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**The Case for a New International Reform Effort**  
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**Debt Restructuring and Sovereign Bankruptcy**

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# THE CASE FOR A NEW INTERNATIONAL REFORM EFFORT

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## Introduction

One of the lessons of the emerging market crises of the late 1990s and the early years of the new century is that the global system can, and should, be better prepared to deal with undesired consequences of business cycle downswings and economic shocks, one of which can be a government debt crisis. Despite the fact that several developing countries now have stronger economic fundamentals than they did in the 1990s, sovereign debt crises will return, as they have repeatedly done through hundreds of years of world history. The reasons for this are several, but the central one is that economic fluctuations are inherent features of financial markets, the boom and bust nature of which intensify under liberalized financial environments, such as those that all countries have increasingly adopted since the 1970s.

Improved fundamentals since the last cycle of debt crises reflect the fact that developing countries have taken advantage of buoyant international economic conditions to make major efforts to prevent the return to crisis conditions by building large supplies of foreign exchange reserves and pre-paying foreign debt. In many, however, domestic debt markets have boomed in recent years along with foreign portfolio investments into those debt markets, generating new forms of risk. And pro-cyclical fiscal policies continue to be the rule in the developing world, a fact that implies that many governments will face difficult

debt servicing requirements and adjustments when a new crisis strikes (which could happen if the ongoing US financial crisis, for example, leads to curtailment of the booming inflows into developing, particularly emerging markets).

Several institutions have been built at the national and international level to manage crises. At the national level, developing (as well as developed) country governments have provided “lending of last resort” and rescue packages to domestic financial institutions to manage corporate and household bankruptcies, and some have also used counter-cyclical policies to encourage economic recoveries. For over 60 years, governments have also recognized that by cooperating through international institutions, forums and practices they can complement and strengthen what they can achieve at national level alone.

Yet, there is a broadening sense that the efficacy of both domestic policy and international cooperation has not kept pace in a world in which market economies have become increasingly global. This book is a contribution to international thinking on the set of practices bearing on the resolution of government debt crises. It argues strongly that the resolution of sovereign debt crises can and should be more effective, fair, timely and less traumatic than it has been in recent decades.

A primary viewpoint of this book is that the existing insolvency system for sovereigns, which has arisen as piecemeal and mostly ad hoc intergovernmental responses to sovereign debt crises as they occurred over the past half-century or so, does not do an adequate job. The system has been able to address some issues, such as the collective action problem and

creditor holdouts, and in this sense it produces a “solution”. But this result for sovereigns is clearly inferior to that provided for corporations and sub-sovereign public entities by national bankruptcy regimes written in law, which not only aim to find a solution, but also aim to reach one that achieves nationally desired economic and social outcomes, particularly a “fresh start” (or “clean slate”) when a bankrupt entity is reorganized. {1} The current system for treating cases of sovereign bankruptcy does not address the latter goals.

This system, as it is, may be characterized as embodying informal and imperfect coordination of the debtor and its creditors by the International Monetary Fund (IMF), under the guidance of the Group of 7 major industrialized countries (or a subgroup of them). The latter countries set the overall policy directions for the IMF and the other involved institutions, such as the so-called Paris Club, where debts owed to governments are restructured. The system assumes a developing country government in debt distress will adopt an IMF-approved macroeconomic adjustment program, that the program will be effective, and that all the relevant classes of creditors (banks, bondholders and suppliers, government creditors and multilateral institutions) will cooperate in providing the overall amount of relief and financial support deemed necessary in the Fund documents. These assumptions never fully held and what confidence there was in the system was severely rocked by how the East Asian, Russian, Ecuadorian and Argentine crises from 1997 to 2005 were handled. Indeed, during this period, the focus of the major creditor governments (and thus IMF) shifted from the bailouts of the mid-1990s to “bail-ins” (i.e., debt restructuring) of private creditors. While this change irked the lenders, many debtors were also unhappy, most notably Argentina, which settled with its bondholders without the IMF

(see chapter 10 in this volume). By the end of the period, the international financial industry developed a “code of conduct” that can be read as offering sovereign debtors that draw heavily on private markets to replace the IMF with direct creditor/debtor discussions when debt crises loom (see below and chapter 15). Like the status quo, this approach would also not meet the systemic need we are seeking to identify here.

Even when the existing system produces a “solution”, the goal has not, in general, been to provide a “fresh start” for the country. Countries eventually emerge from crisis, but usually only after having gone through a sharp economic recession or a long period of stagnation or slow growth, with slippages on all sides and frequent delays and refiguring of the adjustment program. Somewhat later, they have been able to return to their normal sources of financing. In many cases countries have been left with high debt burdens and a significant probability of having to restructure again in the near future, unless they are lucky enough to be subjected to a positive external environment (see chapter 7). This is hardly sufficient. Even the initiative for the group of heavily indebted poor countries (HIPC), which accepted the idea of a fresh start when it was launched in 1996, did not deliver sufficient relief for the selected countries until the Multilateral Debt Relief Initiative of 2005, and then only as a one-time operation for the included countries (see chapter 5).

We believe that the amount of debt relief accorded to different countries should depend on their circumstances, but that it is artificial to have one set of rules for determining that relief for selected developing countries (as was the case with the HIPC) and another for

the rest of the world. Rather, we need a consistent framework for adequate debt relief, in which creditors and debtors restructure the debt to provide a ‘fresh start’ to debtor countries, based on each country’s unique economic condition. The debt workout regime should be efficient in handling debt problems ex post (after default) while promoting efficiency ex ante (when the borrowing takes place). It should also be regarded as equitable. {2} One can see efforts to achieve this in national bankruptcy laws for households and corporations, making the absence of an explicit insolvency regime for sovereign governments all the more unfortunate (see chapter 2). This book claims that we can do better.

An essential feature of our discussion is the sovereign nature of the debtor governments. {3} Lending to members of this debtor class has traditionally been deemed the least risky of credits because governments’ powers of taxation and foreign exchange management give them the ability, in principle, to cover their financial obligations. However, there are times when the social costs of doing so can be enormous. Policymakers may become unable politically or administratively to mobilize that power, may be unwilling to do so, or circumstances may have so hurt the population that any effort to raise additional revenue for debt servicing would be an act of political suicide.

The need to discuss sovereign insolvency highlights another characteristic of sovereign lending, namely, that to speak of a “bankrupt government” is to use a metaphor. Sovereign debts are unlike any other. Creditors cannot force an insolvent government to be wound up or take possession of its remaining assets. {4} Indeed, there is no internationally endorsed

system of law or procedure for how to address sovereign bankruptcy. There is rather a broadly common set of practices, albeit with many exceptions, with the IMF as the “international community’s” overall coordinating agent, if the debtor chooses to use it, as noted above. Also, jurisdictions differ in the legal specifics of how to handle a sovereign’s default. Private foreign creditors of a defaulted sovereign can go “forum shopping” to find the most creditor-friendly jurisdiction in which to press their claims. However, they only collect on their claims, even when they manage to win in court, if the sovereign itself decides to accept the judgment and pay. For this reason, and because some of the debt is owed to official creditors, debt has usually been restructured through informal negotiations and “voluntary” processes. In this regard, the treatment of sovereign debt crises is “political” at its core, in the sense that it involves relations among states even if private entities are part of the deal. Our concern is that this political process no longer be ad hoc but be explicitly shaped so as to be effective, efficient and fair.

Sovereign insolvency is also political in another important sense: sovereign debt crises have become foci of internationally forceful political movements. Most prominent among these is the Jubilee 2000 campaign for debt cancellation for the poorest countries, whose broad popular mobilizations caused creditor governments and multilateral financial institutions to repeatedly break with their announced policies and agree to cancel, albeit grudgingly, increasing amounts of poor country debt since the mid-1990s. {5} Sovereign debt problems in developing countries were featured by these movements as pitting poor countries against rich creditors, inhibiting the ability of the poor people in those countries from raising themselves out of their poverty. Similarly, the debt crises in middle-income

countries, which have been mainly indebted to private creditors, were seen to have plunged millions of people back into poverty. {6} The basic charge of the debt campaigners was a political one: the international approach lacks justice.

There is nothing immutable in the current approach to resolving sovereign debt crises. It arose in the political and economic environment created after the Second World War.

Before the war, the internationally recommended means to resolve a sovereign insolvency that could not be addressed informally was inter-governmental arbitration. {7} Creditors at the time were primarily bondholders, as is increasingly the case today. Typically organized into creditor committees, the bondholders first sought to collect on the defaulted claims of sovereign borrowers themselves, and when this failed, sought assistance from their own governments. Representatives of the creditor governments then negotiated with the debtor or pled the creditors' case in an arbitration proceeding. {8} The debt crisis workouts under the pre-war regime tended to grant sovereign debtors greater degrees of relief from their private creditors than in the current system, but it also generally took longer to settle the creditors' claims, during which time interest arrears typically accumulated, sometimes exceeding the original defaulted principal (in addition to other costs associated with the delay of bankruptcy resolutions). {9} The point here is not to evaluate the pre-war years but, as mentioned above, to remember that the current system is the product of the post-war era. Indeed, perhaps the world is already entering a new era.

The practice of having developed countries directly represent the interests of the creditors from their countries has been deemed unacceptable under the post-war system.

Nonetheless, according to some analysts, powerful governments indirectly represent creditor interests through their influence on multilateral institutions. Representatives of private creditor associations would strongly dispute that assertion, complaining that the international financial institutions (IFIs) are political organizations that favor the debtors — or at least some of them — for foreign policy reasons and that the IFIs (who are also creditors in their own right) defend their own interests rather than the interests of private creditors. Perhaps this means that none of the stakeholders are happy with the current system.

This book is the culmination of a project in which the Initiative for Policy Dialogue of Columbia University invited experts in law and economics and voices from academia, past policymakers, the private sector, and civil society to contribute their perspectives to the problem of developing country debt crises. While the project began with a conference jointly organized with the United Nations Secretariat in November 2004, { 10 } in which most of the authors participated, this book is the result of extensive dialogue over almost four additional years between the project directors, who are the editors of this book, and the chapter authors. The result, we believe, entails a coherent analysis that leads to certain policy conclusions. { 11 } The goal, however, is not to come up with a specific policy recommendation, or set of policy recommendations, as to what a sovereign debt restructuring mechanism should look like; rather it is to present a coherent analytical framework and a selection of views to re-ignite debate.

Some of the chapters seek to clarify the international and borrower country policy

frameworks through conceptual analyses of borrowing and bankruptcy. Other chapters examine the history of international debt workout efforts, or individual debtor country experiences, during the past 50 years. Others seek to shed light on the political processes and substantive content of specific efforts to reform the way workouts from sovereign debt crises are organized. In the process, the authors were drawn to a rich variety of policy conclusions and recommendations, which we highlight here. {12}

### **The Analytical Framework for Debt Policy**

The first step in analyzing policy issues in the international treatment of developing country debt is to draw on economic principles to develop a conceptual framework for the analysis. In this regard, chapter 2 by Joseph Stiglitz focuses on what lessons might be drawn for sovereign insolvency from the principles underlying national policies for corporate or personal bankruptcy. One also needs to ask how much debtor governments can reasonably be expected to mitigate the risk of debt crises, which turns the focus to principles and practices of debt management of the governments of developing countries, which the chapters by Stijn Claessens and Ugo Panizza address.

Stiglitz draws parallels between private and government bankruptcy and finds that the special nature of governments makes it complicated, but not impossible, to define an attractive sovereign counterpart to national bankruptcy laws. Stiglitz notes that processes for dealing with insolvency, as well as their outcomes, can be more or less efficient and fair. He argues that countries adopt domestic bankruptcy laws for both efficiency and

equity reasons and that the goal of an effective bankruptcy regime should be both ex ante and ex post efficiency and equity. Ex-post, an efficient bankruptcy regime should minimize the loss associated with the restructuring, and raise national output and income. It is in the interest of society to keep the physical and human assets in an insolvent firm together as long as the firm is worth more than the salvage value of those assets. Ex-ante, the bankruptcy regime affects how enterprises and creditors behave and how they assess the riskiness of investment decisions. The rules of the bankruptcy regime help shape the probability of default, and of recoveries in the event of default, and thus affect the cost and extent of borrowing. Ex-ante, a properly balanced regime should deter borrowers in trouble from undermining the sustainability of their firms by excessively postponing their moment of default. On the other hand, balance also requires that creditors feel sufficient confidence that their property rights in a loan will be protected to undertake their lending function. Considerations of equity include that all creditors (including minority shareholders) are treated fairly during bankruptcy. In addition, equity considerations include that borrowers be protected from lenders who would exploit them, but also protect creditors from enterprise managers who would strip the assets of a firm going bankrupt.

Without a bankruptcy regime, parties would have to rely totally on contract law, which would be costly, as it is impossible to write contracts that anticipate all contingencies. Negotiations to handle unforeseen aspects of a bankruptcy would be inevitable. Also, without bankruptcy law, too great a burden would be placed on contracting parties to monitor all other contracts of their counterparty and how they might impinge on their own. Finally, strategies of one side or another to increase their gains or reduce their losses in an

unsupervised post-default negotiation could lead to costly delay in reaching a settlement. In short, the “transaction costs” of addressing insolvency can be much reduced with a proper set of laws, a bankruptcy court to adjudicate them, and incentives to promptly bring the parties to a resolution that they would regard as fair.

While there are parallel efficiency and equity arguments regarding government bankruptcy, lending to governments is distinct. Such loans are usually made without collateral and there is no legal mechanism to enforce repayments comparable to court enforcement of a private loan contract. There is instead only a belief that governments will fully service their debts to ensure continued access to credit, which Stiglitz acknowledges is an uncertain incentive. At the same time, the incentive under the current sovereign bankruptcy non-regime is for countries to over-borrow during boom periods and for creditors to lend more to a government than it may be prudent for the government to take on. The question Stiglitz then poses is how to design a sovereign bankruptcy system with desirable efficiency and fairness incentives, a question that we return to below.

Ex post, some might argue that a government that falls into a debt-crisis did not effectively manage its debt, i.e., did not take the steps needed to protect itself from debt distress. In chapter 3, Stijn Claessens analyses whether this charge is fair, noting the costs of different levels and approaches to mitigating risk. Drawing on both the economic theory of contracts and practical experience, he concludes that too much of the risk of sovereign external borrowing resides with the borrower. He thus calls for additional — but not unlimited — risk-sharing with creditors.

The author observes that governmental authorities in developed countries that face high degrees of international volatility do not regularly use hedging instruments, from which he concludes that lack of access to them at reasonable cost is not the only issue that limits their use in developing countries. In addition, he rejects the moral hazard claim that debtor governments accept the risk of default because they expect official bailouts, as their policy makers know that the funds the international community makes available in practice are too little, delivered too late and under too strict conditions to serve as a counter-crisis tool. Rather, he points to the low political payoff to domestic policymakers (owing to low economic returns in the short run) from a large effort at crisis avoidance. And yet, he believes, better crisis prevention is possible.

Claessens calls, first, for better government debt management, which includes examining whether existing contingent liabilities from public/private risk sharing might be altered in ways that ease public responsibility. He also recommends that governments better coordinate their relevant official entities that have responsibilities for foreign liability and asset management. Other proposals would provide better risk-mitigation options for the sovereign debtor. In this regard, he suggests that governments consider issuing their bonds with interest payments indexed to output or commodity prices. Acknowledging that the market has not shown interest in such instruments, he calls on the international financial institutions to do more to promote them, including creating new indices that governments might use in fixing the interest payments on bonds. He also suggests that IFIs could issue their own index-linked bonds to help build market interest in such instruments.

He calls on the institutions as well to add contingent financing mechanisms to their own standard loans as a support when countries face external shocks. In particular, he calls for indexing loans of the World Bank's International Development Association to the growth of national output. Not only would this strengthen the World Bank's pro-growth incentive, but it could reduce the need for multilateral debt relief for poor countries when they are hit by recession; moreover, it would not be difficult for the Bank to hedge these additional risk exposures. We would add that indexing IFI loans to output has an added benefit when the loans accompany structural adjustment packages: the IFIs would share the risk of the ineffectiveness of their policy advice; i.e. the size of the interest and principal repayments would be linked to the effectiveness of the policies, better aligning incentives.

Finally, Claessens suggests the World Bank could offer financial hedges to countries without access to financial markets that otherwise provide them, although he notes the Bank would have to reduce internal disincentives that currently exist to using such programs.

One recent strategy of debtor countries to mitigate the risks of sovereign debt has been to replace external debt with domestic debt issuance. Middle-income countries with domestic securities markets have increasingly floated domestic bond issues in lieu of external borrowing, while even low-income countries have covered shortages in revenues (or delayed aid flows) with domestic debt, typically placed with banks. Ironically, the governments of many low income countries have also issued domestic debt as part of their

effort to counter the potential inflationary consequences of a surge in aid inflows. In other words, a surge in aid inflows can put upward pressure on local currencies, as the foreign currency is converted into domestic currency. This has the effect of making the country less competitive. Policymakers have attempted to prevent this from happening by buying the foreign currency inflows that are not needed for imports and adding them to reserves. However, central banks pay for the purchases of foreign currency by, in effect, printing additional local currency. The government or central bank often seeks to counteract the resulting increase in the money supply by buying an equivalent amount of domestic currency in exchange for domestic currency debt instruments. Such sterilization generally involves issuing Treasury bills to absorb the excess liquidity. In other words, the increase in aid has the perverse effect of leading to a build-up in domestic government debt. It is ironic that just as the international community has moved to replace loans with grants in an attempt to avoid developing country debt crises, the policy to manage these inflows is leading to a new build-up in debt. One implication of this is the need for a new macroeconomic policy framework for managing aid inflows. { 13 }

In addition, as the share of domestic debt in total government obligations rises, it becomes increasingly important to consider the restructuring of domestic debt as part of any workout mechanism for addressing sovereign debt crises. But then, what one means by “domestic” debt matters, as it has consequences for how it would be treated in a debt workout and the risks it poses to fiscal sustainability. As Ugo Panizza emphasizes in chapter 4, it matters if domestic debt means debt issued in local currency (at home or abroad) or to local investors (in domestic or foreign currency) or governed by local law

(also in domestic or foreign currency). From the perspective of organizing a debt workout, the governing law is the most important issue, while from an economic sustainability perspective the currency of the obligations is paramount. Indeed, Panizza asks if countries are in fact reducing their risks at reasonable costs.

For low-income countries, external debts are long-term and carry concessional interest rates, and substituting domestic debt for foreign can be relatively expensive. Local debt generally has a shorter maturity than much of the external debt, and therefore has to be re-financed more frequently, so that countries increase rollover risk as they reduce foreign exchange risk.

For countries with access to financial markets, the tradeoff between external debt with currency risk and domestic debt with shorter maturity structure and thus larger rollover risk, is more complicated. The extra expense of local currency debt may be considered an insurance premium for the reduced currency risk. However, countries will in any case want to develop the local market for domestic currency sovereign debt in order to facilitate development of the domestic capital market, where government bonds traditionally serve as benchmarks for pricing corporate securities. There is, however, a caveat: deeper domestic bond markets have traditionally come with a policy of external capital controls, as in India. In recent years, many countries eliminated these controls, leading foreign investors seeking yield to include an increasing share of locally issued domestic currency bonds in their portfolios. Given the size of external flows compared to the local markets, the result is that local markets can become flooded during boom periods (making it very

difficult for central banks to manage monetary policy). Investors may also lose confidence during bad times and pull their money out of the country, causing increased volatility in the local markets. Panizza suggests the foreign funds may be less flight prone than in the past, as investors appreciate that domestic sovereign debt should be less subject to default than external debt. One reason he offers is that governments might hesitate longer to restructure domestic debt because large quantities are typically held by local commercial banks and defaulting on such debt could set off a banking crisis. Nonetheless, domestic defaults do occur, as we saw in Russia (see chapter 9). In addition, we believe that increased foreign participation in domestic debt markets will likely lead to increase volatility.

Panizza concludes that there is an “optimal” split of domestic and foreign debt and that finding where that optimum lies involves balancing tradeoffs, as there are risks in each type of debt. He thus calls for additional technical assistance to strengthen debt management capacity in debtor countries to help their policymakers manage their individual situations.

### **Experiences with the Post-war Mechanisms for Managing Sovereign Debt Crises**

While Claessens and Panizza point to ways to reduce the risk of sovereign bankruptcy, they do not claim they can eliminate the risk, and so the question Stiglitz raised remains of how best to organize workouts from sovereign bankruptcies. To help answer this question, we first ask how workouts have been arranged in the past. In this regard, chapter 5 by

Enrique Cosío-Pascal examines intergovernmental debt workouts in the Paris Club since the 1950s, chapter 6 by Luis Jorge Garay looks back at how the international community addressed the commercial bank debt crises of the 1980s, and chapter 7 by Shari Spiegel analyzes the workouts from unsustainable bond debt in the 1990s.

Lending by governments mainly in Western Europe and North America to governments of developing countries became a significant international financial flow after the Second World War, as the private financial systems of the North were being rebuilt following their collapse in the 1930s. By 1956, these official creditors discovered they needed a mechanism to deal with debt crises of their sovereign borrowers. They sought to organize debt restructurings so that the creditors would share the burden equitably among themselves, and also — in their own interest — accord only as much relief as they jointly deemed necessary. For that, they worked with the IMF and used the leverage of debt relief to maintain pressure to implement IMF policy conditionality. Thus, the Paris Club was born. This is the focus of Cosío-Pascal in chapter 5.

The author describes how the Club negotiations operate (with the debtor in essence as supplicant to the creditors and, in addition, bearing high costs in administrative time for each rescheduling); how the “short leash” approach to debt relief paralleled the conditionality on disbursement of multilateral lending; how it led to sequential rescheduling and thus to long-periods in which debt overhangs continued to affect debtor countries; how the Group of 8 major industrialized countries gradually deepened the Club’s standard terms of relief, but also how the Club consistently accorded more debtor-

friendly terms to politically important cases; how the Club became more explicitly involved in what was essentially foreign aid policy for the heavily indebted poor countries (HIPC), and how it sought through the “Evian Approach” — but apparently failed — to regain the initiative to be the key creditor forum for non-HIPCs. The Club remains, nevertheless, the institution that debtor governments must come to if they need a restructuring of their obligations to the major government creditors.

The author concludes with three proposals for how the Paris Club could carry out its debt restructuring tasks in a more balanced and comprehensive way. First, as the Club demands that the debtors seek “comparability of treatment” from their private creditors, it should symmetrically accord “reverse comparability” of treatment if the private creditors settle first. This could bring pressure for greater relief more quickly from official creditors, who otherwise tend to drag out the relief process; in contrast, private creditors usually want a one-off restructuring and have, at times, accepted the reality of recognizing losses in loan values. Second, he suggests that Paris Club member governments meet as consultative groups for individual countries (as had been arranged historically for Turkey, Indonesia and certain others) to explicitly work out how much of international cash-flow support should be provided as rescheduling of debt and how much as “new money”. This approach would also signal creditor confidence in the post-restructuring arrangement, and would reduce the chances that recovery programs would be underfunded). Third, he calls on the Paris Club to revive the “bisque clause”, which had been part of the Anglo-American lend-lease restructuring in 1956 (and has certain other precedents), wherein the debtor on its own initiative would be allowed to postpone rescheduled debt repayments in the event of

an economic shock. This would help the debtor avoid shock-induced return trips to the Paris Club.

By the 1970s, international banking had not only recovered from the war but it also had developed syndication mechanisms for mobilizing large sums for international lending, notably to developing country governments. When the latter found themselves unable to service this debt, new modalities had to be devised to restructure it. In chapter 6, Luis Jorge Garay retraces the decade-long effort of international policymakers to extricate the international commercial banks and their sovereign borrowers from the debt crisis that ensued.

Development of the mechanism to treat distressed bank debt was first spurred by the onset of the payments difficulties in Mexico in August 1982 and the realization that the world's main money center banks were dangerously overexposed. As Garay describes it, the key authorities of the main creditor countries and the IMF oversaw the cartelization of the international banking sector. The policymakers used various modalities of persuasion to ensure that the systemic interest took primacy over individual bank interest, and in the process guided the establishment of the "bank advisory committees" (or so-called "London Clubs") to renegotiate the debt of individual debtor countries in crisis — a practice that continues as needed today. At the same time, these authorities discouraged the debtor countries from pursuing their own collective approach, not least by insisting that each country's debt difficulties be addressed separately through the "case-by-case" approach of IMF-endorsed adjustment-*cum*-workout programs.

Garay describes how the initial policy, which emphasized concerted refinancing of obligations as they fell due, was superseded in 1985 by the “Baker Plan”, which sought multi-year relief packages and focused on 15 countries in which the major banks had large exposures. The delayed recovery of the debt-servicing capacity of the debtor countries was no longer ascribed to the global recession of the early 1980s, but to the “structural” problems of the debtor countries. This now required greater World Bank involvement, “structural adjustment” lending, and longer-term debt rescheduling. However, economic recovery resisted these efforts too.

By 1989, it was clear that the adjustment programs in the Baker Plan had been underfunded and that the banks were unlikely to ever fully collect on their loans. Meanwhile, shareholders, regulators and management wanted the banks to move on. The “Brady Plan” was then introduced as a means to reduce the bank debt outright and move it off the books of the banks by swapping it for bonds at a discount, albeit with certain guarantees, which were funded with multilateral institution loans. Thus, the net amount of debt reduction was small or nil (as obligations to official creditors grew while impaired bank debt fell). Nevertheless, the debt crisis was regarded as solved and private funds flowed back into the countries. Looking back, a lot of wealth had changed hands during the “lost decade” of development.

The era of syndicated bank lending to developing countries came to a close in the early 1990s, as “Brady bonds” led the rebirth of the international sovereign bond market.

However, while bonds had largely escaped restructuring in the era of big bank debt, history warned this was not immutable. Garay's story ends with the spreading realization that, however imperfect, the mechanism for restructuring international bank debt was not going to be readily applicable to highly dispersed and disparate bondholders holding marketable financial instruments.

There are several cautions from this experience for today's debate. First, because the nature of the crisis was not correctly assessed for many years, it took over 10 years to resolve, in what the United Nations Economic Commission for Latin America and the Caribbean called the "lost decade" of development. Second, the final resolution, the Brady Plan, avoided establishing a more general framework or statutory approach for subsequent debt crisis workouts. Thus it did not provide a helpful precedent for the future. And third, as the net amount of debt reduction was minimal, the way was paved for a series of crises in the following decade.

As it turned out, there were quite a number of restructurings of developing country sovereign bonds in the 1990s and early 2000s. In chapter 7, Shari Spiegel looks at the debt restructurings during that period in the broader context of emerging market borrowing and the market for sovereign debt. Rather than assessing the outcome of the international process for sovereign bankruptcy by analyzing debt ratios and debt sustainability models, she looks at the flipside: how much creditors were able to recover on their investments in the case of restructurings, and how the bankruptcy process affects risk sharing between the debtor and its creditors.

Spiegel starts by observing that — with a few notable exceptions (such as Argentina and Russia) — most of the restructurings during this period were considered successful because the processes were relatively quick and orderly. However, few of these agreements actually reduced the countries' debt burdens to a significant degree. She finds a marked difference between the cooperative and non-cooperative debt workout cases. In the instances of contentious and disorderly workouts, typically referred to in the market as “unilateral defaults”, such as by Russia in 1998 and Argentina in 2001, creditor losses could be significant. In contrast, the consensual, market-based restructurings did not substantially reduce the debtor governments' obligations. Although they can be seen as useful rollover operations to manage “bumps” in the debt servicing schedule, they did not solve the problem when debt levels were unsustainable. In these cases, the cooperative workouts did not provide the “fresh start” that is the desirable outcome of a debt workout.

Spiegel points out that the consensual restructurings generally took the form of swaps of old bonds that the debtor government was having difficulty servicing (or on which servicing had been suspended) for new bonds. In most cases, creditors agreed to lengthen maturities, but did not reduce their claims. Because the swaps were voluntary, the terms on the new bonds had to be attractive enough to induce creditors to participate, so that issuers generally had to pay higher interest payments on the new bonds to compensate creditors for the longer maturities. Since there is often uncertainty surrounding the issuer's future ability to repay its debt at the time of the restructuring, the size of the payments necessary to induce creditors to extend maturities can be quite large.

Spiegel finds that, because of this, the amount investors ultimately recover in the restructuring is significantly higher than the usual measures of recovery values calculated and used by the rating agencies and financial analysts, which are based on market prices. This is in part because the usual measures generally rely on the discount factor at the time of (or 30-days after) the default, which can be extremely high due to uncertainty and risk aversion. They also are not necessarily good estimates of the amount the creditor will ultimately receive (or the debtor will ultimately repay, which is a perhaps the most important element for the issuer's ability to achieve a fresh start).

To avoid basing recovery values on market discount rates, Spiegel instead estimates the longer-term total returns for investors who hold bonds through a restructuring, and finds that, on average, investors do not suffer losses but actually tend to ultimately earn positive returns on their initial investments. Even in cases when investors experience losses over a shorter time horizon, the high yields paid prior to the default mean that investors earn positive returns when viewed over a longer time horizon. Overall, the difference between the market-price based estimates of recovery values and the amount that investors ultimately recover is found to be significant, especially in the cases of consensual workouts.

Spiegel then explores the causes of this differential, to better understand the implications on the cost of borrowing for sovereign issuers. One explanation is that the difference between recovery value estimates is due to investors' risk aversion. If this is the case, one

would expect that, over a longer time period, emerging market bonds would pay investors an excess return (that is not diversifiable) over a portfolio of market instruments (the overall risk of which is reduced by diversification).

To test this, Spiegel analyzes returns on investments in emerging market debt against returns on the main market risk factors (i.e. returns on investing in alternative market instruments.) She finds that emerging markets have indeed paid investors a significant excess return that is non-diversifiable and is uncorrelated with the returns paid on other market risks. In other words, emerging market issuers have had to pay a premium for the high levels of risk aversion that are associated with emerging market debt.

Spiegel concludes that the uncertainty surrounding the restructuring process could be one of the causes of the substantial risk aversion found in the emerging debt markets. As the excess return for investors is at the expense of developing countries in distress, she calls for clearer rules of the game for sovereign bankruptcy.

### **Country Case Studies**

While surveying the actual institutions and practices for sovereign debt workouts yields some potentially useful insights for the design of a new debt workout mechanism, it was thought that studies of individual country debt-crisis experiences would offer complementary lessons. To this end, we have included three different and very relevant country case studies in this book. Matthew Martin reports in chapter 8 on Ethiopia's debt

negotiations which lasted more than a decade. In chapter 9, Sergei Gorbunov discusses Russia's 1998 debt crisis and its rather quick and full recovery. And Mario Damill, Roberto Frenkel and Martín Rapetti review Argentina's slide into debt default in 2001 and the unique restructuring of its bonded debt in chapter 10.

The first case illustrates the protracted processes that low-income countries in debt difficulty have had to go through, working with their official creditors to manage their external public debt. This is a story of how one country learned how to negotiate more effectively within the Paris Club and HIPC processes. Specifically, Matthew Martin traces the laborious process that the government of Ethiopia underwent in eight separate debt renegotiation rounds in the Paris Club from 1992 to 2004, four of them before the HIPC Initiative was launched and four as part of the initiative. The final decision on HIPC relief for Ethiopia was then followed by a further reduction in debt under the Multilateral Debt Relief Initiative (MDRI), which cancelled almost all of Ethiopia's remaining external debt, which had been owed to its multilateral creditors.

Within the context of the donors' slow recognition of the need for deeper relief that Cosío-Pascal traced in the earlier chapter, Martin emphasizes how important it was that the Ethiopian debt management team gained the capacity and confidence to independently make its own debt-sustainability assessments. Ethiopia thus became better able to advocate for itself in negotiations in the Bretton Woods institutions and with its government creditors on how much relief it required.

Negotiations took place within the “debt sustainability framework” that had been jointly established by the World Bank and IMF, which preset the definitions, the variables considered relevant, and the targets within which the sustainability assessments had to be made. Martin describes how Ethiopia successfully made the case for additional concessions under this complex process, winning, for example, additional “topping up” relief at the HIPC completion point owing to lower-than-programmed export earnings.

In the end, however, negotiation within the HIPC framework became moot. Decisions on relief based on debt “sustainability” were superseded by the intention of the MDRI to free up budget resources from debt servicing (complemented by substantial additional official development assistance) so as to boost government social expenditures to help reach the Millennium Development Goals (MDGs). In this regard, Martin reports that Ethiopia has been developing its own MDG needs calculations as a basis for estimating its external financing requirements, which he encourages the donors to accept as the basis for their assistance to Ethiopia going forward.

The Ethiopian case was about a low-income country with very limited options, dependent on official donors and creditors operating under coordinated multilateral guidance for more than a decade. The Russian crisis and recovery embodied a sharply contrasting set of circumstances. Russia is a very large and ultimately rich country that was shaken to its core by the early policies that accompanied its transition from a planned to a market economy. As became clear after the macroeconomic policies were abandoned when the debt crisis erupted, there was a better way to manage this transition. In addition, the

character of the debt workout of a powerful country makes a striking contrast with that of a poor one. Indeed, Russia rebounded from the default much more quickly than anyone had predicted. This was partially due to the external environment, but also due to the reduced debt burden, and weaker exchange rate post crisis. In addition, Russia was able to re-access the capital markets just three years after its default, and was upgraded to investment grade two years after that, implying that markets are forward looking and countries are not necessarily penalized for past defaults.

The Russian experience is discussed in chapter 9 by Sergei Gorbunov. He traces the descent into bankruptcy of the Russian government from the collapse of the Soviet Union in 1992 to the sovereign default in August 1998, and the recovery strategy that followed. The author ascribes the rapid accumulation of debt before the crisis to the macroeconomic stabilization strategy that was meant to contain the spurt of very rapid inflation as the Soviet Union disintegrated. Russia followed an orthodox strategy of tight money and a relatively fixed exchange rate, the latter acting as a nominal anti-inflation anchor. However, the government also ran unconstrained fiscal deficits, which it financed by borrowing from domestic and foreign sources. By the eve of the crisis, as domestic wealth holders increasingly moved their funds offshore, foreign investors were still lending directly through purchases of international bond issues and domestic currency Treasury bills and bonds, for which they often hedged the risk of exchange rate devaluation through currency swaps with local banks. The International Monetary Fund continued to support Russia until right before the default, which may have been one source of the confidence that some investors in the international financial markets had that Russia was strategically

too important to fail. { 14 }

The post-default, post-devaluation, economic recovery program was built on offering better market incentives on tradable goods from less distorted domestic prices (and, somewhat later, by strengthening international export prices) and easier monetary policy, which together stimulated production and income growth. In addition, the debt burden was eased through a restructuring of both foreign and domestic debt. Estimates suggest that the latter yielded external investors between 16 and 45 cents on the dollar, largely owing to the ruble depreciation (there was no nominal write-down in ruble terms, albeit a shift into mostly longer term securities). The foreign debt was restructured after a partial default that greatly upset international financial market expectations, as Russia continued to service its Eurobonds but ceased servicing Soviet-era debt. The author explains the legal and political rationale and the workouts agreed with Paris and London Clubs, the net result of which was to convert all remaining Soviet debt to obligations of the Russian Federation. The significant “haircut” for private creditors in the sovereign debt workout helped advance the necessary fiscal adjustment, along with higher tax revenues, not to mention expenditure cutbacks on top of the reduced interest outlays.

By 2001, Russia again had international market access and by late 2003 it was rated “investment grade” for the first time ever. Moreover, capitalizing on strong oil prices, Russia substantially reduced its foreign debt both by not rolling over maturing debts and making advanced repayments of obligations to official creditors. Indeed, Gorbunov says that Russia’s dependence on a limited range of commodity exports with volatile prices

requires carrying less foreign debt than standard indicators would say are “sustainable.”

Argentina, like Russia, had committed itself to a fixed exchange rate and like Russia the commitment could not be sustained indefinitely. In the case of Argentina, the question observers had asked was how long and how much could the country punish itself to maintain the peg and avoid default. As Mario Damill, Roberto Frenkel and Martín Rapetti underscore in chapter 10, the answer was too long and too much.

In their view, the key to understanding the lead up to the Argentinean debt crisis was the particular anti-inflation and growth strategy — followed first in 1979-1981 and in a more radical way in 1991-2001— of fixing the exchange rate, liberalizing the economy and fully opening it to international financial flows. The authors show that funds first rushed into Argentina to take advantage of high nominal interest rates in an inflationary environment, which also helped spur economic recovery. However, later the funds fled the country as confidence in the durability of growth and of the exchange rate regime dissipated owing both to real appreciation (domestic inflation, while slowing, still exceeded international rates) and vulnerability to exogenous shocks, the latter linked to the fact that years of net capital inflow translated into a growing foreign debt burden. In the early stage of these currency regimes, debt growth was mainly private, but then government borrowing became essential to maintain the exchange rate when the private funds became more cautious and then fled. Ultimately, the process ended with devastating economic consequences, on both occasions.

The authors dispute the charge that Argentina's problem in the 1990s could be traced to fiscal profligacy that then undermined confidence in the currency regime. They show, instead, that the government ran a tight budget policy on the items under its control. However, the fiscal balance became prisoner of the higher interest payments on the debt, due to a higher risk premium following the East Asian and Russian debt crises in 1997-8, and the budget consequences of the partial social security privatization adopted in 1994. Indeed, when economic recession began in Argentina in 1998, with neither exchange rate nor monetary policy tools available, the response had to fall to fiscal policy, albeit in an external environment already worrying about the growing debt. The government response was a policy of fiscal contraction to try to boost confidence, reduce Argentina's risk premium on interest rates, and stimulate recovery. In fact, it only deepened the recession, leading to increasingly desperate attempts to cut the budget deficit as the economy spiraled downwards. Moreover, government net foreign borrowing had become essential to add to foreign exchange reserves (under its currency board a reserve contraction would also lead to a contraction of domestic credit). Finally, not only had private capital stopped coming, but it began to flee in increasing amounts, so that the collapse of the currency board and default became inevitable.

In early 2002, finally relieved of the currency board and with most external debt-servicing payments suspended, economic recovery began. As in Russia, a sharp fall in the exchange rate stimulated import-competing industries and exports (helped also, somewhat later, as in Russia, by stronger international prices). Fiscal balances also strengthened appreciably, owing to new taxes on exports (to capture some of the gains for society of the strong

improvement in exporter incomes due to real exchange rate depreciation) and rising tax revenues more generally as the economy began to bounce back.

However, the domestic financial system — indeed, business and household finance as well — had been severely distorted by the currency board's overvalued exchange rate and virtual dual currency system (e.g., contractual obligations could be written in dollars and transacted in pesos) and thus the adjustment to the devaluation and return to a more normal financial system was painful. It was also expensive. New financing for the banks (and later for compensating savers for losses), coupled with the need to bail out Argentina's provinces and honoring past-due government obligations, caused government to add \$28 billion to its debt in the first two years of the recovery (it totaled \$179 billion as of end 2003).

In 2005, however, the massive and unilateral external bond swap, four years after default and following years of contentious relations with various groups of bondholders and the IMF, reduced the debt by \$67 billion. This was a formidable "haircut", but roughly a quarter of Argentina's foreign bondholders did not accept the swap. Argentina's Congress nullified the remaining old bonds outstanding and court cases in which holders of those bonds have attempted to recover their investments have not succeeded, at least as of mid-2008. In short, one would be hard pressed to say Argentina's debt workout was either "efficient" or "timely". One might say it was "fair" in light of the large size of the overall reduction in the debt, but all Argentina's multilateral creditors have been repaid in full and on time (or in advance), and all the losses have been borne by private creditors, including

thousands of small household investors in Europe. Perhaps the safest conclusion is that the Argentine case highlights the need for international reform in handling sovereign debt crises.

### **The Politics of Institutional Reform Efforts**

The cases described above are noteworthy but not unique. Many poor countries have had to sustain a decade or more of debt “workout” and quite a few middle-income countries have had to disappoint their private creditors who kept lending, often in increasing amounts, right up to the crisis moment when conditions made it impossible to continue servicing excessive debts. We argued earlier that part of the problem seems to lie in the absence of an effective sovereign insolvency system, one that would discourage excessive borrowing and lending and that would provide an effective and fair workout. We now turn to chapters that explore selected efforts to date to improve the sovereign insolvency process, and the political economy behind why some have failed and others have been implemented. In chapter 11, Henry Northover focuses on reforms in treating the debt of low-income countries and their increasing integration into the nexus of programs of official development assistance for these countries. In chapter 12, Brad Setser then examines the IMF effort to create the Sovereign Debt Restructuring Mechanism (SDRM) and the forces that lined up in favor and against the proposal. Finally, Anna Gelpern and Mitu Gulati report in chapter 13 on their research into how the once controversial collective action clauses (CACs) became the new “boilerplate” (fine print) in sovereign bond contracts. Indeed, in their view, it was much ado about not much.

As we saw in Cosío-Pascal's narrative and Martin's Ethiopian case study, poor country relief from inter-governmental debt has been a protracted process, the terms of which were slowly deepened as the previously awarded amounts of relief became impossible to defend. As both creditors and debtors were governments, the reform process was susceptible to pressure from political movements. Indeed, Henry Northover looks at how the international civil society campaigns that burgeoned in the 1990s helped build political momentum to deepen official creditor debt relief for low-income countries. Drawing on moral and religious roots, these campaigns gave central place to the "human development approach" in their policy thinking.

As Northover shows, despite being a response to public pressures, the creditor community at first sidestepped human development concerns when it introduced the HIPC Initiative in 1996. It formulated the goal of debt relief for the HIPCs in terms of reducing their debt as much as needed until the remaining obligations were "sustainable" in the sense of being within the capacity of the debtor government to pay over time without significant economic and financial adjustment. Many civil society advocates rejected this approach as still privileging creditor interests, underscoring that essential anti-poverty expenditures would be sacrificed to debt servicing. They developed an alternative in which, first, reasonable targets were estimated for debtor-government domestic revenue; second, essential anti-poverty expenditures (and the costs of necessary normal government operations) were subtracted; and third, the remaining amounts, if any, would be used for debt servicing (or, if negative, indicated the additional aid requirements).

Whether this specific analysis was robust or not, politicians got the point of the continued public pressure and the terms of the international policy debate changed. Increasingly, it focused on donor commitments to help developing countries achieve the Millennium Development Goals. The anti-poverty NGO campaigns had tied debt relief firmly to reducing poverty, which had become a major driver of official development assistance. Debt relief thus became a variation on donor budget support for targeted expenditure categories. As debt campaigners argued, human development was a condition of “debt sustainability.” This confluence of debt-relief and aid goals became official international policy in 2005, when the MDRI cancelled almost 100% of the debt owed by HIPCs to the international financial institutions (strictly speaking 100% up to a cut-off date).

Northover further underlines how Southern civil society organizations followed up on campaigning for debt relief by advocating and monitoring that the released funds were in fact spent on pro-poor programs. This could be contrasted with the top-down approach of donor governments and the Bretton Woods institutions in their “poverty reduction strategy papers” and the “aid effectiveness agenda.” The NGOs complained, for example that the so-called donor push for developing country aid “ownership” emphasizes accountability of the recipient government to the donor governments rather than to its own stakeholders. Northover thus recommends that people responsible for the aid partnership process examine and learn from the experiences in the debt campaigns, so as to lead to genuine ownership which would raise the prospects for poverty reduction.

While the HIPC Initiative and later the MDRI broke with past strategies for handling inter-official debt crises of low-income countries, the proposals for dealing with private creditors were not subject to the same degree of political campaigning, or rather were subject to rather negative campaigning by powerful financial interests. In fact, the discussion about whether some new mechanism was needed to organize sovereign debt restructurings when most of the creditors were holders of sovereign bonds was largely academic until November 2001 when the IMF proposed the creation of a Sovereign Debt Restructuring Mechanism (SDRM). The IMF then began intensive development work on the proposal, but by April 2003 the proposal was dead. In chapter 12, Brad Setser gives a perspective on what happened and why.

Setser emphasizes that different stakeholders had rather different ideas of what was wrong and how to fix it. He saw the mainly European creditor governments that supported developing the SDRM as wishing to give debtor countries greater legal protection against their creditors during debt restructuring, thereby reducing the demand for IMF bailout packages (although Setser finds little connection between the short-term financial crisis factors that lead to bailouts and the later process for restructuring sovereign bonds).

Conversely, emerging economy governments that issue bonds internationally worried that they would in fact lose access to IMF funding in the event of need and they worried what signal the market might read from the creation of a bankruptcy regime, possibly raising the perceived riskiness and thus interest cost of their obligations. International investors and financial market operators wondered where the problem was, as bonds were being restructured when needed and no litigation had interfered yet with any bond restructuring

(the famous Elliot case had involved Peruvian bank debt left over from its Brady deal). If anything, the “buy side” of the private sector wanted to further restrict the ability of a debtor government to protect itself from legal actions by its bondholders during a default. Civil society debt campaigners held a diametrically opposed view, calling for a sovereign bankruptcy regime to reduce the perceived pro-creditor bias in debt workouts. The debt campaigners also opposed having the IMF at the center of any sovereign bankruptcy regime, seeing it as pro-creditor, while the private creditors opposed such a role for the IMF for exactly the opposite reason, fearing it favored the debtor government. According to Setser, the main intention of the IMF itself was to facilitate reaching collective debt restructuring decisions without obstruction by holdout creditors and litigators. The Fund was also seeking orderly debt reduction as an additional policy tool, so as not to be trapped into continued lending to insolvent countries. Different academic authors gave support to different sides, some favoring the status quo in order that fear of “disorderly” restructurings would discourage over-borrowing (moral hazard), and others sympathetic to creation of a new approach for a more efficient and fair restructuring and a “fresh start” for the debtor country (as in Stiglitz’s chapter in this volume).

As Setser sees it, the nature of the interplay among the stakeholders doomed the project. The main emerging country bond issuers and important parts of the US government (the jurisdiction where most external sovereign bonds are issued) opposed the SDRM. Indeed, he argues (and Gelpert and Gulati in the chapter summarized below provide supporting evidence) that the SDRM proposal was largely developed as a result of a lack of communication among senior US government officials. The US and emerging market

government opponents had reasons of their own, but also were lobbied intensively by organizations representing the private creditors. The European supporters of SDRM had inconsistent goals: while backing a plan that would have put the IMF at the center of the bankruptcy regime, they were also seeking to trim the IMF's financial power in order to curtail bailouts. Moreover, all the main players — the private creditors, some of the major creditor governments, and civil society debt campaigners — distrusted the IMF, whose staff designed and refined the proposal behind closed doors in Washington, rather than going out to capitals to build a constituency for it.

Setser also points to certain inherent difficulties in the concept that would have had to be overcome for any SDRM design to be accepted. One involved the notion of sovereignty, which a comprehensive reform might seem to compromise. Another is that an orderly crisis workout is not necessarily the same as an orderly legal procedure for a workout (as he says, one might accept being subject to litigation as a price of deeper debt reduction). Third, as is known from corporate bankruptcy, the authority playing the role of the judge needs to be independent and have power to move the parties to a solution, while the standing of the IMF had been seriously eroded in the view of all stakeholders (let alone that it is itself a creditor), and has limited (but not zero) power over the sovereign debtor and none over the creditors.

At the same time that the SDRM was being considered, senior officials of the major creditor governments were also advocating a change in the standard clauses — the “boilerplate” or “fine print” — of sovereign bond contracts, particularly those issued under

New York law. Anna Gelpern and Mitu Gulati found this intriguing, as it is doubtful that senior political figures in the major economic powers knew what legal boilerplate was, let alone would advocate for particular clauses. There was policy content in the advocacy, however, over whether “market-based” changes would suffice to provide for orderly restructuring of sovereign bonds of developing countries in financial crisis. In fact, the “collective action clauses” (CACs) in question have yet to be tested under fire, but Gelpern and Gulati found little indication of belief among the more than 100 intimately involved people in the CACs debate that they interviewed that the clauses would be important determinants of restructuring outcomes.

The clauses in question, which began to be discussed after the Mexican *tesobono* crisis of 1994-5, sought to facilitate orderly debt restructuring by discouraging bondholders from individually suing debtor countries to fully recover their investments and thereby possibly disrupt negotiations between the debtor and a representative body of the bondholders, and by providing a structure for the collective decision on the precise restructuring terms. Most focus has been on the latter question, as New York (and German) law bonds had required unanimous bondholder agreement to change the financial terms of a bond. In fact, the unanimity clause in New York law bonds had not been a barrier to bond restructuring, as it was possible to organize a majority of bondholders to approve a swap into new bonds and at the same time severely weaken the legal claims of holdout bondholders who chose not to participate in the swap by voting to change non-financial terms of the old bonds that required only approval by a specified majority, a strategy called “exit consents.” {15}

Gelpern and Gulati found that, instead of seeing the clauses as the path to orderly workouts of defaulted bonds, most of their interviewees saw them as part of a strategy to kill the SDRM proposal. After a report of the central bankers of the Group of Ten (G-10) originally proposed CACs in 1996, the major governments had sought to make bond restructuring easier and thereby reduce the need for huge bailouts, such as Mexico's in 1994-5. The authors trace how CACs and SDRM came to be seen after 2001 as alternative strategies to attain this goal. While there was considerable financial industry and emerging market governmental opposition to both proposals, the antipathy to SDRM was very strong, including in many parts of the US Government. CACs thus became the "acceptable" (or harmless) alternative. As the authors say, "market-based change came courtesy of successive Washington invasions," the first being in the late 1990s after the 1996 G-10 report (and a subsequent report by a mixed North-South "Group of 22" in 1998). While this first wave was unsuccessful, the second made CACs into the new boilerplate. Gelpern and Gulati attribute the success to the SDRM threat and to the strong personal advocacy for CACs from within the US Treasury by John Taylor, Under Secretary for International Affairs.

Still, the essential point is that the clauses were not expected to matter, except perhaps at the margins. First, even before the CACs were adopted into New York law bonds, Ecuador's bond restructuring in 2000 showed how "exit consents" could disarm a recalcitrant minority of bondholders even when unanimous consent was required to change the financial terms of New York law bonds. {16} Second, the market understood the Ecuador case to reflect explicit multilateral support for restructuring instead of bondholder

bailouts. By supporting CACs (and permitting work to continue on what was quickly realized to be an unrealistic SDRM), the Bush Administration was further signaling its opposition to bailouts. Thus, the CACs did not represent a new weakening of bondholder claims. Indeed, by voluntarily introducing them in early 2003 ahead of the market and with no adverse effect on its borrowing terms, Mexico turned CACs into a signal of strength and quieted market fears that sovereigns would more readily default on their bonds (Mexico's reputation had become by then very strong). It also preempted the SDRM, which Mexico strongly opposed. Finally, as the authors conclude, the process of designing, refining and implementing CACs signaled that the US government was removing itself from the contingent claim — removing itself from the implicit contract — for a bailout in sovereign bond defaults.

### **Further Proposals for Systemic Reform**

The discussion this far indicates that reform efforts have not produced the systematic changes we regard as needed for the efficient and fair resolution of debt crises. However, a number of additional ideas for reform have been proposed that merit consideration. Several of these are reviewed here. We present these not as final solutions, but as an attempt to present ideas and stimulate a debate on alternative solutions. As will be seen, some of the proposals are reactions to or build on other initiatives or practices.

Thus, Jürgen Kaiser, in chapter 14, compares six proposals that have been discussed in different international forums (official, civil society or private sector) as part of the effort

to conceive a better approach to sovereign debt restructuring. The author saw each of the six proposals as an attempt to break with the conventional way that sovereign debtors and their creditors interact. One of the proposals is the SDRM discussed above. None of the other proposals have gathered anything near the international political momentum behind them that the SDRM did before it was killed. However, as the reform agenda remains largely unformed, no ideas should be discarded prematurely.

The five proposals besides the SDRM that Kaiser reviews include: Christoph Paulus' call for an international model law for sovereign bankruptcy that individual governments would adopt to govern how they would treat their creditors in a crisis; Richard Gitlin's call for a Sovereign Debt Forum to develop an agreed set of "best practices" for negotiations and create an institutional capacity to facilitate such negotiations through mediation and informal adjudication; mediation, more generally, as used in other areas of dispute resolution; the Fair and Transparent Arbitration Process comprising independent ad hoc arbitration panels, as proposed by a number of Northern NGOs; and the proposal of groups of Southern NGOs and academic authors for an international insolvency arbitration court.

The proposals are compared in terms of five suggested targets of reform: effectiveness in restoring debt sustainability (i.e., debt restructuring adequate to reduce the risk of future insolvency); providing repayment security to new lenders (not the same as sustainability, as it can mean senior repayment priority for new lenders, as is the case for post-"cut-off-date" debt under Paris Club treatments); ensuring fair burden sharing between the debtor and its creditors and among the creditors (defining "fair" in some mutually agreeable way,

which may exclude “odious” debt from repayment); minimizing avoidable losses to creditors and investors (which could depend on addressing a crisis in an orderly way as it first emerges); and establishing a reliable framework for use in future crises (reducing uncertainty for debtors and creditors on how they will be handled in a crisis).

Of the various proposals, only the SDRM of the IMF received serious international political consideration. As already noted, powerful players saw their interests potentially threatened and cut short work on it. The author concludes that meaningful reform requires a political space in which to develop it; i.e., it requires active engagement of debtor country governments in a non-creditor dominated international policy forum that would seek to establish an impartial debt workout framework.

The proposals that Kaiser discusses are attempts to go beyond the existing debt workout mechanisms so as to better address the inherent shortcoming in purely market based solutions, which Joseph Stiglitz outlined in chapter 2. Indeed, Stiglitz concluded his analysis with a proposal that has similarities to several of the proposals reviewed in Kaiser’s paper. Stiglitz’s framework stipulates that the debtor government would initiate bankruptcy, that this would suspend creditor litigation against the government, that any new lending during bankruptcy would be privileged, that the country could adopt policies to stop or discourage capital flight, that the debtor would propose a workout to which the creditors could counter propose, that assessments should be made of the economic and social impact of proposed workouts, and that some sovereign bankruptcy authority would then rule, giving deference to the proposal of the sovereign. Acknowledging that his

proposal is far from actionable at this time, Stiglitz further proposes three interim measures: that capital controls be considered during sovereign debt crises; that jurisdictional disputes over the governing law in sovereign bankruptcies be avoided through mutual recognition; and that an international mediation service be created to help crisis governments and their creditors come to an agreed workout.

On the other side of the spectrum, private sector organizations have sought to develop a “voluntary” approach that would use informal arrangements of private creditor representatives and the debtor government to develop a way out from a situation of debt distress. In chapter 15, Barry Herman traces the considerable ferment in the first half of this decade among emerging market finance professionals about developing this approach, along with a code of good conduct to guide the relations between the sovereign debtor and its creditors. Although there is more than a decade-long history to the code, its momentum in the financial community in more recent years was probably a response to the SDRM proposal, on the one hand, and Argentina’s unilateral approach to its creditors, on the other. In 2004, a sub-group of the drafters on the private sector side and representatives of four middle-income countries (Brazil, Republic of Korea, Mexico and Turkey; notably not Argentina) adopted a draft of the code. The international community welcomed it as a work in progress, but the text of the code has not been revised or revisited since. Meanwhile, the Institute of International Finance, a major international banking organization, has been promoting the code, formally called the Principles for Stable Capital Flows and Fair Debt Restructuring.

Even though representatives of the “buy-side” (bond investors) dropped out of the discussions before the code was adopted, because they saw it as not friendly enough to their interests, Herman finds the code biased towards creditors. He nevertheless sees several positive features in it, although the negative ones prompt him to call for a more inclusive international process to produce a more balanced code. The positive features are primarily those that pertain to relations between the government borrower and its creditors during normal economic times. The code calls for transparency by the government and open dialogue with its creditors, as through an “investor relations program” (IRP). This much is welcomed, especially if all stakeholders have access to the information made available to the creditors. The drafters appear to have thought that in times of debt crisis, the IRP could become the basis for a creditors’ committee that could spearhead debt renegotiations with the debtor. Also, before default became unavoidable, the IRP could lead, in principle, to commitments of foreign banks and other financial institutions to maintain short-term credit lines and thus not provoke a currency crisis (at least not one they themselves would lead). In effect, the drafters are suggesting that the government would wish to follow the policy reform proposals of the creditors to bolster their confidence that their monies were not being wasted. There are many additional details in the code, which Herman reviews, but one may see this as what it is, promotion of behaviors the creditors would like to see on the part of their sovereign borrowers.

Beyond concerns about the specific content of the code, Herman is critical that the code has no teeth. It is purely voluntary (the text of the code even begins with a disclaimer that no party is bound by it). A key aim of the sovereign bankruptcy proposals described by

Kaiser in his chapter, as well as that of Stiglitz, was not only to establish fair rules for handling insolvency, but to establish a means to push the parties to abide by them. Herman thus proposes not only an international discussion process to rewrite the code in a more balanced way, but also adopting a feature of IMF policy so as to promote enforcement of the code on both sides of a debt negotiation. The feature is the Fund's policy of "lending into arrears" (i.e., to countries in default to their creditors), which the Fund will do on condition that the country is making a "good faith" effort to resolve its debt problem cooperatively.

The revised code, in Herman's proposal, would serve to spell out what "good faith" means, both for the debtor and its creditors. A reformed IMF Executive Board would be responsible for assessing whether good faith efforts were being made by both sides. A negative finding could deprive the country of IMF funding and further reduce the market value of the non-performing bonds, creating a mutual interest in acting in good faith. A positive finding would continue IMF and other official creditor support of the country, but also signal this to the courts of the countries whose laws govern the bonds in default. If non-cooperating creditors (the proverbial "vulture funds") sought to recover their assets through these courts, which would disrupt the negotiations of the cooperating creditors, the governments could make clear to their courts their preference not to find for the plaintiffs (something of this sort happened in the United States during the Argentine crisis). In short, while not a full bankruptcy regime, Herman is proposing that pressure could be put on the creditors and debtor to work cooperatively toward a solution as defined in a new code. As the debt workout process would have political legitimacy, not to mention formal

endorsement by governments and international institutions, he believes it could in fact lead to orderly, effective and fair debt workouts.

In the final chapter of the book, Patrick Bolton and David Skeel suggest investigating a new bankruptcy approach for resolving sovereign debt crises. While they have presented some of the basic ideas in other papers, the innovation they introduce here is to put the International Monetary Fund at its center.

One key to the proposal is that instead of the IMF only lending its own funds to the distressed sovereign, which it can no longer do in amounts sufficient to counter international financial market panics (and which major creditor governments oppose doing in any event), it would also be empowered to authorize private creditors to extend new credits that would have higher repayment priority than outstanding debt, as is done in corporate bankruptcy cases. They envisage that amounts of such credit above some modest level would have to be approved by the defaulted creditors and that contributing private creditors would also need to be brought into the negotiations over the rescue package. The authors argue this approach would avoid some moral hazard problems as the loans would not be automatic: the new private creditors would still have to have sufficient confidence in the policy team of the regime to which they were lending to extend the credit. Also, at least some of the existing creditors would likely want to participate in this sovereign variant of corporate bankruptcy “debtor-in-possession” (DIP) financing, as the new loans would probably largely roll over the creditors’ maturing or short-term outstanding loans, which would thereby raise their repayment priority.

One reason the authors would involve the IMF is that they think a purely contractual approach is unworkable, a specific case of a general point made earlier by Stiglitz. While it would be possible to make absolute priority for repayment part of, say, a post-default bond contract, it would be unappealing to the creditors because they would have to closely monitor the debtor; i.e., even if a bond contract placed it first in priority for repayment, the debtor could issue an additional bond that did not explicitly subordinate repayment to the first creditor. Each lender's repayment rights would be covered only by its own contract. Indeed, in the corporate case, it is the bankruptcy courts, not the lending contracts, that determine and enforce post-default priority for repayment. Thus, the IMF would be empowered to act like a bankruptcy court and assign repayment priority in sovereign debt crises. The authors leave open how the IMF would formally be empowered to assign repayment priority, but suggest that it could just do it in addressing the next crisis, implicitly suggesting that the courts through which unhappy creditors might seek to recover their claims through litigation might defer to the IMF, at least so long as the debtor appeared to be cooperating in good faith, as discussed in a slightly different context in Herman's chapter above.

A sovereign bankruptcy court also would have the advantage that it could manage the process with carrots and sticks so neither side stalls the move to a settlement. Absent that, the authors offer a two-stage voting procedure that would provide settlement incentives; i.e., first all covered classes of creditors would vote together on an overall "haircut" percentage, and if that passed the debtor would propose a restructuring plan containing the

treatment of each creditor class that together produced that haircut. Bolton and Skeel propose that in addition to the first priority accorded to DIP financing, creditors would be assigned seniority for repayment according to how long ago a loan was made. Then, if the debtor's restructuring plan were rejected, the claims would be reduced until the overall haircut was reached, with the lowest priority creditors suffering first, moving up the seniority scale, protecting repayment of the concerted interim financing as the highest priority of all (this approach also would deter those final spurts of borrowing at unusually high interest rates in the run up to a crisis by subordinating debt issued just before default). This assured fallback allocation of the haircut would function like the "cramdown" in corporate bankruptcy.

The central point in the Bolton and Skeel proposal, as in Herman's, is that one may conceive of mechanisms for sovereigns, whether or not involving the IMF, that would mimic settlement incentives in corporate bankruptcy, without actually creating an explicit but unrealistic international bankruptcy law for sovereigns.

### **Conclusion: More Powerful Instruments Are Needed**

In sum, the argument in this book is that the ad hoc official and market-based insolvency regimes for sovereign debtors have been excessively creditor friendly and costly for developing countries. The "solutions" that are provided are generally put into place with lags and almost never provide a "fresh start", thus often leading to the need for additional restructurings in future, and a long period of stagnation or slow economic growth, with

their consequent effects on poverty. Moreover, it is too much to expect governments of developing countries to avoid all future debt crises; there are limits to what national debt management can achieve, as Claessens and Panizza indicated in their chapters. This means some countries will have to return to the debt workout system, one that as currently constituted also gives different treatment to different borrowers, reflecting the different degrees of political power of debtor governments and their willingness to use it, as the Russian and Argentine cases illustrated. In other words, aside from the system's vertical inequities (creditor friendliness), it is also plagued with horizontal inequities that put smaller, less strong or less "strategically" important countries at a disadvantage.

As regards our claim of creditor friendliness in debt workouts in the present system, we saw this in the delay in the 1980s in resolving the emerging economy debt crises until the commercial bank creditors were in a position to absorb losses that could no longer be postponed, as described by Garay. We also saw it in the high returns to private investors in sovereign bonds, which Spiegel traces to the need to make a voluntary, "cooperative" restructuring swap attractive enough to the bondholders. One may see it as well in the terms proposed by the private sector in its "code of conduct" for ideal workout processes, as described by Herman. But we are also concerned with the fact that voluntary cooperative sovereign debt restructurings have not put countries into a sustainable debt situation; i.e., they have not given them a "fresh start", a term we take as a proper objective of an insolvency system, and as the usual goal under national regimes for firms exiting from bankruptcy (as opposed to being wound up), as emphasized by Stiglitz.

We also saw that the system for restructuring the official loans of developing countries had not sought as a general rule to provide sufficient debt relief to countries to renew sustainable growth and avoid the need for them to go back to the negotiating table. The exception to the rule, albeit arrived at only after a decade of strong political pressure and repeated reforms in how the debt was handled, is the process for handling the debt problems of the poorest developing countries, as traced by Cosío-Pascal, and as illustrated by Ethiopia's experience. But the debt of the HIPC's are a special case and their debt workout processes have now been merged into the foreign aid regimes of their donors, as discussed by Northover. Henceforth, the financial relationships of these debtors are to be governed by normal donor/recipient partnerships. One may wonder how other low-income countries that have been outside the HIPC Initiative, but which also service considerable foreign official debt will be treated, if necessary.

What then is the system we need? While countries in different circumstances would need different degrees of relief, the principle of providing sufficient relief for a "fresh start" should be the universal criterion. This goal should be the aim of a *single system for relief*, which should embody mechanisms for debtors to talk with their creditors, with the goal of reaching a *timely and comprehensive debt restructuring* that gives the debtor country room to grow. The poorest countries may require special treatment to support their recovery after crises and attain the international development goals, in forms that do not compromise their debt sustainability, but it may be better to leave this task to the *aid* regime — i.e., official development assistance — rather than to the debt restructuring mechanism. With a view to realizing a comprehensive workout, it should also encourage the creditors to

coordinate their positions within and across different classes of lenders (including the government creditors who operate today through the Paris Club). A well-designed process should protect the rights of minority, as well as majority, creditors. It should give debtors the opportunity to call default through a structured process. The principles of human-centered development, of sustainability and of equity in the treatment of the debtor and its creditors, and among the creditors and debtors, should apply equally to all countries. As in national bankruptcy systems, principals should be encouraged to reach a workout on their own to the extent possible.

It is highly unlikely that these objectives will be met without a more structured framework for international cooperation in this area. Indeed, there is no getting around the conclusion that for the same reason that governments adopt bankruptcy legislation and do not rely solely on voluntary processes for resolving corporate bankruptcies, an efficient sovereign system requires something more than a moral appeal to cooperation. In fact, powerful states can usually be found to impose discipline when needed for private-sector workouts from major financial crisis. While concerted meetings of bankers may have saved Korea from default at the end of 1997 and rescued the US financial markets from the challenge of Long Term Capital Management in 1998, it is important to recall that the concerting was done by the Federal Reserve Bank of New York and the US Treasury. US authorities were also at the centre of the management and eventual resolution of the Latin American debt crisis of the 1980s, although placing the recovery of the developing countries involved second to the objective of avoiding a bankruptcy of the US banking system. Perhaps the last time the private sector rescued a country from financial crisis was when J.P. Morgan

coaxed some of his banker friends at his apartment on the 31<sup>st</sup> floor of 14 Wall Street to work with him to finance the workout from the U.S. financial panic of 1907. That experience, however, prompted the US authorities to create the Federal Reserve System.

One implicit or explicit element in several of the proposals noted here is to empower a global financial institution to act as dispassionate advisor and honest “broker” in helping a country work out of a sovereign debt crisis. It could deploy large financial resources for countries in need, as the IMF has traditionally done, or act more as a mobilizer of other sources in the manner of a bankruptcy court, as in the Bolton and Skeel proposal. The institution we have in mind could be called the “International Monetary Fund”, but it is not clear to us that the existing IMF could undertake the task in its present form. Above all, the organization would have to inspire high confidence in debtor as well as creditor countries. Today the IMF is not seen as a “neutral” mediator, as it is also a creditor and disproportionately governed by creditor countries. But there are ways to manage this problem. For example, the Fund (or a successor organization) could create a mechanism similar to the dispute settlement mechanism of the World Trade Organization, in which an independent panel has the major responsibility, in this case for the mediation and arbitration processes and eventually determining the solution when the former steps fail. In any case, serious reforms of IMF governance are a prerequisite for any solution that has this institution at the center of international debt resolution, and indeed for maintaining its more traditional roles. If the governors of the Fund are unable to reshape it for the twenty-first century, another institution would have to be created that could step into that role.

While any solution must have economic and judicial soundness, an international political process will necessarily be at the centre of any framework of cooperation in this area.

There is every reason for the international community that creates it to give guidance as to the goals of relief, in particular as regards what constitutes a “fresh start” and what is required to reach internationally agreed development goals. As was seen in the special treatments in the Paris Club, governments do not shy away from acting collectively to achieve political goals through institutions like that when deemed necessary. There are internationally agreed principles and priorities with important development and social dimensions that governments should not hesitate to apply fairly across the board. These are shared political goals as much as financial stability and international comity. Incorporating such considerations of fairness and developmental effectiveness into a new sovereign insolvency workout mechanism would boost its credibility with debtors — indeed with all stakeholders, including creditors who would appreciate the reduction of uncertainty under clear rules of the game and the knowledge that any post-workout debt situation would at least start out being sustainable.

We are not the first to reach the conclusion that this system should be replaced, as the reform proposals Kaiser reviewed makes clear. But those proposals have not been accepted and thus we need to continue to seek designs for a comprehensive international mechanism that is more efficient and fair in economic and social terms than what we have. Looking at the failed attempts at reform in the past, especially the SDRM, as discussed in the chapters by Setser and Gelpern and Gulati, one may also conclude that the most assured path to realizing the goals of reform is a more open reform strategy. Fostering discussion and

building momentum behind an idea, first, drafting detail, second, and winning consensus support third, seems the only way to proceed. Today, we are not even at step one. But we should not be afraid to begin the process in a serious way.

## Endnotes

1. Although bankrupt companies can be either liquidated or reorganized, we refer here to re-organization as liquidation is not an appropriate model for sovereigns.

2. This is not to say there is broad agreement on the meaning of “equitable”; e.g., while there has been massive support for the “Jubilee” argument on not exacerbating extreme poverty to pay foreign debt, there is less agreement on what a “fair” sharing of responsibility might be between a distressed sovereign debtor and its foreign creditors (see Christian Barry, Barry Herman and Lydia Tomitova (Eds.), *Dealing Fairly with Developing Country Debt*, Boston: Wiley-Blackwell, 2007).

3. This includes, nonetheless, private sector debts that are absorbed by national governments as part of different rescue operations during domestic financial crises.

4. In other words, occupation of foreign territories to make debts effective is considered unacceptable today according to international law (see footnote 8 below).

5. One indication of the degree of popular mobilization is that just before the United Nations Millennium Summit, Jubilee 2000 presented to the UN Secretary-General a petition signed by 24 million people from 166 countries (based in data of the Jubilee 2000 Coalition).

6. A dramatic case in point is that of Argentina, where 45 percent of the population fell below the poverty line in 2002, the year after the debt default, roughly twice the percentage in 1990. Also, 19 percent of the population was classified as “indigent” in 2002, compared to 5 percent in 1990 (United Nations Economic Commission for Latin America and the Caribbean, *Statistical Yearbook for Latin America and the Caribbean, 2005*, Santiago, July 2006).

7. As called for in the “Convention Respecting the Limitation of the Employment of Force for the Recovery of Contract Debts,” adopted at The Hague in 1907 as part of a set of conventions on the laws of war, the text of which, translated into English, may be found at <http://www.yale.edu/lawweb/avalon/lawofwar/hague072.htm>, on the website of the Avalon Project at Yale Law School.

8. “Negotiate” could be put in quotation marks, as sometimes (but not often) the creditors’ government intervened militarily on behalf of its citizens. Perhaps the two most famous cases are the French intervention (supported by Spain and Great Britain) in Mexico in 1863, installing Austrian Archduke Ferdinand as emperor of Mexico (overthrown by the Mexicans and executed in 1867), and the joint German, British and Italian blockade of Venezuela’s ports in 1902-3. Other cases led to European colonial expansion, as in Morocco and Tunisia. In the Americas and in light of the Venezuelan blockade, in 1904 the United States under President Theodore Roosevelt announced the “Roosevelt Corollary” to the Monroe Doctrine of 1823, essentially giving itself police powers over sovereign debtors in the region, which the US carried out in a series of interventions. The

policy formally ended with the adoption of the “Good Neighbor Policy” of Franklin Delano Roosevelt in the 1930s.

9. See Christian Suter and Hanspeter Stamm, “Coping with Global Debt Crises: Debt Settlements, 1820 to 1986,” *Comparative Studies in Society and History*, vol. 34, No. 4 (October, 1992), pp. 645-78.

10. For a report on that meeting, see Barry Herman, “Report of the Meeting of Authors,” United Nations Department of Economic and Social Affairs and Initiative for Policy Dialogue, Sovereign Debt Task force, Columbia University, New York, October 15-16, 2004 (<http://www0.gsb.columbia.edu/ipd/programs/item.cfm?prid=15&iyid=5&itid=364>)

11. Chapter authors are absolved of responsibility for views expressed outside their individual chapters, although we hope they agree with at least some of what we conclude from the project.

12. In addition to the papers published as chapters in this book, a number of papers written for this project could not be included but have been made available as working papers at the project’s web site

(<http://www0.gsb.columbia.edu/ipd/programs/program.cfm?ptid=2&prid=15&tyid=itemtype&iyid=13>). They include Iwan Azis, “Fiscal Policy and Workouts from Debt Crises: The Case of Indonesia’s Domestic Debt” (April 2008); Barry Herman, “Dealing Deftly with Sovereign Debt Difficulties” (August 2004); Matthew Martin, “Debt Sustainability: Relief

Target, Rule for Lending or Policy Goal for Low-Income Countries?” (December 2007); Shari Spiegel, “Sovereign Bankruptcy: Notes on Debtor Incentives to Repay Debt” (March 2002); and Joseph Stiglitz, “Some Comments on IMF Paper on Restructuring Sovereign Debt” (March 2002).

13. See Joseph Stiglitz, José Antonio Ocampo, Shari Spiegel, Ricardo Ffrench-Davis, and Deepak Nayyar, *Stability with Growth*, New York: Oxford University Press, for a discussion of alternative macroeconomic policy frameworks.

14. In fact, one of the foreign funds that invested in Russia and went bankrupt at the time of the Russian crisis is believed to have assumed that the probability of domestic default was basically zero. As rates rose, the model on which they based their investment strategy told them to keep buying more debt since default was virtually impossible. When the default finally occurred, the net asset value of the fund fell close to zero.

15. The bonds might require only a simple majority or two thirds or three quarters of votes of bonds held to drop the sovereign’s waiver of immunity or submission to the jurisdiction of a foreign court or change other clauses (see Lee C. Buchheit and G. Mitu Gulati, “Exist Consents in Sovereign Bond Exchanges,” *UCLA Law Review*, vol. 48, No. 1 (October 2000), pp. 59-84). The majority needed to adopt the exit consents thus became the majority needed to make the bond swap effective.

16. Ecuador's exit consents eliminated the cross default clause (default on the old bond could not trigger default on other debt), continued the legal existence of the swapped old bonds (so holdouts could not invoke measures that required say 25 percent of bondholders to enact; indeed, 97% of bondholders accepted the swap, which means the government held 97% of the old bonds), removed eligibility of the old bonds for debt-equity swaps or other privatization deals, and de-listed them from the Luxembourg Stock Exchange, reducing whatever liquidity they might have had left (see Eric Lindenbaum and Alicia Duran, "Debt Restructuring: Legal Considerations," Merrill Lynch, New York, October 30, 2000. p. 4).