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UN General Assembly adopts principles for sovereign debt restructuring

In a landmark decision and by a large vote, the United Nations General Assembly adopted a resolution which contains nine core principles that should be respected when a country undertakes the restructuring of sovereign debt. The resolution is a significant step forward in supporting countries that have to restructure their debt and face creditors as well as "vulture funds." This issue of South Bulletin highlights the issues and the process by which the resolution was adopted.

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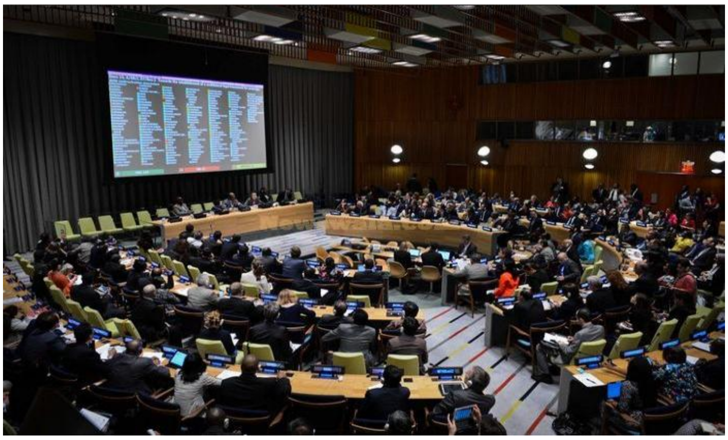
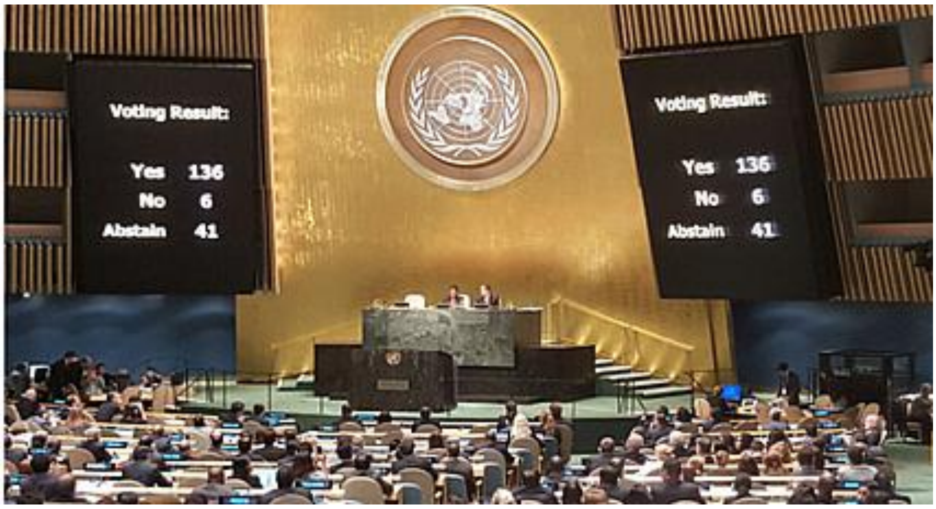


The 68th Session of the United Nations General Assembly adopted Resolution A/68/304 "Towards the establishment of a multilateral legal framework for sovereign debt restructuring processes".

UN adopts landmark debt resolution on principles for sovereign debt restructuring

In a landmark decision and by a large vote, the United Nations General Assembly adopted a resolution which contains nine core principles that should be respected when a country undertakes the restructuring of sovereign debt. The resolution is a significant step forward in supporting countries that have to restructure their debt and face creditors as well as "vulture funds."



UNCTAD

A draft resolution on "*Basic Principles on Sovereign Debt Restructuring Processes*" (A/69/L.84) was adopted by the General Assembly of the United Nations in New York at its Sixty-Ninth Session on 10 September 2015, with 136 member States voting for, six against and 41 abstentions.

By Bhumika Muchhala

The United Nations General Assembly adopted a resolution on principles to guide sovereign debt restructuring processes on the afternoon of 10 September.

This landmark resolution was submitted to the General Assembly by South Africa (current chair of the Group of 77 and China developing countries). It was initiated by Argentina in the wake of the vulture funds lawsuit by an international hedge fund against the country.

The resolution yielded a 'yes' vote from 136 countries from Latin America, Asia, Africa and the Caribbean. A 'no' vote was registered by 6 countries: the United States, Germany, the United Kingdom, Japan, Canada and Israel. An 'abstain' vote, meaning that these countries abstained from voting either yes or no, was registered by 41 countries.

The votes reflect the geo-political pattern in the UN where developing countries vote in favour of measures to increase the stability and fairness of the international financial system, while the most powerful developed countries often block such measures, arguing that such discussions must only take place within international financial institutions and not the UN.

The vote means that the UN General Assembly has declared that sovereign debt restructuring processes should be guided by nine basic principles. Unlike the Security Council, which has the power to issue legally binding resolutions, General Assembly resolutions are non-binding. But they carry political weight.

While the resolution does not reflect the original subject of establishing a multilateral legal mechanism for sovereign debt restructuring, the nine principles that have been adopted have been called a historical breakthrough because the vast majority of nations in the world have spoken out for a change to the current creditor-led debt system that has repeatedly failed numerous countries.

The resolution outlines nine core principles that should be respected when restructuring sovereign debt: sovereignty, good faith, transparency, impartiality, equitable treatment, sovereign immunity, legitimacy, sustainability and majority restructuring.

The principle of sovereignty is encapsulated by the following language in the resolution, "A sovereign state has the right ... to design its macroeconomic policy, including restructuring its sovereign debt, which should not be frustrated or impeded by any abusive measures."

The principle of sustainability implies that sovereign debt restructuring workouts lead to a stable debt situation in the debtor state, preserving creditors' rights while promoting economic growth and sustainable development, minimizing economic and social costs, warranting the stability of the international financial system and respecting human rights.

The principle of sovereign immunity from jurisdiction and execution regarding sovereign debt restructurings is a right of States before foreign domestic courts and exceptions should be restrictively interpreted.

Transparency focuses on the need to enhance the accountability of the actors concerned.

Equitable treatment refers to the equitable treatment of creditors and debtors, and impartiality refers to the impartial conduct and decisions of all institutions and actors involved in sovereign debt restructuring workouts.

The principle of legitimacy entails respect for the requirements of inclusiveness and the rule of law.

Majority restructuring implies that sovereign debt restructuring agreements that are approved by a majority of creditors are not to be impeded by other States or a non-representative minority of creditors.

The vote comes one year and a day after the General Assembly first agreed to negotiate and adopt a multilateral legal framework for sovereign debt restructuring processes on 9 September 2014. Following the September 2014 vote, an Ad Hoc Committee was established on 29 December 2014, with the mandate to elaborate a multilateral legal framework for sovereign debt restructuring processes. Bolivia chaired the Committee.

The current vote results, when compared to last year's vote results, reflect an increase of 12 countries for the 'yes' vote and a decrease of 5 countries for the 'no' vote. The overall movement is that of increased support for the momentum on debt restructuring. The same number of 41 countries abstained from a vote in both years.

The countries whose votes changed from an abstaining vote to a 'yes' vote are Iceland, Ukraine, Armenia, Serbia, Papua New Guinea and Montenegro. The countries whose votes turned from a 'no' vote in 2014 to an abstaining vote this year are Australia, Czech Republic, Finland, Hungary and Ireland.

With the exception of the six countries that voted against the principles, all other developed countries abstained from a vote. Southern countries that also abstained from a vote included Mexico, Colombia and Gabon.

Debt-stricken Greece abstained from voting. However, Greece made a significant break from the European Union's collective boycott of the entire process by participating in the final negotiation session of the Ad Hoc Committee at the UN headquarters in New York.

Other developed countries, most notably the US, Japan and Canada, as well as the International Monetary Fund (IMF) also refused to participate in the three week-long negotiation sessions of the Ad Hoc Committee over the last one year.

Highlights of group/country statements during the vote

The **G77 and China** group of 134 developing countries said that the text provided a good basis for future discussions. The principles had been drafted in a way that brought a "win-win" situation for debtors and creditors. The issue of debt sustainability was central to achieving national and international development goals. The international community needs to now march with vigour to achieve the post-2015 development agenda and to ensure that no one is left behind.

Bolivia, who chaired the Ad Hoc Committee, said the adoption of the principles to guide debt restructuring validates a process that saw tireless efforts of several delegations and the support of the Secretary-General and the President of the 69th General Assembly. This collective endeavour has the potential for creating long-term positive economic outcomes for developing countries.

In direct opposition, the **European Union (EU)** stated that the resolution's text contained a number of statements that did not accurately reflect international law or treaties. The EU stressed that the IMF is the appropriate institution to host global discussions on the subject.

The **United States** said the resolution was deficient on several counts, including the implication of a right of a State to debt restructuring and the threat to contractual obligations. A statutory mechanism for debt restructurings would sow uncertainty in financial markets. The US supported the EU saying that the United Nations was not the appropriate venue for such issues.

The **Caribbean Community** stated that the matter of a multilateral framework for sovereign debt restructuring is of great interest to the group because unsustainably high debt burdens remain a major challenge to the economic development of the region. Debt servicing has far exceeded expenditure on social services, including health and education, which has adversely affected overall socioeconomic development. Therefore, countries must be given an opportunity to undertake orderly debt arrangements as a means of stabilizing their economies.

The **Alliance of Small Island States** said debt sustainability poses a serious challenge to the group, which suffers disproportionately high debt-to-gross domestic product (GDP) ratio.

Australia said it did not support any unilateral right to debt restructuring. However, they expressed a commitment to work towards achieving a solution.

Russia, voting in favour of the principles, said they have always supported improvement in the sovereign debt restructuring process within the context of the UN, and that the principles adopted provide the basis for a fair, balanced and effective process for sovereign debt restructuring through a universal legal mechanism that could apply to all forms of external debt.

Also voting in favour, **Iceland** said that the resolution was a balanced text, and that *ad hoc* arrangements had created incoherence and unpredictability.

Argentina said the adopted resolution is a text in favour of stability. Debt is responsible for inequality and takes advantage of less developed countries. As a democratic forum where all sovereign countries have a voice, it is wrong to say that the UN is not the right forum for debt discussions. Countries have a right to restructure debt and it is crucial to put an end to the power of vulture funds that feed on the lack of global legislation to take advantage of many poor countries.

Argentina stressed that the current economic crisis highlights how foreign debt has become for many countries a heavy burden that endangers growth and employment. It is necessary to change the international financial architecture so that no one will suffer from the exploitation of vulture funds.

Cuba said countries that are held back economically because of punitive debt repayment conditions can now look forward to better days. However, the resolution only represents the first step of a process to address external debt in all its manifestations.

India said the issue of debt restructuring was not just a problem for developing countries. Debt affects inclusive development and political stability globally. By adopting the resolution, the UN is formalizing a set of basic principles for restructuring debt and thereby laying down powerful markers for dealing with sovereign debt. The principles themselves are non-binding in nature and India called for voluntary adherence to them.

Singapore said they voted in favour of the resolution because the non-binding principles on debt restructuring are a practical outcome of the Ad-Hoc Committee on that matter. However, the contractual rights of all creditors must be taken into account. Any further consideration of the issue must secure the active and inclusive participation of debtor and creditor countries, the IMF and other financial institutions.

The **Union of South American Nations** (UNASUR) said an important step had been taken today at the United Nations, which has the legitimacy to deal with challenges that affect the international community as a whole. The resolution provides a fair basis for debt restructuring in the interest of all parties concerned. Debt crises are costly and lead to cuts in spending on health and education, undermining overall economic health. The adoption of the text, following open and transparent negotiations, has provided a set of principles towards establishing a multilateral framework on sovereign debt restructuring.

Nicaragua said it is important to put into practice mechanisms that can prevent and resolve economic crises. The basic principles put forth in the resolution must be the basis of a legal framework for any future agreement. Nicaragua reaffirmed the role of the General Assembly as a universal and equitable forum on matters of economic nature.

Chile said the matter of sovereign debt restructuring was a global challenge that is best suited on the agenda of the United Nations. As long-term debt sustainability is central to sustainable development, the resolution opens the door for further discussions on all forms of external debt.

Brazil said the current international financial architecture is not conducive to the achievement of the UN's Sustainable Development Goals (SDGs). Brazil also expressed regret that not all international financial mechanisms had participated in the discussions.

During the concluding negotiations of the debt committee in July, Ambassador Denis G. Antoine of Grenada delivered a statement on behalf of the **President of the General Assembly** (H.E. Sam Kutesa of Uganda). He said that the set of nine principles "constitutes an important contribution on sovereign debt restructuring, since the principles could serve as a basis for future deliberations of the UN General Assembly towards a multi-lateral legal framework for sovereign debt restructuring processes with the participation of all Member States."

He added that the work of the committee, having been carried out through a transparent and participatory approach, will contribute towards the goal of increasing the efficiency, stability and predictability of the international financial system and achieving sustained, inclusive and equitable economic growth and sustainable development.

The **United Nations Conference on Trade and Development** (UNCTAD), which has long been developing a roadmap and guide to sovereign debt workouts, said that the UN committee's decision is an important step that UNCTAD has been advocating for the past 30 years. It is a movement towards a more rational way of handling sovereign debt crises from the very fragmented and unfair system currently in place.

UNCTAD also stated that it is problematic how the same rules and practices that have been created at national levels to manage debts do not exist at the international level. This absence of international bankruptcy laws is a major gap in the international system.

At the same July session, Nobel prize economist **Joseph Stiglitz**, currently Professor of Columbia University and former Chief Economist and Senior Vice President at the World Bank, had also delivered a keynote speech, where he congratulated the committee for establishing the set of principles on which to build such a framework.

Stiglitz pointed to Greece and Argentina as recent examples of countries that have suffered because of inadequate frameworks for debt restructuring. "In the absence of an adequate framework for debt restructuring economies often go into deep recession -- depressions as we see today in Greece -- as we saw in Argentina," he said.

He especially welcomed the UN as the right place for discussing these issues, instead of the IMF. "The IMF is an institution of creditors. You would not ask Citibank to design the bankruptcy law in the United States," he said. "We know how they would design the law, it would have indentured servitude. We need a fair bankruptcy law, an efficient bankruptcy law and the bankruptcy laws that come out of creditors are neither fair nor efficient." The only place where one can have creditors and debtors at the table is the UN.

Stiglitz also identified five reasons why sovereign debt has once again reached the top of the policy agenda. First, many countries are facing problems of excessive indebtedness. Sovereign debt is no longer a problem of the past. Greece, Puerto Rico and several Caribbean countries are in the throes of worrying debt crises. There are potential crises waiting to erupt in many countries around the world.

Second, court rulings, particularly in the US and UK, have highlighted the incoherence of the current system and have made orderly debt restructuring, at least in some constituencies, more difficult, if not impossible. One jurisdiction makes one ruling and another jurisdiction makes a different ruling, resulting in no place where these different rulings can be reconciled.

Capitalism could not work without a framework for debt restructuring, and this is why every country has a bankruptcy law, he said. Unfortunately there is no international framework and no international law for sovereign bankruptcy, and this absence is why UN principles that can guide the creation of much needed international law are critical.

Third, there has been a movement of debt from banks to capital markets and this has significantly increased the difficulties of debt renegotiations. There are so many more creditors with often conflicting interests at the table.

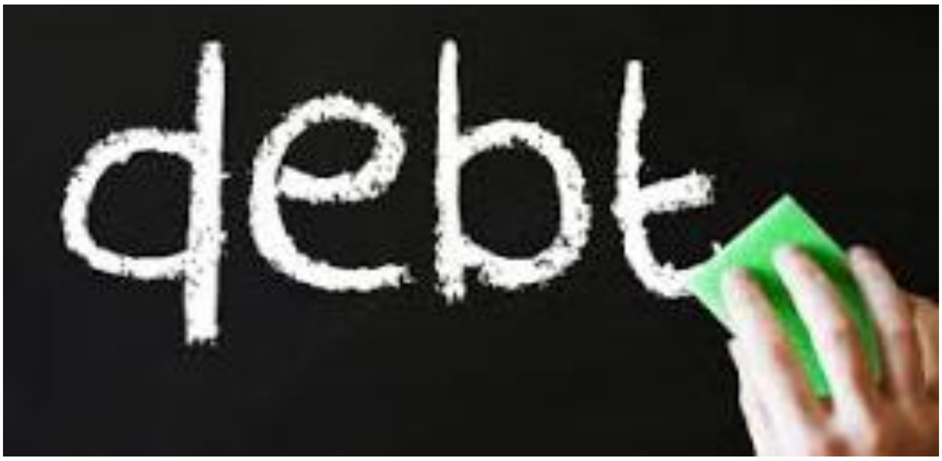
Fourth, the development of credit default swaps, which are financial instruments whose objective is to shift risk, is not as recognized as it should be. The parties at the table at those negotiations may have no economic interest in a settlement. Instead, they may have economic interest in not having a settlement. The consequences of the separation of the ownership of claims and economic interests have not been taken on board fully and it is imperative to do that.

And the fifth reason is the growth of vulture funds whose business model involves holding out against settlements and non-cooperation with the debtor country in order to obtain payments greater than those participating

(Continued on page 5)

UN Committee adopts principles for sovereign debt restructuring

A committee of the UN General Assembly adopted nine principles for sovereign debt restructuring. This was a timely outcome as more countries are facing debt crises and thus the need for debt restructuring that is fair and economically sustainable. The work and outcome of this Committee became the basis for the UN General Assembly resolution on 10 September.



The Ad hoc Committee on sovereign debt restructuring processes adopted nine principles that should be respected when a country undertakes the restructuring of sovereign debt. These support countries that have to restructure their debt and face creditors as well as "vulture funds."

By Adriano José Timossi and Manuel F. Montes

A United Nations committee adopted a set of nine principles for sovereign debt restructuring after two years of deliberations. A report was submitted to the UN General Assembly for its review and action.

The adoption of the Principles on Sovereign Debt Restructuring Processes was timely, as more countries are facing or are in danger of facing sovereign debt crises, and the need for and terms of restructuring their debts have become urgent and often controversial topics.

The nine principles were agreed to at the third working session of the Ad Hoc Committee on Sovereign Debt Restructuring Processes on 27-28 July held at the UN headquarters in New York. They were part of the Chair's summary submitted to the UN General Assembly.

The principles had originally been put forward by the Group of 77 and China, who had also been responsible for initiating the establishment of the committee in 2014.

Although the principles were adopted by all countries present, it should be noted that most developed countries boycotted the meeting as they were not in favour of the ad hoc committee or the United Nations taking up this issue. The International Monetary Fund also decided not to attend.

The right of a state to design its own macroeconomic policy, including

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UN adopts debt resolution on principles *(Continued from page 4)*

in the debt restructuring exercise. These are making debt restructuring under existing institutional arrangements much more difficult if not impossible.

Meanwhile, **Pope Francis** has also endorsed the UN principles amidst Greece's ongoing debt crisis.

The **UN's Independent Expert on the effects of foreign debt and human rights, Juan Pablo Bohoslavsky**, released a statement saying that the resolution is a positive step towards clarifying which existing rules and principles of international law apply to sovereign debt issues, and will provide legal guidance on how to prevent and deal with vulture credits.

He stressed that sovereign debts should be geared towards implementing economic and social policies, with a view to achieving growth and development in the concerned countries. Unfortunately, as it is too often the case, sovereign debts can also throw millions of people into poverty, in particular when resulting in a debt crisis.

The **UK's Jubilee Debt Coalition** reacted to the vote positively, saying that it could prove to be a historic breakthrough because the vast majority of nations have spoken out for a change to the broken debt system. From the Greek debt debacle, to Argentina being held to ransom by vulture funds, to decades-old debt crises in Jamaica and El Salvador the need for change has never been clearer.

The UK-based organization also critiqued the UK government, saying it is outrageous that the UK has chosen to put reckless lenders ahead of people around the world by voting against these principles.

The press release of **Jubilee USA** similarly expressed disappointment that the US voted against the UN's important efforts to limit repeat financial crises. They stressed that because inequality is directly connected to a country's debt, the principles to guide sovereign debt restructuring are critical to create inclusive societies.

The next steps will include a follow-up process to this landmark vote, which will ensure that the further development of the UN principles on sovereign debt restructuring processes will stay alive within the General Assembly in the immediate future.

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restructuring of its sovereign debt, without being frustrated or impeded by abusive measures, is one of the agreed principles.

Another principle is that **Sovereign immunity** from jurisdiction and execution regarding sovereign debt restructurings is a right of States before foreign domestic courts and exceptions should be restrictively interpreted.

Another principle is **Sustainability**, which implies that sovereign debt restructuring workouts lead to a stable debt situation in the debtor State, preserving creditors' rights while promoting economic growth and sustainable development, minimizing economic and social costs, warranting the stability of the international financial system and respecting human rights.

Other principles include **Good faith** by both the sovereign debtor and all its creditors; **Transparency** to enhance the accountability of the actors concerned; **Impartiality** among all institutions and actors involved in sovereign debt restructuring workouts; **Equitable treatment** for creditors; **Legitimacy,** entailing respect for the requirements of inclusiveness and the rule of law; and **Majority restructuring** which implies that sovereign debt restructuring agreements that are approved by a majority of creditors are not to be impeded by other States or a non-representative minority of creditors.

This outcome was the culmination of the three working sessions of the committee. There were also numerous informal sessions and consultations with various organisations and governments, including in locations outside of New York, led by Bolivia's United Nations Ambassador Sacha Llorentty, who chaired the Committee.

The Ad Hoc Committee was established by a UN General Assembly resolution A/RES/69/247 of 29 December 2014, which mandated the Committee to elaborate a multilateral legal framework for sovereign debt restructuring processes.

In the past few months, many informal sessions were organised to negotiate the nine principles on debt restructuring. The principles had been proposed by the Group of 77 and China (the grouping of developing countries in the UN), and several of them were based on the outcome of the UNCTAD Working Group on a Debt Workout Mechanism comprising experts, legal scholars, investors, policymakers and civil society representatives.

Ambassador Denis G. Antoine of Grenada delivered a statement on behalf of the President of the General Assembly (H.E. Sam Kutesa of Uganda). He said that the set of nine principles "constitutes an important contribution on sovereign debt restructuring, since the principles could serve as a basis for future deliberations of the UN General Assembly towards a multi-lateral legal framework for sovereign debt restructuring processes with the participation of all Member States". He added that the work of the committee, having been carried out through a transparent and participatory approach, will contribute towards the goal of increasing the efficiency, stability and predictability of the international financial system and achieving sustained, inclusive and equitable economic growth and sustainable development.

In the same working session, Nobel prize economist Joseph Stiglitz, currently Professor of Columbia University and former Chief Economist and Senior Vice President at the World Bank, gave a keynote speech. Mr. Stiglitz had been the chair of the Commission of Experts on Reforms of the International Monetary and Financial System which studied the 2007-2008 global economic and financial crises and called for a framework to deal with sovereign debt. However, progress on this proposal has been very limited, despite importance of the issue.

Stiglitz pointed to Greece and Argentina as recent examples of countries that have suffered because of inadequate frameworks for debt restructuring. "In the absence of an adequate framework for debt restructuring economies often go into deep recession -- depressions as we see today in Greece -- as we saw in Argentina," he said.

Prof. Stiglitz congratulated the committee for establishing the set of principles on which to build such a framework. He especially welcomed the fact that a set of principles is being put forward by the Ad Hoc Committee since the UN is the right place for discussing these issues, instead of the International Monetary Fund (IMF). "The IMF is an institution of creditors. You would not ask Citibank to design the bankruptcy law in the United States," he said. "We know how they would design the law, it would have indentured servitude. We need a fair bankruptcy law, an efficient bankruptcy law and the bankruptcy laws that come out of creditors are neither fair nor efficient." The only place where one can have creditors and debtors at the table is the UN. "The balanced nature of your report provides testimony to the fact that you are the right place and I think that you have done a great job," Prof. Stiglitz said.

Stiglitz identified **five reasons** why the issue has once again reached the top of the policy agenda. **First**, many countries are facing **problems of excessive indebtedness**. Sovereign debt is no longer a problem of the past. We are facing today the Greek debt crisis. Puerto Rico is facing a debt crisis. There are potential crises in many countries around the world.

Secondly, court rulings, particularly in the US and UK, have highlighted the **incoherence of the current system** and have made **orderly debt restructuring, at least in some constituencies, more difficult, if not impossible**. Capitalism could not work without a framework for debt restructuring, and this is why every country has a bankruptcy law but unfortunately we have no international framework, no international law and this committee is setting principles which will guide creation of that kind of international law. What we have today is an incoherent system where one jurisdiction makes one ruling and another jurisdiction makes a different ruling and there is no place where these can be reconciled.

The **third reason** is that there has been a **movement of debt from banks to capital markets** and this has **increased significantly the difficulties of debt renegotiations**. There are so many more creditors with often conflicting interests at the table. **Fourthly**, and not as well recognized as it should be, is the development of **CDS (credit default swaps)**. These are financial instruments for shifting risk. The parties at the table at those negotiations may have no economic interest in a settlement. Instead, they may have economic interest in **not** having a settlement. The consequences of the separation of the ownership of claims and economic interests have not been taken on board fully and it is imperative to do that.

And the **fifth** reason is the **growth of vulture funds** whose business model involves holding out against settlement and noncooperation (with the debtor country) in order to obtain payments greater than those participating in the debt restructuring exercise. This business model is making debt restructuring under existing institutional arrangements much more difficult if not impossible.

A press conference was held on 28 July 2015 at the UN headquarters by Ambassador Sacha Llorentty, Chair of the Ad Hoc Committee and Bolivia's Permanent Representative to the UN; Ambassador María Cristina Perceval, Permanent Representative of Argentina to the UN; H.E. Carlos Alberto Bianco, Secretary of International Economic Relations, Ministry of Foreign Affairs and Worship of Argentina; and Dr. Richard Kozul-Wright, Director of the Division on Globalization and Development Strategies, United Nations Conference on Trade and Development (UNCTAD).

"This constitutes a historic moment when it comes to resolving the issues of foreign debt restructuring," said Ambassador Llorentty at the press conference.

However, Llorentty noted that 11 countries had not supported the establishment of the committee in December 2014 and that these same countries have a greater share of the votes at the International Monetary Fund, which currently has a great say over sovereign debt issues.

Kozul-Wright said that part of the problem was that the same rules and practices that had been created at national levels to manage debts, did not exist at the international level. "At the international level where we have also high levels of indebtedness there is no equivalent of national bankruptcy laws and it's a major gap in the international system," he said.

Kozul-Wright also described the committee's decision as an important step that UNCTAD has been advocating for the past 30 years. "This is a very important first stage in moving towards a more rational way of handling sovereign debt crises from the very fragmented unfair system that we have," he said.

THE NINE PRINCIPLES

The nine principles adopted by the Ad Hoc Committee to guide sovereign debt restructuring processes are as follows:

1. A Sovereign State has the right, in the exercise of its discretion, to design its macroeconomic policy, including restructuring its sovereign debt, which should not be frustrated or impeded by any abusive measures. Restructuring should be done as the last resort and preserving at the outset creditors' rights.

2. **Good faith** by both the sovereign debtor and all its creditors would entail their engagement in constructive sovereign debt restructuring workout negotiations and other stages of the process with the aim of a prompt and durable reestablishment of debt sustainability and debt servicing, as well as achieving the support of a critical mass of creditors through a constructive dialogue regarding the restructuring terms.

3. **Transparency** should be promoted in order to enhance the accountability of the actors concerned, which can be achieved through the timely sharing of both data and processes related to sovereign debt workouts.

4. **Impartiality** requires that all institutions and actors involved in sovereign debt restructuring workouts, including at the regional level, in accordance with their respective mandates, enjoy independence and refrain from exercising any undue influence over the process and other stakeholders or engaging in actions that would give rise to conflicts of interest or corruption or both.

5. **Equitable treatment** imposes on States the duty to refrain from arbitrarily discriminating among creditors, unless a different treatment is justified under the law, is reasonable, and is correlated to the characteristics of the credit, guaranteeing inter-creditor equality, discussed among all creditors. Creditors have the right to receive the same proportionate treatment in accordance with their credit and its characteristics. No creditors or creditor groups should be excluded ex ante from the sovereign debt restructuring process.

6. **Sovereign immunity** from jurisdiction and execution regarding sovereign debt restructurings is a right of States before foreign domestic courts and exceptions should be restrictively interpreted.

7. **Legitimacy** entails that the establishment of institutions and the operations related to sovereign debt restructuring workouts respect requirements of inclusiveness and the rule of law, at all levels. The terms and conditions of the original contracts should remain valid until such time as they are modified by a restructuring agreement.

8. **Sustainability** implies that sovereign debt restructuring workouts are completed in a timely and efficient manner and lead to a stable debt situation in the debtor State, preserving at the outset creditors' rights while promoting sustained and inclusive economic growth and sustainable development, minimizing economic and social costs, warranting the stability of the international financial system and respecting human rights.

9. Majority restructuring implies that sovereign debt restructuring agreements that are approved by a qualified majority of the creditors of a State are not to be affected, jeopardized or otherwise impeded by other States or a non-representative minority of creditors, who must respect the decisions adopted by the majority of the creditors. States should be encouraged to include collective action clauses in their sovereign debt to be issued.

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Manuel F. Montes is the Senior Advisor on Finance and Development of the South Centre.

Political impasse limited UNGA's debt work

The work of the Ad hoc Committee on sovereign debt restructuring processes was met with strong resistance from developed countries. How to break the political impasse in New York to establish a multilateral legal framework for sovereign debt restructuring processes was a question that the Committee tried to answer throughout its work.

By Yuefen Li

On 9 September 2014, a vote took place at the 68th session of the United Nations General Assembly (GA) in New York on a draft GA resolution tabled by the G77 and China entitled "Towards the establishment of a multilateral legal framework for sovereign debt restructuring processes". The resolution (A/68/304) was passed with 124 votes in favour, 11 votes against and 41 abstentions. Most of the developed countries either voted against or abstained. The resolution requests the establishment of an Ad hoc Committee to "*elaborate and adopt through intergovernmental negotiations a multilateral legal framework for sovereign debt restructuring processes with a view, inter alia, to increasing the efficiency, stability and predictability of the international financial system and achieving sustained, inclusive and equitable economic growth and sustainable development, in accordance with national circumstances and priorities.*"

This is a very encouraging development, yet the given timeframe is extremely ambitious. Even though the international debates on the topic have been going on for decades, heating up each time with the onset of a debt crisis and cooling down when the crisis was contained, up to now such debates have not yet come to fruition. Despite the lack of a formal sovereign debt restructuring mechanism which has been considered by many as a serious deficit or missing link in the international financial architecture, the reignited international debate since the global financial crisis has resulted in only less painful yet welcomed measures for improving debt contracts, which have been viewed as insufficient.

The Ad hoc Committee was mandated by GA resolution A/69/247 to organize three working sessions and adopt a proposed legal framework through intergovernmental negotiations. The first working session took place on 3-5 February 2015 while the second session was held on 28-30 April 2015 and the third session took place on 27-28 July 2015. The first two sessions discussed the gaps in the current sovereign debt restructuring processes, the options for moving forward, the political economy of debt restructuring, different elements/stages of a debt restructuring process, and potential guiding principles for debt restructuring. At the second working session, the Chairman of the Ad hoc Committee presented his own elements paper which includes his proposed guiding principles for sovereign debt restructuring.

The work of the Ad hoc Committee met with strong resistance from developed countries. Only several developed countries showed up at the two working sessions of the Ad hoc Committee. The rest of them pursued a non-engagement policy even though most followed the meetings via UN webcast. The Chairman of the Ad hoc Committee actively reached out to UN Member States, in particular the developed ones, as well as multilateral and regional institutions. However, there was no loosening up from the developed countries. On 19 May 2015, the European Parliament in Strasbourg voted Resolution on Financing for Development A-143/2015 calling for EU participation in the UN General Assembly process. It did not seem to have brought changes to the non-engagement approach pursued by the EU.

Time and again major developed countries have emphasized that the United Nations should leave the sovereign debt restructuring issue to the IMF, citing reasons that the IMF has mandates and expertise in this area of work. Developing countries, on the other hand, argued that quite a number of GA resolutions endorsed by consensus have requested the United Nations to work on the topic. The Second Committee of the UN General Assembly has an annual agenda item on debt issues and development. The United Nations Conference on Trade and Development (UNCTAD), the focal point on the debt issues within the UN system, has provided technical support to the GA discussion on debt issues for decades and also has specific mandates given by each UNCTAD ministerial conference to undertake both analytical work and technical assistance projects on debt issues including capacity building on debt management. As a matter of fact, UNCTAD published studies on debt restructuring long before the IMF started to work on a sovereign debt restructuring mechanism (SDRM). UNCTAD had also invited the IMF, the World Bank, regional development banks and other stakeholders to work together to formulate the Principles on Promoting Responsible Sovereign Lending and Borrowing. The G77 and China asked the question of why with such mandates and expertise, the United Nations, the most democratic and representative international institution in the world, should not discuss the issue of sovereign debt restructuring.

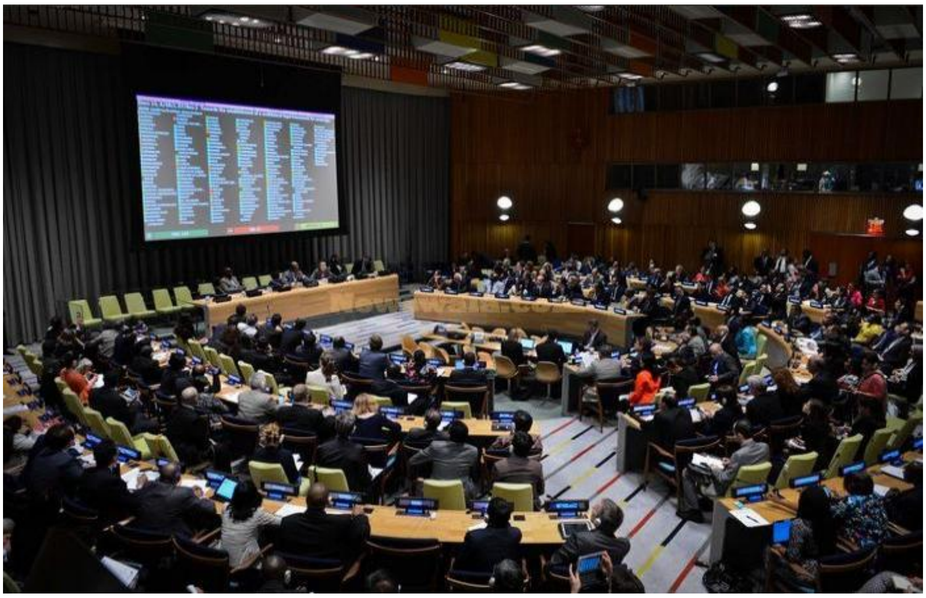
As the New York based diplomats had been overwhelmed with the preparation for several major UN high level conferences to be held in 2015, the time for serious and detailed negotiation of the sovereign debt restructuring legal framework was very limited. Therefore, the Chair of the Ad hoc Committee had focused the discussions on a set of principles for sovereign debt restructuring. It is hoped that the ambitious tasks mandated by resolution A/68/304 could be undertaken in a phased manner. However, how to break the New York political impasse is still a question waiting for an answer. At a time when old challenges for debt restructuring are still as persistent as ever and the new developments are making future sovereign debt restructuring even more difficult, to pray for a miracle to happen does not seem to be an option.

Yuefen Li is the Special Advisor on Economics and Development Finance of the South Centre.

Debt Crisis: Resolution and Workout Mechanisms

The need for and nature of a sovereign debt restructuring mechanism had been discussed at a committee of the UN General Assembly, in accordance with a resolution of the UNGA to set up such a mechanism which is intended to help countries experiencing an external debt crisis.

During the first meeting of the Committee on Sovereign Debt Restructuring Processes held at the UN in New York, the South Centre's Chief Economist, Yılmaz Akyüz, made a presentation on "Crisis Resolution and International Debt Workout Mechanisms". Below is his statement.



Xinhua/Niu Xiaolei

The 68th session of the United Nations General Assembly in New York adopted on 9 September 2014 Resolution A/68/304 "Towards the establishment of a multilateral legal framework for sovereign debt restructuring processes".

By Yılmaz Akyüz

International Debt Workout Mechanisms

Debt restructuring is a component of crisis management and resolution; it needs to be treated in the context of the current economic conjuncture and vulnerabilities.

International Debt Workout Mechanisms (IDWMs) are not just about debt reduction, but also include interim arrangements to provide relief to debtors including temporary hold on debt payments and financing.

IDWMs should address liquidity as well as solvency crises. The difference is not always clear. Most start as liquidity crises and can lead to insolvency if not resolved quickly. Liquidity crises also inflict serious social and economic damages as seen in the past two decades even when they do not entail sovereign defaults.

IDWMs should apply to crises caused by external private debt as well as sovereign debt. Private external borrowing is often the reason for liquidity crises. Governments end up socializing private debt. They need mechanisms that facilitate resolution of crises caused by private borrowing.

IDWMs apply to a legal, not an economic concept, of external debt. Legal concept: debt issued under foreign jurisdiction irrespective of its currency of denomination and holders. Economic (Balance of Payments) concept: debt held by non-residents irrespective of the law it comes under and its currency denomination.

Local-law debt should not come under IDWMs even when held by non-residents. This was agreed during the debate on the Sovereign Debt Restructuring Mechanism (SDRM) in the IMF in the early 2000s. For such debt governments have the means to resolve collective action problems.

Recent Crises and Current Vulnerabilities

Only one of the last 8 major crises in emerging and developing economies (EDEs) was due to internationally-issued sovereign debt (Argentina). Mexican and Russian crises were due to locally-issued public debt (tesobonos and GKOs); in Asia (Thailand, Korea, Indonesia) external debt was private; in Brazilian and Turkish crises too private (bank) debt played a key role alongside some problems in the domestic public debt market.

We have had no major new crisis in the South with systemic implications for over a decade thanks to highly favourable global liquidity conditions and risk appetite, both before and after the Lehman collapse, due to policies in major advanced economies, notably the US. But this period, notably the past six years, have also seen considerable build-up of fragility and vulnerability to liquidity and solvency crises in many EDEs (see the South Centre's Research Paper 60). This is a matter of concern because favourable global financial conditions are unlikely to last over the coming years.

Sovereign international debt problems may emerge in the so-called frontier economies usually dependent on official lending. Many of them have gone into bond markets in recent years, taking advantage of exceptional global liquidity conditions and risk assessments. There are several first-time Eurobond issuers in Sub-Saharan Africa and elsewhere.

In emerging economies (EMEs) internationally-issued public debt as % of GDP has declined significantly since the early 2000s. Much of external debt (in BOP terms) of these economies is now under local-law and in local currency. However, there is a large build-up of private external debt in forex issued under foreign law since 2008. Many of them may face contingent liabilities and are vulnerable to liquidity crises.

Crisis Intervention

Interruption of access to international financial markets, stop in capital flows, foreign exit from local financial markets and capital flight by residents resulting in rapid depletion of reserves, currency collapse and interest rate hikes; governments are often too late to recognize the gravity of the situation.

IMF lending is typically designed to bail out creditors – to keep debtors current on their obligations to creditors – and to avoid exchange restrictions and maintain the capital account open.

The IMF imposes austerity on the debtor, expecting that it would make debt payable and sustainable and bring back private creditors. It has little leverage on creditors.

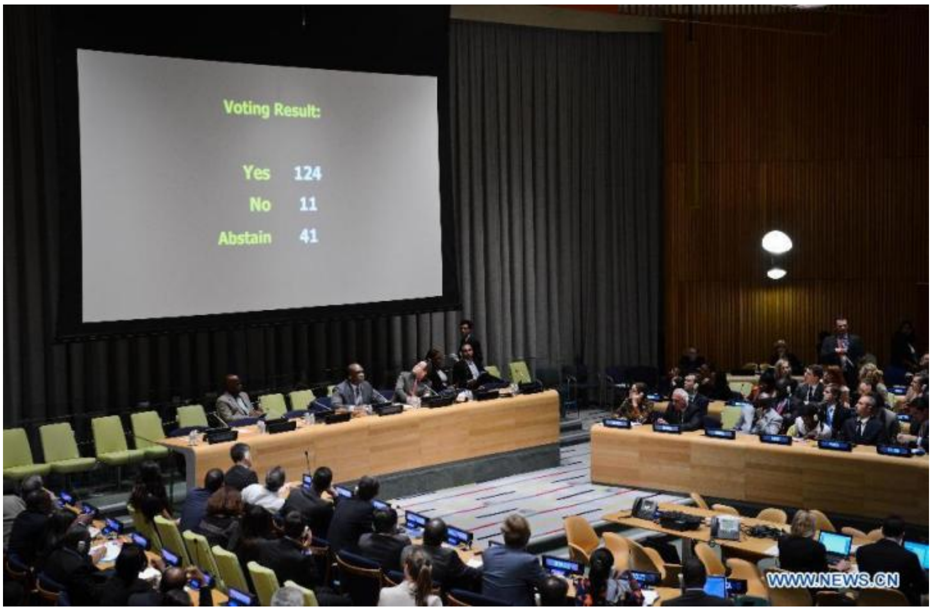
The problems with standard crisis intervention are: austerity can make debt even less payable; creditor bailouts create moral hazard and promote imprudent lending, and transform commercial debt into official debt, thereby making it more difficult to restructure; and creates risks for the financial integrity of the IMF.

Many of these problems were recognized after the Asian crisis, giving rise to the SDRM, originally designed very much along the lines advocated by UNCTAD throughout the 1980s and 1990s (though without due acknowledgement). However, it was opposed by the US and international financial markets and could not elicit strong support from debtor EDEs, notably in Latin America. It was first diluted and then abandoned.

The question of IDWMs was put on the back-burner after the early 2000s as strong global growth, unusually favourable conditions in international financial markets and rapid recovery of capital flows to EDEs led to complacency and served to obscure continued weaknesses and vulnerabilities in several EDEs. The matter has come back to the attention of the international community with the Eurozone crisis and then with vulture-fund holdouts in Argentinian debt restructuring.

A New IMF Proposal

After pouring money into Argentina and Greece whose debt turned out to be unpayable, the IMF has proposed a new framework to "limit the risk that Fund resources will simply be used to bail out private creditors" and to involve private creditors in crisis resolution.



UNGA Resolution A/68/304 was passed with 124 votes in favour, 11 votes against and 41 abstentions. Most of the developed countries either voted against or abstained.

The proposed intervention and crisis resolution would be different according to how the problem facing the country requesting IMF assistance is perceived.

Where debt is deemed to have a high probability of sustainability, the IMF would lend as usual, under the exceptional lending framework of 2002, while the country would make policy adjustments.

If debt sustainability looks uncertain, the IMF would require reprofiling (rollovers and maturity extension) before lending. If debt turns out to be unsustainable at the end of the IMF programme, then restructuring (debt relief) would be sought.

If debt is seen as unsustainable with a high probability, the IMF would require upfront debt reduction before lending.

Problems with the New Proposal

The proposed shift of the IMF away from creditor bailouts is welcome. But for several reasons the proposal does not provide a viable and reliable IDWM.

The IMF does not have a good record in sustainability assessments but wants to pass judgement on whether or not a country approaching it for assistance is solvent and needs reprofiling and restructuring. These decisions should mainly be left to the country concerned.

There is no legally binding framework for reprofiling and restructuring. They are left to negotiations between the debtor and the creditors, to be facilitated by various contractual provisions.

Reprofiling needs to be done quickly to prevent meltdown. This could be possible when debt is mainly in syndicated bank credits, but not when it is in widely dispersed bonds. Even in what is widely considered as successful instances of negotiations, agreements with banks in Korea, Brazil and Turkey came only after the deepening of the crisis as banks were interested in exiting quickly rather than rolling over their claims. Thus, in a statement at a G20 meeting, Korea hinted its agreement with many observers who "have found that Korea could have solved its liquidity problem sooner had a standstill programme been in place at the time Korea requested IMF assistance at the end of 1997".

If creditors fail to agree to reprofile and restructure and the IMF does not lend without these, then it would effectively be telling the debtor to default.

But it makes no proposal to protect the debtor against litigation and asset grab by creditors.

Reform and Limits of Contract-Based Resolutions

The IMF and others have been making proposals for improving debt con-

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The first meeting of the Ad Hoc Committee on Sovereign Debt Restructuring Processes was held at the UN in New York on 3-5 February 2015.

tracts by inserting better-designed CACs, stronger *pari passu* clauses etc. in order to facilitate negotiated settlements. There is a growing consensus that this route needs to be explored further in resolving liquidity and solvency crises.

However, there are well recognized limits to what negotiations can achieve.

A viable solution could be to rely on a judicious combination of contractual and statutory arrangements in different stages of crisis resolution.

Elements of a Workable IDWM

- Statutory reprofiling: Need for temporary debt standstills and exchange controls whether it is a liquidity or solvency crisis or is caused by public or private debt. The decision would be taken by the country concerned and sanctioned by an internationally recognized independent body to impose stay on litigation.

- Lender-in-possession financing: sanctioning standstills automatically grants seniority to new loans, to be used for current account financing, not to pay creditors or finance capital outflows. The IMF should be required to lend into arrears, but the private sectors can also be motivated to lend if terms are favourable since such lending would enjoy *de jure* seniority. In any case there would not be much need for new money since debt standstills and exchange controls limit the drain on reserves and the policy adjustment by the country can be expected to improve the current account.

- Negotiated debt restructuring including maturity extensions, rollovers etc, aided by CACs and other measures designed to restrain holdouts. If financial meltdown is prevented through standstills and exchange controls, stay is imposed on litigation, adequate lender-in-possession financing is provided and contractual provisions are improved, the likelihood of reaching a negotiated debt workout would be very high in a large majority of cases. A statutory cram-down should be the last resort. It should be recognized that a statutory solution would intervene not only with creditors' rights but also with sovereign rights of debtor countries. In this respect the pros and cons of various options (international bankruptcy courts, *ad hoc* panels, arbitration, and a dispute settlement system along the lines of the WTO) should be carefully assessed.

Role of the IMF and the United Nations

The role of the IMF in crisis management and resolution is incontrovertible. However, the IMF cannot be placed at the centre of IDWMs. Even after a fundamental reform, the IMF Board cannot act as a sanctioning body and arbitrator because of conflict of interest; its members represent debtors and creditors.

However, independent statutory bodies and mechanisms can be established within the IMF (as in WTO) if its governance is significantly reformed.

The United Nations successfully played an important role in crisis resolution in several instances in the past.

The Compensatory Financing Facility introduced in the early 1960s to enable developing countries facing liquidity problems due to temporary shortfalls in primary export earnings to draw on the Fund beyond their normal drawing rights at concessional terms resulted from a UN initiative.

Guidelines for negotiations of official and officially guaranteed debt of developing countries were effectively set at UNCTAD in 1980 through the adoption of TDB Resolution 222(XXI) which was seen by Michel Camdessus, the chairman of the Paris Club at the time, "as establishing the international legitimacy of the Paris Club within the international financial architecture."

A more recent example concerns Iraq's debt. After the occupation of Iraq and collapse of the Saddam regime, the UN Security Council adopted a resolution (No 1483) to implement stay on the enforcement of creditor rights to use litigation to collect unpaid sovereign debt. This was engineered by the very same country, the United States, which now denies a role to the UN in debt and finance on grounds that it lacks competence on such matters that mainly belong to the Bretton Woods Institutions.

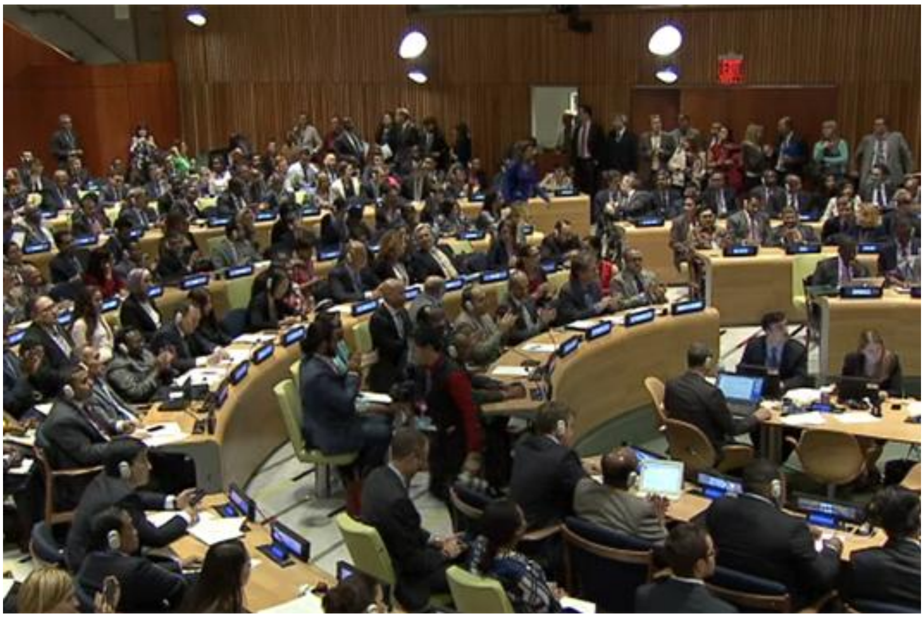
More interestingly, that Security Council resolution on Iraq's debt was duly complied with and implemented by the very same institutions, the IMF, World Bank and the Paris Club, which have refused to participate in these deliberations mandated by the General Assembly, presumably because they would not want to take guidance from the UN on debt restructuring.

Yılmaz Akyüz is the Chief Economist of the South Centre.

Debt Restructuring Mechanism: Options for Moving Forward

The need for and nature of a sovereign debt restructuring mechanism had been discussed at a committee of the UN General Assembly, in accordance with a resolution of the UNGA to set up such a mechanism which is intended to help countries experiencing an external debt crisis.

During the first meeting of the Committee on Sovereign Debt Restructuring Processes held at the UN in New York, the South Centre's Special Advisor on Economics and Development Finance, Yuefen Li, made a presentation on "Options for Moving Forward". Below is her statement.



Jubilee Debt Campaign

UN delegates applauded as UNGA Resolution A/68/304 "Towards the establishment of a multilateral legal framework for sovereign debt restructuring processes" was passed.

By Yuefen Li

This Ad Hoc Committee is probably **the** intergovernmental body which is the highest in level and also with the largest country representation **mandated** to deal solely with the issue of the legal framework of sovereign debt restructuring. I agree with the distinguished delegate of El Salvador completely that having the meeting by the committee at the General Assembly by itself is already of great significance and a step forward in the international debate on the topic.

Previous speakers have eloquently dealt with the gaps of the current debt restructuring system. At the beginning of the global financial crisis, some people still had some misgivings as to whether or not the lack of a formal sovereign debt restructuring legal framework is a serious deficit or missing link in the international financial architecture. Economic and legal events since 2008 have brought a great deal more **convergence** to this topic. The acknowledgement of this as a systemic issue and as a governance issue has taken a stronger hold.

Right now, **the centre of the debate has shifted to "options for moving forward"**. This is naturally a crucial stage. The outcome of the international debate could end up with some contractual improvements, which are good, and yet leaving the fundamental problems unsolved to the next crisis, just like the 2002 debate. The other option is to try to take big steps forward in filling the gaps. This ad hoc committee is having this ambitious aim. Allow me to offer my two cents regarding how to move forward. To fill in the gap in debt restructuring processes would require **an inclusive process**, the active engagement of Member States and stakeholders of the private sector, the IMF and civil society. Unfortunately, the international debate has been, as in the past, unnecessarily polarized, giving rise to misconstrued fears of a multilateral legal framework on debt restructuring processes. Such fears need to be first of all dispelled or lessened. This could be the first step of our way forward. A process lacking inclusiveness would challenge the legitimacy of the outcome of the process.

I. Thus the first step could be to dispel misconstrued fears of a multilateral legal framework and make the GA process inclusive.

1. **One fear is that the introduction of a mechanism would lead to loss for creditors from the developed countries and gains for debtors from the developing ones.** This has turned the debate to an ideological fight between two camps, which was **well reflected by the outcome of the vote** for the United Nations General Assembly resolution for creating a "multilateral legal framework for sovereign debt restructuring" on 9 September 2014 in New York. Almost all the 52 countries who abstained or voted against the resolution were developed economies. The global economic landscape has changed dramatically in the past few decades with globalization and **internationalization of finance**. Creditors and debtors have been very much blurred nowadays. As a norm rather than exception, one country's debt would be held by both developed and developing countries, and by foreign and domestic residents. Messy and delayed debt restructurings would incur political and economic losses

Image Telam

Argentina's Foreign Minister Héctor Timerman hailed the approval of UNGA Resolution A/68/304, fostered by Argentina.

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The second meeting of the Ad Hoc Committee on Sovereign Debt Restructuring Processes was held at the UN in New York on 28-30 April 2015.

and human sufferings to developing and developed countries alike, in some cases extremely unsettling politically and socially. In addition, sovereign-debt crises are **no longer just a problem for developing countries**, but also a major concern and burning problem for some developed countries as well.

2. The fear, which has been existing since the first time the idea of a legal framework surfaced, is the **moral hazard problem**. To make sovereign default too easy is like a nightmare haunting policy makers as if creating a legal framework amounts to creating a monster. However, many studies have shown that delayed defaults outnumber by many times strategic defaults. That is why "too late and too little" debt restructurings have been the most generally used for arguing in favor of a mechanism. Contrary to causing moral hazard, a mechanism aiming at more efficient and fairer debt restructurings would to various extents address the moral hazard problem as timely debt workout would minimize private sector bailouts like the massive socialization of private debt during the current global financial and economic crisis which could be considered as a much more serious and frequently occurring moral hazard problem during debt crises than the possible strategic default.

3. Another big fear is that a mechanism would lead to the **loss of sovereignty** even though maintaining sovereignty under the current procedure is a struggle for the debtor governments once they have to go through debt restructuring exercises. The ongoing legal fights between hedge funds and Argentina is a case in point.

4. The fear that **the introduction of a mechanism would compromise debtor credit worthiness and lead to increased cost of borrowing** is another long-standing fear. However the smooth introduction in debt contracts since 2003 of CACs without apparent cost and the recent surprisingly uneventful use of ICMA's tightened up language of *pari passu* in debt contracts of Kazakhstan,Mexico and Viet Nam without increased cost have proved to the contrary of this fear.

All stakeholders should participate in this process, developed and developing countries alike. It is hoped the IMF, the regional economic commissions, the Paris Club, the private sector and the civil society all adopt an engaging attitude. Only so can all their concerns be taken into consideration in the process. In my previous incarnation of being the head of the UNCTAD debt and development branch we had such an inclusive process in the formulation of the principles on promoting responsible sovereign lending and it was a very rewarding and cohesive process.

II. The second step forward could be to identify guiding principles in conducting debt restructuring.

For the second step forward, you might want to consider identifying guiding principles in conducting debt restructuring.

As the topic has been discussed for decades, the aspirations of the legal framework on debt restructuring seem to converge: orderly, timely, equitable and comprehensive debt restructurings, which can restore medium term debt sustainability, were the aspired debt restructurings.

The identification of guiding principles for debt restructuring should be unpinned by achieving these aspirations. It is meant to have a common understanding of the assumed norms, which are regarded as **the standard of correctness in behavior and practices.** Its moral force could also be of valuable significance.

UNCTAD started a project in 2014 to work on a sovereign debt restructuring mechanism. A working group was set up comprising senior legal and economic experts (including those from the civil society) with well-established expertise in the fields and representative of different stakeholders. The Group identified **legitimacy, impartiality, transparency, good faith, and sustainability** as the main principles which would uphold public interest and redress the weaknesses in conducting debt restructurings. Scholarly papers were written to elaborate these principles, which are on the UNCTAD website. Some of the principles have already been enshrined in domestic legal order such as transparency and legitimacy.

The principles of **good faith and transparency** in the context of sovereign debt restructuring have been considered as essential. Good faith requires treating the other party fairly; to represent one's motives truthfully, and to refrain from taking unfair advantage of them. The behaviour of vulture funds is considered as completely against this principle at several levels. It is fraudulous and should be constrained by legal framework. I do not see why countries would be afraid of having legally binding arrangement with immediate enforcement on this. Coming back to good faith, it is closely related to transparency. Data and process transparency would be crucial for the success of debt restructuring. However, the timing and limits of transparency should also be defined so as not to jeopardize the confidentiality of the negotiation process.

The principles of **legitimacy and impartiality** for debt restructuring cannot be overemphasized. There are three different types of impartiality: institutional impartiality, actor impartiality and informational impartiality. With institutional impartiality, it is important to avoid systematic bias in favor of one interest group. This would contribute to arriving at an impartial and balanced outcome to the benefit of both creditors and debtors.The legal framework should emphasize *institutional independence*, including attentiveness to *financial* independence, *personnel* independence, and *physical* independence (i.e. geographic location in a neutral setting) as well as *transparency and review.* Impartiality of the actors involves independence of decision-makers and mediators from the negotiating parties.

The principle of **sustainability** refers to the ability of restoring medium term debt sustainability through debt restructuring. This is to avoid repeated debt restructurings within a short period of time.

To broadly agree on the guiding principles for debt restructuring could give orientation to the design of a debt restructuring legal framework.

III. The third step forward could be to identify complementarities between contractual and statutory approaches in the introduction of a debt restructuring mechanism.

The debate on debt restructuring has been historically framed in the context of **a "contractual approach" *vis-à-vis* a "statutory approach",** as if they are mutually exclusive. This does not really reflect the true nature of the issue. It has made reaching an international consensus on designing a legal framework on debt restructuring more contentious than it warranted. Contractual approach, also named as market approach, is considered as an approach aimed at making debt restructuring smoother through improvements of debt contracts. While statutory approach has been considered as a legally binding compulsory process with or without a supranational legal setup. Many people get cold feet on hearing the word "statutory ". Rationally these two approaches do not have to be mutually exclusive. Contractual approach is always there. When debt contracts are better designed, debt servicing can be better self-enforced and there would be less probability of the need for debt restructuring. Regarding a legal framework, since so far it is still at the international debate stage, the concern of maintaining sovereign to the extent possible could be well taken into consideration in designing the legal framework. It could also be incremental, moving from a voluntary one to gradually hardening up, as the framework is being perfected and also more generally accepted.

In designing such a framework, a clear idea of what debt restructuring problems contractual approach cannot address would be helpful.

However good the contractual approach is it has some huge limitations:

1. Inability of contractual improvements to address some fundamental and systemic problems facing sovereign debt restructuring like *Procrastination* or *"too late and too little"*

2. Legal forum fragmentation

3. Lack of comprehensiveness in debt restructuring

4. The problem of *interim financing*

5. The long phase in period of contractual improvements. It could take decades for the strengthened debt contract clauses to be adopted widely, depending on the life span of debt instruments. In between one two debt crises could have taken place already. It is like kicking the can down the road.

6. Even to phase in fully Super CACS with an aggregation clause may not be able to protect countries with small quantities of bonds. For hedge funds with deep pockets, it is peanuts to buy over 25% of the total bonds to block debt restructuring agreements. However, these countries tend to be newcomers to the international capital market or small and poorer economies, the countries which are more vulnerable to debt crises.

7. Other boilerplate clauses in debt contracts in addition to *pari passu* can also cause problems in the future.

It is hoped that a legal framework could address the above limitations of the contractual approach and contribute to de-stigmatizing debt restructuring, make it more predictable, consistent and fairer. This would hopefully give sovereigns with unsustainable debt more confidence to go through debt restructuring in a timelier manner to the benefit of both debtors and creditors.

IV. For the fourth step, with guiding principles and also a clear idea of pros and cons of the contractual approach, it is important to build consensus on the major building blocs of the legal framework which will be balanced and offer incentives to both debtor and creditor and with the IMF playing an important but not leading role.

After decades of international debates, there have been relatively broad agreements on major elements of a legal framework for debt restructuring. The following major elements could be considered:

1. **Decision by debtor countries to initiate debt restructuring** based on debt and economic data indicating severe difficulties and inability in debt servicing.

2.With validated data, introduction of a debt **standstill,** which would have a stay on litigations and debt servicing. Here arrangements should be made to avoid the triggering of CDS.

3. **Interim financing** should be arranged with seniority status.

4. **Comprehensive treatment of different types of debt in a single undertaking** if desired and give differentiated treatment in line with their different features.

5. **An inclusive negotiation process** which will make the negotiation of the terms of debt restructuring a broadly representative process of all creditors and the debtor country.

6. Decisions by a super majority of creditors regarding terms of debt restructuring bind all creditors. This is in line with the **CACS**. Yet with immediate enforcement even restructured debt do not have CACs or CACs with an aggregation clause in their debt contracts.

7. **Independent and impartial body to oversee the process.**

The above proposed possible steps for the way forward are just for the consideration of the audience here, many of whom are experts in the field with greater insights on the issue than me.

Impact of Hedge Funds' Activities on Human Rights

Yuefen Li, Special Advisor on Economics and Development Finance of the South Centre, made a presentation at the 14th session of the Human Rights Council Advisory Committee held on 25 February 2015 in Geneva, emphasizing the importance of the UN General Assembly process and the need to be coherent and support different fora within the UN in dealing with the issue of hedge funds' activities. Below is her statement.


OHCHR

The Human Rights Council Advisory Committee was established to function as a think-tank for the Council and work at its direction.

By Yuefen Li

When talking about activities of vulture funds, the first thing that comes to mind would be the most recent and the most notorious hedge fund activity namely NML against Argentina in a US lower court and then the supreme court. It has been dubbed as the litigation of the century, dominating newspaper and website headlines for many months last year. However, in absolute numbers, the successful litigations by hedge funds against the heavily indebted poor countries (HIPCs) would outnumber by far any other groups of countries. As you are aware, in 1996, under a lot of political pressure, the IMF and the World Bank and some regional development banks started the HIPC initiative to reduce the debt stock of some of the poorest countries on the planet, most of them sub-Saharan African countries. Vulture funds took the HIPCs as their easy preys. Easy in the sense that debt relief would free funds for these countries so that they can pay vulture funds. As these countries are normally weak in defending themselves legally, they are easy to defeat in court. Just as the vulture funds expected, most HIPCs being sued paid the vulture funds. With a number of exceptions, not much was reported in the international media. These HIPCs belong to the voiceless bottom billion.

For instance, Zambia owed to Romania money for purchasing agricultural machinery. By 1984, the government had difficulty to service the debt which amounted to about $30 million with interest included. In 1999, just when Zambia was about to reach the decision point under the HIPC initiative for a comprehensive debt relief , a vulture fund based in the British Virgin Islands bought the claim at about US $ 3 million, or 11% of the debt's face value. This is a very clever calculation, because the government will be in a position to pay with debt relief. In 2005, the hedge fund sought $55m repayment in total. By the time litigation ended, London's High Court had awarded the vulture fund a $15.5m settlement, roughly a 370% return. What is the impact of this claim on Zambia? The total expenditure of the central government on social benefits according to the IMF was around US$ 140 million, thus the vulture fund took away almost 15% of the total government social benefits expenditure. Money that could have been channeled to education, health care and poverty alleviation thus had to be used to pay the victorious vulture fund.

Out of 36 HIPCs going through debt relief, at least 20 of them have been threatened with or been subject to legal actions by commercial creditors and vulture funds since 1999. Per capita income of many HIPCs is between 1 to 2 dollars per day. The HIPCs lost the cases systematically and have been obliged to pay the original debt, interest and fees accrued since the debt entered arrears, as well as the hefty legal costs of the lawyers.

Sometimes for some countries, the ratio of lawsuit costs to debt service obligations could reach 200%, so much so that in 2009, the African Development Bank launched its African legal support facility to provide legal help to countries facing litigation from commercial creditors.

According to country surveys, vulture funds are engaged in claims seeking a total of $1.5bn from HIPCs.

These vulture funds have won most of their lawsuits with a success rate of 72 percent. In some cases, the claims by vulture funds constitute as much as 12 to 13 percent of a nation's GDP.

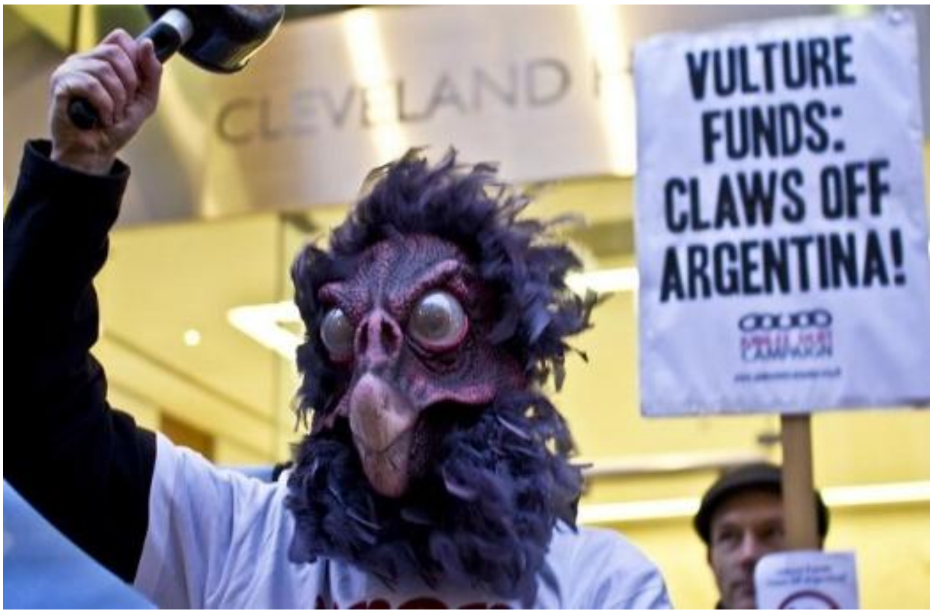
After winning the case in court, vulture funds have used various means to get paid. Sometimes, it can be very aggressive. They chase the sovereigns around the world, attempting to seize the overseas assets of the country. In the case of an oil producing HIPC, the vulture fund intercepted proceeds of an oil sale to recoup $39 million. The vulture fund is expected to get its $90 million claim eventually. This prevents a profitable industry of a poor country from having any impact on alleviating poverty and promoting economic development. Instead, it is turned into a milking cow for paying fraudulous claims of a vulture fund located in an offshore island. This indeed is "a morally outrageous outcome".

Hedge funds have no ideological baggage, they attack developing and developed countries alike. Take Greece's debt restructuring of 2012 for an example. Holders of over €6bn refused to swap Greek debt. To avoid legal complications, Greece at one point made a repayment of €436m on its foreign law -governed debts. Of this total, 90% reportedly went to one hedge fund located in the Cayman Islands. The Greek government received bail out money from the IMF, EU and ECB with the left hand and gave it out with the right hand to the vulture fund. As for the Greek people, we know that with the long period of austerity, the Greek welfare state has been on the verge of collapse and the society has been suffering. Almost half of the young people are unemployed. According to studies, the suicide rate increased dramatically. Where are the human rights of the poor people in Greece?

A sovereign debt crisis is like a financial tsunami. It brings a great deal of economic destruction and economic reversal. A country could lose 5-15% of its GDP. With it, human rights would also be sacrificed to various extents. A speedy and equitable debt restructuring could reduce economic and human suffering. However, hedge funds can hamper and delay debt restructuring relatively effectively.

With the US supreme court ruling on the Argentina case, debt restructuring is likely to become more difficult and vulture fund litigations would be on the rise.

There are a lot of discussions in various international fora, among academics and NGOs about how to contain hedge funds. There are some proposals to tighten up debt contract languages and introduce stricter debt contract clauses including pari passu and the collective action clause. However, we all know that these cannot fix all the problems and most important of all is that existing, outstanding debt contracts without the new clauses will last for years. Allow me to give you an example. If the mortgage terms have introduced a more favourable condition for borrowers, only the new house buyers can benefit from it and the people with old mortgages are stuck with the old terms. According to the IMF, now there are around 900 billion dollars of sovereign debt outstanding. So they cannot benefit from the contractual improvements. Some of the bonds would last for 30 years. It would not be an exaggeration that one or two debt crises would have taken place within this period. Therefore, it is expected that vulture funds' activities will increase instead of decline.



London 'Claws off Argentina' protest outside the offices of Elliot Associates by Jubilee Debt Campaign on eve of the New York appeal.

Jubilee Debt Campaign

With the global financial crisis and the messy litigation against Argentina, there is the convergence that the global system on sovereign debt workout is not working, the system is broken and needs to be fixed. How to fix it, in particular the hedge fund problem is being heatedly discussed in the UN General Assembly in New York. Last September, the UN GA had a resolution towards the establishment of a multilateral legal framework for sovereign debt restructuring processes. The UN Secretary General set up an Ad Hoc Committee to conduct intergovernmental discussions on the issue. Countries may have different views on many aspects of a legal framework. However, most of the countries are sympathetic to contain the vulture fund activities.

I hope the work in the Human Rights Council on vulture funds would lead to recommendations relating to concrete actions. This could be at both national and multilateral levels.

For instance, at the national level, the UK government's Debt Relief Act 2010 did play a role in stopping creditors, including "Vulture Funds", from using the UK courts to extract harsh and inequitable payments from poor countries for debts.

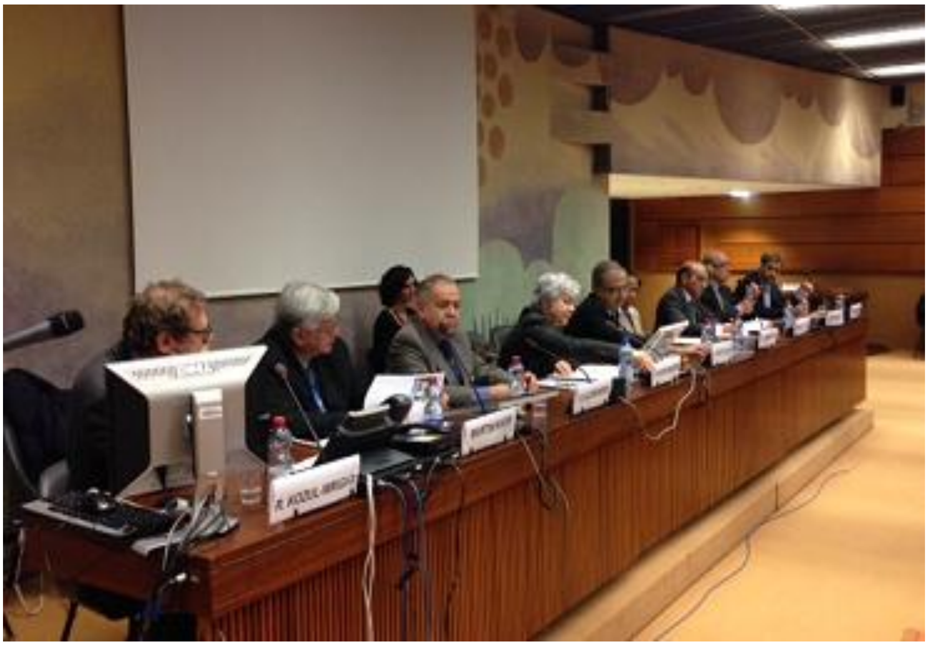
At the multilateral level, the United Nations process and the process in the IMF are progressing. However, it may take some time. Nevertheless, we should work together to curtail predatory activities of vulture funds and protect human rights of the poor who would be negatively affected by such activities.

U.S. Mission Photo by Eric Bridiers

Yuefen Li

Foreign Debt and Human Rights

In a side event during the 28th Session of the Human Rights Council organized by the Permanent Missions of Argentina and Cuba to the United Nations in Geneva, issues pertaining to the consequences of foreign debt on human rights were discussed. The session also addressed the challenges that States encounter in their debt restructuring processes, especially due to the negative impact of the activities and litigation by 'vulture funds'.



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The Permanent Missions of Argentina and Cuba in Geneva organized a side event to the 28th session of the Human Rights Council on "Foreign Debt and Human Rights" on 4 March 2015.

By Kinda Mohamadieh

Issues pertaining to the consequences of foreign debt on human rights were discussed in a side event organized by the Permanent Missions of Argentina and Cuba to the United Nations in Geneva on Wednesday, 4th of March 2015, during the 28th Session of the Human Rights Council. The session aimed at providing a space to discuss national experiences, as well as strategies adopted in the regional and multilateral arena, in regard to debt restructuring. The session also addressed the challenges that States encounter in their debt restructuring processes, especially due to the negative impact of the activities and litigation by 'vulture funds'. 'Vulture funds' refer to private entities that buy up sovereign debt at a discount and then pursue a litigation process to force the debtor to payout the full amount. Panelists included the Permanent Representative of Argentina to the United Nations in Geneva, the Deputy High Commissioner for Human Rights, the Permanent Representative of South Africa to the United Nations in Geneva, the Permanent Representative of Cuba to the United Nations in Geneva, the Permanent Representative of Greece to the United Nations in Geneva, the Executive Director of the South Centre, a member of the Advisory Committee of the Human Rights Council, the United Nations Independent Expert on the effects of foreign debt, and the Director of the Division on Globalization and Development Strategies at the United Nations Conference on Trade and Development (UNCTAD).

Ambassador Alberto Pedro D'Alotto, Permanent Representative of Argentina to the United Nations, commenced the session by underlining that the challenges emerging out of foreign debt and the negative impacts of the activities of 'vulture funds' on the enjoyment of human rights are faced by all countries, at various levels of economic development.

Ambassador D'Alotto noted that since the 1990s, the Commission on Human Rights and subsequently the Human Rights Council have, in a number of resolutions and decisions, adverted to the challenges that excessive foreign debt burden pose to the realization of human rights. He added that the negative impacts of the activities of 'vulture funds' and its consequences in regard to the enjoyment of human rights raise problems for the processes of sovereign debt restructuring.

Ambassador D'Alotto added that several studies show that the amount that some countries spend yearly in foreign debt service is higher than the budgets appointed to fulfill basic needs or public services, such as education and health. He cautioned that countries might be diverting a disproportionate percentage of their budget aimed at combating poverty and improving social conditions to foreign debt service.

Given the challenges that foreign debt pose to the fulfillment of human rights, and Argentina's belief that the practices of 'vulture funds' pose a global problem that can affect any country going through a debt restructuring process, Argentina promoted a number of initiatives on this issue in different international fora, Ambassador D'Alotto explained. These are namely Resolution 68/304 at the UN General Assembly dealing with the establishment of a **multilateral legal framework for sovereign debt restructuring,** and Resolution 27/30 at the UN Human Rights Council on the negative impacts of the activities of 'vulture funds' on human rights. Both resolutions were adopted during September 2014. Ambassador D'Alotto added that the broad support to these initiatives reflected the will of the international community to address the existing gaps in multilateral rules and mechanisms; these gaps have been undermining sovereignty of States and affecting their capacity to guarantee the fulfillment of human rights.

Ms. Flavia Pansieri, Deputy High Commissioner for Human Rights, stressed that human rights have primacy. Economic growth and development objectives do not operate in a vacuum but are closely interconnected with human rights, she added. Besides the

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A general view of the participants at the 28th Session of the Human Rights Council.

allocation of resources to development, it is important to consider the way in which this allocation is done, whether it is inclusive and rights-based, and whether it takes into account the state's human rights commitments, including the UN Declaration on the Right to Development, she added.

The Deputy High Commissioner cautioned that States, when acting through their membership under international financial institutions, do not seem to be factoring their human rights commitments into decisions that deal with economic and financial measures, nor in mobilizing financial resources to ensure an enabling environment for development. Ms. Pansieri stressed the importance of being mindful of these considerations in the context of the Post-2015 development agenda and the Financing for Development (FfD) conference.

Ms. Pansieri underlined that the mandate of the United Nations Independent Expert on the effects of foreign debt has contributed to a deeper understanding of issues pertaining to the impact of foreign debt on human rights.

Debt per se is not a bad thing, Ms. Pansieri noted; external debt could help states weather economic shock or fulfill human rights obligations. It is the reason behind states' indebtness that matters, according to Ms. Pansieri. Furthermore, it is important to recognize that states are sometimes shouldering unsustainable debt, which could threaten states' ability to fulfill development objectives and human rights, she added.

Ms. Panisieri noted the challenges faced by the Heavily Indebted Poor Countries (HIPCs) to progress on achieving the Millennium Development Goals (MDGs). She added that states are still caught in the aftermath of the 2008 global crisis; both developed and developing countries face the challenges of sovereign debt crisis. Efforts to avert sovereign debt crisis has to be intentional, Ms. Pansieri stressed.

Ms. Panisieri pointed to the 2014 World Social Protection Report by the International Labour Organization (ILO) that shows austerity measures had expanded as a response to the global crisis. She warned that the larger pattern of austerity measures threatens the enjoyment of human rights and economic growth and development. Austerity measures impacted 123 million people in the Euro Zone alone, Ms. Pansieri added. She also cautioned that where states recovered, inequality has continued to rise. For example, 95% of the gains from economic recovery in the United States went to the top 1%, according to Pansieri.

The imposition of austerity measures has an impact not only on long term economic growth and development prospects, but also on inequalities, thus potentially translating into violations of human rights, the Deputy High Commissioner pointed out. She added that the International Monetary Fund (IMF) had addressed the correlation of higher inequality and lower growth rates, in recognition that inequality is not good for growth. Thus, measures that lead to increasing inequality have to be addressed, according to Pansieri.

Choosing austerity instead of investing in development impacts the longer-term sustainability of the overall economy, Ms. Pansieri stressed. Clearly, austerity measures are not the answer and should not be the answer, she added. Ms. Pansieri called on states to look for alternatives in order to balance the budgets without impacting the enjoyment of rights.

Ms. Pansieri pointed to the case of Iceland, which managed to weather the crisis by protecting its core welfare system and the collective participation of citizens in guaranteeing rights.

Ms. Pansieri underlined the importance of a fair, transparent and effective sovereign debt workout mechanism. She also called on the private sector to remain mindful of its responsibilities.

Ambassador Abdul Samad Minty, Permanent Representative of South Africa to the United Nations, commenced his statement by recalling the 2014 Report of the United Nations Secretary General on External Debt and Sustainability, which shows that the total external debt stocks of developing countries and transition economies reached $6 trillion in 2013, reflecting an increase of 8.7% compared to 2012.

The human rights implication of such foreign debt has long been debated within the Human Rights Council and the Commission on Human Rights beforehand. The imperative to address the effects of foreign debt on human rights arises from the principle of international assistance and cooperation, as provided for in the Charter of the United Nations, Ambassador Minty noted. Article 28 of the Universal Declaration of Human Rights also provides that "everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized".

An international order characterized by extreme indebtedness of low and middle income countries and an attendant inability to fulfill their human rights' obligations towards their citizenry is inconsistent with this entitlement, Ambassador Minty stressed. MDG 8 also places additional responsibility on the international community to assist. The MDGs encompass a specific commitment towards an "enhanced programme of debt relief for heavily indebted poor countries and cancellation of official bilateral debt, and more generous official development assistance for countries committed to poverty reduction", according to Ambassador Minty. There were some initiatives taken in this context including on the HIPCs, but implementation is proceeding too slowly, he added.

South Africa has done a comprehensive analysis of its Bilateral Investment Treaties (BITs), Ambassador Minty explained. South Africa's experience highlighted evidence that BITs have very little, if any, impact on inward flows of foreign direct investment (FDI), yet they do pose a range of risks to democratic policy making. In a context where South Africa is constitutionally bound to pursue transformation in order to address the legacies of apartheid, these risks are simply not acceptable, Ambassador Minty stressed. Poorly drafted treaties can result in expansive interpretations of their provisions in ways that allow investors to challenge a wide – and widening – array of government measures deemed to have a detrimental impact on the investors' 'expectation' of profit, he added. The Ambassador cautioned that this severely constrains governments' capacity to legislate and regulate in the public interest.

Ambassador Minty added that these challenges are compounded by flaws in the international arbitration system established to enforce the treaties. There is growing concern over the investor-state arbitration system including its fragmentation, lack of transparency, and inconsistency in decisions, he noted. Also, arbitrators in most cases are drawn from a relatively small group of private practice lawyers, resulting in situations where the same individuals could serve as arbitrators in some cases and as counsel in others. The perception of conflict of interest in itself raises profound questions about the credibility and legitimacy of international investment arbitration, Ambassador Minty cautioned.

Ambassador Minty explained that investors and law firms representing them stand to gain enormously; litigation became part of the business model for investors and legal firms. In some cases, specialized firms finance claims against States in exchange for a share in a possible future award or settlement in favour of the claimant.

According to Ambassador Minty, a billion dollar industry has emerged out of this flawed system, and it is here where investment treaties spill over into discussions about 'vulture funds' and questions on sovereign debt restructuring.

These private interests have now 'discovered' that BITs offer another avenue to challenge governments that are seeking to re-negotiate the terms of repayment of the sovereign debt to bondholders/creditors. Ambassador Minty gave the example of Argentina, where some bondholders who bought Argentinian debt at discounted prices are now using BITs and the investor-state dispute settlement system to sue Argentina, which in effect would undermine Argentina's efforts to re-negotiate and restructure its debt. Consequently, state sovereignty on matters of vital national interest is being severely compromised by private investors using a flawed international regime, Ambassador Minty cautioned.

According to Ambassador Minty, this context makes it clear that there is a need to establish a multilateral framework for orderly sovereign debt workout that is not susceptible to profit-driven motives. The resolution of sovereign debt crisis cannot continue to be governed by ad hoc mechanisms; a comprehensive approach is needed. The current context also underscores an additional argument against BITs that offer another avenue for individual bondholders to arbitrate against States, thereby obstructing efficient debt restructuring, Ambassador Minty added.

There are several cases by vulture funds pending in South Africa. Debt constitutes a critical obstacle in the development of developing countries and especially in Africa's fight against poverty.

Debt service competes with development spending. Financial considerations should not be the only consideration in dealing with debt distress, Ambassador Minty noted. An approach that takes into account the right to development is needed. He stressed that a government's obligations to fulfill its human rights obligations towards its people must remain fundamental. He added that these funds should not supersede a State's right to protect its people under international law. Moreover, the international community cannot be held captive by a few countries that are not ready for a statutory system of sovereign debt resolution, Ambassador Minty stressed.

Ambassador Anayansi Rodriguez Camejo, Permanent Representative of Cuba to the United Nations, commenced her input by cautioning that the economic and financial crisis affecting the world has had great impact on every country, particularly on the developing ones. These challenges are multiplied with the burdens of the foreign debt service payment. Consequently, the enjoyment of economic, social and cultural rights is unquestionably affected, the Ambassador added.

Ambassador Camejo pointed to the resolution that Cuba presents annually to the Human Rights Council entitled '*Effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights*'. This resolution aims at drawing attention to this problem and making progress on ways to alleviate these burdens, taking into account the negative impact of the burden of foreign debt on the fulfilment of human rights, mainly in developing countries, Ambassador Camejo explained.

However, there are still some developed countries that fail to acknowledge the clear implications of the foreign debt on the enjoyment of human rights, Ambassador Camejo pointed out. This is the situation despite the clear examples listed by the Independent Expert on the effects of foreign debt in his reports and of the various statements made by UNCTAD and other international players on this matter.

According to Ambassador Camejo, in Cuba's opinion, the different human rights standards and international fora where this issue is analyzed have not been able so far to find an equitable and permanent solution to the problem of debt in line with the various commitments adopted by the international community in this regard.

One of the topics that emerged from the studies undertaken under the mandate of the Independent Expert on the effects of foreign debt tackled the negative effect of the so-called 'vulture funds' on relieving the debt burdens and on the capacity of developing countries to meet their obligations and commitments in terms of development and human rights. Ambassador Camejo noted that the example of the attacks by vulture funds on Argentina has made clear their predatory nature; such practice reflects the problems of the current global financial system and its profoundly unjust nature, she added.

Ambassador Camejo underlined Cuba's agreement that there is need for national and international actions to curb the activities of such funds, which must also be part of the necessary and thorough reform of the international financial system.

Ambassador Alexandros Alexandris, Permanent Representative of Greece to the United Nations, presented a message from the Alternate Foreign Minister responsible for International Economic Relations. The management of Greece's foreign debt problem in 2010, when Greece agreed to an economic adjustment program, proved to be ineffective from the financial point of view and painful in regard to the impact on the Greek society, Mr. Alexandris noted. During a period of four years, the Greek economy receded by 25%, and youth unemployment increased up to 50% resulting in mass migration of young Greeks, Mr. Alexandris added.

The management of the Greek crisis had negative consequences on society, adversely affecting human rights conditions, in particular economic and social rights. Many households do not have access to electricity, medical care, and water. As a result, 30% of the population is confronted with the dangers of poverty and social exclusion, Ambassador Alexandris cautioned.

The new government seeks to address this situation while cognizant of the international climate that it operates within, Ambassador Alexandris explained. The power imbalance between financial markets and national economies persists, whereby financial investments are usually short term aiming at accruing high profits while ignoring the needs of the real economy. This is why Greece supported the introduction of tax on foreign exchange transactions, the Ambassador added.

Greece stands fully aware that states are confronted with a wide range of supranational problems that are in need of supranational solutions, Ambassador Alexandris pointed out. Greece is ready to launch initiatives towards resolution of problems that both national states and the international community are collectively facing, he noted.

Mr. Martin Khor, Executive Director of the South Centre, pointed to the position taken by the South Summit of the G77 held in Santa Cruz, Bolivia, where the of heads of states and heads of governments tackled in their declaration the role of vulture funds. Heads of states reiterated the importance of not allowing these entities to paralyze the debt restructuring efforts of developing countries and stressed that they should not supersede the rights of the state to protect its people under international law.

Mr. Khor added that not only the developing country leaders proclaimed against 'vulture funds'. He mentioned the position taken by Mr. Gordon Brown, former Prime Minister of the United Kingdom, who condemned before the General Assembly of the United Nations in 2002 the perversity of practices by 'vulture funds' whereby they purchase debt at a reduced price and make a profit from suing the debtor country to recover the full amount owed. This is a morally outrageous outcome, according to Mr. Brown.

In addition, Mr. Khor pointed to the opinion of Martin Wolf in the Financial Times who noted that it is unfair to the birds called 'vultures' to name these entities by the term "vulture funds"; while the birds 'vultures' perform a valuable task, the hold outs do not recycle carrion but insist the carcass can meet its obligations.

When a country has to defend a legal case it has to divert a lot of resources away from social sectors, such as health care and education, Mr. Khor explained. This case is prevalent and does not represent an Argentinian problem only, he added. According to the World Bank and the IMF, 54 court cases were instituted against 12 heavily indebted poor countries (HIPCs) between 1998 and 2008. Moreover, the African Development Bank documents that at least twenty HIPCs have been threatened with or have been subjected to legal actions by commercial creditors and vulture funds since 1999, including Sierra Leone, Cote d'Ivoire, Burkina Faso, as well as Angola, Cameroon, Congo, Democratic Republic of the Congo, Ethiopia, Liberia, Madagascar, Mozambique, Niger, Sao Tome and Principe, Tanzania, and Uganda. Other countries that faced such cases include Peru, Nicaragua, among others.

Mr. Khor pointed to a case brought against Zambia, where a 'vulture fund', having bought a debt for USD3 million, sued Zambia for USD55 million and was awarded USD15.5 million. In the case of Peru, NML Capital, the same vulture fund that recently raised the case against Argentina in the United States' courts, won a case against Peru in the year 2000, recovering many times what the fund paid for the country's distressed debt. According to media reports, the fund spent almost four years in the courts to win a ruling that forced Peru to settle for almost USD56 million on distressed debts, which the fund had initially bought for USD11.8 million.

Mr. Khor cited a paper published by the United States Institute for Peace in 2013, which noted that "there are an estimated twenty-two vulture funds waiting for payouts amounting to $1.3 billion, thereby draining crucial resources and undermining prospects for economic development".

According to Mr. Khor, addressing the negative implications emerging out of the role of 'vulture funds' should be a concern for all countries. He suggested that countries could take national action by adopting laws and regulations to prevent 'vulture funds' from pursuing excessive claims against heavily indebted countries before their national courts. He also suggested interventions through international cooperation and solidarity, including through developing an international mechanism that sets a standstill on debt payment and stay on litigation to allow breathing space for debtors and creditors in order to reach an agreement.

Mr. Khor pointed to the discussions taking place at the United Nations in New York on a sovereign debt restructuring mechanism. A mechanism that leads to fair and balanced solutions is what the world needs, especially at a time when the world faces global financial uncertainty and many countries are on a verge of a debt challenge.

He added that the Human Rights Council (HRC), including the Advisory Committee of the HRC, could contribute to the solutions.

Mr. Jean Zeigler, member of the Advisory Committee of the Human Rights Council, explained that the Advisory Committee of the HRC is mandated to prepare a research-based report on the activities of 'vulture funds' and the impact on human rights, specifically economic, social, and cultural rights.

Mr. Zeigler explained that debt issues are addressed under national laws on bankruptcy. Internationally, there is no law that addresses cases where states are over indebted, and no normative apparatus that can be drawn upon. What exist are mechanisms under the international financial institutions and forums dealing with reduction of debts.

Mr. Zeigler pointed to the implications of holdouts from debt restructuring processes, whereby few among the creditors hold out from joining the restructuring scheme proposed by the indebted country, and they ask for 100% of the original value of their bond. In the case of Argentina, holdouts represented 1.7% of the total creditors. In some cases, holdouts sell their shares to vulture funds, he added.

Resolution 27/30 of the UN Human Rights Council (HRC) was not a consensus resolution, Mr. Zeigler noted. The financial community is witnessing a heated debate in regard to the possibility of the HRC developing normative control over 'vulture funds', Mr. Zeigler added. He pointed to a statement by the head of the bankers association of Switzerland, who in a recent interview questioned the process under the HRC, noting that 'vulture funds' do not accept normative control over their activities.

Mr. Zeigler stressed that it is necessary for the United Nations to become active in developing the normative framework addressing 'vulture funds', given the social and economic implications of their activities.

AFP / Getty Images / Issouf Sanogo

Foreign debt have consequences on human rights. States also encounter challenges in their debt restructuring processes, especially due to the negative impact of the activities and litigation by 'vulture funds'.

Mr. Zeigler explained that vulture funds do not refer to any specific juridical form; hedge funds have juridical definition but not 'vulture funds'. There are only descriptions of the practice of vulture funds. The official term usually used to describe vulture funds is 'distressed-asset funds', he added. Vulture funds are generally offshore entities that lack transparency, which makes it difficult to identify who stands behind them. These funds are progressing very rapidly, Mr. Zeigler explained, making them a brutal instrument of modern capitalism, he noted. They are increasingly using litigation against states.

Since 2008, 'vulture funds' have won around three quarters of the cases they have raised. At the stage of executing the judgement, 'vulture funds' are aggressive in execution. For example, in a case raised by a 'vulture fund' against the Republic of Congo, the fund got a judgement for USD 90 million. For execution purposes, the 'vulture fund' seized oil shipments of the Republic of Congo worth USD 39 million.

Mr. Zeigler explained that the mandate from the Advisory Committee is clear. The starting assumption of the research mandated to the Advisory Committee is that the activities of 'vulture funds' violate the right to development and the economic, social, and cultural rights of the population in States attacked by these funds, he added, thus undermining the benefit that debt reduction brings to indebted countries. These are the hypotheses for the research that will be undertaken by the Committee, which will be examined through the case studies that the Advisory Committee will address, Mr. Zeigler noted.

Mr. Zeigler gave the example of a case brought against Zambia concerning debt that it originally owed to Romania as a result of a transaction concerning imported seeds and fertilizers. The original debt by Zambia amounted to USD 3.5 million. In 2007, a High Court in the United Kingdom accepted and recognized a claim by a 'vulture funds' ordering Zambia to pay USD 20 million. Mr. Zeigler noted the capacity and resources available to 'vulture funds' to pursue such claims for years with the support of highly paid lawyers.

In pursuing the research, Mr. Zeigler pointed that the 'bona fide' concept could be a central point in the approach that would be adopted. He added that under Swiss civil law, the 'bona fide' article provides that the manifest abuse of a right is not protected by the law, according to which a court would refuse abusive cases. Mr. Zeigler added that English law, and a law being prepared in Belgium, integrate the 'bona fide' article. In this regard, Mr. Zeigler noted that vulture funds would still be able to go to the courts; but asking for 100% of the original value of the debt they hold would be considered abuse of their rights. Accordingly, the courts could only accept a claim for the amount that the vulture funds paid to purchase the bond.

In addition, Mr. Zeigler noted that 'forum hopping' should be addressed. Vulture funds usually seek jurisdiction where the judicial forum would be most favorable for them. He also noted the possibility for debtor countries to label the debt in a currency other than the dollar. The American courts are not expected to change towards adopting the 'bona fide' approach, Mr. Zeigler added.

Mr. Juan Pablo Bohoslavsky, the United Nations Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social, and cultural rights, stressed that the threats from a global debt crisis are not over; debt vulnerabilities remain high and growing. Moreover, debt relief initiatives appear not to achieve their aim, he added.

Heavily Indebted Poor Countries are likely to miss the Millennium Development Goals (MDGs) targets, Mr. Bohoslavsky noted. The debt crisis in Greece reminds us that it is not only least developed countries that are at risk, he added. Access to housing, electricity, health services, and other basic services have been a concern in many European countries, he explained.

Mr. Bohoslavsky asked whether European and international financial institutions are bound by the human rights obligations that their Member states have signed at regional and international levels. While European financial institutions may acknowledge such obligations, he noted, he questioned whether they have actually operated based on them.

States can try to minimize the impact, but can also do more harm when resources are distributed in an unequitable manner, thus hitting the most vulnerable in society, Mr. Bohoslavsky explained. He recalled his visit to Iceland in December 2014. Iceland was hit by a banking crisis in 2008, which was a severe blow to the country, causing unprecedented unemployment. During his visit, Mr. Bohoslavsky witnessed that while certain cuts were taken in health and education, the government increased social protection spending and social benefits directed to low-income households. As a result, inequalities were reduced in Iceland. Mr. Bohoslavsky noted that the government in Iceland had taken the choice to protect the core social welfare system; it imposed capital controls and endeavored to establish political, economic and judicial accountability.

Mr. Bohoslavsky moved to address the litigation of NML Capital against Argentina, which has underlined the need to find better legal solutions for debt restructuring. He added that the ruling by the U.S. Supreme Court in this case provides additional incentives to holdouts in debt restructuring processes and removes incentives to participate in debt restructuring. This makes the future restructuring processes harder, especially cases where contracts have weak 'Collective Action clauses'.

The Independent Expert noted that litigation by 'vulture funds' in one country may hold extraterritorial implications and impede another country to pay its debts or fulfill its obligations in the area of economic, social and cultural rights.

'Vulture fund' litigation is a growing global trend, the Independent Expert noted. Between 1976 and 2010, there were about 120 lawsuits by commercial creditors against 26 debtor countries. In the 1980s, only 5% of debt restructuring was accompanied by litigation; this figure has gone up to almost 50 per cent and the total volume of principal under litigation reached USD 3 billion by 2010, Mr. Bohoslavsky cautioned.

Mr. Bohoslavsky recalled the importance of Resolution 68/304 dealing with the establishment of a multilateral legal framework for sovereign debt restructuring that passed at the UN General Assembly in New York, in addition to the United Nations Guiding Principles on Business and Human Rights and the Principles on Responsible Sovereign Lending and Borrowing. In the discussions towards designing a debt restructuring mechanism, Mr. Bohoslavsky noted that human rights principles, human rights impact assessments, and coherence between financial and human rights law are important elements. Moreover, civil society organizations and national human rights institutions should play a role in this process, according to Mr. Bohoslavsky.

Mr. Richard Kozul-Wright, Director of the Division on Globalization and Development Strategies at UNCTAD, pointed that UNCTAD serves as the focal point for international debt issues under the UN system and serves as the secretariat for negotiations towards a sovereign debt restructuring mechanism.

Mr. Kozul-Wright explained that those negotiations are contentious. Creditor countries are boycotting the negotiations, along with major international financial institutions, he added, on grounds that the UN is not the appropriate venue to discuss these issues. They argue that the IMF is the right place for a discussion on debt restructuring, he explained.

Mr. Kozul-Wright noted that such claims stand odd on a number of grounds; for example the track record of the IMF in regard to debt crisis is hardly strong, he added. He mentioned the cases of Greece and Iceland as reference cases in this regard. Mr. Kozul-Wright pointed to the IMF report on Iceland under Article IV Consultation released during the summer of 2008, which reflects the IMF's assessment of the economy at the time. Reading the report, one would have no idea that the country will face a financial meltdown within three months, Mr. Kozul-Wright added. He noted that the argument that the IMF should be the sole arbiter on this issue is questionable.

According to Mr. Kozul-Wright, the UN system has been involved in international debt issues for a long time. Since the time of UNCTAD's establishment, debt has been an issue on its agenda. The UN is the universal body that sets the ethical and normative principles for operations of international governance, including on economic issues.

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A Rule of Law for Sovereign Debt

By Joseph E. Stiglitz and Martin Guzman

Governments sometimes need to restructure their debts. Otherwise, a country's economic and political stability may be threatened. But, in the absence of an international rule of law for resolving sovereign defaults, the world pays a higher price than it should for such restructurings. The result is a poorly functioning sovereign-debt market, marked by unnecessary strife and costly delays in addressing problems when they arise.

We are reminded of this time and again. In Argentina, the authorities' battles with a small number of "investors" (so-called vulture funds) jeopardized an entire debt restructuring agreed to – voluntarily – by an overwhelming majority of the country's creditors. In Greece, most of the "rescue" funds in the temporary "assistance" programs are allocated for payments to existing creditors, while the country is forced into austerity policies that have contributed mightily to a 25% decline in GDP and have left its population worse off. In Ukraine, the potential political ramifications of sovereign debt distress are enormous.

So the question of how to manage sovereign debt restructuring – to reduce debt to levels that are sustainable – is more pressing than ever. The current system puts excessive faith in the "virtues" of markets. Disputes are generally resolved not on the basis of rules that ensure fair resolution, but by bargaining among unequals, with the rich and powerful usually imposing their will on others. The resulting outcomes are generally not only inequitable, but also inefficient.

Those who claim that the system works well frame cases like Argentina as exceptions. Most of the time, they claim, the system does a good job. What they mean, of course, is that weak countries usually knuckle under. But at what cost to their citizens? How well do the restructurings work? Has the country been put on a sustainable debt path? Too often, because the defenders of the status quo do not ask these questions, one debt crisis is followed by another.

Greece's debt restructuring in 2012 is a case in point. The country played according to the "rules" of financial markets and managed to finalize the restructuring rapidly; but the agreement was a bad one and did not help the economy recover. Three years later, Greece is in desperate need of a new restructuring.

Distressed debtors need a fresh start. Excessive penalties lead to *negative*-sum games, in which the debtor cannot recover and creditors do not benefit from the larger repayment capacity that recovery would entail.

The absence of a rule of law for debt restructuring delays fresh starts and can lead to chaos. That is why *no* government leaves it to market forces to restructure *domestic* debts. All have concluded that "contractual remedies" simply do not suffice. Instead, they enact bankruptcy laws to provide the ground rules for creditor-debtor bargaining, thereby promoting efficiency and fairness.

Sovereign debt restructurings are even more complicated than domestic bankruptcy, plagued as they are by problems of multiple jurisdictions, implicit as well as explicit claimants, and ill-defined assets upon which claimants can draw. That is why we find the claim by some – including the US Treasury – that there is no need for an international rule of law so incredible.

To be sure, it may not be possible to establish a *full* international bankruptcy code; but a consensus could be reached on many issues. For example, a new framework should include clauses providing for stays of litigation while the restructuring is being carried out, thus limiting the scope for disruptive behavior by vulture funds.

It should also contain provisions for lending into arrears: lenders willing to provide credit to a country going through a restructuring would receive priority treatment. Such lenders would thus have an incentive to provide fresh resources to countries when they need them the most.

There should be agreement, too, that no country can sign away its basic rights. There can be no voluntary renunciation of sovereign immunity, just as no person can sell himself into slavery. There also should be limits on the extent to which one democratic government can bind its successors.

This is particularly important because of the tendency of financial markets to induce short-sighted politicians to loosen today's budget constraints, or to lend to flagrantly corrupt governments such as the fallen Yanukovych regime in Ukraine, at the expense of future generations. Such a constraint would improve the functioning of sovereign debt markets by inducing greater due diligence in lending.

A "soft law" framework containing these features, implemented through an oversight commission that acted as a mediator and supervisor of the restructuring process, could resolve some of today's inefficiencies and inequities. But, if the framework is to be consensual, its implementation should not be based at an institution that is too closely associated with one side of the market or the other.

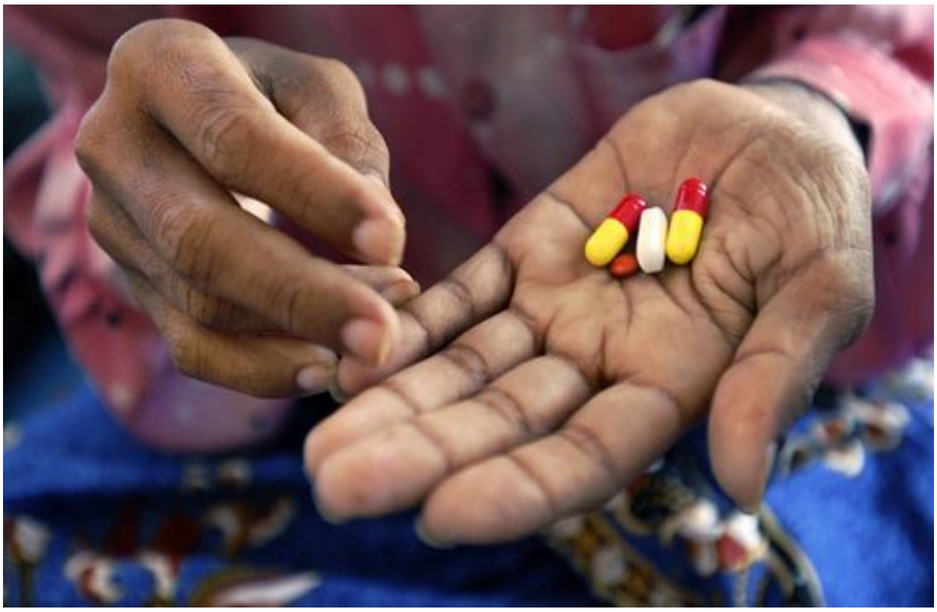
This means that regulation of sovereign debt restructuring cannot be based at the International Monetary Fund, which is too closely affiliated with creditors (and is a creditor itself). To minimize the potential for conflicts of interest, the framework could be implemented by the United Nations, a more representative institution that is taking the lead on the matter, or by a new global institution, as already suggested in the 2009 Stiglitz Report on reforming the international monetary and financial system.

The crisis in Europe is just the latest example of the high costs – for creditors and debtors alike – entailed by the absence of an international rule of law for resolving sovereign debt crises. Such crises will continue to occur. If globalization is to work for *all* countries, the rules of sovereign lending must change. The modest reforms we propose are the right place to start.

This article was published on 15 June 2015 from http://www.project-syndicate.org/commentary/sovereign-debt-restructuring-by-joseph-e-stiglitz-and-martin-guzman-2015-06.

Access to medicines and the right to health and life

Access to medicines is a cornerstone to the realization of the right to health and life. The following is a statement presented by Martin Khor, Executive Director of the South Centre, during the 2015 Social Forum of the United Nations Human Rights Council which took place from 18 to 20 February 2015 in the Palais des Nations, Geneva, Switzerland.



MSF USA

Access to medicines is a cornerstone to the realization of the right to health and life.

By Martin Khor

Access to medicines, even if a person is too poor to afford it, is a cornerstone to the realization of the right to health and life. There has been significant progress in new and better medicines. However prices of the medicines are often priced so high so as to be out of reach of the poor or even the middle classes in many countries, not only in developing but also in developed countries.

A major reason for this is the monopoly granted to drug companies through patents, which prevents competition. Sometimes the prices are so astronomical so as to make super profits for the companies. The latest example is the new drug for hepatitis C, sofosbuvir, which is sold for USD84,000 for a 12 week course, or USD1,000 a pill. Profits for the company Gilead have run at many billions of dollars already. Though the company has now offered that some poorer countries can have access to generic versions at low prices, the majority of people in the world, in developed countries and middle income developing countries, cannot have this access. There are 170 million people living with hepatitis C worldwide, and around 350,000 deaths every year. What has happened to their right to health and life?

The global IPR regime has to be reviewed. The TRIPS agreement and public health WTO ministerial declaration of 2001 have been positive but inadequate. There should be an option for countries, or at least developing countries, to opt for an exemption to patents for medicines and other essential health technologies.

Meanwhile, countries should be encouraged to make use of TRIPS flexibilities, which are part and parcel of the global and national IPR regime. These include the policy space to determine which applications are eligible for patents, for the non-grant of patent for frivolous changes or second use, the use of safety data for approval of generics, pre grant opposition, the use of compulsory license and government use orders. These enable the making and use of generic medicines, which together with regulation on prices, can enable access to medicines at affordable prices.

Developing countries should master the principles and use of TRIPS flexibilities, and developed country governments should not place pressure on those countries that make use of the right to use TRIPS flexibilities.

There are new threats and challenges to access to medicines, as well as opportunities.

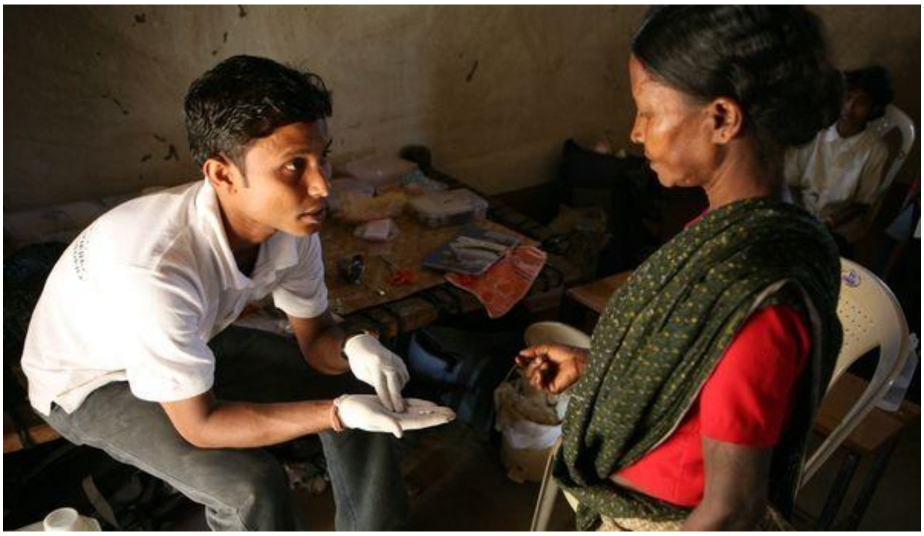
A major opportunity is the significant progress in universal health coverage as a principle adopted by WHO, WHA and the SDGs. This principle recognizes states' responsibility to provide or arrange for health services for all. The issue is how to make this a reality.

The challenge to this is the cost to government of providing health care including medicines, when the prices of many brand name medicines are so high and governments cannot provide them at this cost. All the more then is the need for generics and for the use of TRIPS flexibilities. Otherwise UHC cannot be attained.

The new threats include:

(1) investment treaties and bilateral and regional FTAs. These remove many of the TRIPS flexibilities for countries that subscribe to these treaties as they contain TRIPS plus provisions including data exclusivity, prolonging patent term, and in the investor-state dispute system which threatens the use of compulsory license and other TRIPS flexibilities.

(2) Reduced government revenue due to recessionary conditions and austerity policies, sometimes imposed through conditions for extending



MSF

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loans.

(3) Conditions that prevent the establishment, survival or thriving of generic companies.

(4) The emergence of new diseases and epidemics makes the access of medicines an even more acute issue. For example, ebola vaccines and medicines are likely to be patented. Will this prevent access, just as patented drugs prevented access with regard to avian flu some years ago and sparked a major global controversy?

(5) Antibiotic resistance poses another challenge. New medicines are needed. However if the same R and D model is followed, the new antibiotics will be patented and access to them will be limited. Thus only a few will have access to the new life saving drugs for resistant TB, AIDS, pneumonia, skin and stomach ailments etc.

We therefore also need a new R and D model in which public funding supports R and D for drug discovery including for neglected diseases of poor countries, and these new drugs should not be patented, or else the patent should be owned by the public fund, which allows licenses freely for all companies to produce.

Therefore, to realize access to medicines and the right to health and life:

1. Measures should be taken to enable countries to make use of TRIPS flexibilities. There should be no pressure on countries that exercise these flexibilities.

2. LDCs whose exemption from TRIPS implementation for medicines is expiring in 2016 should be allowed renewal of this exemption for as long as they are LDCs.

3. This year, 20 years after TRIPS was established, there should be consideration for allowing exemption for medicines and health technologies, at least for developing countries. 75% of the world's poor live in middle income countries, thus the medicines exemption for LDCs should be extended to other developing countries.

4. Investment treaties that threaten the right to health should be reviewed. Countries that have signed on should consider amending the treaties or changing the model to one that explicitly allows governments to pursue the right to health and access to medicines, without threat of being brought to court and sued.

5. FTAs should not contain TRIPS-plus provisions or other elements such as the investor-state dispute system, that adversely affect access to medicine and the right to health. There should be a general exception for public health measures including tobacco control.

6. Policies that governments pursue to counter recession or extend their loans, should not include measures that affect the right to health and access to medicines.

7. Conditions should be created or further developed to enable the establishment, survival and thriving of generic medicines and their producers.

8. All patients should have access to new medicines developed for new and emerging diseases.

9. In the growing battle against antimicrobial resistance, priority must be given to access to existing medicines as well as the new medicines that combat resistant diseases.

10. An R and D model should be prioritized in which there is sufficient public funding and the outcome of research is thus not patented or else the patent is freely available to producers.

11. Financial and technological assistance should be provided to developing countries to enable them to implement universal health coverage policies and the health related SDGs.

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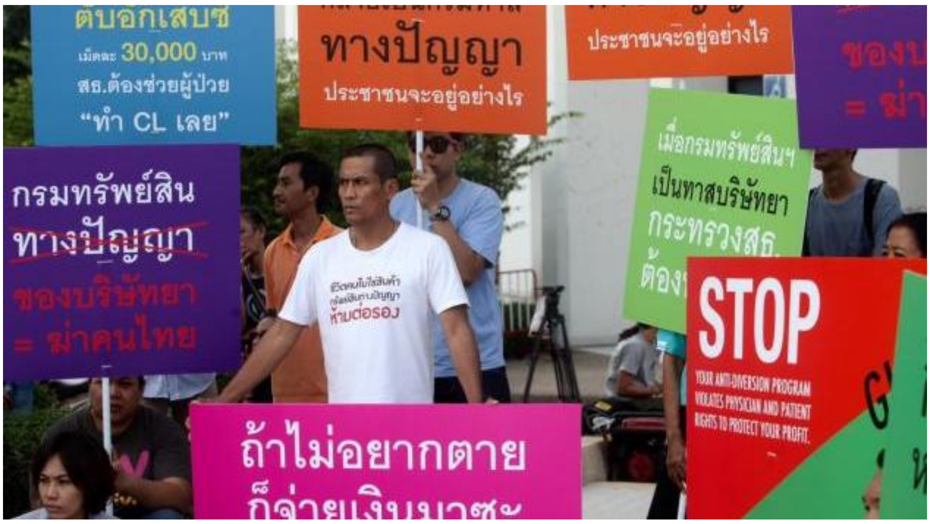


The Nation

Activists in Thailand in May called on the Public Health Ministry to use compulsory licensing to ensure wide access of the medicine for hepatitis C and to control its price.

The high prices of patented medicines: The case of Hepatitis C

By Germán Velásquez

Health systems in many developing countries are experiencing growth in health spending, beyond the financial capacities of their economies. Medicines expenditure is the category that most grows as a result of increasingly higher prices of new products.

Medicines have reached unsustainable price levels, which is due in large part to the rules of protection of intellectual property required by the World Trade Organization and free trade agreements. The widespread use of patents for medicines, for a period of 20 years, is creating problems not only in developing countries but also in developed countries.

The case of Hepatitis C is a warning sign of what is happening and may happen in the future. Hepatitis C, which the World Health Organization estimates infect 150 million people worldwide, has been treated until now with pegylated Interferon, an expensive drug, which is difficult to use and has serious side effects. The new oral drugs, Sofosbuvir and Simeprevir, known as direct-acting antivirals (DAAs), which are newcomers to the market in the last year, could revolutionize the treatment of Hepatitis C. Studies show cure rates of over 90% for some disease genotypes (four of the six known). Unfortunately treatment prices are exorbitant. In the United States a standard 12-week treatment costs US $ 84,000 equivalent to US $ 1,000 per pill. Experts from the University of Liverpool estimate that the cost of production moves in a range between US $ 68-136 per treatment.

The striking difference in price is often justified with the argument that the development of novel drugs is expensive. However, in this case, the product was developed by a small company that was acquired by Gilead, the North American company that has a patent on the product. It argues that a liver transplant, which many patients could possibly need, costs about US $ 100,000. That is why it sets the price of the new medicines so high.

On 13 January 2015 the Patent Office Controller of India rejected the patent application by Gilead company for a key drug against Hepatitis C. This is being hailed by advocates as a path to dramatically lower costs of treatment for the disease.

The decision states that oppositions to several patent applications on Sofosbuvir were filed by the Initiative for Medicines, Access & Knowledge (I-MAK) and the Delhi Network of Positive People (DNP+) in November 2013 and March 2014, arguing that they were not sufficiently novel and inventive as required for a patent.

According to Médecins Sans Frontières (MSF, Doctors without Borders), "Gilead has signed voluntary licence agreements with multiple generic producers in India, but these agreements impose many restrictions, including which countries can access the drugs produced under these licences, as well as invasive restrictions on medical providers and patients with respect to distribution and use of the drug," said MSF. "With the patent being denied, other companies that have not signed the licence are now free to produce."

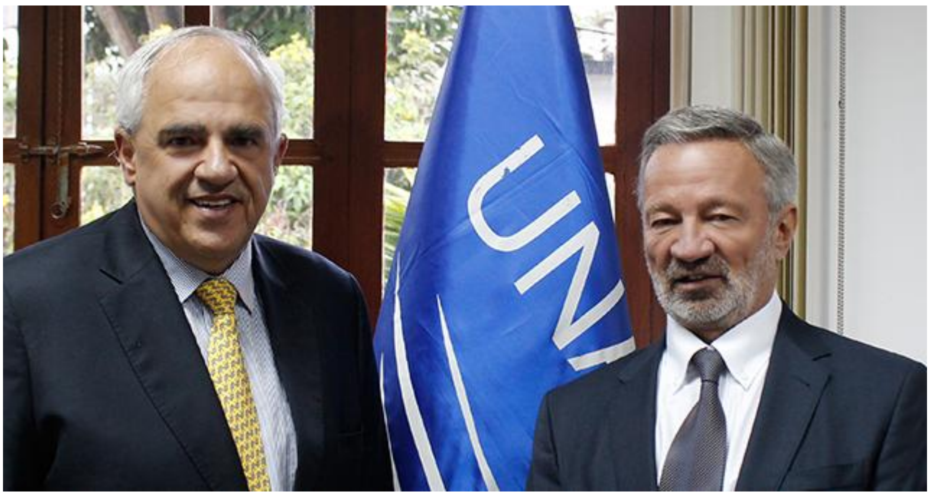
Indian manufacturers could produce this drug in the future for as little as $101 for the full three month treatment course. That's roughly $1 per pill, which is a big improvement over the $1,000 per pill Gilead is charging in some countries. At the current prices, Sofosbuvir is unaffordable for widespread use in most countries of the world.

Countries like Spain and France have managed to negotiate the price with the manufacturer, to 25,000 and 42,000 Euros respectively, per treatment. In view of the number of potential patients in these countries, the cost of the treatment may seriously threaten the financial viability of their social security systems.

Developing countries have made progress towards the goal of coordinating regional drug policies and to join efforts to negotiate prices, in some regions. These gains would be undermined if the problem caused by the high prices of medicines under patents is not resolved. Negotiating and achieving affordable prices for drugs, today and in this case, is an ethical imperative.

And if the negotiations would not result in reduction of prices, countries should consider implementing legitimate mechanisms recognized by the WTO such as compulsory licensing mechanisms. Or countries should analyze the legal possibilities to refuse the patent, as India has done. The right to health cannot be subject to the rules of international trade.

Germán Velásquez is the Special Advisor on Health and Development of the South Centre.


UNASUR

The Secretary General of the Union of South American Nations (UNASUR) Ernesto Samper Pizano (left), met with the South Centre's Special Advisor on Health and Development, Germán Velásquez (right), in Quito in February 2015.

Antibiotic resistance: a global plan at last

The World Health Assembly adopted a global plan to address antibiotic resistance and other forms of antimicrobial resistance, which pose a threat to human health and survival. But will the plan be implemented?

A view of the 68th session of the World Health Assembly in Geneva.

By Martin Khor

The World Health Assembly on 25 May adopted a global plan to address antibiotic resistance and other forms of antimicrobial resistance, which pose a major threat to human health and survival.

Action may thus be coming at last to deal with one of the most important threats facing humanity – the fast-increasing resistance of bacteria to antibiotics and other medicines.

For years and decades this problem has been growing, without serious efforts being taken across the world to stop it in its tracks.

Patients are the ones that suffer the most. Old medicines no longer work against many diseases and newer and more potent medicines (often with stronger side effects) are also getting useless.

Pathogens are getting increasingly resistant to drugs, affecting treatment for tuberculosis, malaria, influenza, HIV-AIDS, gonorrhoea, and common infections such as pneumonia and urinary tract infections.

Patients going to hospitals are now increasingly acquiring infections unrelated to their original ailment, caused by highly resistant bacteria such as MRSA, which have caused thousands of deaths.

Despite the publicity about resistance, there has been little action in most countries, until the problem has blown up to crisis proportions at national and global level. The World Health Organization Director-General Margaret Chan has called ours a post-antibiotic era – meaning that we are now living in a world where antibiotics may not work anymore.

The consequences are horrifying to contemplate. In Thailand, antimicrobial resistance was found to kill 30,000 people a year and its economic impact amounted to 0.6% of the country's GNP, according to the Thai Minister of Public Health, speaking at a panel discussion at the World Health Assembly in May.

A similar study should be done in Malaysia. I wonder what it will reveal.

There is no time to lose for comprehensive action to be taken before the resistance crisis worsens.

This is the background to the adoption of the global action plan on antimicrobial resistance (AMR) that was adopted on 25 May by the World Health Assembly meeting in Geneva.

The plan has five objectives – to use medicines properly in human and animal health; reduce infection by sanitation, hygiene and infection prevention measures; strengthen surveillance and research; educate the public as well as doctors, veterinarians and farmers on proper use of antibiotics; and increase investment in developing new medicines, diagnostic tools and vaccines.

The plan calls for actions by governments, the WHO Secretariat, international organisations, civil society groups and professional bodies.

Most importantly, all governments are expected to have in place a national action plan on antimicrobial resistance within two years.

These national plans are to be aligned with the global action plan and with international agencies' standards and guidelines.

The national actions should include:

- Developing a national surveillance system for antimicrobial resistance to collect data on resistance by bacteria to various medicines, and as well as surveillance in the animal health and agriculture sectors.

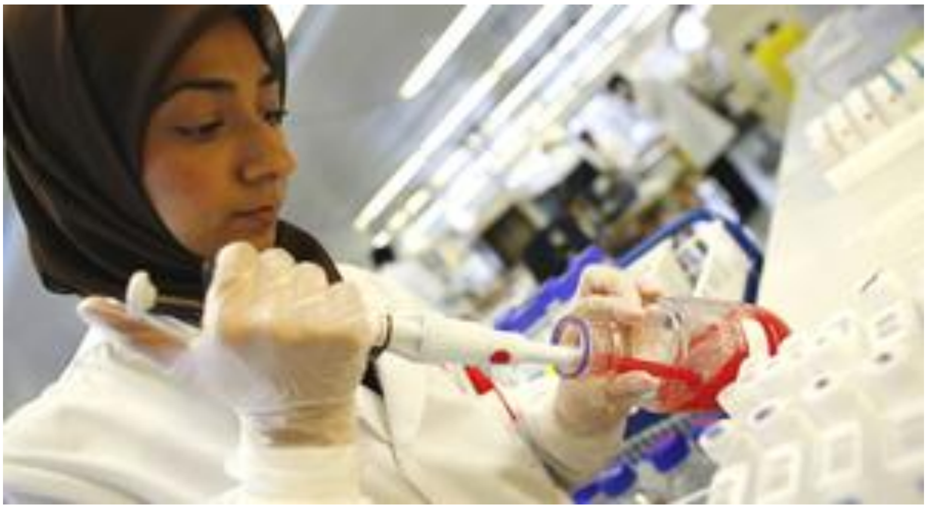
- Effective regulation and governance for the licensing, distribution, prescription, dispensing and use of medicines in human and animal health.

- Improve laboratory capacity to identify pathogens and their antimicrobial susceptibility in order to guide optimal use by doctors of antibiotics.

- Elimination of economic incentives in all sectors that encourage inappropriate use of antibiotics and introduction of incentives to optimise use.

- Introduce policies for proper use of antibiotics in animals, fishery and agriculture sectors, including phasing out the use of antibiotics for animal growth promotion.

- Actions to reduce infection through sanitation, hygiene and infec-



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Objectives of the global action plan on AMR include strengthening surveillance and research and increasing investment in developing new medicines, diagnostic tools and vaccines.

tion prevention measures.

• Increase national awareness of antimicrobial resistance through public education programmes, medical and school curricula, and establish coalitions including of civil society groups, scientific and industry bodies.

• Participate in research for developing new medicines, diagnostic tools and vaccines.

In an earlier session of the WHA in May that discussed the global plan, some developing countries' health officials highlighted the special needs of developing countries in implementing the global and national action plans.

These include obtaining the necessary funding and technical equipment to implement a national action plan, as well as assurance that people in their countries will have access to the new medicines, vaccines and diagnostic tools that will be developed in the future, and at affordable prices.

It would be terrible if the present antibiotics don't work anymore and when new ones are developed, the patients in developing countries cannot have access to these, because they are patented and thus have high prices.

The global plan also calls on WHO to support countries to develop and implement their national plans, and to lead and coordinate support to countries to implement their investment needs and to publish progress reports.

The adoption of the global action plan is a landmark and gives hope that international and national actions will now take off in a serious way to tackle antimicrobial resistance.

Now that the plans are drawn up and approved, the difficult part has to be done: implementation. Our lives depend on it.

To remind us of the seriousness of the problem, the WHO issued a Fact Sheet on antimicrobial resistance. Its key points include:

• Antimicrobial resistance is resistance of a microorganism to an antimicrobial drug that was originally effective for treatment of infections caused by it.

• Resistant microorganisms (including bacteria, fungi, viruses and parasites) are able to withstand attack by antimicrobial drugs, such as antibacterial drugs (e.g. antibiotics), antifungals, antivirals, and antimalarials, so that standard treatments become ineffective and infections persist, increasing the risk of spread to others.

• Antimicrobial resistance threatens the effective prevention and treatment of an ever-increasing range of infections caused by bacteria, parasites, viruses and fungi.

• In 2012, WHO reported a gradual increase in resistance to HIV drugs, albeit not reaching critical levels. Since then, further increases in resistance to first-line treatment drugs were reported, which might require using more expensive drugs in the near future.

• In 2013, there were about 480 000 new cases of multidrug-resistant tuberculosis (MDR-TB). Extensively drug-resistant tuberculosis (XDR-TB) has been identified in 100 countries. MDR-TB requires treatment courses that are much longer and less effective than those for non-resistant TB.

• In parts of the Greater Mekong subregion, resistance to the best available treatment for falciparum malaria, artemisinin-based combination therapies (ACTs), has been detected. Spread or emergence of multidrug resistance, including resistance to ACTs, in other regions could jeopardize important recent gains in control of the disease.

• There are high proportions of antibiotic resistance in bacteria that cause common infections (e.g. urinary tract infections, pneumonia, bloodstream infections) in all regions of the world. A high percentage of hospital-acquired infections are caused by highly resistant bacteria such as methicillin-resistant *Staphylococcus aureus* (MRSA) or multidrug-resistant Gram-negative bacteria.

• Treatment failures due to resistance to treatments of last resort for gonorrhoea (third-generation cephalosporins) have been reported from 10 countries. Gonorrhoea may soon become untreatable as no vaccines or new drugs are in development.

• Patients with infections caused by drug-resistant bacteria are generally at increased risk of worse clinical outcomes and death, and consume more health-care resources than patients infected with the same bacteria that are not resistant.

SOUTH BULLETIN

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