

# Round Table on Conceptual and Operational Issues of Lender Responsibility for Sovereign Debt

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World Bank, Washington D.C.  
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## Meeting Notes <sup>1</sup>

### Introduction

The round table on “*Conceptual and Operational Issues of Lender Responsibility for Sovereign Debt*” was hosted by the World Bank following the publication of a draft World Bank discussion paper entitled “*Odious Debt: Some Considerations*” in September 2007.<sup>2</sup> The event was organized in response to a request by a coalition of civil society organisations interested in discussing the findings of the Bank paper and the broader issues of odious/illegitimate debt and responsible lending.

Around 40 participants attended the event from non-governmental organisations, universities, staff of the World Bank and the IMF, World Bank Executive Directors’ offices, regional financial institutions, the Paris Club and donor governments. The meeting was characterized by an open, substantive, and thoughtful discussion recognizing the different viewpoints and responsibilities of the participants. To facilitate frank debate, the discussion was held under Chatham House Rule, with the implication that no remarks reported in these notes are attributed to any individual.<sup>3</sup>

This outcome report, jointly prepared by the World Bank and Eurodad, captures some of the main points raised by panellists as well as the discussions with the meeting’s participants which followed.

- Session One focused on the concepts of odious and illegitimate debt, i.e. what the terms odious and illegitimate debt mean and whether these can be considered well established legal concepts.
- Session Two looked at how feasibly these concepts could be applied in practice.
- Session Three looked at practical approaches to addressing concerns on responsible lending and borrowing in the future.

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<sup>1</sup> Notes drafted jointly by Bank and EURODAD staff

<sup>2</sup> Vikram Nehru and Mark Thomas, 2008, “Odious Debt: Some Considerations” at: <http://siteresources.worldbank.org/INTDEBTDEPT/Resources/468980-1184253591417/OdiousDebtPaper.pdf>

Eurodad’s analysis of the Bank discussion paper can be viewed at: <http://www.eurodad.org/whatsnew/reports.aspx?id=2172>

<sup>3</sup> For more information on the Chatham House Rule, see: <http://www.chathamhouse.org.uk/about/chathamhouserule/>

## **SESSION ONE: Approaches to the Legitimacy of Debts: Conceptual and Operational**

### **Odious Debt: A Clear Concept?**

#### **Key points and questions raised during the presentations included the following:**

- The concept of the legitimacy of debt extends beyond purely legal definitions, but it is nonetheless important to look at what international law states in this regard. On the question of odious debt not much is found in international law.
- If one takes, as a starting point, the legal sources listed in Article 38 of the Statute of the International Court of Justice, namely international conventions (bilateral and multilateral), international custom, and general principles of law recognised by civilised nations, then one is bound to conclude that the evidence in support of an international legal concept of odious or illegitimate debts is pretty thin.
- There is no legal basis for the characterisation of the Norwegian Ship Export debt as illegitimate.<sup>4</sup> These debts were cancelled not because of a legal compulsion to do so but as an *ex gratia* cancellation due to a unilateral recognition of co-responsibility. In this regard, the principles of law should not be confused with broad considerations of equity and there is nothing in international law which allows for the repudiation of a debt based on its alleged odiousness or illegitimacy.
- Nor is the appeal to *ius cogens* any more convincing. The idea (reflected in Article 53 of the Vienna Convention on the law of treaties) is that a treaty is void if it conflicts with a norm of *ius cogens*, namely (in the words of Article 53) a norm of general international law “accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted”. If so, a World Bank staff member argued, for each financial agreement alleged to be void because it is odious or illegitimate on the grounds of *ius cogens*, one would have to identify clearly the *ius cogens* norm with which the agreement is allegedly in conflict, show evidence that this norm has been accepted and recognized by the international community of states as a norm of *ius cogens*, and explain the respect in which the conflict is alleged to exist. No generic appeal to *ius cogens* will do.
- On the other hand it was argued that the concept of odious or illegitimate debt emerged from the concrete experiences of many developing countries. It was argued that peoples in developing countries had experienced illegitimate debt in a number of different ways such as through acts committed in gross violation of ethical, social, economic and environmental standards or through the circumstances and the nature of the treaty or contract, for example loans which paid for overpriced products, where

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<sup>4</sup> Norway's Minister of International Development Erik Solheim announced on 3 October 2006 that Norway would unilaterally and without conditions cancel US\$80 million in Ship Export debt owed by 5 countries: Egypt, Ecuador, Peru, Jamaica and Sierra Leone. The Government stated: “The [Ship Export] campaign represented a development policy failure. As a creditor country Norway has a shared responsibility for the debts that followed. In cancelling these claims Norway takes the responsibility for allowing these five countries to terminate their remaining repayments on these debts. See: <http://www.regjeringen.no/nb/dep/ud/Pressesenter/pressemeldinger/2006/Cancellation-of-debts-resulting-from-the-Norwegian-Ship-Export-Campaign-1976-80.html?id=272158>

the project failed, where there were question marks over bidding processes or which were “pushed” on them.

- Citizens from developing nations have a reason to challenge these debts, it was argued, because sovereign states have certain duties and obligations towards their citizens. These include the obligation that states act in the interest of their constituents (on whose behalf they are contracting the debt) and that the contract is fair and mutually beneficial, not harmful and grossly unjust. These are widely accepted values internationally.

**In the ensuing discussion the following points were made:**

- The issues of odious and illegitimate debt pose more of a political than legal challenge.
- Odious and illegitimate debts are both a symptom and a symbol that this system is not working as it should. It was suggested that comprehensive debt audits and further case studies could strengthen work in this area.

**The Case of Haiti**

**The meeting heard a presentation on Haiti. During the presentation and ensuing discussion the following points were made:**

- Haiti can be seen as an emblematic case of illegitimacy both with respect to its historical and its contemporary debt. Upon its independence in 1806, Haiti was forced to compensate French slave owners for their losses. Haiti had to take out a loan from London’s financial markets in order to pay this debt.
- The contemporary debt crisis began in the 1980s. The Duvalier dictators took on nearly two billion dollars in loans and stole more than US\$ 900 million.
- The new World Bank StAR Initiative (Stolen Assets Recovery Initiative) could help repatriate some of Haiti’s stolen assets in the future.<sup>5</sup>
- The Haiti case demonstrates the issue of “powerlessness” of developing countries. Privately many governments in Latin America will testify to the questionable origin of much of the debt, but realistically what can they do? In particular many fear loss of access to international capital markets. In this context, the issue of power relations between states need to be addressed.

**Creditor Responses to the Problem**

**A presentation on creditor responses to odious/illegitimate debt included the following points:**

- The decision of Norway in 2006 unilaterally to cancel US\$80 million owed by five developing countries acknowledging shared responsibility for the debts was cited as the first time that a creditor had invoked part of the concepts of odious and

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<sup>5</sup> <http://www.unodc.org/documents/corruption/StAR-Sept07-full.pdf>

illegitimate debt.<sup>6</sup> Contrary to popular opinion there were no negative responses from financial markets to this decision.

- It was hoped that this decision would stimulate international debates on these issues and it was for this reason that the Norwegian Government had requested studies on odious debt by UNCTAD and the World Bank.
- The issue of odious and illegitimate debt is not simply a legal question but also a moral and political one. However, important dilemmas remain: what criteria should be employed to assess the illegitimacy of debt, what cut-off date should be used, how are unsuccessful projects in “legitimate” regimes dealt with and successful projects in “illegitimate” regimes, how can the problem of moral hazard be overcome and what are the concerns with respect to a potential credit drought?
- In this context it is important that the complex issues surrounding odious and illegitimate debt do not hinder progress on the improvement of future lending practices and the improvement of existing debt relief mechanisms. In particular, it was stressed that the views of debtor governments needed to be heard in any international discussions on the illegitimate debt issue.

**In the discussion that followed the following arguments were made:**

- Spain has contributed significantly to international debt relief measures. However these cancellations had been based on considerations of the sustainability of the debt, not its illegitimacy. In this context, there are international instruments available to deal with unsustainable debt but not with illegitimate debt. However it is important to ask why a debt is illegitimate. If it is due to the bad use of funds by the borrower, the borrower must be held responsible. Spain believes strongly in developing country ownership.
- It is important for the World Bank and other lenders to stay engaged in developing countries. The application of an ambiguous doctrine of odious or illegitimate debts would entail that many loans could not be made in many challenging contexts. Moreover, it is not for World Bank staff members to assess the legitimacy of regimes. The decision whether or not to lend is the prerogative of the institution’s Board.
- There were high levels of creditor awareness of the nature of the regimes in place at the times many loans were made. The case of the export of military ships to General Suharto in Indonesia by Germany was referred to. This transaction went ahead despite international concerns over human rights abuses in the region at the time. The current international financial system cannot answer the question of how to bring about justice if the population of a country has been harmed by a project. Furthermore, criminal investigations by successor regimes could have a sobering effect on creditors. An alternative to criminal investigations could be the setting up of truth commission.

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<sup>6</sup> The relevance of the odious debts concept to this case, though, has been questioned. The Government of Norway admitted “*shared responsibility*” for debts which had resulted from failed development policy lending which, in the words of the government lacked, “*proper needs assessment and a proper risk analysis.*”

## **SESSION TWO: The Applicability of Concepts of Odious and Illegitimate Debt**

### **Odious Debt and Public International Law**

**The presentations on the above topic include the following arguments:**

- One of the most remarkable developments of the last twenty years, posing enormous challenges for law and politics, has been the transition from authoritarian to democratic regimes. This has raised issues of accountability for the past, including individual and collective responsibility, legal, economic, and political.
- We have also seen major evolutions in international law such as the creation of the International Criminal Court; prosecutions in the former Yugoslavia and Rwanda and the restitution of confiscated property in the context of the Holocaust and transition in Eastern Europe. Odious debt is another area of transitional justice.
- With respect to debt between two sovereign states, there is an obligation of a sovereign state to repay another sovereign as a matter of public international law. So the issue of odious debt becomes one of interpretation of the limitations on this obligation, some of which have to do with transitional justice. The UNCTAD study on odious debt gives an overview of state practice in this respect.<sup>7</sup>
- There is no general rule of public international law which requires a state to repay a private creditor. Contractual obligations to private parties do not automatically become public international law obligations. Some contracts contain umbrella clauses that elevate contractual obligations with private parties into public international law obligations but there is a big caveat in relation to odious debt, for example the *clean hands* doctrine.<sup>8</sup>
- What is practically at stake is where a successor regime seeks not to repay debt that it deems odious. At worst, the creditor state could take the debtor state – depending on whether it accepts its jurisdiction – to the International Court of Justice and ascertain legal responsibilities. If unilateral counter-measures are being entertained, these have to be proportional to the economic interest at stake. Public international law is therefore not much of an obstacle to a successor state not wanting to repay odious debts. Other actions could also be contemplated including, for example, truth commissions.
- The World Bank staff's discussion paper is an important step forward. The mere fact that the Bank has taken up the issue is indicative of the importance of the issue. Nevertheless, the Bank's paper is very dismissive of the doctrine of odious debt, since it argues that there is little agreement on a workable definition of odious debts. Of concern is how the Bank arrived at this conclusion, said one speaker.
- The World Bank's starting point is the formulation of odious debt as suggested by Alexander Sack in 1927.<sup>9</sup> The Bank then looked at international law for evidence of

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<sup>7</sup> [http://www.unctad.org/en/docs/osgdp20074\\_en.pdf](http://www.unctad.org/en/docs/osgdp20074_en.pdf)

<sup>8</sup> The clean hands doctrine is a rule of law that someone bringing a lawsuit or motion and asking the court for equitable relief must be innocent of wrongdoing or unfair conduct relating to the subject matter of his/her claim.

<sup>9</sup> According to Sack's definition, a sovereign debt is defined as odious if a) when a despotic regime "contracts a debt, not for the needs and in the interest of the state, but to strengthen its own despotic

support for this doctrine (i.e. the *fons et origo*) since this was merely Sack's formulation. Since 1927, public international law has undergone fundamental changes, for example the outlawing of slavery, the 1948 Genocide Convention, the 1973 Apartheid Convention, treaties against war crimes and crimes against humanity and the 1984 Convention Against Torture. Article 53 of the 1969 Vienna Convention on the Law of Treaties introduced the notion of *ius cogens*.<sup>10</sup> It remains to be seen whether a loan agreement, allegedly violating a norm of *ius cogens*, would withstand scrutiny. In any event, it would be a very small set of claims that would violate *ius cogens* norms, said one participant.

- Article 16 of the 1978 Vienna Convention on Succession to Treaties states that a newly independent state is not bound to uphold or to become a party to any treaty by reason only of the fact that at the date of the succession of state the treaty was in force. This is referred to as the *clean slate* rule.
- The perspective of the successor state: all debts contracted by the predecessor state with a view to attaining objectives contrary to the major interest of the successor state are odious debts. Moreover, according to one speaker, from the perspective of the international community of states, all debts contracted by the predecessor state with an aim and purpose not in conformity with international law embodied in the Charter of the United Nations are odious debts.
- Unlike the World Bank's conclusion, the International Law Commission did not dismiss the concept of odious debt. Article 38 of the 1983 Convention on Succession of States in Respect of State Property, Archives and Debts adopted the approach that it would first examine each particular type of succession of states, as the rule to be adopted might well settle the issue and dispose of the need to draft a general provision on the matter. Therefore the issue was implicitly recognised, although perhaps not in the express language of the treaty. It is also recognised in customary law in terms of peremptory norms of general international law. In this regard the Bank staff's paper falls short of making a convincing argument.

**In the subsequent discussion the following argument was made:**

- We need to be creative and think of different legal ways to challenge the validity of debt where there is moral agreement on its illegitimacy. It is also important to consider lobbying for changes of the law where it doesn't address the moral concerns we have. In this context, one possibility might be to look at the national laws in borrowing countries, for example the concept of lack of authorisation to borrow (such as in non-democratic regimes). We could take into account whether, under the debtor country's national constitution or other applicable national law, governments are authorised to act for the people with regard to the specific loan, and argue that lack of authorisation under national law should void the contract at the international level.

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regime"; b) when the government "contracts debts to subjugate the population of part of its territory or to colonize it by members of the dominant nationality" and c) when the government of a state contracts debts "with a view to waging war against another state". See Alexander Sack (1927): *Les effets de transformations des états sur leurs dettes publiques et autres obligations financiers*.

<sup>10</sup> A peremptory norm of general international law is a norm accepted and recognised by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

## **The Debt Relief Process in Nigeria**

**In the presentation of the debt relief process in Nigeria the speaker made the following points:**

- When President Obasanjo was elected in 1999, he inherited a huge debt burden from previous military administrations. It was clear that securing debt relief needed to be prioritised. However, it was not clear what the best strategy was to achieve this.
- Three strategies were identified: take unilateral action, adopt a bilateral approach (i.e. work with individual creditors to leverage good will and in the process encourage other creditors to come on board), and multilateralism (negotiations).
- Initially the Nigerian Government focused on bilateralism but was told to go to the Paris Club. The issue of the legitimacy of debts featured in the discussions. Over 60 percent of projects had failed, 9 percent were fraudulent, the Abacha family had stolen large amounts of money and much of the debt related to interest and penalty charges. There were citizens' calls for reparations.
- The Government faced many challenges besides the legal and conceptual issues related to odious debt. It was also constrained by political issues such as Nigeria still being considered a 'pariah' state. The government was concerned that if it pursued unilateralism, this might impair the country's ability to access new resources vital for development.
- Despite many calls within the country for repudiation, for example by parliamentarians who were frustrated at the pace of negotiations on the debt, in the end the desire to engage in constructive dialogue prevailed. Nevertheless, during these negotiations it was important to make the moral case for debt relief based on the illegitimacy of the debts and shared responsibility with creditors.
- Ultimately, Nigeria secured a 60 percent debt cancellation deal with the Paris Club. The government had been pushing for more, but given the challenges it considered it a reasonably satisfactory result. However, the upfront payment of US\$12 billion to creditors to secure the debt write-down became very controversial. In the end, the government had just wanted to get rid of the debt and not remain subjugated to the issue.

**Points raised in the discussion that followed included the following:**

- The huge amount of resources a government has to dedicate to negotiations on debt such as in Liberia now is worrying. The Nigerian government made over 100 trips to creditor countries to negotiate the country's debt. South Africa also decided against unilateral repudiation of debt due to reputation risk.
- The example of South Africa's claims on Namibia and Mozambique was also raised. The South African Government cancelled Namibia's debt for very practical reasons and odious debt arguments were not invoked. However, South Africa illegally occupied Namibia so this may have been a factor in the decision. The debts of Mozambique were also cancelled by South Africa and, if we look at the acts of aggression by South Africa against Mozambique, from a legal point of view odious debt arguments could have been advanced though such arguments were not used.

## **Addressing Risks in Sovereign Lending**

### **The main points made by the presenter on this topic were as following:**

- Development outcomes are expected from bilateral and multilateral lending. The notion of creditor co-responsibility is sensible, and is already embedded in the way the World Bank works. Whenever there is evidence of corruption at project level, co-responsibility is examined.
- The real question is how the international community responds to the concerns raised in this round table over odious debt. One approach is unilateral repudiation. However the example of Nigeria is telling in this regard: most borrowers want to maintain access to finance of different kinds. Another approach is to develop a new international tribunal or other instrument. This would have to be negotiated internationally before it could have any power. It was, in a slightly different context, discussed in the IMF in 2003 with the proposal for a Sovereign Debt Restructuring Mechanism (SDRM).
- There are concerns about measures which would inject uncertainty into sovereign lending, in particular since we are trying to increase financial flows to developing countries. There are also judgements that have to be made in lending to the poorest countries, for example the real ability and commitment of the borrower to the project. It is rare to find complete absence of any risk of corruption. This has to be weighed against the costs of not going ahead with the project.
- The development business is high risk and we do not always know in advance whether a project will fail. There is also the moral hazard issue, i.e. for a government which is contemplating the misuse of funds, what greater incentive could there be than the possibility that debts would be written off? This may actually encourage the kinds of practices that we are trying to combat. Current practice is to cancel the project and call back the money. Writing off debts is, in incentive terms, the opposite of ownership and enfranchisement.
- If we don't go down a formal route, but rather an informal one, the debtor and creditor could sit down and renegotiate. But a binding international mechanism is unlikely to work for three reasons:
  1. Such a mechanism would be open to allegations of arbitrariness.
  2. It would starve developing countries of resources when we are trying to do the opposite.
  3. Making failure the fault of the lender has the effect of disenfranchising the borrower and incentivises failure or even misuse of funds.
- Informal negotiations between the creditor and debtor have the advantage of flexibility. It is also important to continue to improve future lending practices, he concluded.

### **Responding to this presentation, arguments from participants included the following:**

- Currently, risk is not borne by the lender but by the population in the country. Not enough weight is given to that consideration. It is a bleak picture if we say 20, 30, 40

percent of the loans will almost inevitably go astray. How much is the Bank's pressure to lend at work in many decisions?

- The Bank could design equity contracts where repayment is linked to the success of the project but this would raise questions as to why there is an incentive for failure. The principal pressure to lend also comes from the countries themselves.
- The real cost of repudiation or default is questionable. After default, several countries such as those in Latin America had experienced higher economic growth rates.
- Using post-default growth rates is misleading as countries are bouncing back from a crisis, so would be expected to have high growth rates.
- The Bank could have formal mechanisms that indeed reduce this cost. *Ex post*, a formal mechanism could make it easier to default but *ex ante* some of that would be priced into lending to these countries and we don't want to increase the costs of lending.

### **SESSION THREE: Practical Approaches to Responsible Lending and Borrowing**

#### **Ensuring responsible lending in the future**

##### **The speaker made the following points:**

- At the moment the scope of debate is open to broader definitions of illegitimate debt, which encompass successor states, corrupt debts or ineffective debts, and the level of consensus inevitably will be much more limited.
- There is firmer consensus on the issue of responsible lending. Everyone agrees there needs to be a regime in place that promotes transparency and mutual accountability. There might be differences on how to get there in the same way that most people will agree on the proposition that openness of the economy is beneficial over the long term; how to achieve this, however, is very open to debate. There may be differences over how to make sure that, in pursuing responsible lending, the lender takes joint responsibility for the outcome of the lending, and how to minimise the possibility of misuse of procedures. It would be useful to see where the World Bank and civil society could work together in advancing this agenda.
- In terms of the issues that civil society has been raising on responsible lending such as greater legal clarity, environmental and social impact analysis of projects, transparency, good procurement practices and clear procedures for arbitration, the Bank could sign all of them. In fact, this is what the Bank is trying to pursue with its own rules. Some clients would argue that the Bank is too heavy-handed with regard to environmental safeguards, or that the procurement rules are too stringent.
- In other areas of responsible lending, however, there are issues more open for debate. For instance, placing restrictions on the secondary trading of debt obligations, we have to ask, what will be the consequences? A blanket restriction on secondary trading of debt has a counterproductive impact in terms of the costs of new debts. Another issue relates to interest rates. By limiting variable interest rates, are we going to accomplish the outcome we want in terms of sustainable debt and responsible lending? The World Bank and other organizations would like to continue interaction with civil society on many of these open questions.

- Financial markets exist to increase the efficiency of how an economy is able to make inter-generational transfers and how to improve its possibilities for development. This is an area where consensus amongst economists is very strong. Financial markets have an important role to play and debt is an important instrument for development. We do not want to make public institutions too complex and unwieldy to pursue the objective of responsible lending or make it prohibitively expensive.
- There are a great many issues on which the World Bank and civil society agree, for example advancing the agenda on responsible lending. But vision without implementation is of no use.

**A second speaker on Ensuring Responsible Lender made the following points:**

- There is agreement and shared concern as to the mistakes of the past. If it can be established that lenders and borrowers share responsibility for them, then there can be agreement that there is something in the concept of illegitimate debt. But how to actually make the concept operational is where there are very different views.
- There are two essential goals that need to be met. Firstly, we have the responsibility to develop and provide an environment in which illegitimate debt claims can be practically distinguished from legitimate debt claims, and secondly to provide active deterrence from the re-accumulation of illegitimate debt in the future.
- Current international sovereign debt management procedures are unfit for these purposes. The Paris Club is the principal forum for renegotiation of bilateral debt claims, yet creditors are both “judge and jury” and the forum is open to political interference. As regards multilateral debt, the HIPC and Multilateral Debt Relief Initiatives have resulted in significant write-downs for some countries but this has been limited to a small set of countries classified as Heavily Indebted Poor Countries. The World Bank’s and IMF’s new debt sustainability framework had been presented as the magic bullet solution to avoid new rounds of unsustainable debt. But this framework does not assess the quality of loans and is therefore lacking. Given these realities, what are the possible outcomes?
  - First a government could take unilateral action to either repudiate alleged illegitimate debt or a creditor could decide to unilaterally cancel illegitimate debt. However unilateral action is unpredictable and can be unfair to one party.
  - A second possibility is the development of an international framework to assess and deal with illegitimate debt claims. This could deal more fairly and equitably with illegitimate debt concerns.
- Concretely, CSOs have advanced three proposals for a new international financial architecture:
  - The first is for a set of clear and equitable *ex-ante* and *ex-post* rules of the road as the only way of and enforcing and rewarding responsible lending and borrowing behaviour.
  - The second proposal is the creation of an international mechanism to deal impartially with existing claims of illegitimate debt.
  - The third is the proposal for comprehensive and official debt audits, such as citizens’ debt audits in Brazil and the Philippines and the official debt audit

process underway in Ecuador. The World Bank should subject itself to an independent audit of some of its lending.

- A focus on future lending is important and civil society will support international policy developments on this issue but this is not sufficient. It must be tackled in parallel to the issue of illegitimate debt. How can creditors' concerns over future responsible lending be credible if they are not undertaken in parallel with open assessments of past mistakes?

**A third speaker made the following points:**

- For many indebted countries, the international financial institutions (IFIs) are the most important lenders. This is why it is important for the IFIs to be subordinated to impartial decision-making processes on debt. The World Bank needs to indicate that it is prepared to work with such an impartial decision-making body.
- There should be specific proposals for a fair and transparent arbitration procedure to deal with sovereign debt default.<sup>11</sup> This mechanism should be impartial where the IMF's proposal for a Sovereign Debt Restructuring Mechanism was not, since the IFIs enjoyed preferred creditor status under this proposed instrument.<sup>12</sup>
- It is not necessary to wait for titanic reforms and the IFIs could take some concrete and practical steps now:
  - The first concrete step is to put an end to IFI immunity with regard to their own transactions.
  - The second proposal is support a comprehensive and impartial decision making procedure in sovereign debt management. From a technical perspective it is not difficult to implement and, most importantly, it is consistent with domestic laws.
  - The last proposal is to use multilateral resources to support countries which seriously question the validity and legitimacy of some loans. This would be akin to the Bank using its resources to help developing countries confront litigating creditors.

**The response to the presentations in the discussions was the following:**

- A lot of energy was spent on the IMF's SDRM which eventually failed. One of the lessons learned is to look forward, not backward, especially since there are already many mechanisms to solve problems of odious debt although not explicitly, such as the HIPC Initiative and Paris Club forums.
- The issue of impunity had been underplayed in the discussions. If we are not able to address the past and resolve the questions of responsibility, it will be almost impossible to rebuild the future.
- Legislation currently in the US Congress has as one of its elements to encourage the Government Accountability Office of the US to undertake an audit of past US lending in cases where there is evidence of odious lending. The debt audit process in Ecuador was also cited and it was stressed by civil society representatives that audit processes are not simply financial audits of the debt, they encompass the economic, financial

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<sup>11</sup> For further information on proposals for a fair and transparent arbitration procedure (FTAP), see: <http://www.erlassjahr.de>

<sup>12</sup> For more information on the SDRM, see <http://www.imf.org/external/np/exr/facts/sdrm.htm>

and legal terms and conditions of loans and the social and environmental impacts that loans may have had. They are not solutions but tools to identify mistakes of the past and promote learning on how avoid them.

- With respect to the issue of proposals for responsible lending and borrowing standards, it is one thing to list good principles but another to guarantee that they are enforced and followed-up in the best manner. In this context, it is important to pursue the international debates on responsible lending which had already started within the G20 and OECD in order to bring more countries on board. Otherwise initiatives would have no teeth. In fact, the export credit and guarantee working party of the OECD has adopted principles and guidelines with respect to sustainable lending practices in the provision of official export credits to low-income countries. These guidelines are also related to governance and transparency.
- The World Bank does not view the debt sustainability framework as the definitive solution to future debt problems. The DSF is viewed as seeking one key objective: analysing risks of repayment difficulties in the future. It is one part of a tool kit. The Bank is also working on technical assistance to developing countries to improve debt management capacities.
- There was concern that the debt sustainability framework, while it exerted pressure on the borrower not to take on excessive levels of new debt because of, e.g., the threat that IDA allocations may be reduced, did not exert similar pressure on lenders. Therefore the problem of lender's moral hazard remains a real one. Responsible lending standards could lead to more conditionalities imposed on poor countries. It may also ensure the proceeds of funds were used in the best interests of recipient nations.
- There are concerns over the capacities of developing country administrations to negotiate complex commercial transactions. The African Development Bank (ADB) African Leadership Support Facility was mentioned as an important initiative in this regard.
- The Bank could be making changes to its Debt Reduction Facility so that non-HIPCs could also benefit from legal assistance in the face of litigating creditors. This legal assistance is very much needed, it was stressed, since litigation is very expensive.

### **Conclusions and Next Steps**

In conclusion, all participants agreed that the round table had been a welcome exchange of views and should be viewed as part of a broader conversation on the subject. It was suggested that the unilateral action of Norway to cancel US\$80 million owed by five countries acknowledging "shared responsibility", had helped to facilitate discussions on the issue of creditor co-responsibility among governments, officials and civil society organisations.

A number of proposals for follow-up activities were raised by participants. Some civil society organisations suggested that, if the World Bank was indeed serious about the importance of the odious debt issue, it should foster further discussions on the subject, for example workshops with legal experts to discuss different approaches to dealing with the

problem. It was also proposed that the World Bank and a Southern CSO jointly appoint an independent auditor to examine a selected Bank credit according to mutually agreed indicators. Finally, CSOs called for the World Bank discussion paper and roundtable outcome report to be discussed by the Bank's management and Board.

The World Bank mentioned that its discussion paper on odious debt would now be finalised and posted on the website.<sup>13</sup> There would also be a detailed outcome report of the day's discussions produced jointly by EURODAD and the World Bank.

In October 2008, the Bank will hold a conference on debt relief in low-income countries. This would be an opportunity to look at 12 years of the HIPC Initiative, and to look forward beyond the process. CSOs would be invited to attend and the forum would be an occasion to continue some of the discussions on odious debt.

Finally, the Bank mentioned that its internal audit procedures were stringent and that allegations of impropriety and/or damaging consequences of Bank financed activities would be seriously investigated. In this context, should CSOs wish to bring a concrete case to the attention of the World Bank, it would be pleased to look at it more closely. Moreover, the World Bank staff present did not have any remit to make institutional or policy commitments on behalf of the Bank.

Although some stressed that there had been incidences of lending going wrong in the past, there were differences of opinion expressed over how to address these concerns. Some participants argued that it was essential to look at the issues of past illegitimate debt and future responsible lending hand-in-hand. In order to ensure responsible lending and borrowing behaviour in the future, it was essential to learn the lessons of the past as well as be seen to "put your house in order". Other participants argued that discussions over the past should not paralyse efforts to move forward on issues of responsible lending in the future. This was an issue on which broad-based consensus could be achieved and tangible progress made relatively quickly.

It was agreed that the discussion on odious debt and responsible lending had engaged a much broader range of stakeholders than before. In this context, participants looked forward to the outcome report and welcomed further such exchanges in the future.

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<sup>13</sup>The paper can be found at <http://siteresources.worldbank.org/INTDEBTDEPT/Resources/468980-1184253591417/OdiousDebtPaper.pdf>