

Conference on “Frameworks for Sovereign Debt Restructuring”

BRIEFING NOTE:

Even before the global financial crisis there was concern about a variety of weaknesses of the international financial architecture that might impair growth, especially of developing countries and emerging markets, and might increase economic instability.¹ These concerns were brought to the fore by the 2008 crisis, and the report of the International Commission of Experts on Reforms of the International Monetary and Financial System appointed by the President of the General Assembly of the United Nations highlighted them.

Among the lacunae that have long been recognized² is the lack of a framework for sovereign debt restructuring (FSDR), a deficiency that has been brought to the fore by the difficulties facing Argentina and Nauru. Recent events have reminded us of the risks of not having orderly FSDRs. Its absence has led to the emergence of destabilizing speculative behavior in international debt markets and has delayed the resolution of sovereign debt crises. Delays in debt restructurings have been costly for sovereigns and for good-faith investors.

The potential adverse effects for global economic, political, and social stability that the lack of these frameworks implies make their design and implementation a matter of urgency –a claim that has been recently endorsed by a resolution of the United Nations.

The International Monetary Fund recognized the need for implementing these frameworks in 2001.

Over the past fifteen years discussions have explored many alternatives, and their economic, political, and social consequences. Each has to be evaluated in terms of ex ante incentives — is there, in some sense too much or too little lending? How is lending distributed across countries? Is lending done on the right terms? Do the lenders have the right incentives for due diligence? And do the borrowers for prudent lending? –as well as ex post incentives: when a problem occurs, are there incentives for a timely resolution, without undue delay? Are there incentives for a fair and efficient resolution, one that enables the indebted country to return to growth quickly, which does not impose undue hardship on its citizens, and provides fair compensation to the creditors?

Some have suggested that simple modifications of the current contractual approach are all that is required. Others claim that some sovereign debt restructuring mechanism would be desirable.

There have been, of course, several important academic studies addressing various aspects of FSDRs, as well as the advantages and disadvantages of these mechanisms relative to the

¹ See in particular the Monterrey Consensus and the Committee of Experts Report

<http://www.un.org/esa/ffd/monterrey/MonterreyConsensus.pdf> ;

Committee Report

<http://www.un.org/esa/ffd/sdf/ReportICESDF.htm>;

<http://www.un.org/esa/ffd/documents/ICESDF.pdf>

²See the Monterrey Consensus and the Committee Report (especially the final section), and chapter 4 of the 2009 Report of the International Commission of Experts on Reforms of the International Monetary and Financial System.

Even earlier, NGO's and academics had drawn attention to the issue. The Initiative for Policy Dialogue at Columbia University held an international conference on the subject in 2002.

private contractual approach.³ UNDESA has initiated a process of identifying issues which impede the orderly working of the international financial architecture for debt and a range of policy options, both under the voluntary and statutory approaches.⁴ This meeting is intended to build up on these discussions.

This conference will bring together academics and other experts, who will discuss these issues and will provide guidance on (a) what kinds of contractual reforms would facilitate a better working of sovereign debt markets? (b) What are the limits of the private contractual approach? What are the benefits and limits of a statutory approach? Do contractual approaches help address the problems posed by these limitations? How might these be structured in order to promote a more efficient and equitable market for international debt? Are there intermediate approaches, involving “soft law,” that might facilitate the functioning of sovereign debt markets?

More generally, the conference will provide insights on how the market-based approach can be complemented by a legal framework that replicates the functions of a national bankruptcy court.

³ See for example Barry Herman, José Antonio Ocampo, and Shari Spiegel, *Overcoming Developing Countries Debt Crises*, eds. The Initiative Policy Dialogue Series, Oxford University Press, 2010; and Joseph Stiglitz and Daniel Heymann, eds. *Life After Debt*, Palgrave Macmillan, 2014.

⁴ Reports of the meetings are available on un.org/esa/ffd under the item multistakeholder consultations.

CONFERENCE AGENDA

Venue: Seminar Room 1, Faculty House, Columbia University
(2nd floor of Faculty House, map of campus attached)

Date: November 17 2014, 8:30am-5:10pm

8:30-9:00am – Breakfast and Introduction to the Conference

Jan Svejnar (Columbia University)

9:00-10:00am – Implications of recent events

9:00-9:35am

Topics:

Implications of the Argentine Sovereign Debt restructuring and litigation for the international financial architecture

The United Nations' Resolution: "Towards a multilateral legal framework for sovereign debt restructuring processes."

Panelists:

Lee Buchheit (Partner, Cleary Gottlieb Steen & Hamilton LLP, New York)

Sergio Chodos (IMF, Alternate Executive Director for Argentina)

Guilherme de Aguiar Patriota (United Nations, DPR from Brazil)

Moderator:

José Antonio Ocampo (Columbia University)

9:35-10:00am

Topics:

Current Debate on the Reform of the IMF Lending Framework

Panelists:

Hugh Bredenkamp (IMF)

Susan Schadler (CIGI)

Moderator:

José Antonio Ocampo (Columbia University)

10:00-10:30am – Objectives and Challenges of Sovereign Debt Restructuring

Keynote Speaker: Joseph E. Stiglitz (Columbia University)

10:30-10:45am – Coffee break

10:45-12:45pm – The Private Contractual Approach

Topics:

Issues in sovereign debt restructuring

Can the private contractual approach provide efficient and equitable solutions to SDR?

What is the optimal design of contracts?

Collective Action Clauses. How do we weigh different classes of creditors? How do we determine priority with bonds issued under multiple jurisdictions?

Champerly. Can it be included in bond contracts?

Aggregation and Pari passu

How can provisions of Chapter 9 be incorporated into contracts?

What are the limitations of the private contractual approach?

Lending into arrears

Standstills in debt contracts

Credit Default Swaps. Issues of transparency and disclosure

Can provisions of Chapter 11 be embedded into contracts?

Role for GDP indexed bonds

Panelists:

Lee Buchheit (Partner, Cleary Gottlieb Steen & Hamilton LLP, New York)

Richard Conn (Innovate Partners, LLC)

Timothy B. DeSieno (Bingham McCutchen LLP)

Jonathan Eaton (Brown University)

Jim Haley (CIGI)

Robert Howse (New York University)

Eric Santor (Bank of Canada)

Joseph E. Stiglitz (Columbia University)

Moderator:

Martin Guzman (Columbia University)

12:45-2:15pm – Private Lunch Panel: Discussion on the Context of the Debate

Topics:

The view of the IMF

The view of the UN

Should the recent decision be viewed as an aberration, and are there quick fixes?

Speakers:

Sean Hagan (IMF, General Counsel and Director of Legal Department)

Domenico Lombardi (CIGI)

Benu Schneider (UN)

Moderator:

Jan Svejnar (Columbia University)

2:15-2:30pm – Coffee Break

2:30-4:30pm – Proposals for multilateral legal frameworks for SDR

Topics:

Provisions for an International Bankruptcy Law

The reach of the soft law
The institutional structure
The institutional process to create it
Improvements over the Paris Club ongoing process

Panelists:

Patrick Bolton (Columbia University)
Barry Herman (The New School)
Brett House (Jeanne Sauvé Foundation)
Jurgen Kaiser (erlassjahr.de NGO)
José Antonio Ocampo (Columbia University)
Kunibert Raffer (University of Vienna)
Shari Spiegel (United Nations)

Moderator:

Joseph E. Stiglitz (Columbia University)

4:30-4:40pm Coffee Break

4:40-5:10pm Conclusions – Towards a Consensus

Leaders:

Jan Svejnar (Columbia University)
Marilou Uy (G24, Director)



 COLUMBIA | SIPA

Center on Global Economic Governance

Initiative *for* Policy Dialogue