Are the debts owed to Atradius DSB by the Suape Port Authority Illegitimate?

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Abstract

In 2011, the Dutch dredging company Van Oord was hired to expand the Suape port's capacity by dredging the entrance to a new shipyard, and to deepen the access channel to the port in order to allow bigger tankers to reach a newly built local oil refinery. The company took out insurance for these projects by the Dutch ECA Atradius DSB (Dutch State Business). These projects ended up having major implications for local communities and wildlife, and only one of them were ever completed. Even though the access channel was never completed, Van Oord still claimed the outstanding payments on the project, and when the Suape port authority refused, Atradius DSB claimed it on the insurance. The thesis investigates whether or not the debts owed to Atradius DSB by the Suape port authority are legitimate, and finds that there are grounds for declaring the debts owed from the never completed dredging project to be illegitimate.

Abbreviations:

ECF: Export Credit Finance

ECA: Export Credit Agency

Eurodad: European Network on Debt and Development

National Contact Point: NCP

CSR: Corporate Social Responsibility

UN: United Nations

IMF: International Monetary Fund

GIEK: Garantiinstituttet for eksportkreditt

Atradius DSB: Atradius Dutch State Business

OECD: Organisation for economic Cooperation and Development

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1. Introduction

In the global economic dichotomy of northern and southern countries, northern countries hold by far the most influence. This influence derives in large part from their higher concentration of wealth, which creates a problem of imbalance when business is to be conducted between countries from the global north and the global south. By and large, middle and low-income countries in the south hold massive debts owed to rich countries in the north, either in the form of development loans or as Export Credit Finance (ECF) (Brynildsen, 2011).

Export Credit Finance (ECF) and the agencies through which the business is conducted are highly profitable enterprises that operate either privately or pseudo-publicly with the express interest of earning profits through promoting export of goods from the country in which they are based. They way export credits works is rather straight forward. ECAs promote the exports of its home country by insuring the company whose goods or services it aims to promote, or by lending money to a foreign entity directly, on the condition it be spent on exports from the ECAs home country. The guarantees help reduce risk for the company so as they need not worry about bankrupting themselves over a deal with foreign actors, though the insurances only cover political and non-commercial risks. The ECA will then act as creditor for the money if the company in the host country is unable to pay. Oftentimes the ECA will make sure that the state which they are promoting exports to will make a counter guarantee, so that the exporting company that they insured is guaranteed to receive compensation, while the risks lie with the country importing the goods or services (Flacké et al, 2009).

1.1 problematization

While much of the debt incurred by lower-income countries to rich countries might originate from legitimate business dealings, they are unfortunately not limited to them. And while a study into illegal international debts might be an interesting one, it is not the main focus of this thesis. The operations of ECAs serve an important purpose when promoting exports from their country of origin, (Flacké et al, 2009) But their methods have in some cases proven to be more than questionable, maybe even unethical. Either through a lack of commitment to upholding responsible business dealings as set out by international or in-house standards, or by flat out breaking them, ECAs often times have enough influence to collects debts they had

no right to issue in the first place. That is not to say that ECAs by any means are criminal or immoral organisations, either by majority or nature, but their ability to collect debts that have questionable legitimacy is certainly cause for alarm.

So far, while there exists plenty of academic articles on the concept of illegitimate debt in terms what is often called dictator debt, (Nehru, Thomas. 2008) the concept is less explored when it comes to ECF. It has proven possible for ECAs to insure domestic companies to construct or partake in various business projects around the developing world, and claim insurance money from the host country despite the projects never being completed (Flacké et al, 2009).

1.2 Aim of the Study

Based off of the concept of illegitimate debt, this study will take a closer look at the Suape situation and hopefully be able to determine if the debts incurred by the Brazilian government were legitimate or not. As such my main research question will be;

Are the debts owed to Atradius DSB by the Suape Port Authority Illegitimate?

To answer this question, I propose the following minor research questions:

Did van Oord and Atradius DSB act in good faith?

How successful were the dredging projects?

What was the impact of the dredging project on the local populace, environment, and wildlife?

What has happened to the debts?

The first question will not be crucial in determining if the debts were legitimate or not, since a lack of awareness would not necessarily save a lender from their responsibility, (Raffer, 2009) but it would help make that determination, and potentially provide some insight on the commonality of such dealings within the export credit business.

Question number two will be the most important one for me to answer as it would be the most

1.3 Scope of the Study and Relevance

This study will be limited to the case of Suape and will as such not be able to make a broad conclusion on ECF and illegitimate debt beyond that scope. The thesis will however seek to ad to academic debate by highlighting this case from the perspective of illegitimate debt and debt cancellation, hopefully raising awareness of the possibility of other such cases existing concurrently. Organisations such as EURODAD have been proponents of case-by-case approaches to illegitimate debt to help with the efforts of academia, multilateral organisations, and the global anti-debt movement (Flacké et Al, 2009). It is the hope of this thesis to be able to assist in this way by providing a detailed analysis of the events taking place around the Suape dredging project, and determine the validity of the debts.

The concept of illegitimate debt is related to the north v south dichotomy of the global economy, as well as high-income v low-income countries. Brazil may be a southern country, but it is also a upper middle-income country which in this case is dealing with companies from, or acting as representatives form the Netherlands, a high-income country (World Bank, 2018). Brazil's higher economic standing does affect its relevance to the study somewhat due to the fact that illegitimate debt as it is currently defined often concerns itself with the low-income countries, and the interest on the situation of low-income countries is one that is held by the international academic community as well, (Raffer, 2007) Which does present a small problem. Since Brazil is an economic powerhouse, they will have more influence in negotiations with international companies and other countries with which they do business, and as such are more unlikely to end up in positions where the debt they incur can be considered to be illegitimate. I do however believe that the case I present in the form of Suape harbour will be strong enough to demonstrate that even countries with as much clout as Brazil may be subject to inexcusable business dealings.

1.4 Thesis Outline

I will begin by outlining some background on development debt, and then move on to previous examples of debts issued by ECAs that were illegitimate. I will the explain the theory of illegitimate debt and provide information on CSR in my theoretical framework, which will be followed by my methods section. I will then go through the facts of the events

surrounding Suape harbour and compare them with the policy guidelines of the ECA as well as my theoretical framework, and finally discuss my findings.

2. Background

ECF and the agencies that conduct the business serve a key role in promoting export in their country of origin by providing credit to buyers both public and private, in countries both in the developed and developing world (Turguttopbas, 2013). The practice has existed since the post-war era and shows little sign of slowing down. In fact, roughly 80% of all debt owed by developing countries to developed ones comes from ECF, rather than developing loans. While borrowing for investment into development can be a valuable strategy for developing countries, but it has been shown multiple times the transactions from Export Credit Agencies (ECA) have little to provide any solid boost to a nation's development, and in some cases outright damage it (Brynildsen, 2011). International trade is however quite expensive, not to mention risky, so the fact that these institutions exists is not unwarranted, in fact, it can be quite necessary in some cases if international trade is to occur at all (Brandi et Schmitz, 2015).

However, if any economy wants to participate in global trade, particularly a developing one, they will first have to comply with certain international standards, not all of which are going to be benevolent. ECF is often a requirement in trade deals that developing countries have no choice but to accept if they are to participate in global trade and reap any rewards from it (Brynildsen, 2011). Developing countries are seeing more outflows of capital than inflows, and that disparity is becoming greater day by day. Money that is badly needed for infrastructure and development on the homefront are being sucked away by multinational companies and the developing world is suffering greatly for it (Hanlon, 2010).

Not only are developing countries lagging behind developed ones due to loans that comprise largely of ECF, but a staggering amount of loans around the world have grounds for illegitimacy. There are studies indicating that countries like Indonesia, Nicaragua and Argentina have a 100% odious foreign debt rate for the years 1970-2004 (Wong, 2010). It can be demonstrably that ECAs account for a majority of debts owed to rich countries by developing ones, (Brynildsen, 2011) and that illegitimate debt is a problem for countries less fortunate.

3. Literature Review

Though there is plenty of research on ECAs in regard to for example Corporate Social Responsibility, (CSR) there appears to be a lack of research on ECF from the viewpoint of the theory of illegitimate debt, a sentiment echoed by Eurodad (Eurodad, 2009). Illegitimate debt has also historically been mostly focused on how it relates to dictator debt, with few cases presented where it relates to the practice of ECF. To this end, I believe there is an opportunity to explore the link between two subjects which have been studied independently in the past, but rarely in how they could potentially intertwine.

3.1 The case of GIEK and Indonesia

Eurodad, in the same report which talked about the lack of cases for illegitimate debt, presents the case of a wave power plant at Baron beach in Indonesia that was financed through Norwegian export credits, but was never finished. In 1995, Norwegian company Indonor S/A signed a deal with the Indonesian government for the construction of a wave power plant worth roughly 5,4 million euros, which the Norwegian ECA *Garantiinstituttet for eksportkreditt* (GIEK) insured for a total value of 3,8 million euros. Indonor's project was also sponsored by the Norwegian development agency Norad for a total value of 1 million euros. Trouble began early on however, as The Norwegian Engineering Council on Oceanic Resources concluded that the technology which the power plant was supposed to be utilising was likely not to be commercially viable, as the construction of a wave power plant is likely to prove expensive beyond any reasonable level of profitability, while the Norwegians' lack of experience and knowledge about Indonesian climate, topography and available wave energy, provided huge uncertainties towards its overall viability. The Norwegian companies decided to invest in the wave plant even so, since it was deemed that Indonesia has reliable enough wave climate for the project, coupled with the fact that Indonesia has precious few other ways of producing energy. Indonesia was however keen on building the power plant, and after some kinks were worked out regarding the export credits, and an official state visit paid to Indonesia by the Norwegian prime minister Gro Harlem Brundtland, an official contract was signed on December 19th 1995. Trouble started immediately however, as the initial assessments made by Indonor proved to be grossly inaccurate, as the waves were not as

strong as previously believed, and the local cliffside was deemed too fragile, placing the plant in huge risk in case of an earthquake. These new findings meant that the construction of the plant would not only take longer than anticipated, but be considerably more expensive. The realisation of these new costs, combined with the general knowledge that the project was probably never going to be profitable in the first place, lead to disagreements on both sides on how should front the extra needed cash, and construction stalled. Just as production stalled, the 1997 Asian crisis hit, and Indonesia suffered hard. The value of its currency fell to a quarter of its previous conversion value to the dollar, making it impossible for them to cover the costs relating to the wave power plant, and Indonor seized the opportunity to withdraw their commitment by declaring the situation to be a force majeure. In the following years, after Indonesia had recovered somewhat from the crisis, they floated the possibility of completing the wave plant by their own accord. The response from Indonor was that that the technology used in the power plant was intellectual property owned by a Norwegian company, and could as such not be used by the Indonesians, though they had by all accounts already paid for it. In the end, Indonesia ended up paying a total amount of 3,1 million euros though the plant was never even finished. Even so, Indonesia has been forced to repay 2/3rds of the total amount of the loans they owed to Norwegian institutions (Flacké et al, 2009).

Eurodad believes that the power plant was problematic for a number of reasons. The loans paid no regard to development ideals in Indonesia, even though the power plant was a development project. Local communities were not adhered to, the project was not integrated into the local development plan, and international tenders were not used to facilitate the contracts. The loans were also given to a highly corrupt regime which did not allow the people to consent to the loans, nor did it benefit them. Most importantly however, is the fact that Indonesia has been forced to repay loans towards a failed development project which never saw the light of day. Eurodad believes that Norway were aware of many of the problems that would haunt the project in during its development, and must therefore recognize its creditor responsibility for the debt, as well as cancel the remaining debts, since they are for reasons listed illegitimate (Flacké et al, 2009).

3.2 ECF Impact on Development Debt

Export credits are an extremely lucrative business

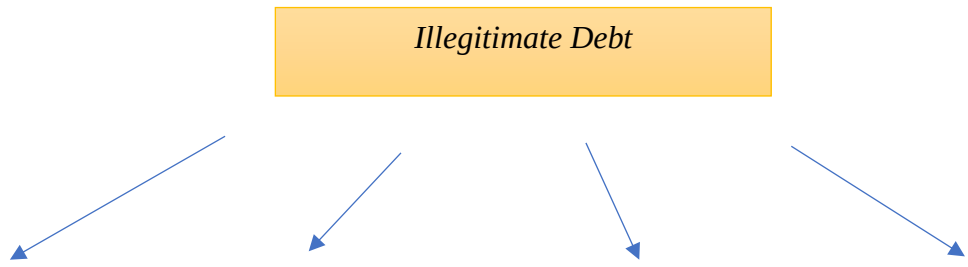
During the 1970's, America began what is now called loan pushing, a conscious effort to place exceedingly high loans on developing countries in order to strengthen the home country's position on the international stage, by being able to leverage these often unpayable loans for favours of a wide variety, like military bases, UN votes, or access to natural resources like oil. The money that America had lent out would often times, and not by accident, find its way into the pockets of developing country's dictators, which would ensure that that projects (which were often unnecessary) the money was really supposed to finance were accepted. The money would then often in return find its way back to American firms who were tasked with completing the projects. Loan pushing has never been for the benefit of the borrowing nation, and always for the lending one (Hanlon, 2010).

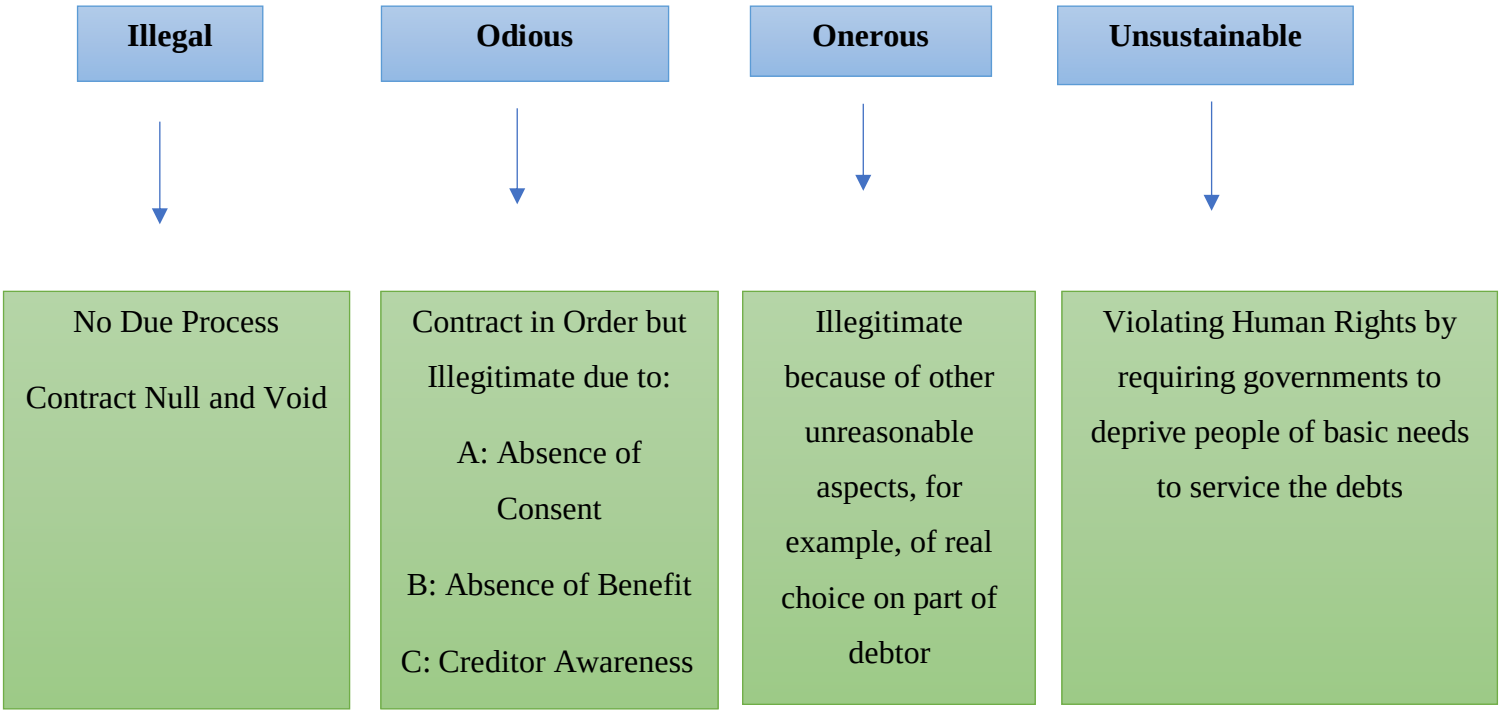
That is however only one example of pushing loans onto developing countries in recent times. Following the 2008 financial crisis, the World Bank and IMF sought to increase the capital flows between countries to mitigate the effects of the crisis, and in order to do so they increased the cap for what was considered a country in debt crisis. As a result, a country that was in heavy debt problems one day, could be considered to have a manageable debt level the next, with nothing but the goalposts being changed. Loan pushing has remained a problem for developing countries as richer ones aim to promote their exports by turning to ECF, and development debt has increased as a result (Hanlon, 2010).

4. Theoretical Framework

In the global economy of money lending, all countries are not equal. The power of lending and collecting debts is situated primarily in northern countries which

4.1 Illegitimate debt





Source: New Economics Foundation, 2006.

When talking about illegitimate debt, it is important to note that the term can mean different things to different people. To some, the term illegitimate and odious are the same thing, to others, they have different meanings but are part of the same framework (New Economics Foundation, 2006). For this reason, I have chosen to incorporate the framework presented above as it helps define different types of illegitimate debt by allocating them into separate categories. This framework will be applied to the case and compared to the other definitions of illegitimate debt presented in this section. This thesis is not concerned with debts that are illegal in the strictest sense of the term, and that category will therefore not be discussed much beyond this point. For the sake of clarity, this framework will be referred to as the *Typology of illegitimate debt.*

Odious debt is in this framework a debt where those taking out the loan lack consent from for example the people or a parliament, and have no mandate to impose the obligation to repay that loan on the people, state, government they have ostensibly represented, due to high levels of corruption or because they have no right to be in power. Though common among

dictatorships, it is entirely possible for democratically elected leaders to be corrupt enough for their debts to be considered odious. Onerous debts are debts that can be considered to be unenforceable if their terms are beyond reason. In cases where the borrower lacks the ability to affect the terms of the debt, due to being in a situation of financial desperation, it is possible to argue that the terms should be renegotiated due to the possibility that the borrower was taken advantage of at the time. Finally, there is unsustainable debt. An unsustainable debt is a debt which does not necessarily need to be particularly onerous, but is nevertheless unpayable for the simple reason that the borrower is too much in debt overall in order to repay it. Government have a duty to provide certain basic needs such as clean water, health, and education, and if their ability to provide these services is impaired by the debt burden then those debts should be considered illegitimate (New Economics Foundation, 2006).

The popularisation of illegitimate debt stems back to the 1980's and is a subject that mostly concerns the debts contracted by low income or developing countries in the global south, by rich countries in the global north. The term was originally coined back in the 1920's however by a man called Alexander Sachs, a man whose focus was more on despotic regimes who oppress their people rather than the modern interpretation which accepts broader qualifications for the term (Wong, 2010). An illegitimate debt is broadly defined as a debt that was procured under fraudulent circumstances, or has been mismanaged some way or another by a party involved. No exact definitions is agreed upon of what kinds of circumstances are required for a debt to be considered illegitimate, but Eurodad points to several factors that can make a debt illegitimate, such as the debt being acquired by a nation without parliamentary or democratic approval, the money being stolen from the state by corrupt officials, the money was used to oppress the population, or the money was spent on mismanaged or corrupt development projects that were ultimately failures. Human rights violations and environmental damage can prove to be grounds for odious debts as well, though damage to the environment presents a much weaker case than the other indicators. The taxpayers of the country should not be obliged to repay such debts to foreign investors, since they did not benefit the people. If a debt is deemed to be illegitimate, then that debt should be cancelled immediately (Eurodad, 2019).

Illegitimate debts stand as a major barrier to developing country growth. If the debt has been deemed to be illegitimate, then it is most likely the case that whatever caused the country to owe those debts has not benefited them at all, be it a failed development project or a loan

pushed on a country that did not need it. It is problematic that most often the money is being transferred from a country that needs it desperately, to a country that does not deserve it (Wong, 2010). The term of illegitimate debt is however not one that can be universally applicable to debts that appear to be unfair. A debt is not illegitimate simply because the lender is rich and the borrower is poor, and because the lender has managed to secure themselves a sweeter deal. Defining illegitimate debt is in many cases a matter of judgement, and it is important that at least one of the generally accepted criteria be fulfilled (Raffer, 2009).

The problem with advocating for illegitimate debt recognition is that one runs the risk of inciting debtors to borrow recklessly, if they can have their debts cancelled. On the other hand, however, if illegitimate debt is not adequately advocated for, there is the adverse risk of lenders lending money recklessly, which is exactly what has happened. Increased checks and balances would allow for a fairer, more level playing field of international lending, and ECF (New Economics Foundation, 2006).

4.2 Corporate Social Responsibility

In order to make sure that companies operate their business in such a way that it does not compete with the best interest of the public, corporations are often held to a certain standard of conducting business that is commonly referred to as corporate social responsibility. CSR is a set of guidelines that a corporation is supposed to abide by in order to ensure that human rights, worker's rights, and environment, among other things, are not negatively impacted by their business dealings, and in fact contributed to. It started off as a form of self-regulation imposed by the corporation on itself, lest the government should sweep in and do it for them Bakan, 2004. P 28).

5. Methods and Data

In this section I will go through the methods I will be using to answer my research **question(s)**. I will start off by explaining how the concept of illegitimate debt will be applied to the case of Suape seaport, and why.

This thesis will focus on the actions of actors involved in the dredging effort of the Van Oord company in the port of Suape over the years 2010-2013, as well as the aftermath that the

company's efforts had on the local populace and environment. As such, the research will be conducted as a qualitative single-case study using secondary sources. By doing a case study I will have the opportunity to study one case intently which will allow me to discover more information and earn a deeper understanding of the case in question, which in turn will give me the opportunity to examine how the theories I have chosen apply to the case in greater detail (Bryman, 2008. P 60-61). My data will be based primarily off of reports made by NGOs, which will be contrasted with information gathered from Atradius DSB on their business policies. I will attempt to make an assessment on the situation based off of National Contact Points (NCP) that have mediated the interactions between Suape et Al and Atradius DSB in Suape over the course of the arbitrations that have been held over the period of time since the project's implementation, though information from these sources are limited. Supplementary information will be gathered from newspaper articles.

Since determining whether or not a debt can be considered illegitimate or not is such a difficult venture, (Raffer, 2009) I will be looking at the CSR of the Dutch ECA Atradius DSB as well as the OECD guidelines and the UN Global Compact, both of which Atradius and Van Oord claim they follow. These guidelines are not in a direct sense linked to illegitimate or odious debts, but it is my opinion that if the debts owed by Suape to Atradius are to be examined from this theoretical perspective, it would be pertinent to use these guidelines as a metric, as they will help provide a framework for better understanding of, and determining any potential wrongdoing by Atradius or Van Oord.

5.1 Delimitations

One potential problem that I might come across in my gathering of data is a lack of sources that present both sides of the argument. In their role as mediators, the NCPs present a largely unbiased contribution of the facts at hand, as they are laid out in their deliberations. The articles I have found, along with the NGO's I source, are overwhelmingly on the side of Suape, blaming Van Oord and Atradius DSB entirely for the hardships of the local communities and environment. Van Oord and Atradius themselves however, provide next to no information on the environmental effects of the dredging project in question, with the information I've been able to gather from them being focused more on the plans for the

project issued before its commencement. Data on the specifics of the project has been gathered from NGO's reports on the matter, which cite among other things yearly reviews from Atradius and Van Oord as their sources, though both institutions seem to have removed these from their platforms since. Most data available on this subject is also mostly from the years immediately following the implementation of the project, so while I do believe it does create an accurate description of the situation in the wake of Van Oord's project implementation, It will be difficult to say if the situation has changed in the five or so years since those reports were written. To do updated research on the current situation of current wildlife, populace, and environment, would require resources that are beyond the scope of this thesis.

The fact that Suape is located in Brazil means that some outlets that have researched the situation have published their findings in Portuguese, a language that I do not speak. Finding a translator would be beyond the scope of this thesis, and I have thusly been put in a position where I am unable to use these sources. I hope that the ones I am able to read will provide adequate data for my thesis.

6. Analysis

For the analysis section of this thesis I will begin by explain the situation in Suape in detail, going through the sequence of events to the best of my ability based off of the data that is available. This will mostly be based off of the data provided by NGO reports on the progression of the dredging projects, as well as information on the guidelines for responsible business that Atradius DSB claim to adhere to.

6.1 What Were the Projects?

In 2011, the Dutch dredging company Van Oord was awarded two dredging projects in the Brazilian port of Suape, with the client being Suape Complexo Industrial Portuario Governador Eraldo Gueiros, or the port authority for the Brazilian state of Pernambuco (Van Oord, 2011). Pernambuco is located on the easternmost part of the country, and the majority of the state's population lives rather close to the beach, within 322 km. The state suffers from poor health and living conditions, with its life expectancy being among the lowest in Brazil, and its infant mortality rate being among the highest. Its population is estimated to be about 9,2 million people as of 2014 (Britannica, 2014). The Suape harbour area covers about 13 500

hectares where, as of 2013, 25 000 residents comprising 6800 household resided (Both Ends, 2013).

Location of Suape port and the state of Pernambuco (BBC, 2011).

The dredging of the Suape port (dredging is the process of widening or deepening a river) came in two stages, with the first one being to deepen the access channel to the port. The project involved deepening the channel from -15 to -20 meters and removing 5 million m3 of dirt, and was scheduled to be completed in September of 2013 (Van Oord, 2011).

The second project was dredging an access channel and basin to the Promar shipyard, which required the removal of 6 million m3 of earth, and the project was scheduled to be completed in May of 2012. The two projects combined were collectively worth more than 165 million euros (Van Oord, 2011).

On the 23rd of November 2011, Atradius DSB insured the dredging project to a value of 41 525 100 euros with the debtor being the state owned harbour of Suape. Atradius DSB were according to the NGO Both Ends (2013) aware that the project could have severe consequences on the local populace, environment, and wildlife, and claim that they took measures to prevent such consequences.

Van Oord began by deepening the access channel and basin to the newly built shipyard of Promar, which is supposed to construct vessels that can operate within the off-shore Brazilian oil industry. The shipyard is located way inside the harbour complex, close to the island of Tatuoca. This project covered about 97,4 hectares, 17 of which were used for the basin, whereas the remainder were used for shipyard facilities. A project of this scale necessitated the destruction of 45 hectares of mangrove and restinga forests. This had huge impact on the local wildlife and biodiversity of the surrounding region (Both Ends, 2013).

Van Oord finished the construction of the Promar shipyard largely on schedule, but were unable to complete the dredging of the access channel. Early estimates of the costs of the project had been underestimated, and Van Oord suspended construction in 2013. The company alleged that they needed more money to complete the project, which the port authorities refused, insisting that the project be completed for the agreed upon price. When Van Oord suspended their efforts, the Suape port authorities refused to pay the outstanding 40 million euros for completion of the project, and Atradius DSB responded by claiming this final outstanding sum through the insurance contract signed with Suape. The access channel project has yet to be completed in its entirety (ECA-Watch, 2015)

Though the initial assessments of costs and insurance are readily available information, it is unclear how much money has been paid by the Suape port authorities out of the 40 million that was claimed by Atradius DSB and the Dutch government, and the 40 million are themselves a contested number (ECA-Watch, 2015).

6.2 Social Impact

While it seems like the Van Oord projects have had impacts on the ecological and social welfare of the surrounding region, it is important to note that Suape has had problems with human rights abuses in the form of evictions stemming from projects that are not related to Van Oord or Atradius. When Suape fails to purchase the land from locals, they use private security firms to bully them into selling or evict them. The thermal power plant that powers the port has caused damage to property of nearby locals, and the gases produced by the port have caused multiple health problems for people living nearby, as well as providing a constant odious smell to the region (Reporter Brazil, 2017).

The biggest impacts on the Suape area's environment and populace however have come as a result from the dredging projects carried out by Van Oord. Early estimates stated that around 48 families lived on Tatuoca island, (Both Ends, 2013) but the construction of Promar shipyard and deepening of the access channel meant that as many as 80 families had to be evicted from their homes on Tatuoca, and were moved to housing projects created by the government. The new homes were situated far from the sea and with no access to farming lan, which provided the inhabitants with problems as they primarily supported themselves by fishing and farming. As it stands only eight or so people out of the 80 families are employed. The relocated locals are also prohibited from selling their new government provided houses, effectively trapping them in their current residences. In 2017, some residents were offered the opportunity to fish in some off-limit areas close to the port in exchange for paying a fishing fee to the local government, which under Brazilian law is illegal, as fishing licenses can only be issued by the federal government (Reporter Brazil, 2017).

6.3 Ecological Impact

While Van Oord received the contract for the two dredging projects focused on in this thesis in 2011, they have been active in the port region since 1995. It is reasonable to expect that Van Oord knows the region well after having been active in the port for what was at the time 15 years. Despite this, interviews with the local populace have shown that they are not aware that it is in fact a Dutch company responsible for most of the dredging projects in the port, having assumed that it was the port authority itself that was responsible. Apart from the lack transparency, it has been shown that Van Oord have acted in a highly careless manner when it comes to disposing of the dredged earth they had dug up, dumping it at various locations across the shoreline. This has led to severe damage to reefs and breeding grounds for fish in the area, which has in turn led to the local populace to struggle with their livelihoods, as the communities are largely dependant on fishing. When dredging of the inner port area began, multiple rivers and streams were dammed off in order to allow for a more efficient work environment in the port, but little action was taken towards making sure that alternate discharge of the water was provided. This caused severe changes to the water flow of much of the region, disrupting the life of the local communities, not to mention the flora and fauna. As a result, the region was prone to regular flooding during times of heavy rainfall. The area has

also suffered groundwater contamination as a result of marine intrusion caused by the dredging activities. (Both Ends, 2013).

6.4 Corporate Social Responsibility and Business Guidelines

Atradius DSB has since 1932 been the sole provider of export credits for the Dutch government, and operates under a government mandate as the official Dutch ECA. The state of the Netherlands acts in this regard as an insurer to Atradius DSB (Atradius DSB, n.d).

Atradius operates under mandated CSR policies as the official ECA of the Netherlands, as well as being adherents to the OECD Guidelines for Multinational Enterprises, and ten principles of the UN Global Compact (Atradius DSB, 2017). Atradius claims that due to their position as an insurance agency, their greatest social responsibility is therefore an economic one, as their businesses practices helps boost economies and provide job opportunities. As well as this, Atradius makes the claim that they use their best endeavours to ensure that their business dealings have no effect on local populace, environment, and animal welfare (Atradius DSB, n.d). Atradius does CSR review for all applications made to the company, but does not disclose detailed information about specific applications it has reviewed. For this reason, it is impossible to determine whether or not approach they decided upon in any given application was the best one. When the NGO Both Ends (2013) made a visit to the area and interviewed local stakeholders such as community leaders, the Suape port authority, the environmental branch of the local government, and local NGOs, they found that none of them had any knowledge of Atradius DSB's involvement in the port's dredging projects. This heavily implies that Van Oord has not been in consultation with local stakeholders about the impacts of their projects, witch is a requirement under OECD guidelines for Multinational Enterprises (OECD, 2011). In order for Van Oord to have received export credit insurance from Atradius DSB they need to adhere to these rules by Atradius's own accords (Atradius DSB, 2011). Since this appears not to have happened, Atradius must have either failed to ensure that the OECD guidelines have been upheld by one of their insured companies, or have wilfully ignored it, which presents serious problems either way. Atradius DSB reached out to the NGO Both Ends which conducted the interviews with the local stakeholders, and claimed that the port authority was responsible for public participation and consultation, with Van

Oord relaying a similar message. By claiming that the port authority is responsible for community outreach, Atradius DSB is in essence admitting to breaking the OECD Guidelines it claims to adhere to (Both Ends, 2013). The failure to consult relevant stockholders means that Atradius is likely to have lacked much information about the impact of the projects on local communities.

Category A	-projects which have significant potential adverse environmental and/or social impacts which will be felt beyond the project's location -we will require you to submit an environmental and social impact assessment and an environmental and social management plan
Category B	-projects which have less severe potential adverse environmental and/or social impacts and for which measures can be taken to mitigate them -we will require you to submit relevant environmental and social information about the project and an environmental and social management plan.
Category C	-projects which have minimal or no potential adverse environmental and/or social impacts -we will require you to submit relevant environmental and social information about your company, your buyer and the project.
Category M	-refinancing, projects without a fixed location, and existing operations which do not significantly change in output or function -we will require you to submit relevant environmental and social information about your company and your buyer as well as general information about the project.
Category E	-tool and equipment cover -we will require you to submit environmental and social information about your company.

Source: Atradius, Environmental and Social Review.

In the table above is Atradius's project classification categories, which is how the ECA evaluates the potential damage that any project they are funding could have on environment and social welfare. Atradius judged that the construction of Promar shipyard was a category A-project, and the dredging of the access channel was a category-B one. Atradius was thus aware that the dredging projects would have serious negative impact on the local environment and population, though it seems few steps were taken to mitigate any such effects. Despite all of this Atradius made the assessment that the environmental and social impacts of the

dredging projects were acceptable. How Atradius reviewed the project projections and reached the conclusion that that the risks were acceptable is unknown, as that information is not disclosed by the ECA (Both Ends, 2013).

6.5 UN Global Compact

The ten principles of the UN Global Compact are divided up into four sections; *Human Rights, Labour, Environment, and Anti-Corruption* (UnGlobalCompact.org, n.d) The ones that are of relevance to this thesis are principle 1, 2, 7 and 8. The principles are laid out as follows:

Principle 1

Businesses should support and respect the protection of internationally proclaimed human rights

Principle one is rather straight forward, a business should not engage in practices that infringe on human rights directly. Companies should ideally also take active steps towards ensuring that human rights are improved upon through means such as their core business, philanthropy, advocacy, etc. The principle specifically mentions that companies should take steps towards ensuring that no groups, individuals or communities be displaced from their homes as a result of their business, nor that the livelihood of local communities be impacted by their involvement (UnGlobalCompact.org, n.d).

Principle 2

Businesses should make sure that they are not complicit in human rights abuses

Principle two deals with largely the same issues as principle one, but focuses on the indirect ways that a company can affect human rights abuses. Principle two states that a company should not engage in business with another actor which is carrying out human rights abuses,

and that a failure to act against it, as well as legitimising, assisting, or encouraging such abuses, would constitute breaking the second principle. A company can be a part of direct liability, where they actively provide means to carry out abuses, beneficial complicity, where they profit from human rights abuses even if they do not cause or assist them, and silent complicity, where the company takes no action against continuous rights abuses (UnGlobalCompact.org, n.d).

Principle 7

Businesses should support a precautionary approach to environmental challenges

Principle seven relates to the precautionary measures that a company should take to ensure that no necessary harm comes to the environment. It is vital that companies make risk assessments of the damage to nature that they could be responsible for, and work toward minimizing that risk. This principle involves the company to take making a decision on appropriate levels of risk based off of scientific evaluation, cost-benefit analyses, and political considerations such as impact on the public (UnGlobalCompact.org, n.d).

Principle 8

Businesses should undertake initiatives to promote greater environmental responsibility

Lastly, principle eight deals with businesses responsibility to ensure that their business will not cause damage to the environment. Businesses need to be good actors in the community and meet the needs of society, which more and more entails environmental friendliness. UN Global Compact advises companies to include sustainable development in the company vision in terms of economic prosperity, environmental quality, and social equity. Though more than one goal is at play here, environmental protection is the main focus of Principle 8 (UnGlobalCompact.org, n.d).

Based off of what has been presented in sections 6.1, 6.2, and 6.3, it is clear that Atradius has failed in meeting the expectations set up by the UN Global Compact principles 1, 2, 7, and 8.

Though voluntary, these principles are supposed to help guide companies towards responsible business practices (UnGlobalCompact.org, n.d). which in this case has proven unsuccessful.

6.6 OECD Guidelines for Multinational Enterprises

The OECD Guidelines for multinational enterprises are a set of non-binding guidelines set by the OECD that aim to promote good business practices across national borders. The are not substitutes to national or international law. The OECD identifies 15 general policies that multinational corporations should adhere to, (OECD, 2011) 10 of which are of relevance to the subject of this thesis.

1. Contribute to economic, environmental and social progress with a view to achieving sustainable development.

2. Respect the internationally recognised human rights of those affected by their activities.

3. Encourage local capacity building through close co-operation with the local community, including business interests, as well as developing the enterprise's activities in domestic and foreign markets, consistent with the need for sound commercial practice.

5. Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to human rights, environmental, health, safety, labour, taxation, financial incentives, or other issues.

7. Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.

10. Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.

11. Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.

12. Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.

13. In addition to addressing adverse impacts in relation to matters covered by the Guidelines, encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the Guidelines.

14. Engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making for projects or other activities that may significantly impact local communities. (OECD, 2011. P 19-20)

The failure to complete the dredging of the access channel by Van Oord puts Atradius in a position of breaking the first guideline, as they have expected Suape to not only pay for the costs of the incomplete work on the harbour, but also by claiming the insurance policy despite the fact that it was Van Oord who refused to complete the project for the agreed upon amount (ECA-Watch, 2015)

failure to engage in dialogue with, and ensure that local communities were not harmed as a result of business they had insured puts Atradius in a position of potentially breaking guidelines nr 2, 3, 5, 7, and 14 (Both Ends, 2013).

AS previously shown, Atradius DSB was aware that there was significant risk to the local communities and wildlife as a result of the business of the company they had insured, but there points to being very little done by Atradius in terms of measures taken to limit the indirect impact they were going to have on the region, putting them at odds with guidelines 10, 11, 12 and 13 (Both Ends, 2013).

In June 2015, the NGOs Both Ends, Forum Suape, and Conectas filed complaints against Atradius DSB, the Suape port authority, and Van Oord to the Dutch NCP over alleged breaches to the OECD guidelines as a result of the two dredging projects to construct the Promar shipyard and to deepen the access channel to the Suape port. The Dutch and Brazilian NCPs concluded that the Dutch one would handle the complaints towards Atradius DSB, and the Brazilian one would handle the complaints towards Van Oord and the Suape port authority. The NGOs filed the following complaint;

"…ADSB failed to use its influence over Van Oord to ensure compliance with the OECD Guidelines in the activities for which it was providing cover. Similarly, ADSB failed to ensure that the UN Guiding Principles on Business and Human Rights and the IFC's Performance Standards were effectively applied in both of Van Oord's projects in Suape. 'In violation of its own corporate social responsibility, ADSB failed to ensure effective monitoring of the projects' impacts. This behaviour, among other factors, resulted in a failure to consult with the affected people and communities, a loss of traditional ways of life, as well as severe damage to biodiversity and ecosystems. As an implanting agency that acts on behalf of the Dutch government, ADSB is committed to implementing the OECD Guidelines. In violation of those Guidelines, it failed by not encouraging Van Oord to apply them. By attempting to hold the contracting parties and Brazilian authorities liable for consulting with and guaranteeing the participation of the affected populations, ADSB shirked its responsibility to comply with OECD Guidelines, transferring it instead to the client…"

(Dutch NCP Both Ends et al-Atradius DSB Notification, 2015. P 2.)

Though Atradius DSB claim to adhere to the OECD guidelines as part of their CSR (Atradius, **CSR Brochure)** they were of a different mind in their NCP deliberations. The Dutch state argued that Atradius is representative of the Dutch government and that the guidelines do as such not apply to them, as the state bears responsibility. While they believe that some ECAs should operate under the guidelines, they allege that Atradius DSB in not one of them. They argue that credit insurers like Atradius would instead fall under the guidelines of the OECD Common Approaches, a different set of regulations. As Atradius represents the Dutch state, any complaint filed against them would therefore also considered a complaint against the Netherlands. The Dutch NCP was however of the opinion that the guidelines do in fact apply to Atradius DSB, as their business model fit the description of a multinational enterprise. (2016)

7. Discussion

The role of Van Oord on the dredging projects and their consequences may seem to be bigger than that of Atradius DSB, and in the direct way, they are. Van Oord received the contract, Van Oord carried out the manual labour, and Van Oord together with the Suape port authority

caused the damages to the local communities and environment. Atradius acted only as the insurer and debt collector. Even so I have decided to place the majority of my focus on Atradius for this thesis rather than Van Oord. My reasoning for doing this is that I want to view the Suape harbour situation from an ECF perspective. Since the insurance claim comes from Atradius rather than Van Oord, I believe this focus makes the most sense. Including a greater focus on the CSR and conduct, etc, of Van Oord would muddle the focus of the thesis, so I have instead decided to focus on Atradius's perspective on Van Oord's actions. As previously mentioned, 80% of developing country debts to rich countries come from export credits, (Brynildsen, 2011) and Suape together with the Baron beach power plant show that debts from export credits run the risk of being illegitimate.

The difficulty of determining illegitimate debt provides the biggest obstacle for this thesis. To help overcome these obstacles, a number of indicators will be examined and applied to the case at hand as well as comparisons to other cases in order to establish precedent. The indicators I have chosen for this thesis are the UN Global Compact articles, the OECD guidelines for multinational corporations, and the Corporate Social Responsibilities of the ECA. The reason that I have chosen these indicators is that Atradius DSB outlines multiple times that they adhere to these international standards of conducting business, so proving that they broke with any of these guidelines would be proving that there was indeed misconduct on Atradius's behalf, which is a crucial step for defining the debts as illegitimate.

While this thesis finds that the debts were in fact **(…),** it is beyond the scope of this thesis to definitively formulate how an internationally acknowledged mandate for abolishing illegitimate debts could be constructed. It is my hope that this thesis will contribute to the academic understanding of the application of illegitimate debt theory in practice. By providing more and more examples of debts that are illegitimate into academia, and perhaps into the public mind, lobbying for the recognition of illegitimate debts into international corporate law, as well as acknowledgement from institutions such as the World Bank and the IMF could take place.

Cancelling the debts that the Netherlands government has claimed from the Brazilian authorities would however not mean the end of the matter. We know from other examples of international debt that when a developed country fails to make their money back on a loan or an investment, they will simply decrease their Official Development Assistance budget by a

corresponding amount, certainly targeting the country that caused the loss of revenue (Brynildsen, 2011).

On the matter of forced evictions and human rights abuses, the idea that the debts owed by Suape to Atradius would be illegitimate and rendered null and void because of it becomes muddled, due to the fact that it was the port authority that was responsible for the breaches of the locals' civil rights. Due to the size of the Suape harbour and the large amount of companies that operate within the port, it becomes difficult to place guilt on Dutch money for specific evictions, since money from many other actors are at play. The position that a government should not be required to repay money to a foreign lender because that government used that money to oppress or discriminate against its own people is a difficult one to argue, if no regime change has taken place. The case of the wave power plant in Indonesia as an illegitimate debt is much easier to argue for since the Indonesians were not themselves implicated in the same way as Suape has shown itself to be. What is clear however is that creditor responsibility is not nearly up to par, as Atradius managed to breach its own CSR, OECD guidelines**,** and four out of the ten UN Global Compact principles, with every single one of these aspects supposedly being adhered to by the ECA.

For most of the thesis, I have viewed illegitimate debt from perspectives that can be seen as more moral than practical. The typology of illegitimate debt will aim to bring a counterbalance to that. It can be argued that since the Suape port authority is the one directly responsible for evictions in the Suape region, with Van Oord and Atradius assuming secondary responsibility, that the debts owed are odious in this regard, as the authorities show signs of corruption in their treatment of local communities (Reporter Brazil, 2017). There is a major obstacle to this definition however, one which permeates throughout the thesis. The debt owed by the Suape port authority to Atradius DSB does not originate from a loan, but from an insurance claim. This variable has huge implications on how the debt can be analysed, and what frameworks can be applied. The typology of debt presents some of the definitions that are the most easily argued for in terms of illegitimate debt and debt cancellation. Indicators such as damage to the environment, populace, and project failure, are more difficult to argue for due to the terms of the debts themselves not necessarily being unreasonable, with the issue instead laying with the spending of the money. Debts like that are sometimes known as 'moral debts' (New Economics Foundation, 2006). The debts owed by Suape to Atradius DSB fall under the category of moral debts, which presents a barrier

A problem with the definitions of illegitimate debt as they are conventionally understood is that debts should not be paid back if the money was used to infringe on human rights, or that the people should not be expected to pay back debts that were incurred by corrupt governments. The problem I find myself with when analysing the Suape situation is the fact that people needed to be evicted from their homes in order for the Promar shipyard to be completed, but these evictions were not carried out by Van Oord, but rather the port authority of Suape, which is state owned. The idea that a government should not be expected to pay back loans which were part of business dealings that led that government to commit breaches to their own citizens civil rights is not one easily signed onto, even if the foreign actor bear indirect responsibility as well.

The most damning evidence for arguing that the debts are, at the very least partially, illegitimate is the fact that the deepening of the outer access channel was never completed due to Van Oord wanting more money than the agreed upon price as a result of faulty pre-emptive research into the project's cost, and yet claiming to be paid despite its incompletion. The situation mirrors the one in Indonesia where Indonor was unable to complete the wave power plant for the agreed upon price due in part to unforeseen costs, and would instead effectively cancel the agreement while GIEK still demanded 2/3rds of the debts repaid. Eurodad argued that the debts owed by the Indonesian government to GIEK and by extension Norway should be considered illegitimate due to the power plant never being finished, and it is along similar schools of thought that I deem the debts owed by the Suape port authority to Atradius DSB for the project of deepening the outer access channel from the Atlantic ocean to the port to be illegitimate. It is wholly unreasonable for a creditor to demand any repayment of debts incurred as a result of a project which their represented party refused to complete for the amount of money that they themselves had agreed to complete the project for. While there has certainly been damages to the local populace and the environment as a result of Van Oord's dredging projects, it remains difficult to determine whether or not the debts from the projects constitutes as illegitimate or not.

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