

**Ad hoc Committee on a multilateral legal framework
for sovereign debt restructuring processes**

Second working session (28–30 April 2015)

Draft minutes of the first day

Tuesday, 28 April 2015

10:00 AM – 1:00 PM

3:00 PM – 18:00 PM

Conference Room 2

2 United Nations Plaza (DC-2), New York

Agenda item 1: Adoption of the agenda and other organizational matters

The representative of Azerbaijan was unanimously elected to become the new Vice President of the Ad hoc Committee. After adopting the program, the chair proceeded with an introductory note stating the need for the ad hoc Committee to work closely together with other stakeholders (financial institutions) in order to involve them in the mandate given by the GA. He updated member States that the work which was currently in progress with Member States, World Bank, IMF and other institutions, and would continue until May. He noticed that the ad hoc committee would reach out to other member States to make their work better known.

Agenda item 2: A multilateral legal framework for sovereign debt restructuring processes

The chair introduced Richard Conn by presenting a biographical note, which revealed that Conn is a lawyer and has a background in the private sector.

Keynote address

Conn started by thanking UNCTAD and Joseph Stiglitz in their role facilitating his speech and mentioned the issue of creating a framework for Sovereign Debt Restructurings. He introduced the question of the advantage brought by a partnership between the public and the private sector when it comes to Sovereign Debt Restructurings, which developed countries do not necessarily perceive as an advantage. In his keynote address, he subsequently returned to this issue, by explaining why other member States saw sovereign debt restructurings as controversial and especially focused on possible ways to get over this dilemma.

He began to introduce all participants to the issue of Sovereign Debt Restructurings by explaining that it was nothing more than a typical situation of lending money emphasizing the lack of state guarantees in the inter-state context.

Conn started the substantive part of his presentation by identifying 3 catalysts for the current dilemma; the (long and difficult) history of restructurings in certain countries; the UN Resolution 68/304 of 9 September 2014 where an overwhelming majority had voted in favor of sovereign debt restructurings; and the Argentina cases. He especially concentrated on the latter. In the so called Argentina cases, he argued that the US Supreme Court had made a seemingly unfair judgment. After many had agreed to accept exchange bonds containing new terms of payment,

others did not and the court eventually decided that every party was bound to what they had agreed on. This produced the result that some who were cooperative did not benefit, whereas others, who were persistent to not alter their agreements, would be entitled to be paid back (prisoners dilemma). Conn stressed that this dilemma had the negative consequence of supporting holdouts. He explained that including collective action clauses and aggregation clauses in the respective agreements could be a useful remedy. However, he also stated that many of the currently existing agreements would not contain such provisions and could therefore be a problem.

In his view the key questions which would be needed to be addressed in the context of sovereign debt restructuring would be: which framework would be feasible: private or statutory or hybrid?; How would this relate to the IMF's role and to politics?; Would States be willing to give up parts of their sovereignty and if not, what would be the alternative?; How could we produce a framework that is perceived as fair and legitimate?

When turning to his proposed framework, Conn especially concentrated on the feasibility of such an endeavor. He stressed that the framework should be modest in order to achieve consensus. Generally, he was a strong advocate for consensual decisions and claimed that they would especially require rules and procedural steps for restructuring. Conn suggested including all relevant parties, also the IMF, because the power would come from having consent in the market place, which was why it was crucial to get the private market actors behind sovereign debt restructuring. Substantive law would need to be included in contracts/ agreed upon ad hoc. A framework would also require impartial, independent expert sovereign debt restructuring facilitators/decision-makers.

Conn stressed that there was a difference between issues that could be solved at the moment, e.g. the slowness of the process, and issues that could not be addressed right now. These would include systemic risk issues (at least of the backend of restructuring), moral hazard issues (aggressive borrowing knowing that the IMF is close by to limit the damages), but especially political issues (e.g. Greece and the impacts on the Eurozone, problems that are too complex are non-starters). He also mentioned deficiencies of status quo by saying that holdout problems would exist and would continue to exist. There is no forum yet that would allow for this discussion to take place and the status quo would provide no systemic defense to be incorporated into contracts, whereas developed countries have a huge interest in preventing systemic failures.

In his concluding thoughts Conn addressed the creation of an international bankruptcy court. He raised that there were several implications to this issue such as scope of jurisdiction location, judges and their ambitions (which can depend on whether the context is national or international) independence from the IMF, and fairness issues.

Conn stated that sovereign debt restructuring was by its nature a backend concept. However, he advocated the view that it would be more advisable to address the front end by putting regulations in place that address the systemic issue, if one wanted to get to systemic risks (which were the core of the issue), because this is where the developing and the developed countries would share a common interest. He suggested including collective action clauses and aggregation clauses, which would help avoiding a race to the bottom.

Agenda item 3: A multilateral legal framework for sovereign debt restructuring

The chair introduced **H.E. Mr. Hugo Martinez, Minister of Foreign Affairs of El Salvador**, by presenting a biographical note.

Keynote address

In his statement the Minister reaffirmed the establishment of the GA resolution allowing for the Sovereign Debt Restructuring mechanism. Despite the evolution of debt, the framework on addressing, preventing or dealing with it has not yet followed due to slowness and late reactions. He reiterated the importance and urgency of this intergovernmental process to mitigate the damages caused by debt crises with a more integrated and global approach.

He called for a timely solution, that is efficient, full and lasting, which should receive consensus by all member States. The Minister called for a responsible approach, which should take into account the actual situation of the specific countries and the difficulties they face.

The Minister highlighted the dilemma faced by many developing countries in the sense that they borrow money to finance their economic development, but when difficulties to pay back arise, sustainable development is hindered. He therefore called for an early warning system and better data collection to enhance predictability.

He stressed that all public debt should be based on the primacy of Human Rights above all other contracts and that the UN has played a fundamental role in the Sovereign Debt Restructuring efforts.

Question and answer session

After the chair concluded that there was a need for a fair and equitable international financial system which should eventually be reflected in debt restructuring, he opened the floor for a discussion.

Statements from Member States, by order of intervention

One point in the discussion was that Conn pointed out that in 2002 the IMF had launched a sovereign debt restructuring mechanism, which eventually failed. Member States asked why it failed and what lessons could be learned from this experience. Conn pointed out that the IMF proposal was in his mind too ambitious and too substantive. It had been deemed to fail, because the way the proposal was designed could not get consensus from member States. The question of sovereignty stayed a central issue. Politicians would not let judges make decisions on issues they had control over. Politicized issues would always be obstacles for the legal procedure. He also stressed that one had to make sure that there would be no knock out of lending, by regulating the wrong things.

Following up on a statement made by the representative of China, the representative of Sudan asked which impact the creation of an institution such as the Asian Infrastructure Investment Bank (AIIB) would have on the traditional institutions such as the Bretton-Woods institutions. Conn answered that this institution would be good for competition and thus would lead to better

functioning in this market. However, he also stressed that one will probably see changes in the institutions in their behavior towards Asia and that there was concern on how the AIIB would be operated.

Regarding the discussion on vulture funds, Conn mentioned the creation of bad law based on bad facts (vulture funds are out there; targeted legislation could interfere with the market and the freedom of contract). According to him, it is crucial to make up-front regulations instead of trying to change a deal afterwards.

Some member States (e.g. Guatemala, Egypt) and stakeholders (civil society) reaffirmed that they would welcome an international bankruptcy court, stating that the latest developments in creating new tribunals, especially for arbitration, were supported by many member States.

The representative of Egypt made concrete proposals on what the multilateral legal framework should look like, especially stating that it would be necessary to prevent vulture funds.

Minister Martinez of El Salvador emphasized again the need for a two-track system, because debt issues would need to be tackled from a front and a tail-end. A court could in his mind resolve issues that the early-warning system couldn't, and even though there was a market-based approach, information would be needed (consumer right of information). The minister proposed a ranking of countries which are giving information about companies that do “cross the line” on the costs of the needs of poor countries. He emphasized that such a mechanism could prevent developing countries from taking the wrong financial decisions. A good example would be the ones of Argentina, which had become what they were due to a lack of predictability.

The chair concluded that one will work on an even more targeted proposal in the progress of the ad hoc committee.

Agenda item 4: A multilateral legal framework for sovereign debt restructuring

Briefing on the main points of the 'elements document' circulated by Bolivia:

The elements document was circulated to all Member States and relevant bodies of the UN system. The document is not a draft, but a background paper on a debt reform with the aim to inspire substantial debate in this session. There are strong grounds for establishing rules for resolving debt crises. Member States will need a clear set of agreed principles and the inclusion of contractual clauses deterring uncooperative creditors.

Statements from Member States, by order of intervention

The representative of South Africa, speaking on behalf of the G77 and China, expressed their wish for all Member States to fully participate in this process for the multilateral legal framework, noting that without the involvement of all stakeholders, the sovereign debt restructuring process would be compromised, which is why having views from all spectrums will be of paramount importance.

He reiterated the need for a full range of discussions among Member States leading to intergovernmental negotiations on multilateral frameworks that will engender and increase stability and predictability of the international financial system. He then stressed the importance of reaching comprehensive, fair and durable solutions to debt ridden developing countries. Moreover, he called for the intensification of efforts to palliate to the deficiencies of the current financial system and reaffirmed his commitment to the process.

The representative of Ecuador spoke on behalf of CELAC and declared that UNCTAD's proposal of a Sovereign Debt Restructuring mechanism, the Doha declaration and other elements had reminded the need for more protection in sovereign financing. He claimed that CELAC considered there were strong reasons to analyze international norms of an independent and transparent international mechanism to deal with the sovereign debt restructuring process, given the shortcomings of the current system. He recalled the systemic implications of vulture funds and the risk they represent while also recognizing the right of States to negotiate their sovereign debt. He reminded the importance of respecting agreements between debtors and creditors as well as the general need of adopting good practices for sustainable development and growth.

The representative of Argentina reminded that state sovereignty and immunity are the cornerstone of international law. He noted the link between vulture funds and the lack of compliance with the principle of good faith. He welcomed the move towards a legal framework for Sovereign Debt Restructuring Processes, without prejudicing the rights of creditors.

The representative of Cuba backed the proposal put forward by Argentina in the last session as a good step forward especially with regard to CA Clauses as a way to promote the development needs of developing countries. He reminded the importance of reaching a consensus between developing and developed countries.

The representative of China took note of the comments made by delegates regarding the set of guiding principles, hoping that they would contribute to the resolution of the shortcomings and inefficiencies of the international financial market.

The representative of Ecuador outlined the major elements, such as stability, sustainability, economic growth and development, which should be kept in mind when defining a framework for sovereign debt restructurings.

The statutory and contractual focuses discussed by the parties are complementary with one another. It was highlighted that one of the biggest threats for this process was the speculative activities of vulture funds. The sovereign debt restructuring process should ensure that debtors and creditors are subject to the same regulations.

Agenda item 5: A multilateral legal framework for sovereign debt restructuring

Statement by Mr. Alexey Belov, Head of Debt Capital Markets, Department of Public Debt and Sovereign Financial Assets, Ministry of Finance of the Russian Federation
(See: <http://statements.unmeetings.org/media2/4657920/statement-by-russia-eng.pdf>)

Question and answer session

The South Center believed that this is an important opportunity to reform the international architecture of finance, urging all Member States to engage in this process.

The representative of Brazil considered that the elements paper goes in the right direction and is a positive answer to the work bestowed upon them last year. He deemed this issue to be political and technical and claimed the need for a broader number of entities from the UN system to support this endeavor. He mentioned that it might be beneficial to engage the IMF and the World Bank in the process as they possess background work that is useful to move forward. He called for enhanced guidance and support in regard with the continuation of the process, reminding that this discussion could also be seen as a contribution to the FFD process.

The Chair closed the session and thanked UNCTAD for its work.

**Ad hoc Committee on a multilateral legal framework
for sovereign debt restructuring processes**

Second working session (28–30 April 2015)

Draft minutes of the second day

Wednesday, 29 April 2015

10:00 AM – 1:00 PM

3:00 PM – 18:00 PM

Conference Room 2

2 United Nations Plaza (DC-2), New York

Agenda item 6: A multilateral legal framework for sovereign debt restructuring

Yuefen Li reminded the Ad-Hoc Committee that the principles referred to in the elements paper were based largely on 2 premises: common aspirations for sovereign debt workouts, and addressing weaknesses and gaps of the current debt processes. She noted that there had been an increasing erosion of sovereignty, and it had become easier to get court judgement rulings against sovereigns due to trade and development regulations. She expressed the belief that debt workouts should follow procedures and be subject to legal review, noting that legitimacy of debt restructuring should take into account source legitimacy. Process and outcome legitimacy should also be considered, and relate to whether procedural standards are respected and whether successful outcomes are generated.

She noted that the principle of impartiality was grounded in independence and objectivity which included three different types: institutional, actor, and informational impartiality. She specified that in the first, it was important to avoid systemic bias in favor of certain groups. In the second, there must be independence of decision makers from negotiating parties. The third can be preserved through indicators and expert knowledge. It should take into account asset recovery and ability to overcome common challenges in sovereign debt restructuring.

Regarding transparency, she recalled the necessity for data to not be nebulous and to be read in the context of protection from predators, keeping in mind that transparency did not conflict with confidentiality of negotiations.

With respect to good faith, she stressed that it encompassed trust, required fair treatment, and had an impact on all the other principles.

She also underlined the importance of mutual responsibility regarding sustainability.

Statements from Member States, by order of intervention

No statements. Meeting was suspended until 11:30 am

Keynote address by H.E. Mr. Axel Kicillof, Minister of Finance for Argentina

H.E. Mr. Axel Kicillof, Minister of Finance for Argentina started his keynote address by reminding the importance and legitimacy bestowed upon his country's case by this process as an example of the harm that speculative funds can have on countries. He then gave a brief history of sovereign debts, which began with the creation of bodies such as the Bretton Woods institutes, followed by a historical overview of the existence of vulture funds.

He reminded that there is a history of small judicial battles won by vulture funds that have allowed them to slowly gain the power they have today, noting that the latest debt restructurings had the funds as the main actors and not the creditors. He pointed out the extortive power held by vulture funds that allows them to win rulings in which they change a sovereign debt into a commercial activity, which is therefore not protected by sovereign immunity.

He ended his keynote address by wondering how it would be possible to ensure that basic principles will be upheld in the face of a default where a country will be extorted and attacked.

Statements from Member States, by order of intervention

The representative of Venezuela declared that the consequence of illegitimate debts against developing countries has highlighted the need to construct multilateral machineries to deal with this. The participation shows the growing interest in developing countries. He reminded the importance of coordinating policies in sovereign debt restructuring processes and the other existing threats of political nature having to do with sovereignty, namely the threats of vulture funds to sovereign immunity. He called for the mitigation of the forces of private groups in developing economies so as to enhance stability in the international financial sector.

The representative of Cuba expressed the wish to be working for the system by putting a human face to the market by way of a reformist solution to control a market that has been regulating in the wrong direction and that might implode.

The representative of Brazil hoped for a positive outcome and wished for a greater participation so that NGOs and academia could make their policy suggestions. He reminded the importance of having appropriate documents to backup Bolivia's elements paper. He noted that it is a matter of history for their region since many countries in Latin America have issues of debt and development.

The representative of Sri Lanka expressed the view that the approach to sovereign debt restructuring processes should be statutory, in light of the lack of a structured fallback mechanism which reflects the deficiencies of the current financial architecture. He declared that an acceptable framework to creditors and borrowers would return efficiency, stability and predictability to the international financial system, adding that such a framework would protect both parties' interests. He also put forward elements to be considered when a multilateral legal framework is created.

The representative of Guatemala recalled the IMF giving a complete picture of FfD the previous week. He mentioned the need to mobilize resources and incur in certain debts due to drops in oil prices, and pointed out that it is likely the cost of financing debts will go up in the future. He argued rules only protecting certain countries would not make sense. He stressed the need to understand that when countries go into debt, those who buy the debt are more powerful than the countries' governments themselves. He wondered about the existence of a vicious circle with the private companies when there was a speculative attack, and how this kind of situation could be renewed.

The representative of Singapore considered it is important to have active participation of Member States in control of major financial sectors for this process to be successful. He reminded the expertise of international financial institutions that have the potential to bring to take sovereign debt restructuring processes forward.

Keynote address

Address by **H. E. Mr. Axel Kicillof, Minister of Economy and Public Finance of Argentina.**

His Excellency Mr. Axel Kicillof started his keynote address by reminding the complex Argentine situation since 2001. He highlighted the importance of growth to achieve sustainability and meet financial commitments. Recalling the urgency of the situation, he expressed the need for means to protect countries from speculative attacks and reiterated his support for the creation of a new structure for sovereign debt. In spite of the obstacles that this process may encounter, discussion among countries is key and Member States should be part of the debate.

Agenda item 7: A multilateral legal framework for sovereign debt restructuring

Mr. Richard Kozul-Wright (Director UNCTAD) gave a statement on *The Roadmap and Guide for Sovereign Debt Workouts*, which UNCTAD had just published and which consists of steps that countries can take before and during debt restructuring. He pointed out that the current gaps in sovereign debt restructuring were deficits in efficiency, legitimacy and coherence, but that all these could be avoided. One would need legitimate processes allowing for a fresh start; normative coherence would allow for less uncertainty, transparency and impartiality would also be needed. He also explained what the role of UNCTAD in this process could be (analysis, normative support, and practical assistance) and that the roadmap was expert-based. After listing the Sovereign Debt Workout Principles (legitimacy, impartiality, transparency, good faith and sustainability), he pointed out that the four stages of restructuring were to 1) take the decision to restructure; 2) prepare for negotiations; 3) negotiate and 4) go through restructuring terms and post-restructuring efforts. He especially concentrated on negotiations, which should have a comprehensive approach, take advantage of contractual innovations, give a voice to all and include a systematic documentation process. The overarching challenge would be implementation. He stressed that the roadmap showed that there was an institutional gap in the current system and called for action. He highlighted that one option to facilitate this process was

the creation of a debt workout institution, which could provide coordination and technical support, keep records and provide mediation and/or arbitration panels.

Agenda item 8: A multilateral legal framework for sovereign debt restructuring

Dusan Zivkovic (UNCTAD) began his presentation by giving a brief background on the Heavily Indebted Poor Countries (HIPICs) and how they had been dealt with. He stated that the original HIPIC initiative was designed to deliver faster, deeper and broader debt relief, which was, however, not a big success. Vulture litigation in addition to the lack of participation had compounded this negative effect and led to inequitable burden sharing amongst creditors. Focusing on vulture fund litigation, he stressed that vulture funds were very profitable and provided an incentive for creditors to not participate in debt restructuring processes, because the legal proceedings against indebted countries would have high returns. It was stated that most of the times, judgments would not even be made, because the parties would settle before the decision (bearing in mind that the indebted country would still pay a considerable amount of money), leaving the countries with significant setbacks that have then again negative consequences on poverty reduction and the achievements of the development goals. As examples, he used the prominent cases of the DRC and Zambia. He also highlighted a few ad hoc measures that had been taken by Belgium, the UK, the World Bank, and the Paris Club. He, however, also raised critically that these efforts were not enough and that fragmentation in handling this issue had created opportunities for vulture funds to profit and sabotage sovereign debt relief initiatives. The problem of the status quo undermining incentives for creditors in participating in restructuring would not only count for HIPICs, but for all member States. The legal framework should thus provide for: equal burden sharing amongst creditors, transparency and predictability; reducing costs of litigation, ensuring that development aid/debt relief was not diverted from its intended purpose.

Statements from Member States, by order of intervention

Member States (Argentina, China) and stakeholders (EuroDebt (civil society)) welcomed the points made by the representatives of UNCTAD and expressed that they found the roadmap very helpful.

Argentina highlighted that systemic risks which were involved in speculative behavior were a dimension of the issue that was shown by vulture funds and that this would be a real danger for the restructuring process. It was also stressed that because of the sovereignty of all states, a state was not just an ordinary debtor, because of its nature as entity that cannot simply be dissolved when facing difficulties to pay back. This issue would still need to be addressed.

China also raised the issue of sovereignty as critical point with regards to the roadmap.

Civil society was wondering who would eventually make the decision for an impartial institution, making reference to the General Assembly (GA) or the inclusion into the FFD process. Another question was if, given there would be a multilateral legal framework at one point, national legislation would then also still be needed or if the international framework was sufficient.

Richard Kozul-Wright clarified that the issue of sovereignty was one that was central to any discussion on rules and regulations on international level, which was why it was not explicitly addressed in the roadmap. He stressed that there has been an erosion of sovereignty in the course of the last years especially in the areas of international trade and investment agreements and that they often took precedents over national legislation.

He also stressed that the interaction between legal, political and economic issues seemed to be much more intense when it comes to sovereign debt restructuring (compared to FDI and trade). Institution building is, however, in itself a highly political issue. An incremental approach is desirable for institution building as the world is institutionally fragmented and needs to move to a comprehensive/consistent institutional structure which exactly addresses this unfairness. He welcomed the work of the trade union movement, which would feed in to the work of UNCTAD.

Regarding the absence of some developed countries in the process, he acknowledged that they were in fact represented through trade unions and civil society groups. He also shared that there was an EU Parliamentary document, which would be of an advisory nature, but had really strong language calling upon using the UN principles aimed at reducing the prevalence of debt crises and engaging constructively in the GA initiated process.

He warned once again that the Congo Case made clear that the authority of vulture funds to seize assets was dangerous.

Concluding the session, the chair thanked UNCTAD for its work in the field of sovereign debt restructuring, but also highlighted the work that was carried out over the course of many years.

**Ad hoc Committee on a multilateral legal framework
for sovereign debt restructuring processes**

Second working session (28–30 April 2015)
Draft minutes of the third day
Thursday, 30 April 2015
10:00 AM – 1:00 PM

Conference Room 2
2 United Nations Plaza (DC-2), New York

Agenda item 8: Conclusion of the second working session

In the beginning of this morning session, the chair briefly summarized the 2nd working session of the committee, highlighting the points made by each speaker and acknowledging the work of UNCTAD towards and throughout this working session.

Announcements by the Chair

The chair reaffirmed that in the course of the past months efforts had been made to reach out to all stakeholders (member States, financial institutions, civil society and private sector) and that, together with the president of General Assembly and Secretary General, meetings had been held at the World Bank and the IMF. He assured the participants that these efforts will be continued. In this context, he announced that he would travel to Brussels on May 11th 2015 and that meetings with the EU commission (economic and finance), the director of investment and productive development, treasury, members of parliament, leadership of global matters and members of civil society that are credited to the UN, were planned. The committee would moreover continue initiatives in the specific regions and continue to work with respective stakeholders.

The chair announced several dates for the further process of the work of the committee.

Statements from Member States, by order of intervention

At the end of the session, the chair gave the floor again to member States and stakeholders before concluding the 2nd working session of the committee.

Argentina, Venezuela, China and Ecuador complimented the roadmap and other work done by UNCTAD. The belief was stated that the roadmap was a transparent and solid basis that would allow for designing a working instrument not only because there was awareness of the danger of vulture funds now, but also because one worked towards an efficiently organized mechanism.

Argentina reiterated that Sovereign Debt Restructuring was a sub-product of the (historical) financial architecture of capitalism and reforms would be needed now, because there were some deeply indebted countries which could create a dangerous situation for all.

Argentina also made clear that they noted consensus that there should be gradual work, taking up on the steps as proposed in the UNCTAD roadmap. Belief was expressed that the 5 principles are principles that could enjoy broad consensus, one thing that could be ensured when visiting the EU. He called the document a historic contribution to bring in order the sovereign debt restructuring mechanism.

China appreciated what was said about the inclusiveness of the process. It called for a cooperation with the World Bank, the IMF and major developed countries. It was stated that one could learn from these institutions and include their suggestions.

Ecuador highlighted the possible involvement of regional institutions.

In his concluding remarks the chair acknowledged that sovereign debt restructuring was a complex and controversial issue, but asked who, if not the UN, could address complex controversial issues. He assured to continue the work in an absolutely transparent manner and stressed the need of input from civil society.