



**UNCTAD**

**UNITED NATIONS CONFERENCE  
ON TRADE AND DEVELOPMENT**

**PROMOTING RESPONSIBLE SOVEREIGN LENDING  
AND BORROWING, INCLUDING DEVELOPING  
GUIDELINES AND CRITERIA FOR ASSESSING  
LEGITIMACY OF SOVEREIGN DEBT**

**PROGRESS REPORT**

**NOVEMBER 2009**

Project Manager: Mrs. Yuefen Li,  
Head, Debt and Development Finance Branch

Contact E-mail: [prslab@unctad.org](mailto:prslab@unctad.org)

## THE PROJECT

UNCTAD has initiated a project under the broad heading of Promoting Responsible Sovereign Lending and Borrowing. This involves, inter alia, the development of a set of guidelines to promote and foster mechanisms to enhance responsible sovereign lending and borrowing. Activities started in March 2009.

No universally agreed principles for responsible sovereign lending and borrowing currently exist. There are widely differing views among stakeholders, including civil society of what constitutes responsible practices. An approach which can be part of an international consensus is therefore needed. The private sector has established codes of conduct in certain areas, such as the Equator Principles, that may provide inspiration. The project therefore aims to build consensus around a set of guidelines to promote responsible sovereign lending and borrowing. Eventually, such guidelines could lead to the establishment of criteria to assess whether the contracting of sovereign debt has been performed in accordance with internationally accepted principles.

An increasing interest in engaging in responsible lending and borrowing has been observed in recent years both from the lender and from the borrower side. Borrowers, especially from developing countries, have brought the issue to the fore by questioning lending motives and the use of borrowed funds by previous governments. A unilateral repudiation of debt is not a realistic option for most borrowers, because it would have a negative effect on the country's reputation and may cost the country dearly with respect to new financing and investments.

Therefore, the resolution of such issues could be facilitated if lenders and borrowers could refer to an agreed set of standards to observe during the negotiation phase. The parties would then not only have a common reference point in the case of a dispute, but they would also be encouraged to follow generally accepted principles that enhance responsible practices.

The project seeks to establish a forum for broad dialogue among lender and borrower states. Therefore, based on economic, legal and development considerations a set of international guidelines for responsible lending and borrowing will be compiled for discussion among sovereigns and all other stakeholders including the civil society. The project will also study closely connected topics such as the analysis of new sovereign lenders and their lending practices, including the re-emergence of export credits and impacts on future debt sustainability.

The annual United Nations General Assembly resolution on external debt has repeatedly stressed the importance of promoting responsible lending and borrowing, an issue that was also addressed at UNCTAD's 6<sup>th</sup> Debt Management Conference in November 2007. UNCTAD therefore seeks to continue to facilitate and create awareness of the present debate on responsible lending and borrowing among sovereigns, the private sector, academics and NGOs.

## OBJECTIVES

- 1. Create a forum for the study and documentation of the practices and standards on responsible sovereign lending and borrowing and related consensus-building activities. This will include inter alia the analysis of new sovereign lenders, their lending practices and impacts on future debt sustainability.**
- 2. Develop a set of guidelines to promote responsible sovereign lending and borrowing and invite a discussion on the possible use of such guidelines as criteria for assessing legitimacy of sovereign debt.**
- 3. Promote the discussion on the different options for a structured approach to resolving defaults and disputes between sovereigns and private creditors.**
- 4. Create a global debt portal targeted at borrowers, lenders, policy-makers, debt managers and researchers.**

## THE ACTIVITIES

The majority of the first four months of activities under the project has been spent preparing the ground for the establishment of an Expert Group and an Advisory Group (both described in more detail later). These two groups will be the major forums in which a set of draft guidelines will be prepared and discussed. This has involved very extensive interaction and consultations with key stakeholders among NGOs, academia, the private sector, international organizations, as well as government representatives, both through their representations in Geneva and their respective headquarters.

It was essential that this ground work be prepared before the UNCTAD Debt Conference in Geneva in November 2009, which will be used for the formal establishment of the two groups. No other event gathers that many debt experts and high-level government officials with an interest in the debt issue from such a variety of countries. The invitation to this meeting is sent out to all 192 members of UNCTAD and the typical participation spans the entire range from LDCs to High-income countries. It was therefore crucial to draw a maximum of benefit from this event which takes place only every second year. Furthermore, part of the Conference this year is assigned to the issue of responsible lending and borrowing, a segment that is prepared by the staff of the project, and in this way essential synergies have been achieved between two different UNCTAD initiatives. The project staff has identified and contacted all speakers on Wednesday morning of the Debt Conference.

The project contracted out the first legal background paper in July 2009. In an agreement dated 16 July 2009 the law firm of Cleary, Gottlieb, Steen & Hamilton agreed to provide legal services to UNCTAD on a pro bono basis. Under this agreement one of their senior lawyers, Mr. Lee C. Buchheit undertook to co-author with professor Mitu Gulati of Duke University Law School a study on the shortcomings of the current international legal system

in resolving sovereign debt disputes and point out possible areas for improvement. A final draft of this study has recently been presented for further discussions.

"A consensus about the reciprocal responsibilities of sovereign borrowers and lenders, together with improvements in the way in which sovereign loans are planned, executed, documented and, when necessary, restructured, will directly affect the lives of most of the people that live on this planet."

**Buchheit & Gulati, October 2009**

In the early phases of this project, and in particular during preparations for the establishment of the Expert- and Advisory Groups, as well as the preparations for the Conference itself, UNCTAD has received invaluable support from other key stakeholders. First we would like to thank the NGOs and the private sector. The NGOs have provided advice and have helped UNCTAD make the initiative known in their respective countries. The private sector has made substantial contributions in kind. World famous academics have dropped other priorities in order to participate in the Expert Group, International Organizations provide expert advice in their respective fields, and government officials have embraced the initiative and provided moral and substantial support.

## **THE EXPERT GROUP**

UNCTAD coordinates and is the secretariat to an Expert Group that acts as a source of technical and policy analysis. The Expert Group informs the discussion on factors that would promote responsible sovereign lending and borrowing.

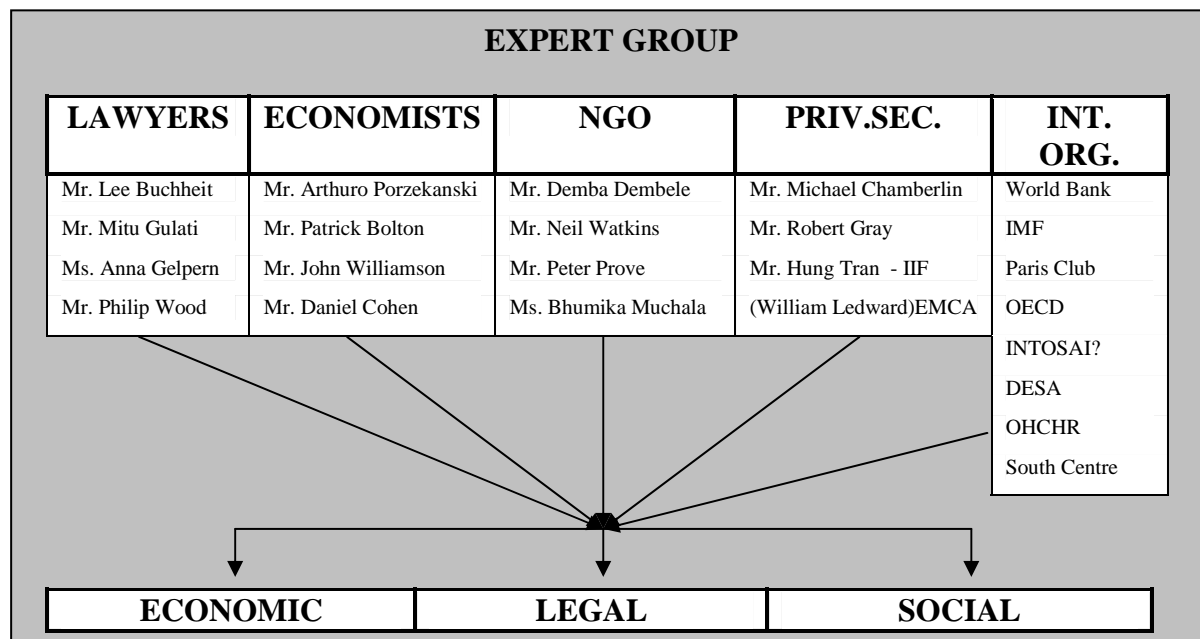
The Expert Group is composed of individuals who act in their professional capacity. This group represents no national or outside interests other than the fostering of responsible sovereign lending and borrowing.

Given the need for the Expert Group to conduct extensive consultations with a long range of very different interest groups, and the considerable interest observed among stakeholders to be a member of the Expert Group it has become necessary to divide it into three different sub-groups, the legal-, the economic-, and the social ad-hoc working groups. Selected subject matter experts will be invited to the meetings of the sub-groups. For practical reason the size of the core of the Expert Group is limited to around 20 experts. It is this core that, assisted by UNCTAD will compile the recommendations emanating from the various ad-hoc working groups.

The first Expert Group meeting is to be held in Geneva in November 2009. The core of the Expert Group has already been established and comprises reputed economists, lawyers, NGO and private financial sector representatives, as well as members from international organizations.

As of today the structure of the Expert Group is as shown below. Members of the core group are also members of the ad-hoc working groups. Further internal discussions in the group

remain, however, before it will find its final shape. These discussions will continue in the November meeting.



### **THE ADVISORY GROUP**

The Group is composed of government representatives. All interested member governments of the UN will be encouraged to send delegates to its meetings. This group represents national, as well as regional, linguistic and other interests. The group advises and steers the work of the Expert Group.

An initial ad-hoc Steering Group meeting is to be held in Geneva in November 2009 with interested government representatives. During that meeting the focus and the working structure of the initiative will be discussed. UNCTAD will also be responsible for chairing and making administrative arrangements for subsequent meetings unless otherwise agreed.

Leading up to the 2009 Debt Conference and first ad-hoc Advisory Group meeting in Geneva, UNCTAD has held discussions with interested government representatives from a wide range of countries. In all, representatives of more than 20 governments have been consulted.

### **THE DEBT PORTAL**

Progress on the creation of the planned Debt Portal for the project has seen a delay due to an internal misconception of the title of the person who will manage the Portal. The title Debt Portal Administrator was understood by UNCTAD's Information Technology Support

section to be primarily an information technology post, which, in that case, would have to be supervised by them. This issue has now been resolved and the title of the post has been changed to Associate Sovereign Debt Expert. The classification of the post is on-going and it will be advertised in the near future. The IT services required to develop the Debt Portal will be delivered internally by the Information Technology Support section of UNCTAD under contract with the project. Design specifications for the Portal will start in November.

## **THE FUNDING**

The initiative was provided an initial extra-budgetary contribution of USD 2.6 million from the Government of Norway to cover the first three years of operation. This contribution funds a small Geneva-based secretariat (4 staff plus other administrative expenses), meeting costs, travel cost for staff and to some extent travel costs for members of the Expert Group. The large majority of Expert Group members, however, cover their own travel costs. The project has also received very important in-kind support that is difficult to quantify, and indications are that it will continue to do so.

## **THE NEXT PERIOD**

As from November 2009 work will start on the design of the Debt Portal with initial main focus on setting up a website. In addition to the actual design of the Portal this will involve the compilation and classification of primary sources on illegitimate debt issues.

An economic background paper will be contracted out as soon as the project has identified a suitable author who is both qualified and has the time to do the job. A couple of possible candidates have been considered

Also a second legal background paper will need to be contracted out. The first paper looked primarily at private sector lending to sovereign borrowers. There are other ways to focus the attention, such as the sovereign lenders' responsibilities vis-à-vis the debtors.

A series of Expert Group meetings will be held during 2010. The level of activity will depend to some extent on the feedback from the first meeting in Geneva in November, but since the plan is to work both on the level of sub-committees and at the level of the core Expert Group, the project estimates that this will not only be the most active area, but possibly also the most costly. Particularly sub-committee meetings should be undertaken regionally.

Based on the results from the Expert Group and the sub-committees the drafting of Guidelines will start. The project aims at holding at least one Advisory Group meeting per year. If progress in the Expert Group is good more frequent meetings may be required.

## **THE PARTNERS**

### **NGOs**

Mr. Demba Moussa Dembele, ARCADE, Senegal  
Ms. Lidy Nacpil, Jubilee South Asia/Pacific, the Philippines  
Ms. Maria Lucia Fattorelli, LATINDADD, Brazil  
Mr. Neil Watkins, Jubilee USA  
Mr. Jurgen Kaiser, Erlassjahr Germany  
Mr. Jostein Kobbeltvedt, Norwegian Church Aid  
Ms. Bhumika Muchala, Third World Network

### **PRIVATE SECTOR**

Mr. Lee C. Buchheit, Cleary, Gottlieb, Steen & Hamilton  
Mr. Robert B. Gray, ECMA and HSBC  
Mr. Michael Chamberlin, EMTA  
Mr. Hung Tran, IIF  
Mr./Ms. ???, British Bankers Association  
(Mr. Charles Abrahams, Abrahams Kiewitz Attorneys)

### **ACADEMICS**

Mr. Mitu Gulati, Duke Law School  
Mr. Philip Wood, Oxford Law School  
Ms. Anna Gelpern, American University Washington DC College of Law  
Mr. Arturo Porzecanski, American University Washington DC College of Economics  
Mr. Patrick Bolton, Columbia University  
Mr. John Williamson, the Peterson Institute  
Mr. Daniel Cohen, École normale supérieure

### **INTERNATIONAL ORGANIZATIONS**

Mr. Dominique Desruelle, IMF  
Ms. Claire Cheremetinski, Paris Club  
Mr. Javier Santiso, OECD  
Mr. Carlos Braga, World Bank  
Mr. Cephias Lumina, OHCHR  
Mr./Ms.???, UNDESA  
Mr./Ms.???, INTOSAI

### **OTHER PARTNERS**

Mr. Martin Kohr, South Centre  
Mr. Carlo Maria Marengi, Holy See  
Mr. Peter Prove, Lutheran World Foundation