

14/9/2015

SOVEREIGN DEBT RESTRUCTURINGS

THE ARGENTINE CASE AND THE “BASIC PRINCIPLES” ADOPTED BY UNGA

1.

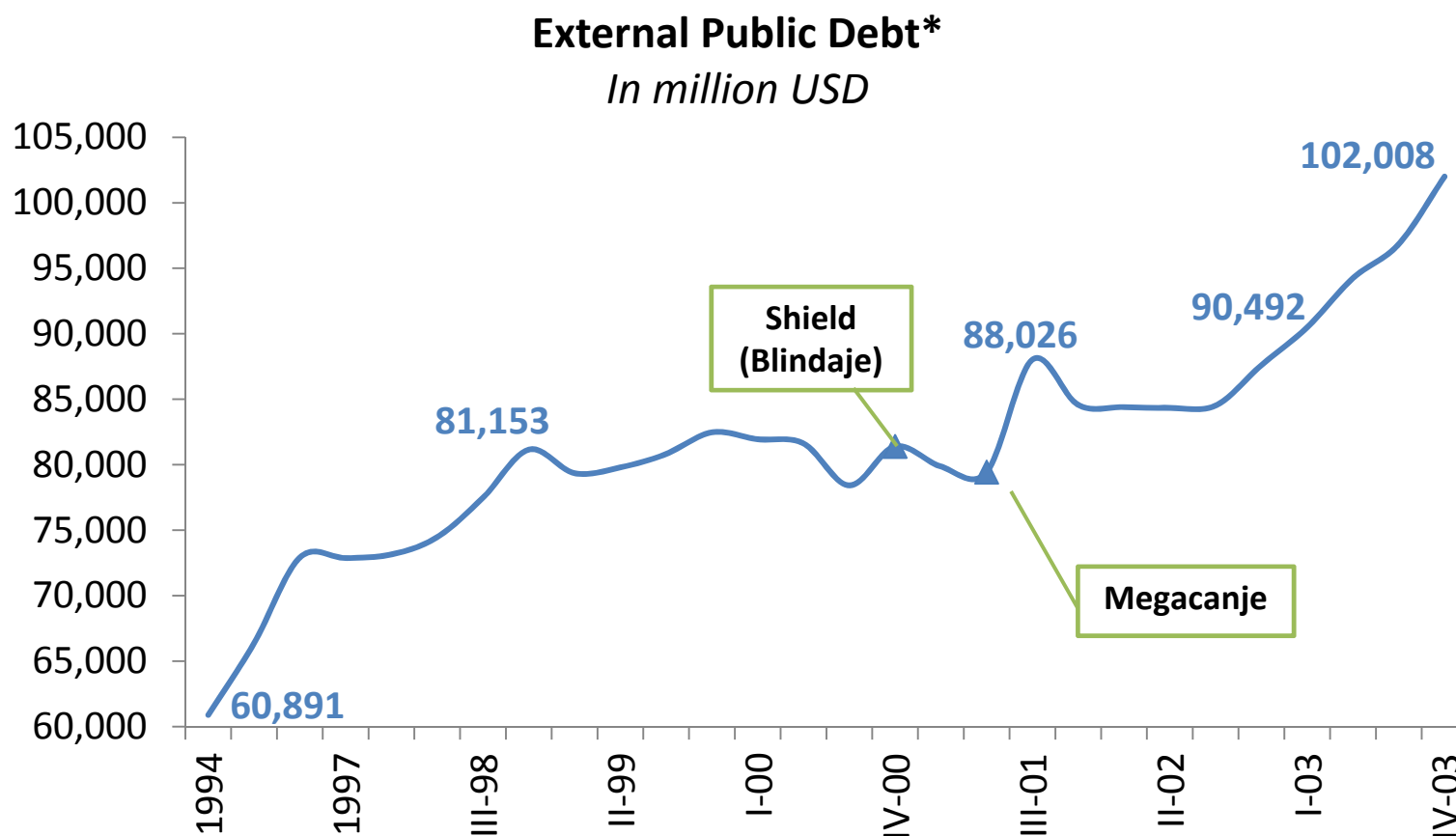
ARGENTINA IN 2001: CRISIS AND DEFAULT

Convertibility

The evolution of Public Debt

1994-2003

The increase in public sector external debt was permanent. During the Tequila crisis and economic downturn in 2001, there were major increases in public debt.



* Non-financial National Public Sector

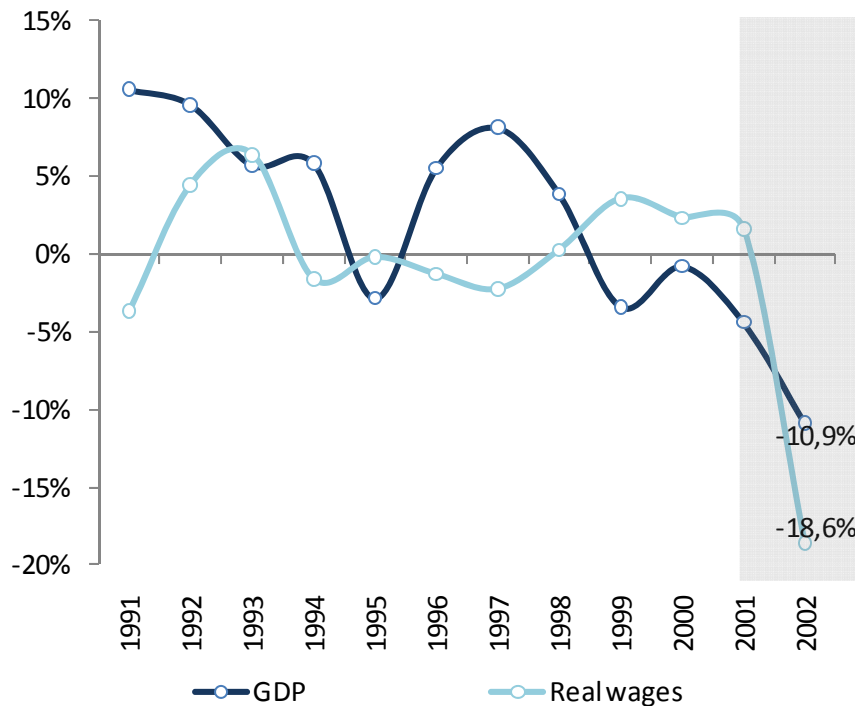
2001 Crisis

Convertibility

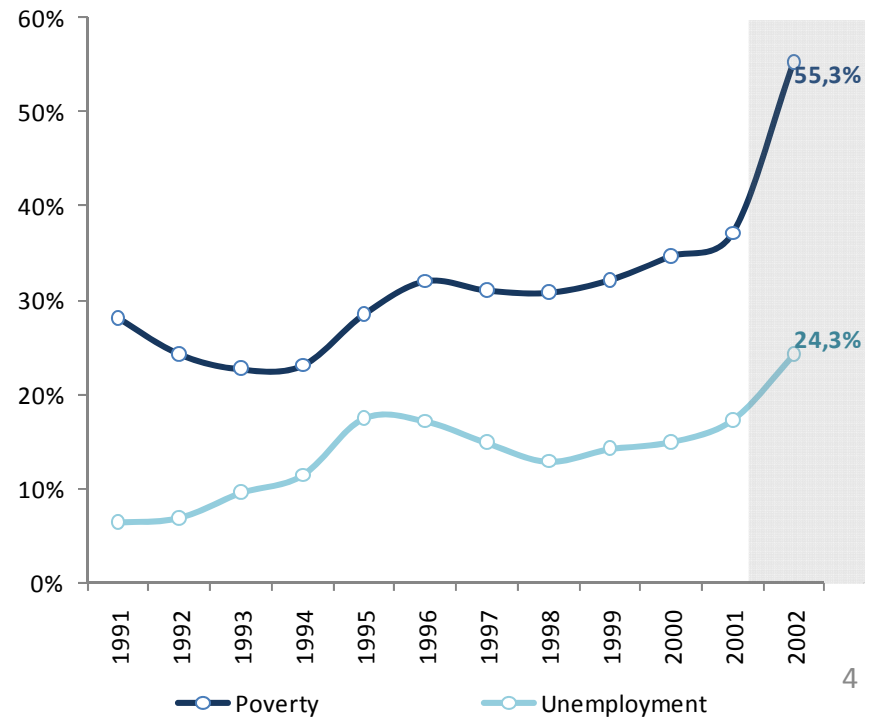
Consequences

The collapse of the convertibility generated record levels of poverty and unemployment. The worst occurred in 2002 when, following the devaluation resulting from the currency crisis, GDP fell -10.9% and real wages shrank -18.6% in comparison with the previous year.

GDP and Real Wages
Annual variation



Poverty and Unemployment
In %



2.

**ARGENTINA'S SOVEREIGN DEBT
RESTRUCTURING PROCESS
2005-2010**

Sovereign debt restructuring process

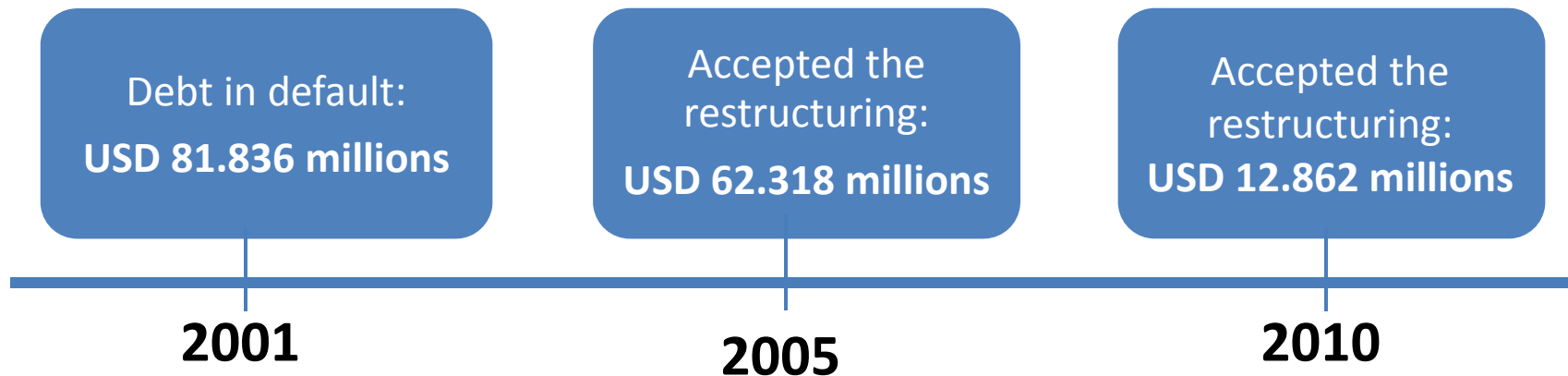
2005-2014

Since 2003 Argentina faced the catastrophic consequences of the decisions taken by previous governments and normalized the situation successfully. Moreover, it achieved the highest growing period of the last century, and crucial steps were taken in the regulation of our external debt while at the same time a process of debt reduction was carried out.

2005	March: Debt restructuring with private holders. Level of acceptance: 76%.	↓ USD 27.057 millions
2006	March: Early debt cancellation with the IMF. USD 9.500 millions.	
2008	September: Paris' Club. A decree was released that authorized the payment of the debt.	
2009	February: Restructuring of secured loans. September: Restructuring of the debt with CER adjustment.	↓ USD 600 millions
2010	May: Debt restructuring reopening. Accumulated level of acceptance: +92.4%	↓ USD 4.347 millions
2013	October: CIADI. Companies agreement with favorable ruling. USD 677 millions.	
2014	March: An agreement with REPSOL is reached for the 51% nationalization of YPF. USD 5.000 millions May: An agreement is reached with the 19 countries of the Paris' Club. USD 9.700 millions	

Sovereign debt restructuring process

Milestones

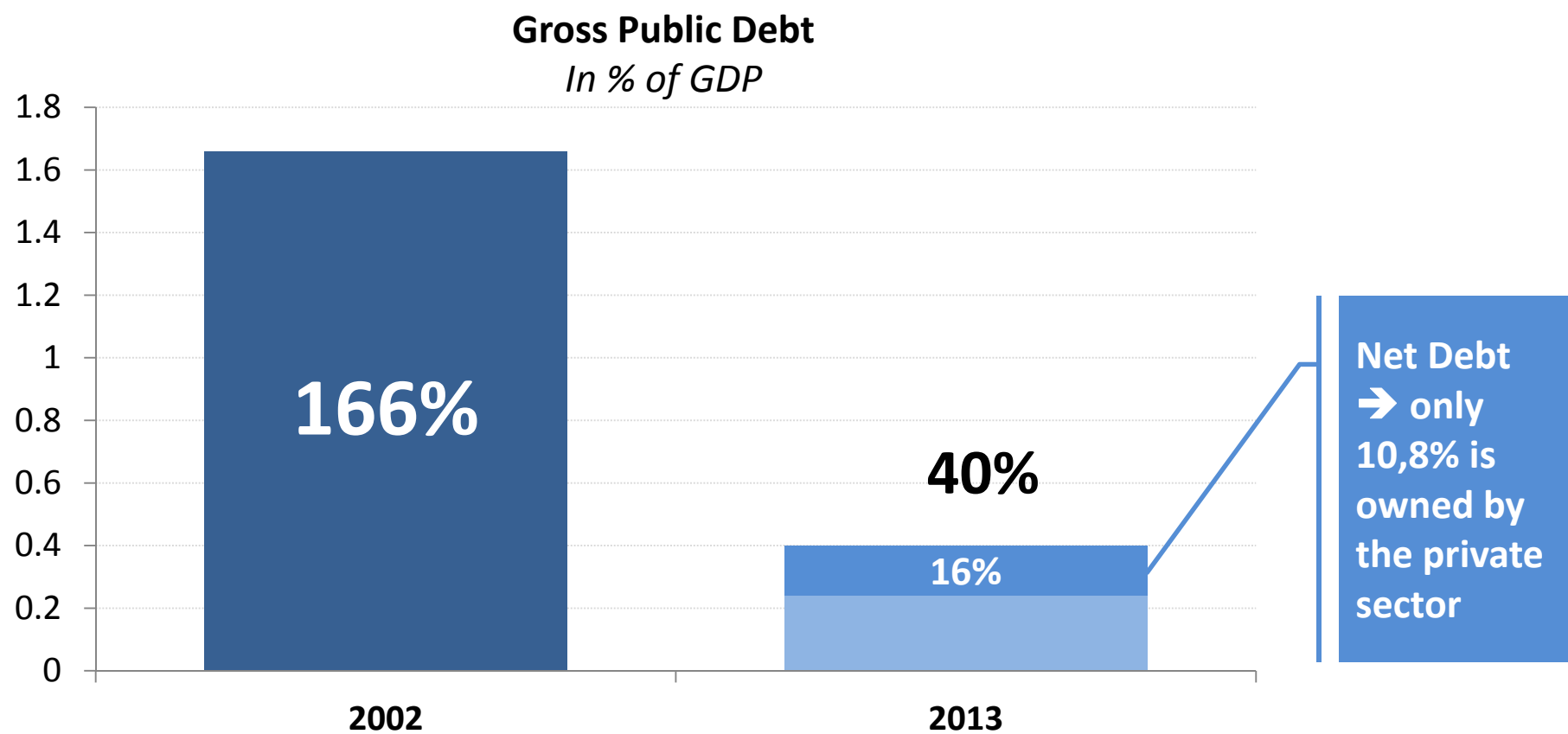


Around **92,4%** of the debt was normalized

Sovereign debt restructuring process

2002-2013

The public debt to GDP ratio dropped from 166% in 2002 to less than 40% in 2013. During 2002, over 95% of the debt was owned by the private sector and multilateral agencies. At present, that percentage dropped to less than half.



Sovereign debt sustainability

Sustainability indicators

Debt sustainability indicators

Ratios	2002	2013
Interests / GDP	3,8%	1,3%
Interests / Government revenue	21,9%	4,9%
Public Debt / GDP	166,4%	39,4%
Foreign Public Debt / GDP	95,3%	11,8%
Foreign Debt / Foreign Reserves	12 times	4 times
Foreign Public Debt / Foreign Reserves	836,2%	198,6%
Foreign Public Debt / Exports	300,6%	62,4%
% of total debt in foreign currency	79,1%	62,3%
Average debt maturity	6,1 years	9 years

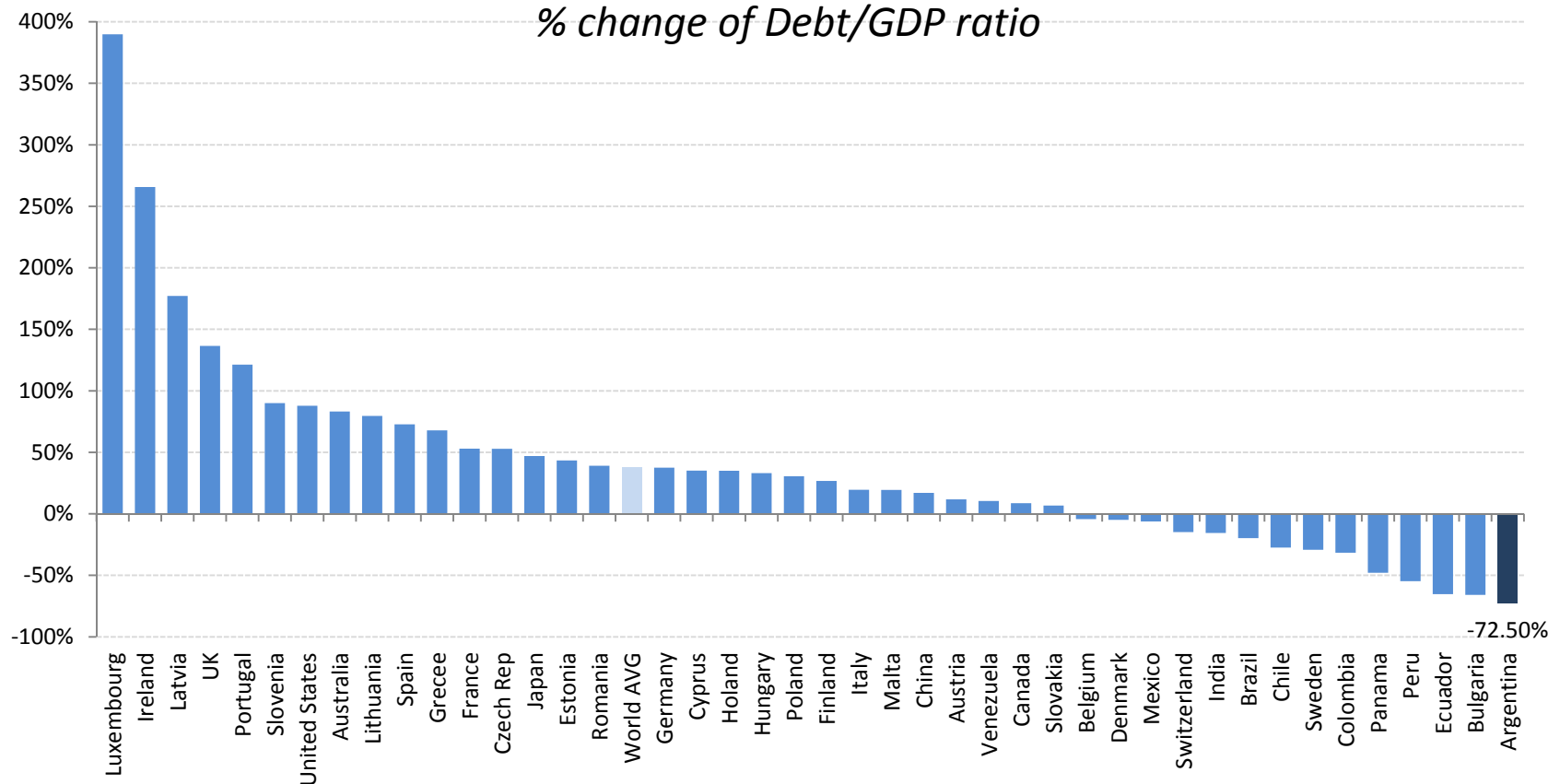
World debt growth comparison

Debt growth

% between 2002-2012

Argentina is one of the countries that achieved a mayor debt reduction between 2002 and 2012. The Debt/GDP ratio for Argentina ratio fall 73%, while for the average of the selected countries there was an increase of 38,1%.

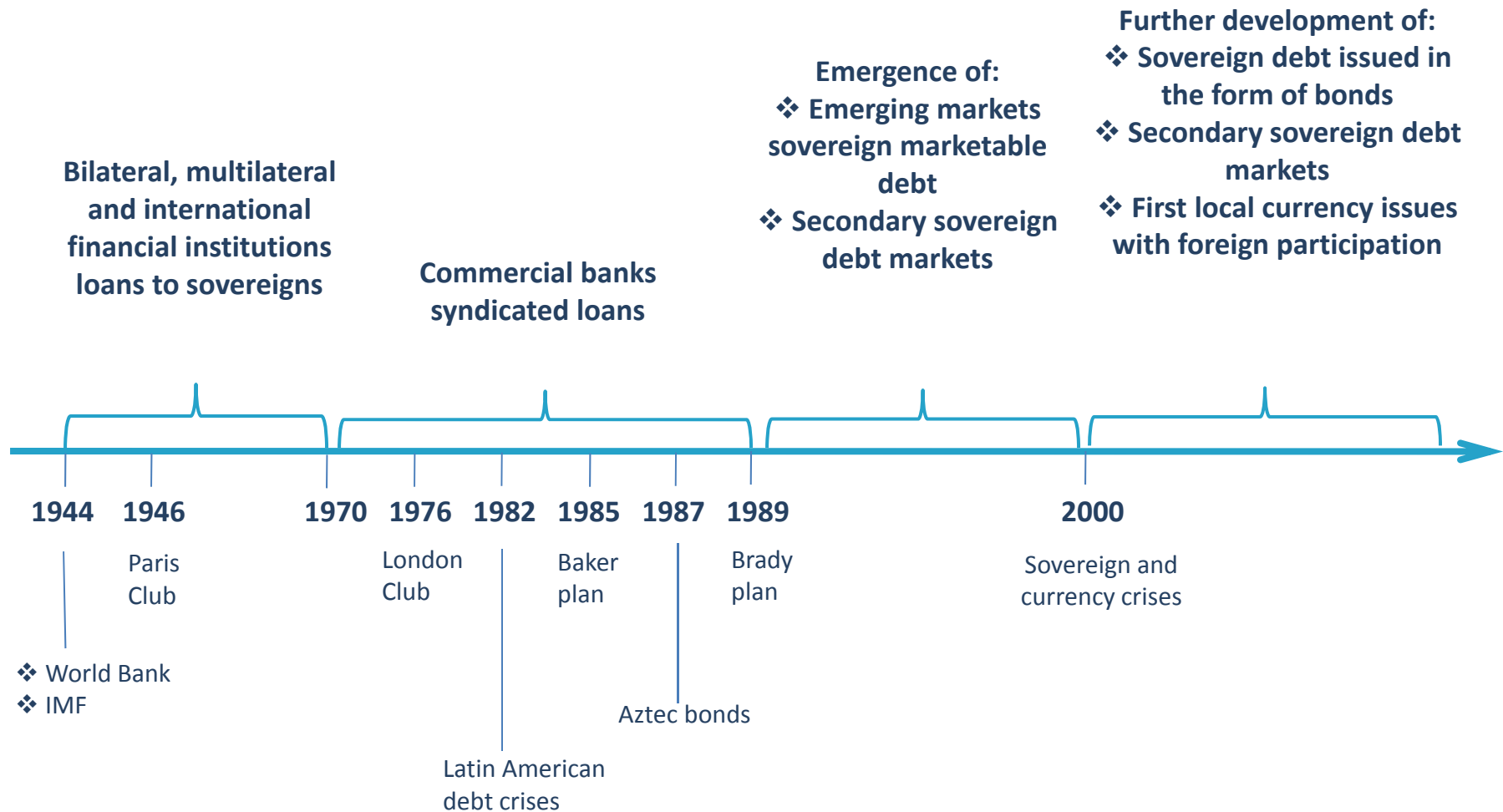
Government gross debt
% change of Debt/GDP ratio



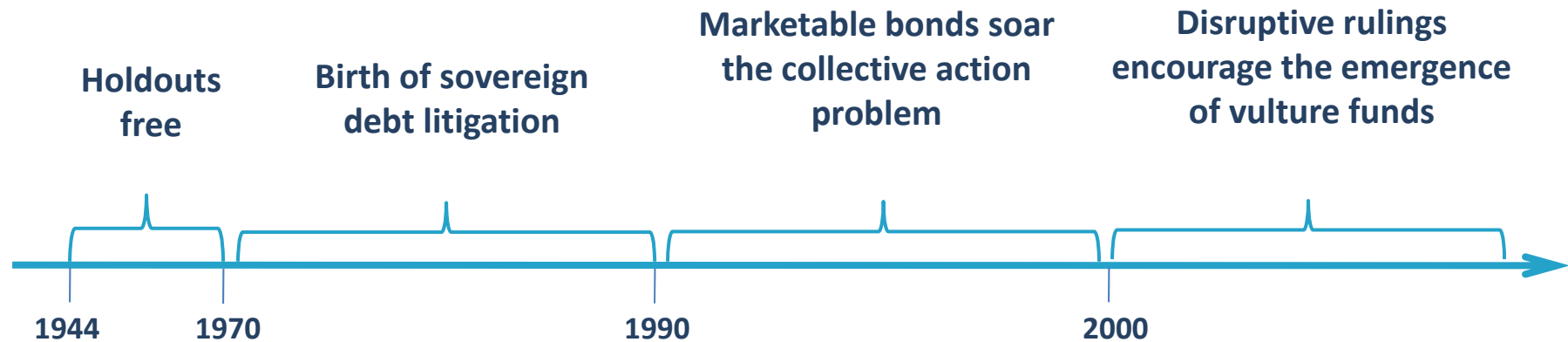
3.

WHO ARE THE VULTURE FUNDS?

Sovereign external debt: origins



The vulture funds problem: origins



- ❖ Holdouts appear in creditor committees of syndicated loans, obstructing sovereign debt restructuring processes.
- ❖ Sovereign debt litigation is born.
- ❖ Vulture funds infringe the foreign sovereign immunities act: the issuance of public debt becomes a commercial sovereign activity.

- ❖ The collective action problem increases as sovereigns issue debt in the form of bonds to an atomized creditor community in different jurisdictions: holdouts multiply.
- ❖ Sovereign debt litigation multiplies.
- ❖ Vulture funds infringe the Champerty defense.

- ❖ Vulture funds are encouraged by disruptive rulings by international courts: special interpretation of pari passu clause is deemed to mean "ratable payment" between creditors rather than "equal treatment".
- ❖ Sovereign debt litigation multiplies even more.

The predatory behavior of vulture funds

Main characteristics

- ❖ The **lack of an international regulatory framework** for sovereign debt restructurings has allowed highly speculative funds, commonly called "vulture funds", to take advantage of systemic gaps with the aim of bypassing successful restructuring agreements and the principles applicable to these contexts.
- ❖ "Vulture funds" are professionals of **worldwide financial speculation**; they seek usurious profits at the expense of countries facing economic and financial difficulties, regardless of whether their actions can generate new crises that hinder other creditors' collection or worsen the living conditions of the inhabitants of those countries.
- ❖ "Vulture funds" are **not** good faith investors but rather entities entirely prepared to withstand high costs on lawyers, financiers and lobbying, in return for windfall profits.

The vicious circle of vulture funds

COUNTRY OVERLEVERAGED AND INSOLVENT

DEFAULT

FUNDS PURCHASE
DEBT AT LOW PRICE

RESCHEDULING AND DEBT
SWAP

MAJORITY ACCEPTANCE

VULTURE
FUNDS

DEBT RELIEF

Vulture Earnings

Further Experiences

Peru

Default 1992

Restructuring 1995

1996 NML Elliott buys securities in default. **180 eligible creditors, only 2 litigated.**

Peru loses judicial dispute in the Court of New York

NML Elliott

Bought defaulted securities for USD 11,4 millions

Collected USD 58,4 millions

Gain of 400%

Vulture Earnings

Further Experiences

Congo

Elliott bought defaulted titles from Congo for a nominal value of USD 30 million.

ELLIOTT

Bought securities for nearly USD 2,6 millions

Gets in United Kingdom judgment for more than USD 100 millions.

Seizes oil exports for USD 39 millions

Gain of
1400%

Vulture Earnings

Further Experiences

Greece

2012 Dart buy Greek bonds prior to the restructuring of its debt (March 2012).

The restructuring is accepted by 97% of the creditors.

DART

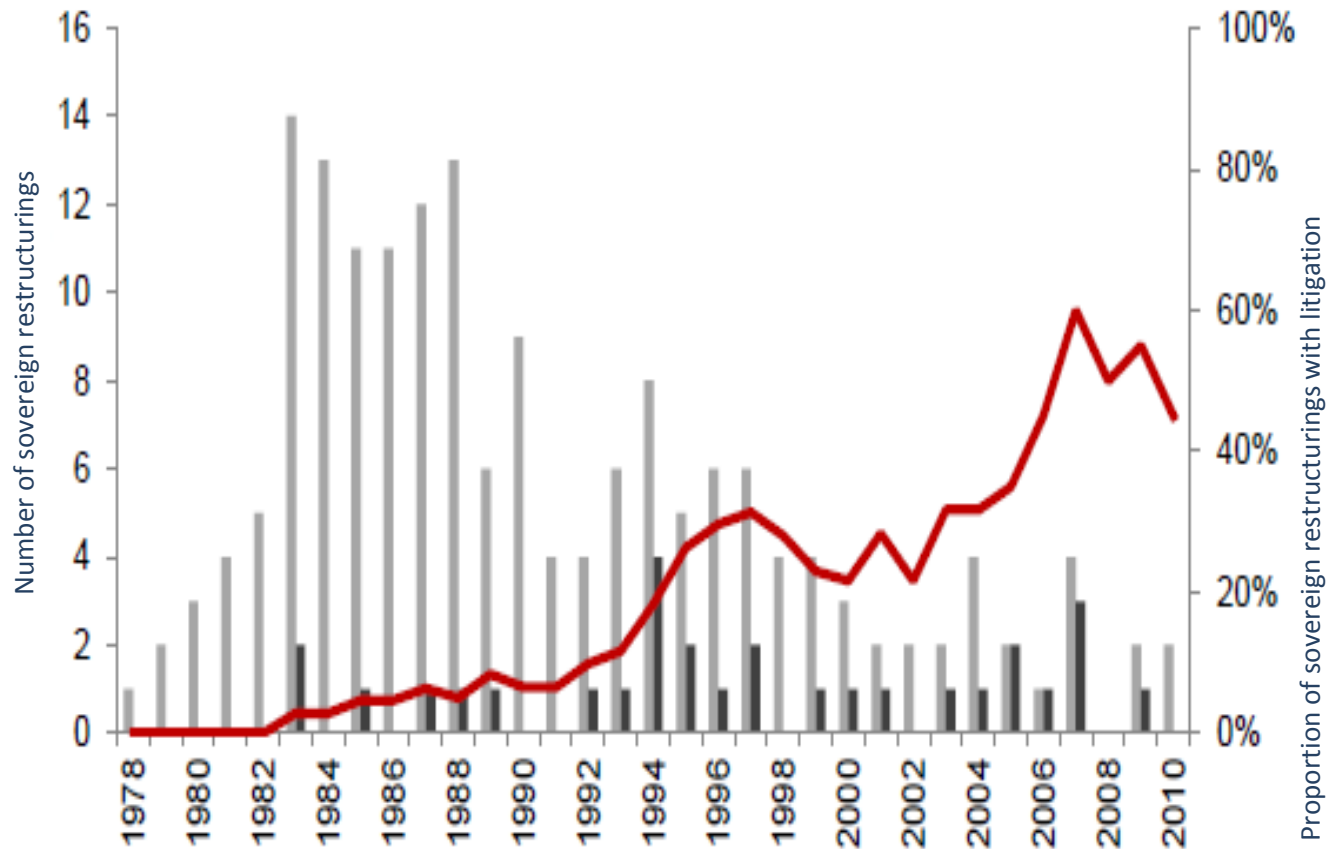


Some of the countries attacked by vulture funds



Sovereign debt litigation: a rising trend

Sovereign restructurings with litigation:



■ Sovereign restructurings ■ Sovereign restructurings with litigation — Proportion of sovereign restructurings with litigation

4.

ARGENTINA AND VULTURE FUNDS

The vulture funds' strategies against Argentina

Argentina is one patent victim of the vulture funds

- ❖ With the support of the US judiciary, these speculative groups, that they bought securities short before or after the default (even during the restructurings processes), have managed to force the meaning of the pari passu clause –which can be found in countless bonds still outstanding worldwide–, with the aim of hindering the successful restructuring of Argentina's debt, reached with more than 92% of its creditors.
- ❖ The negative impact of vulture funds' activity is undeniable. As a consequence of their usurious strategy against Argentina, they seek to collect an approximate amount of U\$D 1.6 billion, in one of their judicial disputes, which represents a 1600 % profit. This amount, together with other claims presented in related proceedings, could rise to, approximately, U\$D 15 billion.

Vulture Funds Claim

→ 2008

BOUGHT
DEFAULTED DEBT

NML
48,7

USD MILLIONS



1608% AGGREGATED
RATE OF RETURN

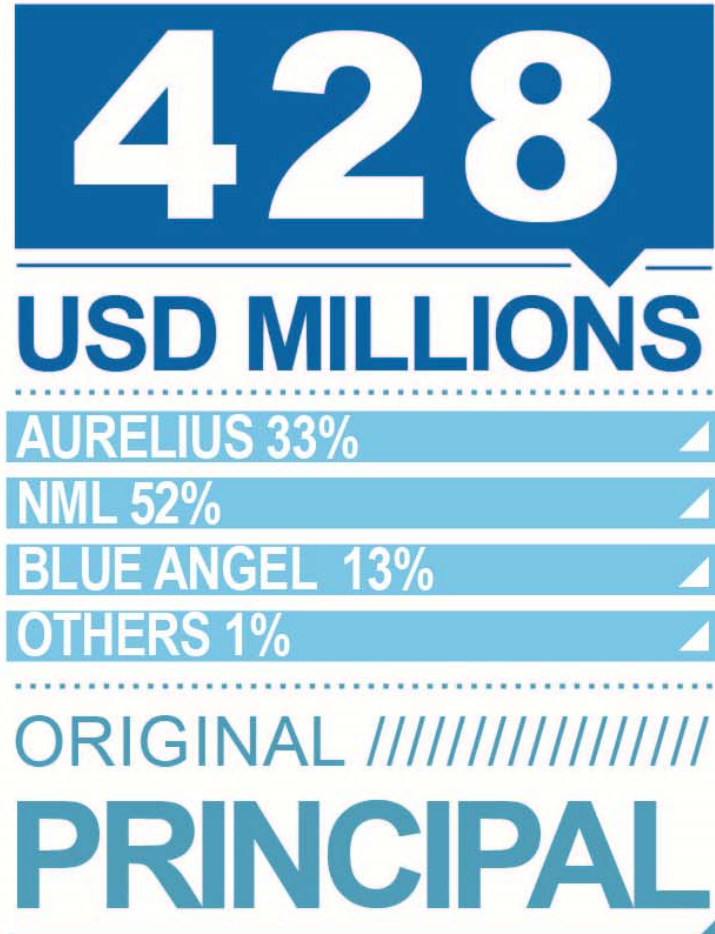
→ 2014

U.S. JUSTICE
RECOGNIZES

NML
832

USD MILLIONS

Vulture Funds Claim



Vulture Funds Claim

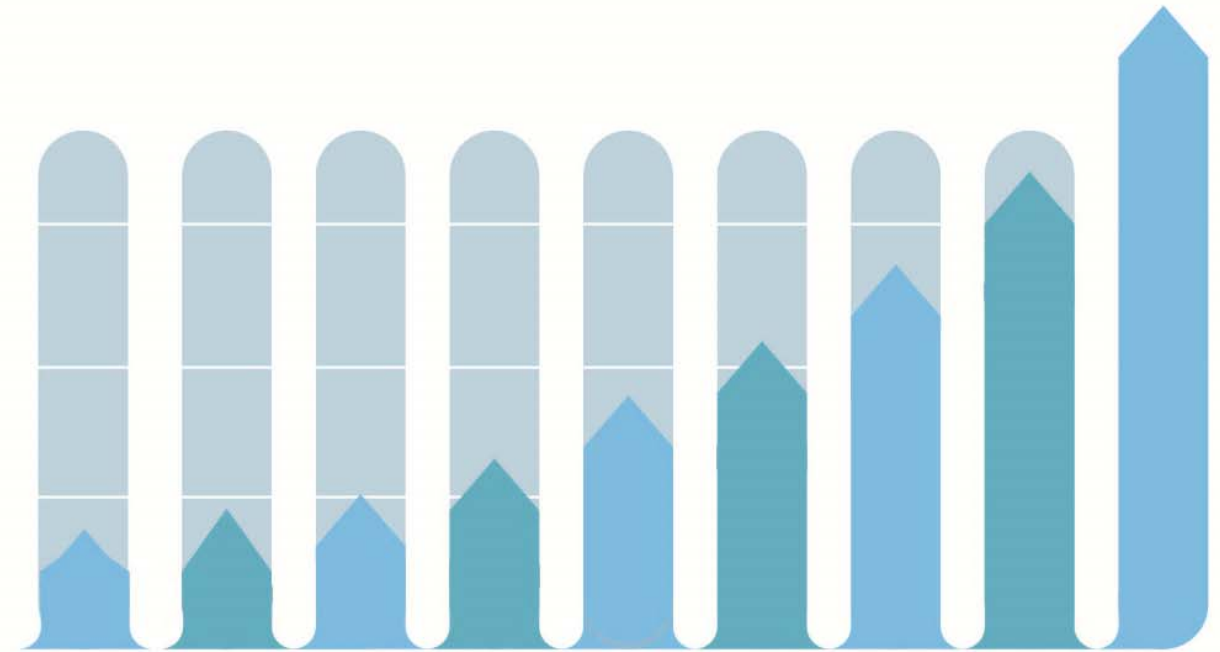


THIS RULING
IMPLICATES

DEBT

1500

USD MILLIONS



+ 15.000
USD MILLIONS

INCLUDING
THE TOTAL
OF BONDS
STILL IN
DEFAULT

Vulture Funds Claim

+15.000 USD MILLIONS

ARE EQUIVALENT TO 

→ **52%**

OF CENTRAL BANK'S
FOREING RESERVES

→ **20%**

OF ARGENTINE
ANNUAL EXPORTS

→ **30%**

OF ARGENTINE PUBLIC DEBT
WITH THE PRIVATE SECTOR



AR\$ 3100

DEBT
INCREASE
PER INHABITANT

5.

THE NEED FOR A STATUTORY SOLUTION

The contractual solution?

- ❖ The **contractual approach** to the collective action problem focuses on the modification of standard contractual clauses used in sovereign debt instruments.
- ❖ **Collective Action Clauses (CACs)** have been adopted since 2003 and amended as of 2014
- ❖ CACs, however, proved not to be a complete solution:
 - ✓ Stock problem: USD 100 billions maturing in the next 10 years with no CACs under NY law.
 - ✓ No effective solution for vulture funds strategies: they can still block restructurings.
 - ✓ No guarantee of a uniformity of criteria nor avoidance of legal fragmentation.
 - ✓ No possibility to provide and regulate interim financing.

The world seeks a solution



❖ The US Supreme Court decides not to consider the Argentine Case

❖ Debtors and creditors agree on new debt contracts that defines new CACs and clarifies the interpretation of the pari passu clause

❖ As the result of a proposal made by G77+China, at the UN starts the discussion on sovereign debt restructuring processes

❖ The Parliament of the Kingdom of Belgium approves by unanimity a law against the activities of vulture funds. The law is effective since 13/9/2015.

❖ On 10/9/2015 the UNGA adopted the "Basic Principles for the Restructuring of Sovereign Debts".

The appropriate forum to discuss:

The United Nations General Assembly is the appropriate forum

- ❖ The **UNGA** is the most **democratic, representative** and **equitative** organ in the international system.
- ❖ It has the advantage of **addressing the sovereign debt problem in a comprehensive way**.
- ❖ It allows an **integrated vision**, comprising all possible angles.
- ❖ It has **no conflict of interest** as it is not a lender nor a borrower.
- ❖ It is not a new topic for the UNGA since it has several resolutions in this regard.

Basic Principles on Sovereign Debt Restructurings

Resolution A/69/L.79

- 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.

Basic Principles on Sovereign Debt Restructurings

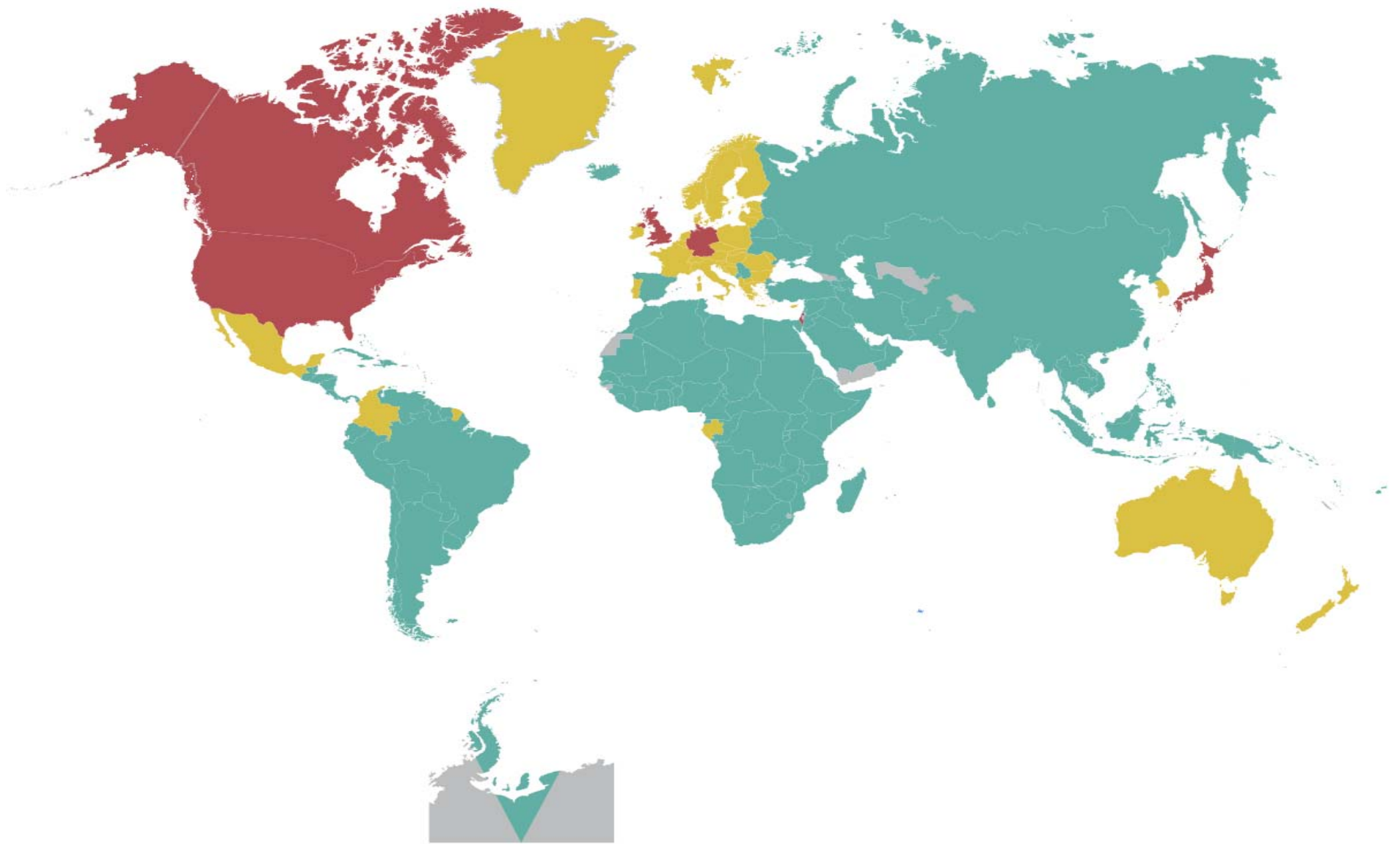
Resolution A/69/L.79

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.

Basic Principles on Sovereign Debt Restructurings

Resolution A/69/L.79

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.”



VOTES

136
In favour

41
Abstain

6
Against

10
Absents