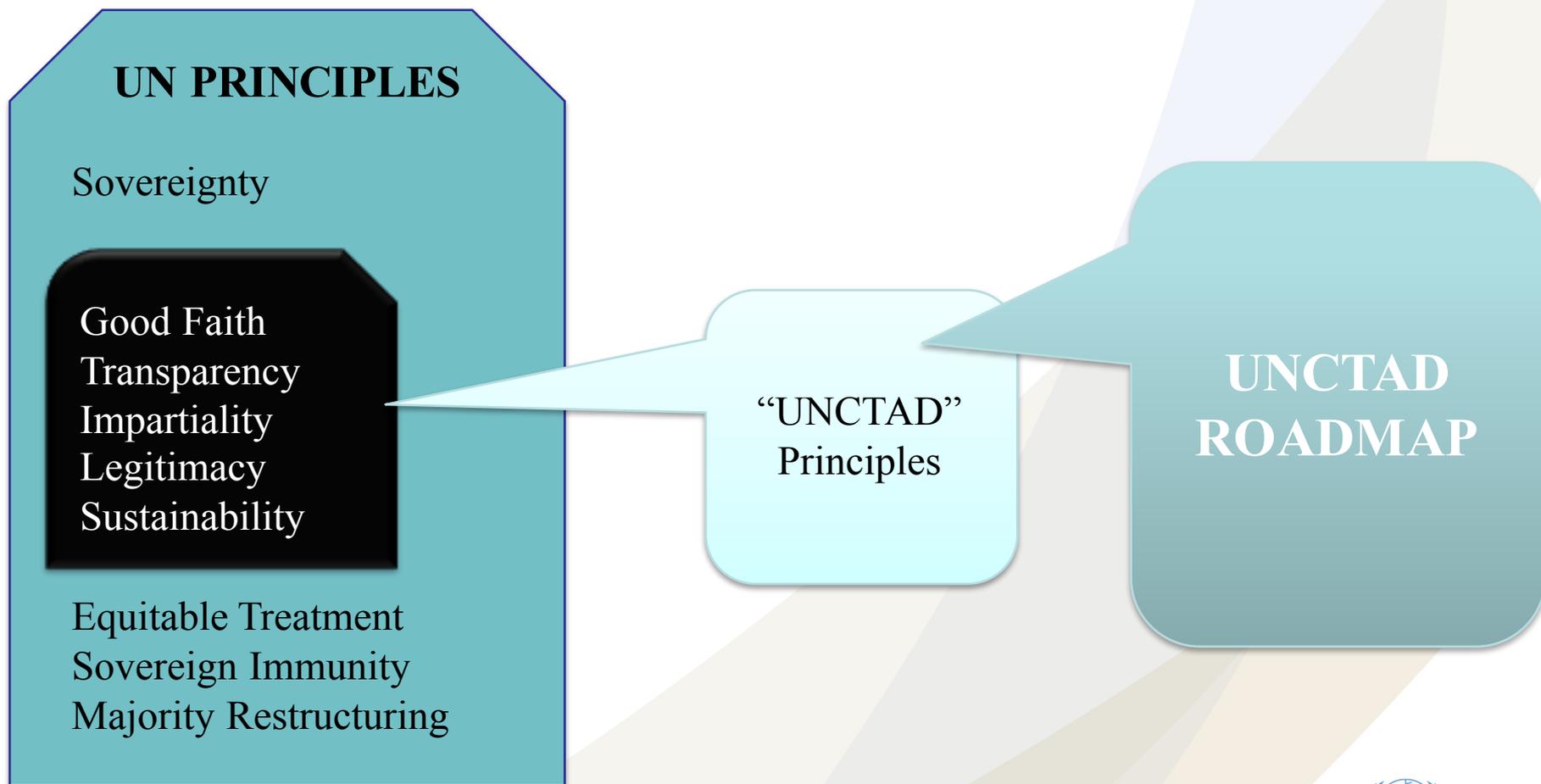
Source: UNCTAD secretariat calculations, based on *UNCTADstat*, and World Bank, *International Debt Statistics* database.

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 |