



UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

**UNCTAD**

**PROJECT ON PROMOTING RESPONSIBLE SOVEREIGN  
LENDING AND BORROWING  
AND  
DEBT WORKOUT MECHANISM**

**PROGRESS REPORT**

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## THE PROJECT

Being the focal point of the United Nations system for debt issues, UNCTAD is uniquely positioned to shape opinions and promote important debt-related issues at the international level through its analytical work, consensus building and technical assistance projects. The project on Promoting Responsible Sovereign Lending and Borrowing is a case in point with the financial and political support from the Government of Norway. This Project was started in 2009 with the active participation of the IMF, the World Bank, regional development banks, other multilateral and regional institutions, experts from the private sector, NGOs and academia.

Currently, the Project is prominently positioned on the international agenda and is being widely acknowledged. The UN General Assembly resolutions of the past few years have indicated clear support to the UNCTAD initiative by stressing the importance of promoting responsible sovereign lending and borrowing. The term "responsible sovereign lending and borrowing" is now being recognized and frequently used beyond the UN by various publications, governments, academic circles, among NGOs and in the press. In April 2012, the mandate negotiated at UNCTAD XIII reflected this widespread support.

Since their opening for endorsement in April 2012, the Principles on Responsible Sovereign Lending and Borrowing (PRSLB) have been endorsed by 12 countries. Argentina, Brazil, Cameroon, Gabon, Germany, Honduras, Italy, Morocco, Nepal, Norway, Mauritania and Paraguay have given their official support to the Principles. Other countries have manifested their strong interest and should join the list of supporting countries soon.

More than 68 countries have actively participated in the drafting of the PRSLB through regional and bilateral consultative meetings. Though the Principles mainly aim at improving behaviors of both lenders and borrowers prior and during sovereign debt contracting as well as addressing deficiencies in institution and procedures, they also include two principles on debt restructuring. This has been considered as a breakthrough in view of the diversity of countries' views on an eventual debt workout mechanism. The acceptance of these two principles indeed shows a strong potential for evolution on this issue.

UNCTAD has been alerting policy makers on the fact that while responsible and prudent behaviors in debt contracting are necessary to reduce the prevalence of debt crises, they are insufficient to stop them. A debt workout mechanism, devised in a transparent and inclusive manner, is thus needed to deal with these debt crises.

With more than 40 years' analytical work experience in the area of debt restructuring mechanisms, UNCTAD has been among the first to reinvigorate the international discourse on the issue since the onset of the global financial crisis. The further mobilization for the Principles' endorsement and implementation side by side with the promotion of a debt work out mechanism complements each other well. UNCTAD would endeavor to achieve these goals not only through intensifying the

international debate at the level of the United Nations General Assembly and other international fora, but also continuing with its country and regional consultative process.

The recent emphasis of UNCTAD's work on debt issues, in addition to tracking the general trend of debt problems of developing countries, has been concentrated on filling two gaps in the international financial architecture in the area of debt, i.e. the lack of principles or soft law guiding responsible sovereign lending and borrowing and the lack of a debt workout mechanism. With its long standing comparative advantage on debt issues, UNCTAD is well placed to work on debt crisis prevention which is the main aim for promoting responsible sovereign financing and debt crisis resolution which is the objective of a debt workout mechanism.

## THE EXPERT GROUPS

UNCTAD coordinates and is the secretariat to two expert groups that act as a source of technical and policy analysis. The first group (hereafter the PRSLB Expert Group) is the one constituted in 2010 for the purpose of designing the Principles on Responsible Sovereign Lending and Borrowing. The PRSLB Expert Group is currently being consulted on the Guidelines on Responsible Sovereign Lending and Borrowing. The second group (hereinafter the DWM Working Group) was formed in March 2013 for the purpose of working on the Debt Workout Mechanism. These Groups initiate and enrich the discussion on factors that would promote responsible sovereign lending and borrowing and a debt restructuring mechanism.

Both the DWM Working Group and the PRSLB Expert Group are composed of renowned scholars and experts on debt issues who act in their professional capacity. These groups represent no national or outside interests other than the fostering of responsible sovereign lending and borrowing and a timely, fair and transparent debt restructuring mechanism. Each member is selected on the basis of its representativeness of a stakeholder group, its professional experience and seniority in the organization it represents. UNCTAD's role is to ensure the diversity of participation and opinions in these groups as well as to maintain a balance in interest representation. These Groups address the legal, the economic, and the social dimensions of responsible sovereign lending and borrowing, including with respect to sovereign debt restructuring.

## THE ADVISORY GROUP

The Group of Advisory Countries is composed of government representatives. The group itself has no fixed individual "membership". 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 Groups by providing views, concerns and the sharing of practical experience further to the release of the draft documents that they prepare.

## THE ACTIVITIES

### 1. Activities related to the Principles and the Guidelines on Responsible Sovereign Lending and Borrowing

#### *1.1. Promoting countries and institutional endorsements*

- Achievements have been made to obtain political support and acknowledgements from various important multilateral institutions and forum for the Principles. In addition to get, once again, the endorsement in the debt resolution of the 67 and 68 sessions of UN General Assembly (A/RES/67/198 and A/RES/68/), UNCTAD was invited to make a presentation at a G 20 high-level seminar for Deputy Ministers on "Public Debt Management under Non-Conventional Conditions on Debt Markets" that took place in Moscow on 2-3 April 2013. Political support is the basis for further endorsement of the Principles by countries.
- Our participation in various other international conferences has always involved the discussion of the Principles. During the Intergovernmental Group of Twenty Four (G24) meeting on the PRSLB, which took place on 9 October 2013 in Washington DC during the 2013 IMF-World Bank Annual Meeting, participants (around 50) emphasized the necessity for countries to endorse the Principles in order to intensify the momentum towards more responsible practices in contracting sovereign debt. It was added that the guidelines to the UNCTAD Principles would facilitate the universal implementation of the Principles. Mr. Amar Bhattacharya, Director of G24, chaired the meeting. In concluding the meeting, he highlighted the relevance of the Principles. Further technical meetings are expected to be held with the G24 in the future.
- Efforts have been made in approaching countries to endorse the Principles. Austria, Colombia, Haiti, Uruguay, Spain, Venezuela, Costa Rica and Togo have expressed their interest and intention. Further work needs to be undertaken to firm up the endorsement.
- UNCTAD representatives have presented and discussed the Principles in a variety of international fora, such as the Eurodad Conference on "Debt, finance and economic crisis. Consequences and solutions". (Prague, June 2-3 2013); the International Law Association Conference on "Imperium Juris: Governance, Trade, Resources" (Athens,

30-21 August 2013); the European Money and Finance Forum (SUERF) Conference on “The Future of Sovereign Borrowing in Europe” (Vienna, March 8 2013)

## ***1.2. Working towards the implementation of the PRSLB***

- In January 2013, the drafting process of the Guidelines on Responsible Sovereign Lending and Borrowing started. The aim of the document is to provide guidance on the implementation of the PRSLB. The second draft of the Guidelines was presented in November 2013 at a side event to the UNCTAD Debt Management Conference. During this event, experts as well as governments and international organizations' officials made detailed comments on the Guidelines. These comments will be incorporated in the next version of the Guidelines which will be widely circulated to Member States.
- INTOSAI-UNCTAD joint work. Between 17 and 21 June 2013, a seminar on “Strengthening Public Oversight and Audit of Sovereign Lending and Borrowing Frameworks” took place in Geneva. The meeting was organized by the International Organization of Supreme Audit Institutions (INTOSAI) and its main objective was to discuss the technical aspects of incorporating the UNCTAD Principles into the international standards used by Auditors General to audit their countries' public debt.
- Norway undertook the world's first creditor-initiated debt audit based on domestic rules and of UNCTAD Principles on responsible sovereign lending and borrowing. The purpose of the audit was to set an example for other creditor nations to follow and to spur a debate on the Principles. The Norwegian Government together with the Norwegian Coalition for Debt Cancellation and the United Nations Conference on Trade and Development (UNCTAD) hosted an event during the UN General Assembly to launch internationally the Norwegian debt audit and highlight the importance. The Minister of International Development of Norway spoke at the meeting. UNCTAD representative also made a presentation and answered questions.
- UNCTAD is preparing a project financed by UN development account focusing on capacity building at the country level in implementing the Principles. It is on the verge of being approved. This is another proof of the importance UN attached to the implementation of the Principles.
- A dissenting opinion in a recent International ICSID arbitration decision on jurisdiction and admissibility mentioned the UNCTAD Principles 5 as relevant law when deciding a

dispute on public debts. This fact also shows the increasingly spreading knowledge and acceptance of the legal status of the Principle<sup>1</sup>.

- In November 2013, a German court suspended ninety trials against Argentina initiated by holdout creditors due to the 2001 default. In these trials Argentina advanced an argument based on the Principles, which was elaborated in a legal opinion prepared and submitted by Professors Christian Tietje and Matthias Lehmann, which extensively explained why the UNCTAD Principles related to debt restructurings (N° 7 and N° 15 specifically ) should be currently considered customary international law and general principles. More concretely, the legal opinion explained that there is a rule under public international law that implies that creditors, in particular holders of sovereign bonds, have to participate in debt restructurings, and that holdout creditors may not, by enforcing their claim, jeopardize the compromise reached by way of a majority decision. German courts have yet to rule on the merits of that argument.<sup>2</sup>

## 2. Activities Related to the Debt Workout Mechanism

### 2.1. Design of the Debt Workout Mechanism

- Brainstorming meeting. With the participation of renowned experts and scholars and representatives from the IMF, World Bank, IDB, Paris Club etc, a brainstorming meeting organized by UNCTAD in Geneva on 1 February 2013, focused on the working methodology and building blocs of a possible Debt Workout Mechanism (DWM) and possible options to design a DWM acceptable to relevant stakeholders.
- First official meeting of the Working Group. On July 2, 2013 the first official meeting of the recently established UNCTAD Working Group on Debt Workout Mechanism was held in Geneva. High-level representatives from, inter-alia, internationally renowned legal and economic experts, multilateral institutions, the private sector, civil society, participated in this meeting in line with the project's objective to give a voice to all relevant stakeholders. The discussion focused on the standstill rule.

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<sup>1</sup> *Ambiente Ufficio S.p.A. and others v Argentine Republic*, ICSID Case No ARB/08/9 (formerly *Giordano Alpi and others v Argentine Republic*), dissenting opinion of Santiago Torres Bernárdez,

<sup>2</sup> See the press release at <http://www.telam.com.ar/notas/201311/39527-la-justicia-alemana-desactivo-alrededor-de-90-juicios-de-acreedores.html>

- Working paper on standstill. A working paper prepared by Matthias Goldmann (Max Planck Institute for Comparative Public Law and International Law) was presented and discussed at the meeting aforementioned. This paper deals with one building block of a possible DWM, namely with the necessity and feasibility of a standstill rule for sovereign debt workouts and theoretical considerations on international law, general principles and DWM.
- Elaboration of the framing document of the DWM. This document under elaboration of the UNCTAD staff results from the first meeting of the Working Group on a DMW. It reflects and is based on discussions had among the participants and attempts to draw the most consensual views. Its purpose is to set the legal and economic framework for future work to be carried out on the design of a DWM. The approach proposed is based on public international law and it is incremental by nature. It is being discussed bilaterally with some of the members of the Working Group and with external experts as well.
- Working paper on good faith and transparency in debt restructurings. This working paper has been prepared by Matthias Goldmann (Max Planck Institute for Comparative Public Law and International Law).
- The second official meeting of the Working Group was held in Geneva on 12 December 2013. On this occasion, the WG discussed the working paper mentioned in the previous bullet point.

### ***2.1. Building consensus around the Debt Workout Mechanism***

- At a conference in Brazil organized by the South Centre and Brazil Multidisciplinary Institute for Development Studies (MINDS), the UNCTAD representative elaborated on the global economic crisis and the need of the UNCTAD Principles and a sovereign Debt Workout Mechanism. The meeting provided the opportunity to meet with the Head of Public Debt Strategy and two vice ministers of finance of Brazil. Brazilian officials expressed their support to the two UNCTAD initiatives and also proposed to enhance exchange of views and to promote the initiatives in the context of the G20.
- At the invitation of the South Centre, the Ministry of Finance of Argentina, the National Security and Exchange Commission and Center of Economic Studies and Public Policy Monitoring, Research Center and Management of Solidary Economy CEFIDAR, Center of Economy and Finance for the Argentinean Development, UNCTAD representative spoke



at a conference on the topic of negotiations and alternatives to overcome the debt crisis explaining the economic and legal rationale of the UNCTAD Principles and the need for a sovereign Debt Workout Mechanism. A meeting with the Minister of Finance took place. Meetings with the Attorney General's Office and academia went in-depth in discussing the Principles and the Debt Workout Mechanism.

- GA 6th High-level Dialogue on Financing for Development on 7 October 2013. At the Multi-stakeholder round table 1: The impact of the world financial and economic crisis on the reform of the international monetary and financial system and implications for development, the UNCTAD representative presented the progress of the international financial architecture reform as well as the two UNCTAD initiatives.
- A very closed but high-level meeting was organized in the United States entitled " The International Monetary Fund and the Future of Sovereign Debt Restructuring " at the beginning of November 2013. The organizers had the intention to forge consensus on allowing the IMF to be the home and executor of the future debt workout mechanism. UNCTAD was hesitant to be present at the meeting, but eventually was of the view that this was an opportunity to air UNCTAD's views. The UNCTAD representative expressed its reservation on the role of the IMF but showed support for the mechanism.
- The biennial UNCTAD Debt Management Conference was held on 11-13 November 2013 with the participation of more than 300 participants from 87 countries with a session on Sovereign Debt Restructurings in which UNCTAD presented its project on the DWM. The Conference was opened by the Secretary General of UNCTAD, and the Governor of the National Bank of Cambodia, who acknowledged that "the missing link in the global financial architecture is the absence of a debt workout mechanism" He also highlighted that "this results in debt restructurings that are characterized as being 'too little too late'." The Government of Norway reiterated its support and commended UNCTAD for its work on the Principles. The Norwegian delegate also mentioning that both the Principles and the Debt Workout Mechanism projects are part of the Norwegian debt agenda. The Argentinean representative highlighted the relevance of the Principles as applicable law in international lawsuits on debt (please see above the trial in Germany and the relevance of the Principles). The Brazilian representative expressed that it is important to look for a debt restructuring mechanism, combining international and national laws. He also highlighted UNCTAD's relevance as an important actor in the debt workout mechanism process.

### 3. General Project Dissemination

- UN General Assembly presentation, 24 October 2013. At the regular session of the GA, UNCTAD presented the UN Secretary-General's report on debt and specifically presented UNCTAD's two initiatives. Meetings were arranged to brief delegates on the progress of the initiatives and the importance of including support to UNCTAD in the GA debt resolution.
- ECOSOC meeting on External debt sustainability and development, talked about both the Principles and the DWM
- US officials from the State Department and the Treasury came to Geneva to have a discussion about UNCTAD work on debt and also ongoing activities on the Principles (including on debt restructuring).

### 4. Research Activities Related to Responsible Sovereign Financing

The process of designing the DWM requires solid theoretical and empirical back up. For the purpose of deepening the technical understanding on the DWM's economic, financial, political and legal rationale and implications, UNCTAD is undertaking several initiatives:

- Dr. Matthias Goldmann, a Professor at the Max Plank Institute in International Public Law and Comparative Law International Law has been commissioned to prepare two background papers on (1) the standstill rule and (2) the Principles of good faith and transparency in regards to debt restructurings.

Furthermore, in the past year UNCTAD staff produced and published the following research on the Principles and Debt Workout Mechanism:

- *Sovereign Financing and International Law: The UNCTAD Principles on Responsible Sovereign Lending and Borrowing*, Oxford University Press, 2013. (This book has been translated into Spanish and a leading legal Spanish publisher –Tirant lo Blanch- will publish it for the Spanish and Latin American audience).
- “Filling a Legal Global Gap in Sovereign Financing: UNCTAD’s Principles”, in Matthias Audit & Stephan Schill (eds.), *The Internationalization of Public Contracts*, Bruylant Editions, 2013 (forthcoming).
- “UNCTAD Principles on Responsible Sovereign Financing: The Intersection of Finance, Law and Politics”, in Lee Buchheit and Rosa Lastra (eds.), *Sovereign Debt Management*, Oxford University Press, 2013 (forthcoming).

- “United Nations Enhancing Customary International Law in Sovereign Debt Governance?” Capital Markets Law Journal, 2013 .
- Fill in the legal gap for sovereign debt crisis prevention and restructuring: UNCTAD Principles on Responsible Sovereign Lending and Borrowing, Chinese Journal of International Economic Law, 2013, Vol. 19 N° 4.
- “Does Legitimacy Matter in Sovereign Debt Governance? The Case of The UNCTAD’s Principles on Responsible Sovereign Financing”, Paper presented at the conference on “The Legitimation and Delegitimation of Global Governance Organizations”, 11-13 Sept 2013, Universität Bremen.

## THE NEXT STAGE

With regards to the Principles, the project has now reached a stage where the focus has switched from developing principles, a stage with much investment in research, to a phase with outreach, consensus building and efforts leading to the implementation of the Principles. This is a stage where much of the spending will be oriented toward travel and meeting costs. As for the DWM, the focus of the project is very much anchored in its intellectual design and the provision of a strong rationale for its constitutive elements. Here consultancy fees and expert groups' expenses are prevailing. Activities under intensive preparation include:

- DWM Working Group: Finalizing phase 1 of the incremental elaboration process. This is a process that entails the elaboration of each building block of the Debt Workout Mechanism through Working Group discussions on the basis of background papers. Further to this, phase 2 will engage the DWM drafting process with a comments and review procedure within the Working Group. Once a first draft of the DWM is obtained, it will be shared with the Advisory Group for a first round of review before it is more widely communicated to all UN Member States for additional comments.
- Buenos Aires-Academic conference on the Debt Workout Mechanism and International law. A conference will take place in on March 20-21, 2014 in which worldwide renowned scholars and experts from several countries will participate as contributors, such as Profs. Armin von Bogdandy, Robert Howse, Mitu Gulati and Anna Gelpern, among others. There will be a special event to launch the book on the Principles.
- Technical assistance on the implementation of the PRSLB - Development Account Project.

- INTOSAI/IDI assistance with the elaboration of standards on public debt auditing incorporating the Principles
- General promotion of UNCTAD's two initiatives on the Principles and the Debt Workout Mechanism in the context of the UN General Assembly, the G20, the G24, the G77 and other international fora.