

An International Insolvency Framework – Why it is needed and what it could look like

The International Financial Institutions (IFIs) have tried to control new borrowing with the help of the World Bank's Debt Sustainability Framework (DSF). This approach is not likely to be overly successful. It unilaterally exerts pressure on the borrower, without providing much of an incentive for the creditor to forego an investment opportunity, simply because it would eventually endanger the borrower's long-term debt sustainability. There is an extreme danger today that in both, low and middle income countries, a new round of defensive lending by multilateral institutions will start a new debt cycle like the one of the 1990s. It is therefore essential that the provision of fresh funding for Southern countries, which are suffering from the crisis must be accompanied by a new mechanism to deal in a comprehensive way, (i.e. involving all creditors), quickly implementable and in a fair way with new situations of sovereign over-indebtedness.

Against this background the Doha process confirmed the Monterrey Consensus' call for new orderly debt workout mechanisms. Proposals mentioned in Doha include the IMF's Sovereign Debt Restructuring Mechanism and also farther reaching proposals by academia, civil society and Southern officials. Most of these proposals convene under an "International Insolvency Framework."

A new framework for sovereign debt workouts needs to differ from existing procedures in several aspects if it is to address the changed landscape of new lending. Key principles of an orderly, effective and fair debt workout mechanism are:

- One single "insolvency" process needs to involve all creditors.
- Impartiality in decision making, rather than the present creditors' hegemony over the negotiation process.
- Automatic stay on loan enforcement, once a case has been filed. Impartial assessment of a sovereign's sustainable debt level and hence income exempt from debt servicing.
- These principles essentially do not reflect more than leading principles of corporate or individual insolvency laws in civilized nations around the globe.

Several practical proposals to implement these principles have been made, notably:

The "Fair and Transparent Arbitration Process" (FTAP) as an ad-hoc procedure. It has been developed by the Austrian economist Prof. Kunibert Raffer and heralded by erlassjahr.de and other civil society organisations. It adds arbitration as a decision making technique to the fundamental principles of the chapter 9 of the US insolvency code, which deals with the insolvency of municipalities.

The proposals for a standing debt court. Practical proposals for a standing court have been worked out by Latin American economists Alberto Acosta and Oscar Ugarteche (*Tribunal de Arbitraje sobre Deuda Soberana - TIADS*) and by Jurists Christoph Paulus and Stephen Kargman ("*Sovereign debt Tribunal*")

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