



**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**

**APRIL 2010**

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## THE PROJECT

In 2009, UNCTAD 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.

### 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.**

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 social 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.

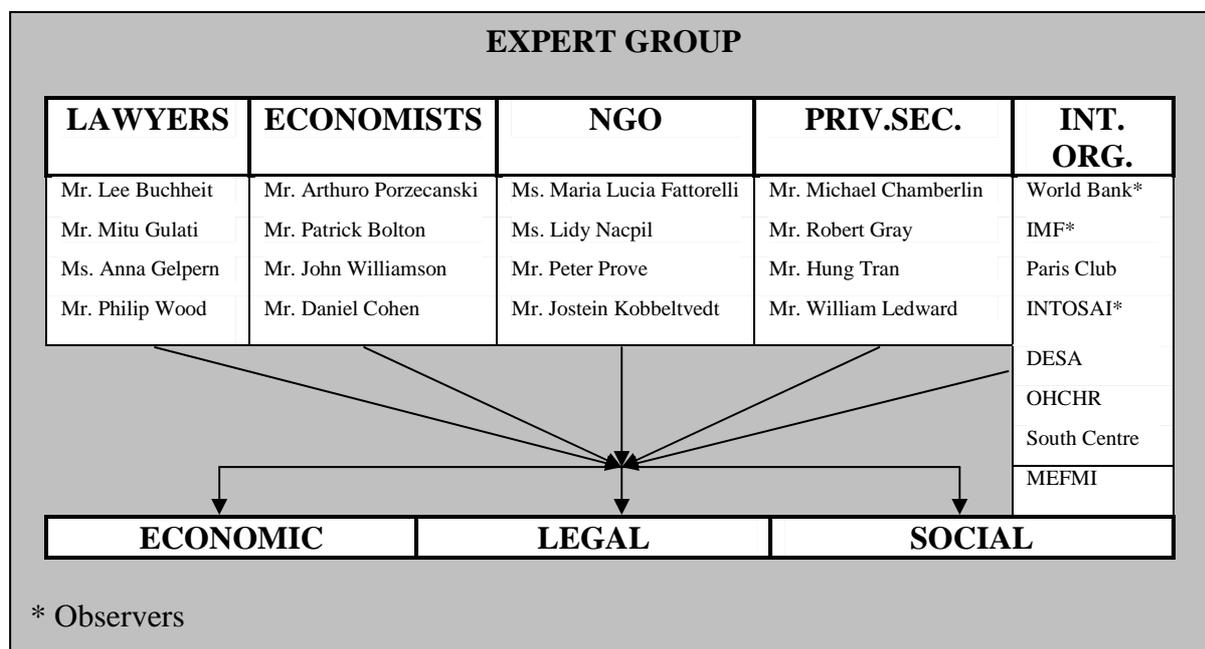
The annual United Nations General Assembly resolution on external debt has repeatedly stressed the importance of promoting responsible lending and borrowing, an issue that was also addressed at UNCTAD's 6<sup>th</sup> and 7<sup>th</sup> Debt Management Conferences in November 2007 and November 2009, respectively. 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. Two groups have been established in order to advance the project: The Expert Group and the Group of Advisory Countries.

## 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 initiates and enriches 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 cover the concerns of a wide range of very different interest groups and stakeholders, additional experts will be invited to its meetings as needed. The Expert Group will address the legal-, as well as the economic-, and the social dimensions of responsible sovereign lending and borrowing - thus the need to call on additional expertise from outside the core group as the different topics are discussed. As of today the core structure of the Expert Group is as shown below.



## **THE ADVISORY GROUP**

The Group of Advisory Countries is composed of government representatives. The group itself has no "membership", but all interested member governments of the UN are encouraged to send delegates to its meetings or make sure they are duly represented. This group represents national, as well as regional, linguistic and other interests. The group advises the work of the Expert Group by providing views, concerns and the sharing of practical experience.

UNCTAD has held discussions with interested government representatives from a wide range of countries. In all, representatives of more than 40 governments from all continents have been consulted directly by April 2010.

## **THE ACTIVITIES**

The first activity of the project was to establish the Expert Group and the Advisory Group. Both groups held their first meeting in November 2009 as side-events to the 7<sup>th</sup> UNCTAD Debt Management Conference.

An early activity was also to contract out the first legal background paper in July 2009. In an agreement dated 16 July 2009, the law firm 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.

This paper was presented at the first Expert Group meeting in November 2009 and is currently being discussed in the Expert Group. It has also been released to the Advisory Group.

The first Expert Group meeting in November 2009 reviewed the most relevant documents that had been distributed to the attendants. Generally, it was concluded that the Buchheit and Gulati paper was an excellent basis for further discussions, particularly since it introduced several new elements missed by the public discussion that had taken place to date. Finally a brief discussion on the Expert Group working structure, including inter alia, methodology, frequency of meetings, venues, and date and time of next meetings followed.

The first (ad hoc) Advisory Group meeting was held in Geneva, Switzerland on Wednesday 11 November, 2009. In addition to staff from the UNCTAD secretariat the meeting was attended by representatives from Argentina, China P.R., Ecuador, Germany, Holy See, Lesotho, Mexico, the Netherlands, Norway, Nigeria, the Syrian Arab Republic, Sweden, the United Kingdom, and Zimbabwe. However, the meeting was open to all interested countries. The purpose was to inform delegates of the objectives of the project and to invite interested parties to participate in future activities of the Advisory Group. The invitation for countries to participate in the project will remain open throughout all stages of the project.

In March 2010 the second Expert Group meeting was held in Tunis preceding a joint World Bank/African Development Bank meeting on "Sovereign Debt and the Financial Crisis: Will this time be different?" Prior to the second meeting members of the Expert Group had been asked to provide a short paper (one to two pages) outlining key elements they considered

important to be included in the first draft of the guidelines. The main purpose was therefore to discuss these proposals and to follow up on the discussion on comments provided to Lee Buchheit and Mitu Gulati's paper.

Prior to the second Expert Group meeting, and based on the observation that a framework for organizing not only further discussions on the issue, but also the final draft proposal, the project engaged a consultant (Mr. Barry Herman) for two months. He proposed an outline listing main elements of guidelines for responsible sovereign lending and borrowing which were discussed in some detail. To facilitate further discussions, the UNCTAD secretariat put all proposals that had emerged to date into categories and will circulate these to all Experts for additional review. During the discussions in Tunis, the Expert Group managed to converge on certain issues, but still diverge on others.

Separate minutes exist of all three meetings and can be provided on demand.

Based on the observation that relatively few developing countries, especially from Africa, had taken active part in the Advisory Group, it was decided to arrange a mission to the continent to better inform high-level officials about the on-going initiative. The mission took place supported by the Macroeconomic and Financial Management Institute (MEFMI) of Eastern and Southern Africa and lasted from 14 February to 21 March. During this period the project (supported by MEFMI at no consultancy fees) visited Zambia, Malawi, Mozambique, Zimbabwe, South Africa, Swaziland, Botswana and Namibia. In all countries the mission met with the Permanent Secretary of Finance (or in rare cases his/her deputy), The Auditor General (again, in some cases the deputy), NGOs and Parliamentarians.

At least three major lessons can be drawn from this mission:

1. None of the Permanent Secretaries of Finance had any prior knowledge about the initiative. In most cases their Geneva-based missions had been informed, but the information had not reached through to the Ministry of Finance. They therefore unilaterally appreciated to be informed directly by UNCTAD.
2. Permanent Secretaries of Finance, with the exception of South Africa, took keen and immediate interest in the initiative. South Africa stated that they needed to discuss further internally before deciding whether or not the initiative had any interest to them.
3. Selected Parliamentarians in various countries are very interested in this issue and indicated that this is something the Inter-parliamentarian Union (IPU) should be involved in.

As the project gains in reputation more and more invitations to international meetings keep arriving. This, of course, is a very welcome acknowledgement of the progress made by the project, but it cannot be denied that it also costs the project considerable amounts of money.

## **THE DEBT PORTAL**

The post as Associate Sovereign Debt Expert has been advertised and interviews have started. The main responsibility of the new Expert will be to monitor and manage the discussions on the Debt Portal. The IT services required to develop the Debt Portal are delivered internally by the Web Unit section of UNCTAD and a prototype is currently being tested.

However, some time will still be required before the portal can be launched to the general public since considerable amounts of contents will have to be uploaded. Also the distribution of usernames and passwords to users with access to restricted areas will take time.

## **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. As indicated above, however, travel costs are currently increasing fast. Client contact is essential for the project and this issue needs to be looked into in the near future.

## **THE NEXT PERIOD**

The drafting of guidelines has started and is progressing well. A first draft for presentation to the Advisory Group is expected to be ready by the end of July 2010.

The project will hold a Conference on Promoting Responsible Sovereign Lending and Borrowing in Xiamen, China on the 8<sup>th</sup> of September 2010 co-organized by UNCTAD, the Ministry of Finance and the Ministry of Commerce of China. This conference will bring together high-level government officials from Ministries of Finance and Ministries of Development Cooperation to examine a set of principles for responsible lending and borrowing by sovereigns. This Conference would at the same time serve as the 2010 Advisory Group meeting.

Testing and uploading of contents to the Debt Portal will be continued.

The need for further information missions will be considered towards the end of 2010 and the destination(s) identified.

An economic background paper is expected to 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 is expected 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 bilateral lending and its particular characteristics. The project is currently discussing with a potential donor who might agree to cover the expenses related to this activity.

UNCTAD and MEFMI will look into the option of arranging a workshop on responsible sovereign lending and borrowing specifically targeted for parliamentarians in Eastern and Southern Africa towards the end of the year. This activity is tentatively scheduled to take place in Kampala, Uganda.

An agreement is currently being negotiated with the University of Warwick, School of Law for a joint call for papers. These papers will serve as input to the Expert Group discussions and will be published by the University of Warwick.