

# UN Committee passes first ever set of UN debt restructuring principles

By Bodo Ellmers

Just ten days after the UN's International Conference on Financing for Development, and just in time for the endorsement of the new sustainable development agenda, a UN Committee has agreed on a set of principles to guide further sovereign debt restructuring processes. The new UN principles were inspired by the devastating bank bailouts in Greece, and by the vulture fund lawsuits that Argentina faced at US courts. They build on preparatory work done by an expert group convened by the UN Conference on Trade and Development (UNCTAD) and, subject to approval by the UN General Assembly (UN GA) in early September, will be the first step towards a new multilateral debt restructuring framework that aims to prevent future debt crises, or at least manage them better.

## Litmus test for the new development agenda

Debt crises undermine development and cause humanitarian catastrophe. Creating a better debt workout mechanism has been on the UN's to do list since the first Financing for Development (FfD) Summit in 2002 in Monterrey (pushed mainly by G77 countries, the negotiating bloc of developing countries at the UN). Recently the [Sustainable Development Goals](#) also acknowledged the need for debt restructurings to prevent debt crises. However, the necessary institutions to restructure sovereign debts in a speedy, timely, fair and sustainable manner are still missing. The current process for managing debt crises remains a "bail-out" regime that facilitates and rewards reckless financial speculation, free-riding and predatory lending, by making such operations literally risk-free and allowing for usurious profit rates. The multi-€100 billion transfer of liabilities from the private to the public that this bailout regime implied faces massive critique, which is catalysing the reform processes.

## New UN debt restructuring principles

The [UN General Assembly Resolution](#), passed in September 2014, therefore called "for the intensification of efforts to prevent debt crises by enhancing international financial mechanisms for crisis prevention and resolution" and decided to "elaborate and adopt through a process of intergovernmental negotiations ... a multilateral legal framework for sovereign debt restructuring processes with a view, inter alia, to increasing the efficiency, stability and predictability of the international financial system".

The UN General Assembly's Ad Hoc Committee, which has been set up to get this job done, was assigned the ambitious task of developing such a framework in just three sessions, held at UN headquarters in New York between February and July this year. The result is the [nine principles for debt restructuring processes](#) that have now been released. In summary, these are:

1. The **sovereign right** to start a restructuring process
2. **Good faith** negotiations by debtor and creditor

3. **Transparency** of the process and related data
4. **Impartiality** of all institutions and actors involved
5. **Equitable treatment** of creditors
6. **Sovereign immunity** of states before foreign courts
7. **Legitimacy** of the institutions involved
8. **Sustainability**: speedy conclusion, and outcomes that promote growth and respect human rights
9. **Majority restructurings**: minorities that respect decisions approved by the majority.

The Committee could benefit from the work done by the UNCTAD expert group on debt workout mechanisms in the two preceding years, which made it possible to take the conceptual work to this stage in the short time available. The UN principles build on the [UNCTAD Roadmap and Guide for Sovereign Debt Workouts](#) that had been finalised and released in May of this year.

### **If it's broke, fix it: Building on lessons learnt**

The negotiations at the UN GA were inspired by the experiences of the last few decades. The increasing problems with holdout creditors and vulture funds lawsuits (that undermine the existing system of voluntary creditors' participation in debt restructurings) points towards the need to strengthen majority restructurings. The attempt by New York judge Thoma Griesa to apply his rulings extra-territorially has demonstrated the need to strengthen sovereign immunity.

The experience of the 2012 Greek debt restructuring – combined with the fact that the existing framework has failed to solve the Greek debt crises until now – made clear that a new regime must build on the pillars of legitimacy, impartiality, transparency, good faith and sustainability. As the Greek parliamentarian Stelios Kouloglou pointed out when these principles had been [presented in the European Parliament](#), none of them has been followed in the management of the Greek crisis thus far. This is a key reason why the crisis is still not over.

### **Political setbacks caused delay**

The original aim of the UN Committee to create a multilateral legal framework for debt restructuring could not be achieved in the short timeframe given. This was also due to the political blockade of a minority of countries in which the financial industry successfully lobbied the government, in particular the US and some EU Member States. The [US government openly declared](#) in the UN's FfD negotiations that sovereign debt restructurings should follow the ideas of the International Capital Markets Association (ICMA), a financial industry lobby organisation that, according to its [own description](#), "serves the needs of its members".

The rejectionist front was far from solid, however. Towards the end of the process, Greece became the first EU Member State to participate in the Committee sessions. Norway and Switzerland did so from the beginning. The EU's absence – in times when the need for a better debt restructuring framework is sorely felt by European citizens – faced strong criticism by European civil society, and by the [European Parliament, which had called on EU governments to engage constructively](#) in the UN Committee's work. In the context of the Greek debt crises, [more](#)

[than 90,000 European citizens have so far signed the petition](#) that called on the UN to create fair rules for debt workouts.

By mid-September, the UN GA will vote on a new Resolution to adopt these principles and decide on the follow-up process that should create the next building blocks of the multilateral debt restructuring framework. Much pressure on governments from the global north will be needed to ensure that they stop dancing to the bank lobby's tune.