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**Contractual and Voluntary Approaches
to Sovereign Debt Restructuring:
There's Still More to Do**

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Sovereign Bankruptcy

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Abstract

The international community made some important advances in 2014 to reduce the costs of sovereign debt restructuring for debtors and creditors through improved contractual language for bond agreements and the reform of some International Monetary Fund (IMF) processes. Little, however, has been done to reduce the inhibitions debtor countries face in dealing proactively with creditors to prevent and treat sovereign debt distress. This chapter lays out a pragmatic work program to reduce the ex ante costs of sovereign debt restructuring, complemented by additional measures to mitigate the in medias res and ex posts costs of restructuring. Wide-spread and full implementation of these proposals would not create a perfect ecosystem for sovereign debt restructuring, but it would represent a significant improvement on the status quo.

Introduction

The international community took important steps during 2014 to improve the global infrastructure through which we deal with cases of sovereign debt distress—steps on which further progress can be built. The development of better model language for bond contracts, as promulgated by the International Capital Markets Association (ICMA 2014) and largely endorsed by the International Monetary Fund (IMF, the “Fund”; IMF 2014b), should make these bonds easier to restructure when countries hit payment difficulties. Similarly, the reform of some IMF lending practices (IMF 2014a) will likely make the Fund more effective at helping indebted countries avoid unnecessary restructurings. Together, these changes ought to make future episodes of sovereign debt less costly for both debtors and creditors. Concurrent with these developments, the United Nations General Assembly (UNGA) Resolution 68/304 “Towards the establishment of a multilateral legal framework for sovereign debt restructuring processes” (UN 2014) passed by a split vote on September 9, 2014. The resolution expressed the will of many member states to move toward the creation of a multilateral statutory framework for sovereign debt restructuring. It echoed calls by the G77 in the 1970s and in recent UN resolutions (UN 2010, 2011, 2012) for an orderly approach to sovereign debt restructuring. Coming over a decade after the rejection of the IMF’s Sovereign Debt Restructuring Mechanism (SDRM; Krueger 2001) in 2003, this UNGA resolution signals continued interest in treaty-based approaches to enhancing our sovereign debt toolkit.

These innovations underscore that there's no need to choose between contractual or voluntary approaches versus statutory or treaty-based agreements to improve the machinery of sovereign debt restructuring. The firm partisans for one side or another present a false and by now arid choice: both sets of approaches have their strengths and weaknesses—pros, cons, and exclusive features that have already been aired extensively. Neither path provides a perfect combination of optimal results, efficiency, and political feasibility. But in a time of record debt levels in many countries (BIS 2014; Dobbs *et al.* 2015) and heightened consequences attached to any policy mistake, it is important to identify where the next incremental steps can be taken to sustain the reform momentum generated in 2014. This is the purpose of the present chapter.

In charting a route toward further reform, it's notable that the vote on the 2014 UNGA resolution highlighted some of the same differences that undermined the SDRM. Several of the countries that withheld support for the SDRM in 2003 either opposed the UNGA resolution or abstained from the vote. The home countries of the major financial centres where most foreign-law external sovereign debt is issued did not support the resolution, even in its final, diluted form. Some of these countries also expressed a preference for pursuing this discussion at the IMF, rather than at the UN. If there's any doubt that this represents at least a temporary impasse for statutory- and treaty-based approaches to sovereign debt restructuring, consider how difficult it has been to get the 2010 package of IMF reforms completed even with the explicit backing of the White House and US Treasury. For the moment, a great deal more can be done through contractual and voluntary channels to make sovereign debt workouts smoother and more effective.

Parallel to further developments at the UN, additional efforts should be pursued with vigour to improve the voluntary and contractual means of assisting sovereigns in debt distress. This chapter lays out a pragmatic plan for pursuing this agenda. It first takes stock of the achievements of the past year. It then lays out a set of complementary next steps that would support and extend recent advances. If the proposed work program laid out below were implemented, substantial progress would be made without the difficulties that treaty negotiations inspired by the UN resolution would likely encounter.

Recent developments set the stage for more progress

The IMF staff usefully—and bravely—reopened the discussion of sovereign debt restructuring at the Fund's executive board in April 2013 after eight years of quiet and, in so doing, substantially shifted the terms of the debate. The difficulties encountered by Greece in its 2012 debt treatments, the continued pursuit of Argentina by creditors in the US courts, and the prospect of more sovereign financial distress in the coming years together created a natural opportunity for the Fund to re-engage on meta-level sovereign debt restructuring issues. After decades in which the presumption had been that sovereign debt restructuring should be costly in order to provide governments with an incentive for proactive adjustment and a disincentive for

gratuitous default, the IMF staff argued that the real problem is not that restructurings happen “too much, too soon,” but rather that they tend to be “too little, too late” (IMF 2013). That is, they provide too little debt relief to return a country to sustainability and they come too late to prevent substantial damage to the debtor country, its creditors, and, often, global financial markets.

In its consideration of the 2013 IMF staff paper, the Fund board endorsed both the staff diagnosis and a proposed work program built on this assessment. This sensible plan has four parts: (1) reform of IMF analyses, processes, and lending practices; (2) improvement of the contractual infrastructure for debt restructuring; (3) creation of a clearer framework for official sector involvement in treating distressed sovereign debt; and (4) review and possible expansion of the IMF’s policies on lending into arrears. The first two agenda items are direct responses to problems encountered in dealing with the debt crises in Greece and Argentina, but they also address broader systemic challenges and go far beyond attempts to re-fight yesterday’s wars. The last two items confront issues that have received years of lip-service, but little action. The IMF’s work program is both appropriately ambitious and eminently feasible.

The IMF board’s endorsement of this four-point plan opened up the way to 2014’s subsequent staff papers (IMF 2014a; 2014b). IMF Board discussions in response to the first of these papers added the option of debt rescheduling or “reprofiling” to IMF-supported programs, even if—and in some cases, especially when—exit sustainability is questionable. Explicit board endorsement of the option of reprofiling under IMF programs adds board support to an approach to alleviating debt distress that has already been implemented in cases such as Uruguay and the Dominican Republic in the early 2000s. By providing a middle option between the binarisms of a fully-financed public bailout and the expectation that a restructuring is a prerequisite for official liquidity support, the IMF will be able to provide extra breathing room to debtor countries to sort out their affairs and, perhaps, avoid a costlier debt write-down. By allowing this option when the solvency of a debtor country is uncertain, the Board’s decision also reduces the implicit pressure on the Fund staff to certify a lending program would produce sustainability in cases where this is contested.

The first paper (IMF 2014a) also foreshadowed the eventual elimination of what has become known as the “systemic waiver” for the Fund’s rules on exceptional access to IMF resources. The 2010 waiver created an exception to limits on Fund lending in circumstances where “there is a high risk of systemic spillovers”. Schadler (2014) details some of the problems with this fudge. First, it represents terrible process in policymaking: rather than coming at the end of a deliberation on how limits to the Fund’s discretion should be modified while still curtailing the threat of moral hazard, the waiver was inserted by the IMF board in the midst of a specific lending decision on Greece. Second, it’s inherently unfair: the waiver allows massive lending to small countries that are inside monetary unions without permitting commensurate support to similar countries outside currency zones. Finally, it’s the wrong remedy: as the Eurocrisis has shown, contagion isn’t curtailed by large public bailouts, but rather appropriate policies and predictable action. Getting rid of this waiver would be a useful bit of post-crisis tidying up.

Although IMF board discussions on ending the systemic waiver are anticipated in 2015, these talks are likely to remain unconcluded so long as the euro zone faces a hint of existential threat. The IMF’s major shareholders won’t—and arguably shouldn’t—re-bind their hands when they may still need the waiver’s flexibility to deal with a flare-up in the as-yet unfinished great financial crisis. Schadler’s (2014) contention that the IMF’s preferred creditor status should be challenged to force the abolition of the systemic waiver would solve one problem by creating another: financing provided by the IMF in the midst of a crisis, when all other sources of liquidity are closed, clearly merits a senior carve-out from any subsequent restructuring. Instead, the fact that the Fund’s exceptional access criteria proved too binding for the IMF to deal with a relatively small country such as Greece should add further pressure on the world to help the United States find a way to ratify the agreed 2010 IMF quota increase or move ahead without US Congressional support (House 2015b). If the IMF were twice as large as it currently is, far fewer countries’ borrowing needs would look “exceptional”.

The second IMF paper (IMF 2014b) puts the Fund stamp of approval on the improved model language for sovereign bond contracts published by the ICMA in August 2014 (ICMA 2014) following a series of informal multi-stakeholder consultations. If adopted by issuers, the new language introduces three optional configurations that, *inter alia*, introduce cross-series aggregation as a standard feature of sovereign bonds’ collective action clauses (CACs) and narrow the implications of sovereign bonds’ *pari passu* provisions to exclude the ratable payment interpretation provided by New York District Court Judge Thomas Griesa.¹ Griesa’s reading of *pari passu* and his accompanying injunctive remedy precludes Argentina from servicing the bonds from its 2005 and 2010 debt exchanges without also making proportionate payments to bondholders that refused to accept the terms of those restructurings—all of which tips the balance of power in a debt workout disproportionately toward creditors. The proposed new CACs and circumscriptions on *pari passu* provisions should remedy this by making it harder for minority creditors to holdup restructurings. Nevertheless, an indebted sovereign will still face a nontrivial challenge in assembling the majorities needed amongst its creditors to push ahead with a debt restructuring.

The new IMF- and ICMA-endorsed language will move new sovereign bond contracts closer to a Goldilocks trade-off between debtor and creditor interests. The language has been quietly and quickly adopted by a succession of borrowers, led by Kazakhstan, Mexico, Vietnam, and Ethiopia, without any apparent effect on demand for this paper (House 2015c). This mirrors the smooth inclusion of CACs in New York-law bonds from 2003 onward:² creditors have welcomed the greater certainty engendered by the new clauses. Of course, sovereign issuers don’t adopt model contract language verbatim and even the Fund (IMF 2014b) declined to endorse the ICMA paper’s advocacy of creditor

¹ Gelpern (2014) provides a concise summary of the new model CACs, the more delimited *pari passu* clause, and their implications.

² By late-2005, 75 percent of all new emerging-market foreign-law sovereign bond issues included CACs; by 2010, over 90 percent of all new issues included them.

engagement and representative committee clauses. Some interpretative uncertainty will be attached to this language until it is tested in the courts: clever lawyers could still undo the apparent gains it offers. But what is most striking about the ICMA-endorsed collective action, aggregation, acceleration, and *pari passu* provisions is that, once widely incorporated in sovereign debt contracts, they would create a *de facto* facsimile of many of the key *de jure* features of the final 2003 version of the failed SDRM proposal (see IMF 2003; Rieffel 2003, pp. 268-9).

Over time, these initiatives will, together, reduce the costs of sovereign debt restructuring (see Figure 1). The option to reprofile or reschedule debt obligations even when solvency is unclear³ gives a distressed sovereign breathing room to deal with its problems in the midst of a crisis: it reduces the *in medias res* costs of restructuring by either preventing a restructuring from happening or allowing it to be organized in an orderly, pre-default manner with IMF support. Better CACs, narrowed *pari passu* provisions, and aggregation across creditors together reduce the *ex post* cost of restructuring by making the terms of a debt treatment hard to undermine once they have been agreed. But these provisions will only become powerful once enough new bonds bearing them replace existing debt. This will likely take over a decade, since 40 percent of emerging market debt issued under New York law has residual maturities of 10 years or more (IMF 2014b). Debtor countries could accelerate the rollover of outstanding debt through swaps, but the IMF (2014b) reports that sovereigns have not indicated much interest in doing so. Some encouragement could be useful.

³ The IMF's 2013 move to publish its debt sustainability templates and include debt sustainability assessments (DSAs) in its Article IV consultations makes assessments of solvency much more transparent; it also positions these DSAs more effectively as a basis for a consensus amongst creditors on how to address a sovereign's financing problems. See: <https://www.imf.org/external/pubs/ft/dsa/>.

Figure 1: Costs of Sovereign Debt Restructuring, Policy Gaps and Proposed Responses

A. Outstanding policy gaps before, during, and after restructuring

Ex ante

- No standing venue for debt reform, creditor-debtor discussions
- Engagement with non-Paris Club official creditors
- Inhibitions to tapping IMF lending still too strong
- Insufficient lender discipline

In medias res

- No automatic standstill mechanism
- IMF

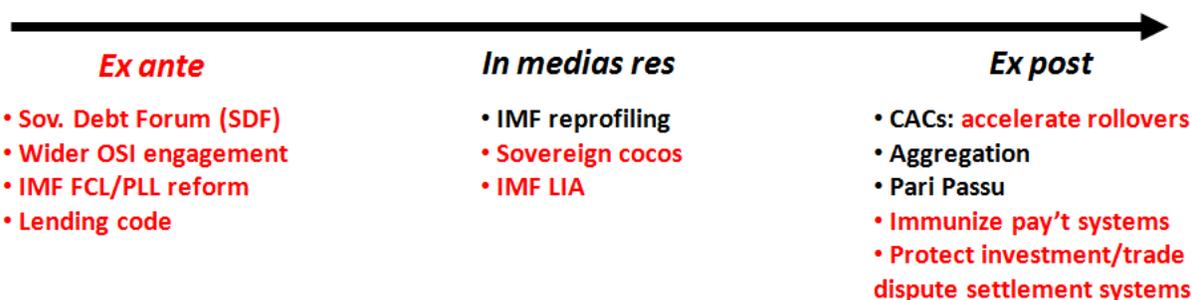
Ex post

- Payments systems vulnerable to attachment

B. Existing and potential responses

Legend
Underway
Pending

Restructuring timeline



Nevertheless, as sensible and helpful as these developments clearly are, and as useful as the 2014 UN resolution may be in sustaining pressure for additional reform, none of these innovations directly address the core problem of “too little, too late” that the IMF identified in 2013. They do not reduce the *ex ante* costs of restructuring: they do little to encourage sovereigns to deal with their debt problems proactively, they provide only an indirect discipline on lender behaviour, and they do not reduce the inhibitions country authorities face in seeking early, preventative assistance from the IMF.

There’s urgency for more action to improve the world’s responses to sovereign debt distress. Incremental, voluntary, and contractual approaches offer the most tractable way to achieve these gains—without undermining the possibility of future statutory- or treaty-based initiatives. Public authorities currently have little margin to compensate for policy mistakes, further slowdowns in real-sector growth, or greater weakness in commodity prices: global debt vulnerabilities have increased since the beginning of the 2008 financial crisis. Sovereign debt stocks have ballooned (BIS 2014), deleveraging still has a long way to go in many financial sectors (Bologna *et al.* 2014), and household balance sheets remain stretched (Dobbs *et al.* 2015). Frontier-market Eurobond issuance is a time-bomb set to

blow when yields finally normalize. According to IMF data, many low-income countries that had the bulk of their debt written-off at the turn of the millennium are back in danger: some 40 poor countries are in medium to severe debt distress. Puerto Rico's near insolvency highlights problems lurking in many countries at the sub-national level. Vulnerabilities can quickly cascade between sectors, and both private and sub-national public debt problems can rapidly become sovereign problems, as the experiences of many emerging markets (Rosenberg *et al.* 2005) and the recent crises in Ireland and Spain demonstrate.

The IMF's intention to engage non-Paris Club official creditors more clearly in sovereign debt treatments will be a good next step to bring down the upfront barriers to restructuring, but more can and needs to be done, not just to reduce the *ex ante* costs of restructuring, but also to cut further *in medias res* and *ex post* costs. The remainder of this chapter provides some practical suggestions on how these goals could be realized in the years ahead.

Ex ante: Make it easier to prevent and treat debt distress

When it comes to sovereign debt problems, an ounce of prevention is worth multiple ounces of cure. Access to such preventative medicine needs to be made cheaper, easier, and more routine to reduce the likelihood that debt treatments, when they happen, come too late to prevent significant damage to a debtor country's economy and avoidable costs to its creditors. The creation of a non-institutional Sovereign Debt Forum (SDF), as proposed by Gitlin and House (2014), would provide a standing, independent venue in which creditors and debtors could meet on an ongoing basis to address incipient sovereign debt distress in a proactive fashion. Continuous and inclusive discussion within an SDF would help blunt the trigger problem and stigma that inhibit governments from seeking international assistance at the earliest stage of payment difficulties. An SDF would also ensure that there is a perpetual research and reform process on sovereign debt issues so that improvement of the system is not allowed to go dormant, as it did during 2003–2010. It could also provide for engagement of new sovereign creditors and private lenders in debt treatments in a more equitable, inclusive, and upfront manner, in line with the engagement, transparency, and creditor committee clauses that the ICMA (2014) has proposed. The histories of non-institutionalized, but nevertheless precedent-bound bodies such as the Paris Club, London Club, the Extractive Industries Transparency Initiative (EITI), and even the successive negotiating rounds for the General Agreement on Tariffs and Trade (GATT) bear testament to the potential effectiveness of a “soft law” SDF. Proposals by Kaiser (2010) and Ocampo (2014) could later add arbitration processes to the SDF's simple design if sufficient support for such measures were ever to emerge.

Pre-emptive and preventative financing from the IMF also needs to be made more attractive to debtor countries. The channels through which the IMF provides such

support, the Flexible Credit Line (FCL) and the Precautionary Liquidity Line (PLL), have rarely been used. Since its introduction in March 2009, only three countries—Colombia, Poland and Mexico—have sought (even then, only after *much* encouragement) arrangements under the FCL, despite market conditions that should have implied substantial interest from many other countries in a well-designed, pre-emptive liquidity window. Only two countries, Former Yugoslav Republic of Macedonia and Morocco, have used the PLL despite its looser qualification criteria compared with the FCL. Although the FCL and PLL are indeed more *flexible* than the Contingent Credit Line (CCL), their unloved and unused predecessor, countries still do not see enough net value in the FCL and PLL compared with the perceived stigma attached to a request for qualification to generate demand for their crisis-prevention and crisis-mitigation financing.

It's should be no slight to the IMF to suggest it's time to go back to the FCL/PLL drawing board again: getting the terms of a credit facilities like the FCL and PLL properly balanced is tough work. The last comprehensive review of the IMF's lending facilities took place in 2011; the next is not due until 2016. In the interim, the Fund made some tweaks to the FCL and PLL in 2014, but they don't appear to have been sufficient to make either meaningfully more attractive to the IMF's member countries. More needs to be done: the FCL/PLL's qualification criteria and processes need to be loosened, the predictability by which approved FCL/PLL resources can be drawn upon needs to be improved, the flexibility of the FCL/PLL's duration needs to be increased, the scale of potential borrowing under the FCL/PLL needs to be bigger, and the FCL/PLL's terms need to be made less punitive.

At the same time, preventative guidelines—such as the Institute of International Finance's (IIF's) Principles for Stable Capital Flows and Fair Debt Restructuring (IIF 2012) and the United Nations Conference on Trade and Development's (UNCTAD's) Principles on Responsible Sovereign Lending and Borrowing (UNCTAD 2012)—need additional work to make them into more effective codes of conduct. At present, the IIF principles are relatively long on expectations of debtors, but more parsimonious in their demands of creditors. Both borrowers and lenders could benefit from a clearer charter for prospective behaviour. In contrast, UNCTAD's Principles are more symmetric in their design, but have received limited buy-in from private capital market participants. There needs to be a unified set of guiding principles, something akin to the United Nations' Principles for Responsible Investment (UNPRI) adapted for sovereign borrowers and their creditors: principles that are both balanced in their treatment of competing interests, widely endorsed, and routinely used as a reference point to guide financing decisions.

In medias res: Give distressed countries more breathing room

The revived proposal for two forms of state-contingent debt most recently articulated by the Banks of Canada and England (Brooke *et al.* 2013) should be acted upon by sovereign debt issuers. The idea of sovereign state-contingent sovereign debt

has been around for some time (Borensztein and Mauro 2004; Barkbu, Eichengreen, and Mody 2012; Mody 2013), but its potential hasn't been fully exploited. Mexico issued oil-indexed bonds in the 1970s; in the 1990s, Mexico, Nigeria, Uruguay and Venezuela issued Brady bonds whose returns were tied to commodity prices; and Costa Rica, Bulgaria, and Bosnia-Herzegovina issued GDP-linked bonds under Brady restructurings in the 1990s. More recently, Argentina in 2005 and Greece in 2012 issued GDP-linked warrants as sweeteners in their respective debt exchanges.

The first form of contingent sovereign debt proposed by Brooke *et al.* (2013), sovereign “cocos” (that is, “contingent convertibles”), consists of bonds that automatically extend their maturity upon realization of a pre-specified trigger linked to a liquidity crisis. The term is borrowed from corporate cocos, bonds that convert into equity when a firm's stock reaches a pre-specified strike price; clearly, the analogy is partial since there is no notion of equity in a sovereign context. Brooke *et al.* (2013) propose tying activation of a sovereign bond's coco provisions to initiation of an IMF-supported program, but other triggers more removed from the sovereign's discretion would be both feasible and more insulated from moral hazard, such as ratings downgrades, increased collateral requirements on a sovereign's debt by clearing systems, or violation of a pre-specified floor on official foreign-exchange reserves. The second form, GDP-linked bonds, carry principal and interest provisions that vary with a country's GDP to preserve the sovereign's solvency in bad times and compensate creditors in good times. Debt service on these bonds could also be tied to global or regional growth, key commodity prices, global interest rate indices, or other major aggregates that materially affect the financial health of the sovereign, but are both independent of the government's discretionary actions and verifiable by third parties.

The main virtue of sovereign cocos and other performance-linked debt lies in their automatic provision of breathing room to a country that gets into trouble owing to forces ostensibly outside of its control. Countries with highly volatile economies and those where monetary policy is bound into a currency union stand to benefit the most from the issuance of such debt, but all issuers would see the need to make wrenching fiscal adjustments in the midst of a crisis dampened. The international system as a whole would also be better off: there would be less political pressure on the IMF to lend into circumstances that don't merit its support, the possibility of an automatic standstill would increase the pressure on creditors to discipline their lending, and private creditors would be “bailed-in” to crisis resolution with their exposure and engagement maintained. Granted, state-contingent automatic standstills don't provide a means to address inter-creditor equity issues or enable debtor-in-possession financing in the manner a statutory framework could. Additionally, just like the new CAC language, it would take years for state contingent debt to replace a substantial amount of a country's debt stock, but even limited issuance of these instruments would be an improvement on the *status quo*.

A strong group of industrialized country and emerging market sovereigns could usefully come together under an agreed program of issuance to make sovereign cocos and other state-contingent debt a more common feature of the foreign-law sovereign debt landscape. Worries that state-contingent debt cannot be priced by the

market are misplaced. The market assigns prices to the Argentine and Greek warrants; modelling their price behaviour is straightforward. There is nothing involved in pricing a *coco* that does not already feature in pricing standard fixed-income instruments. While it is true that some asset managers would not immediately be able to invest in state-contingent debt under their existing investment mandates, it is also likely that these mandates would be modified as this debt becomes more ubiquitous and attractive (House 2015a).

Extension of the IMF's policy on lending into arrears (LIA) to cover past-due debt to official creditors would be a natural complement to wider issuance of state-contingent sovereign debt: both would reduce *in medias res* debt restructuring costs. At present, the LIA policy, which was borne of efforts in the late-1990s and early-2000s to ensure private-creditor participation in debt workouts, allows the Fund to lend to member countries in arrears to their private creditors so long as the country is making "good faith" efforts to conclude a collaborative agreement to treat these debts. Allowing the Fund to lend to countries in default on private bonds and loans goes some way to balance creditor and debtor leverage in the negotiating process. Extending this policy to arrears on official debt, would provide more breathing room to illiquid sovereigns, reduce incidences of avoidable restructurings, and would be consistent with the spirit of comparable treatment.

Ex post: Make agreed restructurings stick

The new ICMA- and IMF-endorsed model CAC and *pari passu* language is a huge advance in lowering the *ex post* costs of sovereign debt restructuring, but as has already been noted, it will be several years before a critical mass of existing debt has been rolled over and replaced with bonds bearing this new language. Intentional, concerted action should be considered to realize more quickly the benefits of this new approach to writing sovereign bond contracts. Collectives of emerging-market borrowers, such as the BRICS countries, G24, ASEAN, or others could work together to reduce the cost of large-scale debt exchanges and pre-empt any concerns that such exchanges in any way indicate a debtor country is concerned about its liquidity or solvency. Further assistance could come from long-term institutional investors and the IIF, who have generally welcomed the increased certainty that the new contractual provisions will bring; capital markets authorities in London and New York, where most foreign-law bonds are issued; and the IMF. Any upfront costs would be more than compensated for by long-run savings for all of these actors. The United Kingdom and the United could also investigate the possibility of retrofitting the new CAC and *pari passu* language into existing bonds through legislation, much as Greece retrofitted an aggregative CAC into its domestic-law bonds to facilitate its 2012 debt exchange.

So long as debt that does not bear the 2014 CAC and *pari passu* language remains outstanding, the *NML Capital Limited v. Argentina* cases in the New York courts show that payment and clearing systems also need to be insulated from attachment by holdouts creditors. Belgium (Government of Belgium 2004) passed legislation in 2004

that shields the Euroclear payment system from attachment threats; Luxembourg provides similar protections for Clearstream. In the early 2000s, the United Kingdom (Government of the United Kingdom 2011) passed legislation that offered protection from attachment under English Law to the 40-odd heavily-indebted poor countries (HIPCs) that saw most of their external debt written off under global debt-relief programs that began in 1996. Action should be undertaken to add such immunities to payment systems under New York law and to broaden these immunities under English, European, and other jurisdictions.

Trade and investment treaties and their dispute settlement mechanisms need similar protections. Some creditors have argued that trade and investment treaties give foreign-law bondholders the same rights as foreign direct investors and have worked to insert claims on sovereign debt into these treaties' international arbitration processes (St John and Woods 2014). Some treaties and sovereign bond contracts explicitly prohibit such actions (e.g., the North American Free Trade Agreement, NAFTA), but many don't, which leaves an avenue for holdout creditors to re-open settled debt restructurings. Though it's received much less media attention than NML's hunt of Argentina in the New York courts, some Italian creditors have pursued Argentina under the Argentina-Italy bilateral investment treaty through the International Centre for Settlement of Investment Disputes (ICSID). Governments should move to eliminate the incipient threat of copycats by adding annexes to their key bilateral trade and investment treaties to rule out this kind of litigation.

Conclusions: A feasible agenda for action

More can and should be done to enhance the prevailing contractual and voluntary approach to sovereign debt restructuring. Building on the improvements to contractual provisions widely endorsed in 2014 and the IMF's move to support reprofiling in cases where debt sustainability is unclear, the proposals outlined above could help end debt treatments that are "too little, too late". None of these efforts would require difficult treaty negotiations or the significant erosion of any actor's leverage in existing processes. This work program should be at the core of the international agenda in 2015, in fulfillment of the G20's commitments to improve sovereign debt restructuring (G20 2014). Even if every element of this plan is implemented, work to improve the mechanics of sovereign debt restructuring will not be finished. Few contracts, laws, or institutions remain perpetually effective: most are eventually undermined or superseded by clever litigation or unanticipated circumstance. Sovereign debt restructuring will likely remain a perfectible project for years to come.

*Authors' note: This chapter builds on and extends arguments made in Richard Gitlin and Brett House. 2014. "Further reform of sovereign debt restructuring: An agenda for 2015." CIGI Policy Brief No. 54. Waterloo, ON.
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