Ad Hoc Committee on a Multilateral Legal Framework for Sovereign Debt Restructuring Processes

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The establishment of the Ad Hoc Committee on a Multilateral Legal Framework for Sovereign Debt Restructuring Processes in the UN General Assembly constitutes a big step forward for the international debate on the sovereign debt restructuring mechanism.
• Greater convergence on the need for a sovereign debt restructuring mechanism since 2008;
• The centre of the international debate has shifted to “options for moving forward”.

First step: Dispel misconstrued fears of a multilateral legal framework and make the process inclusive

• 1. Fear of loss by creditors from the developed countries and gains for debtors from the developing ones
• 2. Fear of moral hazard
• 3. Fear of loss of sovereignty
• 4. Fear of increasing cost of borrowing
Second Step: Identify guiding principles in conducting debt restructuring

Main principles identified by the UNCTAD working group on debt restructuring mechanism

- good faith
- legitimacy
- impartiality
- transparency
- sustainability

Step three: Identify complementarities between contractual and statutory approaches

- When debt contracts are better designed, debt servicing can be better self-enforced, thus less probability of the need for debt restructuring
Limitations of the contractual approach

• 1. Inability to address some fundamental and systemic problems facing sovereign debt restructuring like procrastination or “too late and too little”
• 2. Legal forum fragmentation
• 3. Lack of comprehensiveness in debt restructuring
• 4. Problem of interim financing,
• 5. Incremental contractual improvements take decades to phase in fully
• 6. Super CACS may not be able to protect countries with small quantities of bonds

Step four: Building consensus on major building blocs of the multilateral legal framework

Possible elements:
• Decision by debtor countries to engage in debt restructuring
• Introduction of debt standstill
• Interim financing with seniority status.
• An inclusive negotiation process
• Overriding power of the decision by supermajority creditors (like CACS but immediate enforcement)
• Independent and impartial body to oversee the process
Voluntary implementation

• Voluntary implementation at beginning. Gradually harden up, as the framework is being perfected and also more generally accepted.

Thank you