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Proposal of Issues that Could Be Raised by the Project "Shadow G8"

With my apologies for not being able to participate personally, I should like to propose the following ideas and issues for further work. Regarding my own contribution I think primarily of the sovereign debt issue. International markets of sovereign lending need a proper and sound framework. At present they are rigged due to unjustified discrimination. Official creditors have incentives to preserve rather than solve the debt problem, as their debt management decisions confer leverage on them. Logically, protracting the problem comes at a premium. There is an urgent need to introduce the Rule of Law, sound economic principles and good governance in order to remove this wrong incentive structure. Specific topics I should like to propose are:

a) In contrast to any other debtors, creditors determine whether and how much debt relief should be granted. As rightly observed both by A. Krueger or the *World Debt Tables 1992/93*, this has resulted in avoidable damage inflicted on debtor economies. There is a need for a debt workout mechanism obeying sound economic principles as well as legal minimum standards. Adapting the main ideas of US municipal insolvency to sovereigns (as I proposed in 1987) would do so, abolishing undue debtor discrimination that rigged the market and caused a misallocation of resources. While the G8 have to some extent been prepared to accommodate one principle of insolvency, debtor protection, as HIPC II or the MDRI show, they still refuse to give up their role as judges in their own cause. Having creditors decide on debts and debt reduction is unthinkable in any other case, and rightly so. **Debt arbitration chaired by a neutral entity and on the basis of the main principles of US municipal insolvency (Chapter 9) should be demanded for sovereign debts.**

b) *Fundamental legal principles*, a matter of course with all other debtors, are not observed when it comes to the rights of developing countries. Examples are the principle that only contracts freely and voluntarily entered into are legally binding. Only persons actually having the authority to sign can legally bind corporations or governments; debts assumed under pressure are void. These self-evident principles have not been applied in the case of Southern sovereigns. Normal liability standards and tort laws assuring that markets can work properly are not applied. **Abolishing this unjustified discrimination is mandatory**, both in the interest of debtors and *bona fide* creditors who otherwise have to suffer unfairly big haircuts. One important strand of present analyses of the concept of odious debts focuses on general legal principles completely disregarded in the case of sovereign debtors.

c) Explore further the concept of **illegitimate debts**, which received wide attention after Norway's proposal of an international debt settlement court dealing with them as well as her canceling part of Norwegian claims in order to recognize creditor co-responsibility.

d) **Reforming IFIs by introducing economic mechanism**s: here the need to introduce creditor co-responsibility is particularly pronounced. Multilateral creditors can inflict damage with impunity, even with financial gain. IFIs must be "bailed in". The membership rights of developing countries must be guaranteed. IFIs must be made obey their own statutes. In the case of MDBs these statutes provide for mechanisms that would technically allow damage compensation for unlawfully inflicted damage. In the case of the IMF, such mechanisms are not stipulated in the Articles of Agreement, but encouraged by them. Debt relief mechanisms stipulated in MDB-statutes (e.g. relaxation of the conditions of payment, Art. IV.4.c of the

IBRD's statutes) must be applied as stipulated and intended by their founders. The G8 should be asked to foster the Rule of Law and good governance of IFIs by requesting the use of such mechanism, help guarantee due diligence with IFIs, and safeguard the membership rights of developing countries. Like private creditors, IFIs have established loan loss reserves, financed by their borrowers. Developing countries have already (largely) paid for necessary debt relief. There is no reason why IFIs should not put these resources to their intended use.

e) As the experience of 1982 showed, **tax deductible loan loss provisioning**, usual on the European continent, is a very efficient stabilizer. European banks were fully covered while US money centre banks would have been wiped out by immediate losses. Economically, this can be shown to have negligible costs to taxpayers. They would allow those developing countries able to borrow commercially better and easier access to capital markets than Basel II. Increased use of this stabilizing device could be advocated.

Further ideas suggested are:

- **ODA**

a) *Copying the Success of the Marshall Plan:* It allowed regional co-operation among recipients by joint assessments of needs, joint requests, and the principle of self-monitoring by recipients. As proposed by Paul Streeten, this process of self-monitoring and joint requests to the donor community could be implemented with ODA-recipients as well. It can be further enhanced by integrating NGOs into the process. Public discussions including affected people, open information policies and thus strong transparency should be encouraged.

b) *Financial Accountability of Bilateral Donors*: bilateral donors must also become liable for damages inflicted on ODA-recipients due to (grave) negligence. There is no reason to waive tort law and liability when it comes to ODA.

c) *Independent Reviews of ODA* instead of present peer reviews. Such external auditing would assure a minimum of statistical correctness of ODA statistics.

- **Trade**

WTO-Reforms: a huge array of proposals exist, such as introducing meaningful differentiated and preferential treatment (including the right to temporary infant industry protection for developing countries), stronger sequencing of liberalization, better market access in sectors where developing countries are competitive, changes in TRIPs and dispute settlement to take the needs of the South properly into account. Thus, if an industrial country brings a complaint against a developing country and loses, the plaintiff should pay the developing country's legal costs. Or, compensation for damage inflicted upon a developing country should have to be paid. To protect poor countries from harassment, complaining OECD—countries should have to prove the likelihood non-negligible damage. Retaliatory action by the whole WTO membership against an offender would change the present situation where powerful countries can decide not to implement decisions. Additional resources for net food importing developing countries should be made available, e.g. in the form of a Food Import Facility without conditionality (as the initial STABEX under Lome I) administered by the WTO (Raffer, *World Development* 1997, pp.1901ff). Proposals how to reform the WTO is one important issue.

- **Tobin Tax**

or similar currency transaction tax should probably be mentioned and once again propagated.