

A SPRING FOR SOVEREIGN DEBT RESTRUCTURING?

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By *Sonia E. Rolland**

In the shadow of headlines about the Greek debt tribulations, a little-noticed, but potentially ambitious, initiative was launched at the United Nations to explore [sovereign debt issues](#). The [Ad Hoc Committee on Sovereign Debt Restructuration Processes](#) was launched by a General Assembly [resolution](#) in December 2014 and just completed its first round of discussions in February. The General Assembly vote, with 52 abstentions or oppositions, reveals the shaky political beginnings of this venture. The initiative originated from the [G77](#) but most developed countries ultimately withdrew support from the resolution (as illustrated by the [EU explanation of its vote](#)). The same split could be observed in delegates' attendance of the February session.

The current landscape for sovereign debt relief involves a mix of private and public forums, hard and soft law. At the intergovernmental, institutionalized end of the spectrum lies the International Monetary Fund, where the United States and Europe retain a dominant voice despite recent reforms. The IMF works directly with countries in difficulty to issue loans and help restructure public finance domestically. More informally, the [Paris Club](#) gathers major creditor countries (a dozen European countries, Israel, Russia, the United States, Canada, Japan and Australia) for small group debt alleviation negotiations. China is not a member. Another informal but more diverse club is the [G20](#) bringing together finance ministers and central bankers. At the other end of the spectrum, private creditors became increasingly important players with the advent of [Brady deals](#) in the 1990s that turned foreign sovereign debt instruments into tradable securities. While commercial banks made up the bulk of private creditors at the time, they now mostly act as brokers for investment funds, insurance companies and family offices holding sovereign debt. Private debt holders tend to take their disputes to domestic courts and investor-state international arbitration proceedings under bilateral investment treaties.

With public and private creditors leveraging multiple forums and different sets of rules, debtors find themselves active on several fronts to renegotiate their debt with little guarantee of finality when they strike a deal with some stakeholders and wide variations in the conditions of the deal. Georgetown's Anna Gelpern, in her [remarks](#) to the Ad Hoc Committee, identifies four main gaps in this fragmented approach: shortcomings on enforcement, no fresh start for debtor countries, failed inter-creditor equity and legitimacy deficit.

In theory, then, a single forum for addressing sovereign debt restructuring makes good sense. But even if a political consensus were to emerge around this basic premise, the design of such an institution would require significant legal creativity.

As I suggested in my own presentation to the Ad Hoc Committee, such a forum would need to consider legal standing for all relevant parties (governmental and private). It would have to articulate a position vis-à-vis other available venues. It would require a carefully balanced enforcement mechanism vis-à-vis other state parties as well as with respect to domestic institutions within the debtor countries. It would have to account for the capacity constraints of many debtor countries. And those are but a few of the main procedural issues to consider.

The 2002 summit culminating with the Monterrey Consensus of the International Conference on Financing Development was perhaps the last major UN attempt to re-envision international financial regulation and it included a total of four paragraphs on external debt. The Ad Hoc Committee, with the support of the United Nations Conference on Trade and Development, holds the promise of another push towards policy coordination across intergovernmental agencies and inclusiveness of stakeholders. The Asian and Russian crises of the 1990s, the 2008 global financial crisis and the ongoing difficulties of several European countries have amply demonstrated that sovereign debt restructuring is not solely a developing country matter. Yet current institutions and political dynamics alike remain largely divided along the lines of global South and global North in a way that does a disservice to both public and private interests. Whether the Ad Hoc Committee will succeed in transcending these positions in favor of a coherent, legitimate and durable framework remains to be seen.

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