



AFRICA'S DANCE WITH UNSUSTAINABLE DEBT: IS IT TIME FOR A COMPREHENSIVE MECHANISM FOR DEBT RESTRUCTURING?

PAPER V OF THE
AFRICAN SOVEREIGN
DEBT JUSTICE PAPER SERIES

-Magalie Masamba



FOREWORD

Welcome to the second paper in the African Sovereign Debt Justice Network Paper Series. The African Sovereign Debt Justice is a coalition of citizens, scholars, civil society actors and church groups committed to exposing the adverse impact of unsustainable levels of African sovereign debt on the lives of ordinary citizens.

The African Sovereign Debt Justice Paper Series has four primary goals:

- I. To provide insightful and highly accessible analysis of key sovereign debt issues;
- II. To create awareness about and elevate public attention to the sovereign debt crisis;
- III. To contribute significantly to the menu of reform options for the sovereign debt crisis;
- IV. To promote and build capacity among African academics on sovereign debt issues.

The African Sovereign Debt Justice Network is delighted to have been able to work with the experts to produce this paper series. This paper series, written against the background of the ongoing sovereign debt crisis, has been exacerbated by the COVID19 pandemic. AfSDJN believes there continues to be pathways towards reforming many aspects of the global financial architecture and we hope that this series will speak authoritatively to the types of challenges involved in definitively addressing the sovereign debt crisis.



AFRICA'S DANCE WITH UNSUSTAINABLE DEBT: IS IT TIME FOR A COMPREHENSIVE MECHANISM FOR DEBT RESTRUCTURING?

Magalie Masamba

1. Introduction

The coronavirus or Covid-19 pandemic is considered one of the most unprecedented and devastating events of the past century, and has gravely impacted the economies of African countries. As African countries increased spending in response to the consequential health and social crises, it has become clear that one of the major legacies of the Covid-19 pandemic will be resultant rising debt levels. The pandemic has again brought to global attention the challenge of Africa's unsustainable public sector debt levels and economic crises. While Africa's rising debt levels have been of concern over the past decade, the pandemic has worsened an already worrying situation. For many African countries grappling to contain the virus, the economic impact has been far reaching. Not only are countries battling to fund nation-wide vaccination programs and deal with the economic impacts of national lockdowns and travel restrictions, default on debt repayments has become inevitable. In this respect, while additionally underscoring the significant roles of debt management and governance, Dr. Akinwumi A. Adesina, the President of the African Development Bank Group, has posited that “...*the time for one last debt relief for Africa is now.*”¹

In May 2020, the G20 launched the Debt Service Suspension Initiative (DSSI) in response to the Covid-19 pandemic-induced challenges of debt repayment in developing countries. This is a program set up to provide temporary standstills on the repayment of interest and principal of official-bilateral debts of select eligible countries.² In addition, the G20 endorsed the “Common Framework for Debt Treatments beyond the DSSI” in November 2020, which aimed at providing more broad-based relief through debt rescheduling and in extreme cases, debt

¹ African Development Bank ‘*African Economic Outlook 2021 - From Debt Resolution to Growth: The Road Ahead for Africa*’ (2021) *Foreword African Economic Outlook 2021 | African Development Bank - Building today, a better Africa tomorrow (afdb.org)* (15 June 2021).

² World Bank ‘*COVID 19: Debt Service Suspension Initiative*’ (24 September 2021) <https://www.worldbank.org/en/topic/debt/brief/covid-19-debt-service-suspension-initiative> (accessed 28 September 2021).

cancellation, as well as encourage private creditor participation.³ While these programs do provide some relief, (with the DSSI only providing temporary breathing space), countries may still need to negotiate further debt relief or restructurings with the broad array of creditors. With the present debt suspension initiative, the Managing Director of the IMF Kristalina Georgieva, has noted that as a result of “a highly diversified environment with so many different private creditors and other creditors, I must admit, we are not where we should be.”⁴

Just over two and a half decades after the launch of the Heavily Indebted Poor Country program (HIPC), which was designed to give many developing countries a clean slate, there is a need for another ‘debt jubilee’ that goes further than the temporary relief that initiatives like the DSSI offer. However, if history is anything to go by, even with another debt relief program, the continent will again find itself in a similar predicament. As such, the focus today should not only be on finding short term solutions like debt standstills but should entail mechanisms to ensure that countries have access to the necessary resources to tackle the pandemic and their development objectives. **Is it again time to re-explore the global governance of debt restructuring?** This question is being posed in an effort to revive the discourse on the establishment of an international framework on sovereign debt restructuring.

Today, this debate comes within the context of the global Covid-19 pandemic, which has revealed the dangers of the lack of comprehensive institutional and legal mechanisms versus reactionary responses. This essay is divided into three broad sections. The first explores what the author describes as a glaring gap in the international governance of debt restructuring. Flowing from this discussion, the following section revisits what now seems an abandoned discourse on the establishment of a comprehensive international mechanism on debt restructuring. The third section explores the African perspective on the debate. The paper then concludes with recommendations.

³ Paris Club ‘*Common Framework for Debt Treatments beyond the DSSI*’ https://clubdeparis.org/sites/default/files/annex_common_framework_for_debt_treatments_beyond_the_dssi.pdf (15 June 2021).

⁴ M Jones ‘*COVID debt restructuring push not advanced enough, IMF chief cautions*’ Reuters (16 June 2021) <https://www.reuters.com/business/covid-debt-restructuring-push-not-advanced-enough-imf-chief-cautions-2021-06-15/> (accessed 18 June 2021).

2. The Governance Gap in the Sovereign Debt Restructuring Architecture

There is currently no formal pre-established mechanism to govern how sovereigns restructure their debt as there are in corporate bankruptcies; instead, *ad hoc* mechanisms are used. These *ad hoc* market-based mechanisms, or the contractual approach, employ a case-by-case approach that requires good faith negotiations between debtors and creditors. Presently, the restructuring of sovereign debt takes place at various formal and informal institutional mechanisms — for bilateral debt; this could be through direct negotiations with individual bilateral creditors or via the Paris Club. The London Club may be used for commercial bank debt restructuring, while multilateral development banks make use of once-off programs such as the Highly Indebted Poor Countries Initiative, (HIPC), and Multilateral Debt Relief Initiatives.⁵ The restructuring of privately held bonds is done through a contractual approach.⁶ The reliance on the market-based approach means that the different debt contracts and relevant national laws of the issuing jurisdiction will set out the restructuring process.⁷ As a result, two gap fillers exist in the current regime in the absence of global governance on sovereign debt restructuring. The first is the courts and the second are standardised boiler plate contractual clauses. The contractual approach is reactionary to challenges in restructuring as it makes use of enhancements in the language of boilerplate contractual clauses in response to problems as they arise, which raises the question of whether this is the best approach. Another paper in this series by Austin Hart details how these *ad hoc* restructuring processes unfold.

Not only is there an absence of an international framework, but there is also no formal and independent ‘third party entity’ in the sovereign debt restructuring process; therefore debtors and creditors are tasked with managing and concluding the restructuring process.⁸ Consequently, the outcomes of these negotiations may be influenced by bargaining powers of

⁵ See M Masamba ‘*Reflections On The Current Reality Of Africa’s Debt Landscape*’ AfronomicsLaw Blog (26 January 2021) <https://www.afronomicslaw.org/category/african-sovereign-debt-justice-network-afsdjn/reflections-current-reality-africas-debt>

⁶ T Strickland ‘*Sovereign Debt Restructuring: Recent Issues and Reforms*’ (2014) Reserve Bank of Australia December Quarterly 73 – 80, 73 <https://www.rba.gov.au/publications/bulletin/2014/dec/pdf/bu-1214-9.pdf> (accessed on June 2019).

⁷ M Aguiar and M Amador ‘*Chapter 11: Sovereign Debt*’ (2014) 4 *Handbook of International Economics* 647, 648.

⁸ D Bradlow ‘*Can Parallel Lines Ever Meet? The Strange Case Of the International Standards On Sovereign Debt And Business And Human Rights*’ (2016) 41:2 *The Yale Journal of International Law* 201, 207.

the parties without a balance being achieved by an independent third party.⁹ The seesaw in this unequal relationship may tilt in favour of creditors more than the debtor in distress. Adding more complexity to the restructuring process is the negotiation of cost distribution with various stakeholders.¹⁰ Stakeholders with the upper hand will choose to reduce their losses and instead transfer these to weaker and usually poorer stakeholders, again implying unfavourable human rights outcomes. While the parties may be under pressure to conclude the process, issues such as human rights of debtors to their citizens, transparency, and accountability may fall on the wayside.

While not all restructurings globally have been problematic, challenges have been faced in Africa that relate to delays, lack of transparency and incomplete restructurings.¹¹ There are evident challenges in sovereign debt restructuring arising from the governance gaps identified above. Prior to the pandemic, discussions on the weaknesses in the restructuring architecture revolved around the problems of fragmentation, fairness and late restructuring, all of which relate to both the process and the outcome. The major disparity in sovereign debt restructuring is the lack of coherency or fragmentation of the current framework. In addition to an assortment of legal procedures for restructuring, is a wide variety of debt restructuring dispute resolving institutions. This may give rise to forum shopping and incoherent legal interpretations.¹² There is also an absence of fair workouts (i.e., fairness for both debtors and creditors) as well as a shortfall in transparency, due process, accountability and independent decision-making in these ad hoc restructuring processes.¹³ According to UNCTAD, this fragmentation augments the possibility for bad faith behaviour by some creditors, which may later cause hold out problems. Lastly, restructuring may come ‘too little too late’.¹⁴ Delays may result from many factors such as uncertainty, electoral cycles, or insufficient information.¹⁵

⁹ Bradlow, *ibid*.

¹⁰ Bradlow, *ibid* 210.

¹¹ African Development Bank ‘*African Economic Outlook 2021 - From Debt Resolution to Growth: The Road Ahead for Africa*’ (2021) 5 [African Economic Outlook 2021 | African Development Bank - Building today, a better Africa tomorrow \(afdb.org\)](https://www.afdb.org/en/publications/african-economic-outlook-2021) (15 June 2021).

¹² UNCTAD ‘*Sovereign Debt Workouts: Going Forward – Roadmap and Guide*’ (April 2015) 3 http://unctad.org/en/PublicationsLibrary/gdsddf2015misc1_en.pdf (accessed on 10 June 2017).

¹³ UNCTAD (n13 above) 3.

¹⁴ See M Guzman, J A. Ocampo, J E. Stiglitz (Eds) ‘*Too Little, Too Late: The Quest to Resolve Sovereign Debt Crises (Initiative for Policy Dialogue at Columbia: Challenges in Development and Globalization)*’ Columbia University Press (10 May 2016).

¹⁵ UNCTAD (n13 above) 2 - 3.

The current fragmented regime has failed to produce satisfactory results in some cases. In Africa, these challenges have now been heightened due to sovereign bonds becoming the more prevalent option in sovereign borrowings, as well as due to the pandemic. The latter has drawn attention to the obvious discrepancies in the international financial architecture that (1) struggles to secure private creditors participation of debt rescheduling schemes and broad-based debt restructuring; (2) dissuades countries to restructure early, in part due to fears of credit rating downgrades or reduced access to international capital markets, and (3) that does not perform broad-based restructuring, especially for the management of unforeseen crises such as the Covid-19 pandemic. For African countries, the complexities also relate to issues of broad debt transparency and transparency specifically relating to resource-backed loans.

For Africa, sovereign debt does not only bring to the fore public interest issues like human rights and development, but may in fact be regarded as a human rights issue, thereby also necessitating a rights-centred approach. The challenges in the current landscape has been summed up as follows:

“The COVID-19 crisis has revealed the weaknesses of an international financial architecture that has permitted successive waves of developing country defaults and restructurings, each time with substantial developmental costs. The current architecture reflects the asymmetries of the world: it is procyclical, contractionary, and biased towards creditors. There are numerous gaps in transparency, and lack of clarity in roles and responsibilities in different states of the world. There are no processes that bind all creditors and debtors to a uniform set of standards.”¹⁶

In the next part of this essay, I explore some potential solutions to the challenges I have identified above.

¹⁶ H Kharas and M Dooley ‘*Debt Distress And Development Distress: Twin Crises Of 2021*’ Brookings Institution Global Working Paper 153 (March 2021) 22 <https://www.brookings.edu/wp-content/uploads/2021/03/Debt-distress-and-development-distress.pdf> (10 August 2021).

3. In search for legal solutions to complex problems: current proposals in the Covid-19 era

The Covid-19 pandemic has necessitated reform of the debt restructuring architecture. The Managing Director of the IMF has noted that “*Beyond the DSSI, we recognize the need to further strengthen the international architecture for debt restructuring and we will pursue restructuring on a case-by-case basis when necessary.*”¹⁷ The need for reform has been further reiterated by the African Development Bank that notes that “*To avoid high debt resolution costs in the future, the international community needs to push for changes to the international financial architecture for sovereign debt restructuring.*”¹⁸ These calls for reform have resulted in various initiatives and proposals to improve international coordination on restructuring and ensure that countries have access to emergency finance during times of distress. However, do these proposals, which fall short of a global rule of law to facilitate debt restructuring, adequately fill the governance gap? The section below highlights some of the financial innovations, legal innovations and institutional reform proposals aimed at strengthening the current debt architecture. Among the current proposals include:

Extension of the DSSI and Common Framework (duration and eligibility):¹⁹ The DSSI has already been extended to December 2021.²⁰ Civil society organisations such as Oxfam and the Jubilee Debt Campaign have proposed that the program be extended to the end of 2022.²¹ In addition to the call for extensions of the DSSI, is by implication, extension of the Common Framework eligibility “to all lower-middle-income countries, all small island countries, and all countries deemed to have been seriously affected by the crisis”.²² Homi Kharas

and Meagan Dooley observe that this may both double the size of bilateral relief and private creditor participation.²³

¹⁷ IMF ‘Opening Remarks at Mobilizing with Africa II High-Level Virtual Event Yy Managing Director Kristalina Georgieva’ (9 October 9 2020) <https://www.imf.org/en/News/Articles/2020/10/09/sp100920-opening-remarks-at-mobilizing-with-africa-ii-high-level-virtual> (accessed on 3 March 2021).

¹⁸ African Development Bank (n11 above) 73.

¹⁹ Kharas and Dooley (note16 above) 15).

²⁰ See World Bank (note2 above).

²¹ Kharas and Dooley have noted that while it is unclear whether US administration will back the proposal, US Treasury Department had indicated its willingness to consider it. Kharas and Dooley (note16 above 15).

²² Kharas and Dooley, *ibid.*

²³ Kharas and Dooley, *ibid.*

- **Review of IMF and the World Bank policies:** It is important to IMF and World Bank debt limit policies and Sustainable Development Finance policy to encourage new non-concessional borrowing for sustainable development.²⁴ Further, the DSSI and Common Framework relief be made “additional to existing concessional aid, both for the recipient country concerned and in the aggregate aid volumes provided by donors”.²⁵
- **Setting up a central credit facility:** There have been various proposals for institutional reform that could lessen the issue of creditor co-ordination. The proposal by Patrick Bolton and a series of global experts suggests the establishment of a central credit facility overseen by a multilateral development bank.²⁶ In effect, seeking forbearance “could redirect their interest and principal payments, and receive them back as low-interest loans for specific pandemic mitigation spending.”²⁷ The result is that debt suspension could be offered without creditor coordination.
- **The “African Brady Plan”:** Similarly, the United Nations Economic Commission for Africa (UNECA) has proposed the establishment of a special purpose vehicle that would be underwritten by a triple-A-rated multilateral development bank like the World Bank or alternatively, a central bank. This vehicle would swap developing country commercial debts for what has been described as “for new concessional papers with longer maturities and lower coupon rates.”²⁸ The backing by a triple-A-rated bank could encourage private sector participation. The idea of Brady Plan-like proposals is gaining momentum, with these being explored for instance by Yiag Qian who has examined past Brady Bond restructurings while weighing their pros and cons in the context of similar proposals in a post-COVID era.²⁹

²⁴ Kharas and Dooley (note 16 above 15).

²⁵ Kharas and Dooley (note 16 above 15 – 16).

²⁶ P Bolton, L Buchheit, P O.Gourinchas, M Gulati, C T.Hsieh, U Panizza, and B Weder di Mauro. ‘*Necessity Is the Mother of Invention: How to Implement a Comprehensive Debt Standstill for COVID-19 in Low- and Middle-income Countries.*’ VoxEU(21 April 2020). <https://voxeu.org/article/debt-standstill-covid-19-low-and-middle-income-countries> (accessed on 23 September 2021).

²⁷ Kharas and Dooley (note16 above 16).

²⁸ Kharas and Dooley (note16 above 17).

²⁹ Y Qian ‘*Brady Bonds and the Potential for Debt Restructuring in the Post-Pandemic Era*’ Boston University Global Development Policy Center (22 September 2021) https://www.bu.edu/gdp/files/2021/09/GCI_WP_018_FIN.pdf (accessed on 23 September 2021).

- **Debts of Vulnerable Economies Fund (DOVE fund):** In the African context, Daniel Bradlow has proposed the establishment of what he describes as a ‘DOVE fund’. It is aimed at deterring vulture fund creditors.³⁰ The Dove fund would purchase qualifying sovereign debts at a discount or market price, for the purpose of providing debt standstill. It would also ensure that subsequent to global economic growth, the fund will work with African debtors to guarantee that the unwarranted burden of debt may not tamper with efforts to rebuild their economies.³¹ Secondly, the DOVE fund would advocate debt standstill on a case-by-case basis by private sector creditors for the purpose of debt renegotiation following the end of a crisis.³² The issue of transparency, accountability and participation has been addressed in this proposal with the idea that the fund be managed by an independent board that includes a broad array of stakeholders.

4. Looking to the Future: Charting a Path Forward for Sovereign Debt Restructuring

Over the past two decades there have been proposals to reform the debt landscape in a more comprehensive manner.³³ The most notable are the 2002 IMF proposal to establish a Sovereign Debt Restructuring Mechanism (“SDRM”), which required an amendment of the IMF’s Articles through votes by IMF members carrying 85% of the voting power.³⁴ While this was unsuccessful due to political and technical reasons, the idea of an international mechanism for sovereign debt restructuring was again proposed, this time through the passing of the UN General Assembly resolution “Towards the establishment of a multilateral legal framework for sovereign debt restructuring processes”.³⁵ The UN General Assembly had also passed resolution on the ‘Basic Principles on Sovereign Debt Restructuring Processes’, which stressed

³⁰ D Bradlow ‘Africa Needs a DOVE Fund: Or Should We Starve So We Can Pay our Debts?’ (19 May 2020) <http://www.ipsnews.net/2020/05/africa-needs-dove-fund-starve-can-pay-debts/> (accessed 12 September 2021).

³¹ Bradlow, *ibid.*

³² Bradlow, *ibid.*

³³ See M Masamba and F D. Bonis ‘Towards Building a Fair and Orderly International Framework for Sovereign Debt Restructuring: An African Perspective’ AFRODAD Paper (29 December 2017) <https://www.africaportal.org/publications/towards-building-fair-and-orderly-international-framework-sovereign-debt-restructuring-african-perspective/> (accessed on 17 May 2021). M Masamba ‘An African Perspective on Reforming Sovereign Debt Restructuring of Privately Held Debt’ a thesis submitted to the Center for Human Rights, Faculty of Law, University of Pretoria for the degree of Doctor of Law, South Africa (2020).

³⁴ See A O. Krueger ‘New Approach to Sovereign Debt Restructuring: Preliminary Considerations’ (2001) IMF 1 – 40 available at <https://www.imf.org/external/pubs/ft/exrp/sdrm/eng/sdrm.pdf> (accessed on 15 June 2021) 1, 4.

³⁵ ‘Towards the Establishment of a Multilateral Legal Framework for Sovereign Debt Restructuring Processes’ UNGA Resolution 68/303.

the need for clear principles to manage and resolve debt crises.³⁶ These nine basic principles are equitable treatment, legitimacy, good faith, impartiality, majority restructuring, sovereignty, transparency, sovereign immunity and sustainability. Since 2014, no major progress has been achieved in the establishment of a multilateral framework under the auspices of the United Nations. In fact, this proposal has mostly been viewed as a very ambitious reform agenda and there has been a preference to fill the current governance gap using *ad hoc* mechanisms listed above.

Despite the potential benefits, there is a limited incentive to develop a more comprehensive process. In addition to what may be seen as poetical limitation of a broader framework, there seems to also be reluctance in developing a process that could also include critical issues such as human rights considerations, as this may impact the duration and, in effect, cost of the process.³⁷ Within the time pressures of a restructuring, there is a disincentive on the part of both creditors and debtors to add additional steps (for instance steps geared to the collection of additional information) in the process, even if these may lead to better insights and therefore, more informed outcomes. For African countries, the ideas of reforming the architecture of debt restructuring will not only potently improve transparency and efficiency, but could also potentially lessen social costs of a debt crisis through the “normative distributional goals inherent in any form of restructuring law”.³⁸ As such, while the contractual approach and all its *ad hoc* innovations are critical in the reform agenda, that should not replace efforts for deeper reform.³⁹

5. Conclusion and recommendations

The Covid-19 pandemic has necessitated urgent reforms and proposals to respond to the growing debt burdens of developing countries. Not only is there a need for urgency in reform, there is also a need of ambitious reform. This paper has argued that the reform agenda should not only relate to the more short-term responses to the pandemic, but should also consider the debt restructuring architecture more broadly.

³⁶ UNGA Resolution A/69/L.84 was adopted with 136 member States voting for, six against and 41 abstentions. ‘Basic Principles on Sovereign Debt Restructuring Processes’ UNGA Resolution A/69/L.84.

³⁷ Bradlow (note 30 above 208).

³⁸ J Sedlak ‘Sovereign Debt Restructuring: Statutory Reform or Contractual Solutions’ (2004) 152 *Pennsylvania Law Review* 1483, 1514.

³⁹ S L. Schwarcz “‘Idiot’s Guide’ to Sovereign Debt Restructuring” 53 (2004) *Emory Law Journal* 1189, 1204.

Despite the evident challenges of a mechanism for debt restructuring, from an African perspective the proposal is still attractive. Without providing a full prototype of such a mechanism and in an effort to provide a foundation, below are some preliminary thoughts on key issues:

- **Institutional reform.** An independent body should be established as part of the mechanism. This independent body will have various tasks that include dialogue and assisting in negotiation processes. As such, debtors would be able to approach the body early on in a manner that does not trigger credit ratings downgrades. This body may be formulated under an existing international institution that is broadly representative of most countries; however, it should be an independent autonomous body.
- **Flexibility through a menu approach.** The mechanism may include a menu of both mandatory and non-mandatory features that countries may choose from. The use of mandatory features is aimed at ensuring a minimum level of certainty that is required in the current regime. A balance should be reached between the much-needed certainty as well as much desired flexibility. This balance can be achieved during domestication of the international mechanism where state parties may adopt mandatory features and choose from and adapt non-mandatory elements. In support of the notion of flexibility, Dickerson suggests that not only should a statutory mechanism for sovereign debt restructuring be flexible, but it should also be ‘sensitive to the political realities that government leaders face when their countries confront a financial crisis.’⁴⁰ However, among the points of opposition against the menu approach is the view that the text of each statute will not be uniform, neither will their interpretations.⁴¹ Furthermore is the concern that ‘Because the menu options would not be included in the sovereign’s debt restructuring legislation, creditors could not use prior restructurings to calculate the likely treatment of their claims in the event of a sovereign default.’⁴² While it is true that the provisions of insolvency laws will differ with the option to customize, some

⁴⁰ MA Dickerson ‘A Politically Viable Approach to Sovereign Debt Restructuring’ (2004) 53 *Emory Law Journal* 997, 999 -1025.

⁴¹ Dickerson (n40 above) 1034.

⁴² Dickerson (n40 above) 1034.

level of international coherence should be achieved and room should be left for flexibility.

- **The restructuring process.** A sovereign debtor will activate the SoDR process, following a formal stay on all litigation during the debt restructuring process for a predetermined timeframe, either before national courts or international arbitration bodies.⁴³ How this feature should be applied should not be done in a one-size-fits-all manner. On the contrary, the duration of the stay and exceptions, if any, may be determined on a case-to-case basis. The rationale for this feature is to prevent a ‘rush to the courthouse’ and to thwart holdouts from minority creditors.
- **Collective action.** A new mechanism should include super-majority voting for decision making to prevent collective action problems. In addressing this question of super-majority, separate classifications may be needed, for instance between multilateral organisations, private foreign creditors and private domestic creditors.
- **Interim finance.** During the restructuring process, debtors may require emergency finance from various sources such as the capital markets, or even the IMF as a lender of last resort. Attracting this finance during the restructuring process requires that the new financing be granted priority status. It is proposed that among the mandatory features of a new mechanism, is the need to exclude new finance from the restructuring. Nonetheless, for the sake of transparency and to avoid reckless borrowing, financing should be subjected to some form of creditor vote as interim finance may require that new financiers have a priority status.
- **Adjudication and administering dispute resolution.** Two considerations should be made on dispute resolution; the first is the option of the development of a new institution or the use of an existing mechanism. The second is the extent to which the mechanism should be self-administering. This study proposes the establishment of a neutral body to administer and resolve debt restructuring disputes. Should a sovereign debt restructuring mechanism act just as a national bankruptcy law that makes room for

⁴³ The application of an automatic stay is not recommended by all authors. See SL Schwarcz ‘Sovereign debt restructuring: a bankruptcy recognition approach’ (2000) 85 *Cornell Law Review* 956, 983.

the self-executing restructuring process? It is the view of the author of this study that a new mechanism should only be self-executing to some extent only for the negotiation process, which may not necessarily require supervision, unless required by debtors.

In conclusion, there is agreement on the notion that there is a need to reform the debt restructuring architecture. However, the option to reform the landscape has raised divergent views. Some of the most recent proposals are highlighted in this paper. This paper has brought that discussion full circle by proposing an international framework for restructuring as the most viable mechanism for resolving the perennial nature of sovereign debt crisis.

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