

United Nations
Ad hoc Committee on Sovereign Debt Restructuring Processes
Third working session
24 July of 2015

Committee Report
Second Part: Chairperson Summary

Overview

The current international debt restructuring system suffers from problems of fragmentation, inefficiencies and protracted negotiations, which lead to a lack of growth oriented solutions to the debt problems of developing countries and challenges to developed countries. Furthermore, the activities of non-cooperative litigating creditors continue to add to the uncertainty of post-debt restructuring outcomes. The inability of the international financial community to prevent and promptly resolve debt problems as they arise is financially costly and quickly triggers development losses in areas where gains have been painstakingly made. This fundamentally impairs the ability of a country to maintain a sustainable development path.

Heads of States and governments and other representatives also recently recognized in the Addis Ababa Action Agenda that debtors and creditors must work together to prevent and resolve unsustainable debt situations. The importance of debt restructurings being timely, orderly, effective, fair and negotiated in good faith was reaffirmed.

The Process of Consultations

The consultations of the Chair of the Ad hoc Committee were carried out taking into consideration the above mentioned gaps and challenges.

The consultation process was conducted by the Chair with the aim of including and reaching out to all member states and all institutional stakeholders. The work of the Ad Hoc Committee on Debt Restructuring Processes was comprised of three plenary working sessions, academic contributions, informal consultations, discussion on the Chair's Elements Paper on Sovereign Debt Restructuring Processes and negotiations on the Principles on Sovereign Debt Restructuring Processes.

The Importance of the Principles

During the Consultations it was emphasized that solutions need to be found that foster greater financial stability by reducing excessive risk taking while ensuring a fairer and more efficient resolution of debt crises when they happen. In order to improve the international sovereign debt restructuring practices, a set of Principles were recognized by the Committee.

The Chair believes that the work undertaken by the Ad Hoc Committee will enable further discussions on debt issues. The Principles on Sovereign Debt Restructuring Processes, which are the result of the work of the Ad Hoc Committee, are expected to contribute to enhancing the efficiency, stability and predictability of the international financial system and promote the achievement of sustainable growth and development, in accordance with national priorities.

The set of Principles are listed and described below:

Principles on Sovereign Debt Restructuring Processes

1. A Sovereign State has the right, in the exercise of its discretion, to design its macroeconomic policy, including restructuring its sovereign debt, which should not be frustrated or impeded by any abusive measures. Restructuring should be done as the last resort and preserving at the outset creditors' rights.

2. **Good faith** by both the sovereign debtor and all its creditors would entail their engagement in constructive sovereign debt restructuring workout negotiations and other stages of the process with the aim of a prompt and durable reestablishment of debt sustainability and debt servicing, as well as achieving the support of a critical mass of creditors through a constructive dialogue regarding the restructuring terms.

3. **Transparency** should be promoted in order to enhance the accountability of the actors concerned, which can be achieved through the timely sharing of both data and processes related to sovereign debt workouts.

4. **Impartiality** requires that all institutions and actors involved in sovereign debt restructuring workouts, including at the regional level, in accordance with their respective mandates, enjoy independence and refrain from exercising any undue influence over the process and other stakeholders or engaging in actions that would give rise to conflicts of interest or corruption or both.

5. **Equitable treatment** imposes on States the duty to refrain from arbitrarily discriminating among creditors, unless a different treatment is justified under the law, is reasonable, and is correlated to the characteristics of the credit, guaranteeing inter-creditor equality, discussed among all creditors. Creditors have the right to receive the same proportionate treatment in accordance with their credit and its characteristics. No creditors or creditor groups should be excluded *ex ante* from the sovereign debt restructuring process.

6. **Sovereign immunity** from jurisdiction and execution regarding sovereign debt restructurings is a right of States before foreign domestic courts and exceptions should be restrictively interpreted.

7. **Legitimacy** entails that the establishment of institutions and the operations related to sovereign debt restructuring workouts respect requirements of inclusiveness and the rule of law, at all levels. The terms and conditions of the original contracts should remain valid until such time as they are modified by a restructuring agreement.

8. **Sustainability** implies that sovereign debt restructuring workouts are completed in a timely and efficient manner and lead to a stable debt situation in the debtor State, preserving at the outset creditors' rights while promoting sustained and inclusive economic growth and sustainable development, minimizing economic and social costs, warranting the stability of the international financial system and respecting human rights.

9. **Majority restructuring** implies that sovereign debt restructuring agreements that are approved by a qualified majority of the creditors of a State are not to be affected, jeopardized or otherwise impeded by other States or a non-representative minority of creditors, who must respect the decisions adopted by the majority of the creditors. States should be encouraged to include collective action clauses in their sovereign debt to be issued.