INTERGOVERNMENTAL GROUP OF EXPERTS ON FINANCING FOR DEVELOPMENT
Second Session

Outline for Remarks

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Thank you Mr/Ms President. And thanks to UNCTAD and to all of you for inviting me to speak. I have been asked to talk briefly about the possibility of semi-institutional or fully-fledged multilateral approaches to sovereign debt restructuring. Is there still space for considering such approaches? How might they fit in?

To begin with, I would like to reiterate my support for the improvements that have been mentioned:

- Importance of debt management
- Thinking through the increased sources of vulnerability and how to deal with them. (i.e. climate change and how it is linked to debt problems)
- Importance of soft law, and of shifting norms through the adoption of shared principles – UNGA Resolution; UNCTAD Principles.
- Improvements in sovereign debt contracts – use of CACs, aggregated CACs, state-contingent debt instruments.

Nonetheless, even with all of these, it is virtually certain that problems will remain and that unforeseen crises will emerge:

- Fragmentation among creditors and the changing creditor context.
- Shift towards loans from Non-Paris Club creditors. In many developing countries, the largest portion of official bilateral debt is owed to Non-Paris Club creditors. (Often with shorter maturities; higher interest.)
- Shift in multilateral lending; more 'plurilateral' lenders as well – Asian Infrastructure Investment Bank.
- Continued relevance of holdout creditors, especially given the significant outstanding global debt stock that does not include improved contractual provisions. (Holdout litigation is rare, but relevant.)
- Growth of collateralized debt. Also upending the defacto priorities/hierarchy among creditors.

Why consider a multilateral, institutional approach? This still has the possibility of addressing a number of the problems that remain:

- *Global reach*: Could potentially include all creditors, possibly including not only private bonded or bank debt and other commercial creditors but also bilateral, multilateral, and plurilateral creditors.

- *Global standstill* or stay on creditor action and litigation; moratorium on debt payments; in a crisis circumstance this is essential

- Could include *majority* or super-majority approval of a restructuring agreement, possibly with creditors divided into classes for voting purposes.

- Could include an *arbitral* or semi-judicial body to oversee the process and hear claims or controversies were they to arise.

- Could include *priority* for new financing. Explicitly enable lending into arrears and solving liquidity problems.

- Could be considered more *legitimate* than current approaches, both in terms of procedure and in terms of substantive outcome. And legitimacy is important not only because we like 'legitimacy' but because it can have an actual impact on the ground.
    - Remember that there are two layers of disruption that result from a sovereign debt crisis or restructuring:
    - 1. The disruption from the financial or economic dislocation of the debt crisis itself.
    - 2. The disruption from the political and social anger at the crisis and how it is dealt with. A process perceived to be more legitimate can help to diminish this second layer of disruption.

- I say "could" of course for all of these because you could select from these functions and options.

Institutional forms:

- UNCTAD published one of the first of these proposals.

- IMF-based SDRM in the early 2000s most heavily discussed. This would have amended the IMF's Articles of Agreement to create a statutory framework, giving it immediate global reach.
    - It included majority voting, a stay on creditor action, priority financing. It was primarily intended to deal with commercial creditors. The terms of any restructuring would have been approved by the IMF in the context of an IMF program.
    - Concerns: creditor rights; debtors feared drop in lending & sovereign autonomy; moral hazard.

- It would also be possible to establish more independent multilateral institution.
    - An arbitral body, perhaps based at the PCA.
    - Also the possibility of ad-hoc arbitration.

- A Debt Workout Institution (UNCTAD Roadmap & Manual): A clearing house for knowledge; a neutral party; it could begin as an institution recommending and advising on soft law measures. And then take on a more substantial role as state parties felt appropriate.

- Also the possibility of regional treaties, i.e. Europe SDR.

- State based hard-law approach, though not multilateral:
    - NY Law, London, Singapore changed to allow restructuring under the terms of that law.

Final points:

- It would be wise to have a back-up in the event that unforeseen issues arise and the systems fail.
- Continuing to work on or refine multilateral and institutional approaches is not mutually exclusive with other approaches.
- A hard-law multilateral approach can be 'successful' even if it is never used. The presence and possibility of a back-up can shape interactions.
- Such work can also help to galvanize and spur movement in other approaches. (i.e. CACs after the IMF SDRM proposal.)
- Certain hard law elements could be adopted independent of others: For example, a mechanism to put in place a temporary (but perhaps renewable) global standstill on litigation, which would then give actors breathing space to work on a comprehensive restructuring. This could be a standalone emergency measure.
- This is the time! We are in a relatively unique phase of international relations.

Thank you.

Notes from UNCTAD:

Specifically, on your panel and your contribution: This panel focuses sovereign debt restructurings. The first speaker – Yuefen Li – will outline a role of the UNCTAD Principles/soft law approaches in addressing SDR issues. The second speaker (IMF) will outline both, the IMF institutional line on SDRs as well as his substantive practical experience in dealing with actual SDRs and problems that arise in these.

Your role would primarily be to outline arguments for a semi-institutional and/or fully-fledged multilateral approach to SDRs and why this might be needed. What are the options – what are their pros and cons? What binding (as opposed to voluntary – soft law -) elements of such approaches would it be worthwhile to pursue, what institutional arrangements to facilitate an international approach to SDRs might be workable from the perspective of intergovernmental negotiations at present?