# SOVEREIGN DEBT RESTRUCTURING AND THE INTERNATIONAL LEGAL FRAMEWORK: A CRITICAL ANALYSIS OF EXISTING MECHANISMS AND THE NEED FOR REFORM

*by*

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## ABSTRACT

Countries borrow, and sometimes they cannot pay back. When that happens, there is no bankruptcy court to step in, no single law to follow and no neutral referee. What exists instead is a mix of bond contracts, creditor clubs, policies of international institutions and a small number of court decisions. This article explains how that mix works, where it helps and where it fails. It looks at collective action clauses, the pari passu clause, the Paris Club, the IMF, the G20 Common Framework, national courts and investment arbitration, and it uses real cases from Argentina, Greece, Zambia, Ethiopia and others to test them. The article argues that the system is too slow, too scattered and too easy for a few creditors to disturb, and that ordinary people in debtor countries pay the price. It ends by weighing the main reform ideas and suggests a step-by-step approach that is realistic rather than perfect.

**Keywords:** sovereign debt; debt restructuring; collective action clauses; pari passu; Common Framework; Paris Club; IMF; international financial law

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## I. Introduction

Imagine a small business that owes money to a bank, two suppliers and a landlord. If it collapses, a court can freeze all claims, count what is owed, decide who gets paid first and give the business a fresh start. Everyone knows the rules in advance.

Now imagine a country in the same position. It owes money to bondholders spread across dozens of countries, to other governments, to the World Bank and to commercial banks. It cannot be shut down, and nobody can sell off its territory. There is no court that can freeze the claims against it. If the government stops paying, creditors can sue, but they sue in different courts, under different laws, at different times.

That is the basic problem of sovereign debt restructuring. It is not new. Governments have been defaulting for centuries.[2] What is new is how crowded the room has become. A few banks once lent to a few governments. Today a single country may owe money to thousands of bondholders and to several official lenders, including China, which now lends on a very large scale and does not belong to the old creditor clubs.[3]

The question this article asks is simple. Does international law give a struggling country and its creditors a fair, orderly and reasonably quick way to settle their affairs? The honest answer is "not really". There are good tools, and some of them have worked. But there is no complete system, and when a crisis is deep, the gaps show.

The article first explains why a country's debt is different from a company's. It then looks briefly at history, before describing the main tools in use today: bond contracts, courts, arbitration and the official lenders. After that it looks at recent cases, points out the main weaknesses, considers arguments against reform, and ends with practical suggestions.

## II. Why a Country's Debt Is Different

Three differences matter most.

The first is that there is no bankruptcy court for states. A company can be reorganised under a bankruptcy law that stops creditors from rushing to court and binds those who disagree. A country cannot. In the United States, Chapter 9 of the Bankruptcy Code allows cities and local bodies to restructure, but it does not cover foreign governments. The US Supreme Court made the limits clear in *Puerto Rico v. Franklin California Tax-Free Trust*, where it held that Puerto Rico could not use its own local debt-restructuring law, because federal law had left territories

[2] Carmen M. Reinhart & Kenneth S. Rogoff, This Time Is Different: Eight Centuries of Financial Folly (2009).
[3] Sebastian Horn, Carmen M. Reinhart & Christoph Trebesch, *China's Overseas Lending*, 133 J. Int'l Econ. art. 103539 (2021).

out of Chapter 9.[4] Congress later passed a special law, PROMESA, for Puerto Rico alone. It was a fix for one territory, not a model for the world.

The second is that creditors find it hard to collect. For a long time, courts held that a foreign state could not be sued at all. Over the twentieth century, most countries moved to what is called "restrictive immunity", which says a state is immune for its government acts but not for ordinary commercial dealings. The English Court of Appeal accepted this in *Trendtex Trading Corporation v. Central Bank of Nigeria*.[5] The United States wrote the same idea into the Foreign Sovereign Immunities Act, and the US Supreme Court applied it to government bonds in *Republic of Argentina v. Weltover*, holding that Argentina's rescheduled bonds were a commercial activity and that Argentina could be sued over them in New York.[6] The United Kingdom followed with the State Immunity Act 1978.[7] So creditors can usually win a judgment. But winning and collecting are two different things. Central bank reserves, embassies and many public assets are protected from seizure, so creditors have to search for assets they can actually reach.

The third difference is that the choice to pay is partly political. A company board answers to shareholders. A government answers to voters. When a finance minister has to choose between paying a bond coupon and paying for hospitals, schools or food imports, the legal question is only one part of the decision. Scholars have long noticed that sovereign debt works through a mix of reputation, the wish to borrow again and legal threats, rather than through enforcement alone.[8]

All this creates two opposite dangers. One is that a government defaults too easily, or offers too little. The other is that a small group of creditors refuses every deal and sues for full payment, hoping the rest will accept a loss while they do not. Almost every tool described below is an attempt to deal with one of these two dangers without a court.

## III. A Short History of Debt Crises

Looking back helps, because many of today's tools were built in response to earlier failures. In the nineteenth century, creditors often relied on their governments to force payment. In

[4] *Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 579 U.S. 115 (2016); Puerto Rico Oversight, Management, and Economic Stability Act, 48 U.S.C. §§ 2101–2241. **2**

[5] *Trendtex Trading Corp. v. Cent. Bank of Nigeria* [1977] 1 QB 529 (Eng.).

[6] 28 U.S.C. §§ 1602–1611; *Republic of Argentina v. Weltover, Inc.*, 504 U.S. 607 (1992).

[7] State Immunity Act 1978, c. 33 (UK).

[8] Ugo Panizza, Federico Sturzenegger & Jeromin Zettelmeyer, *The Economics and Law of Sovereign Debt and Default*, 47 J. Econ. Literature 651 (2009); Sabine Lienau, Rethinking Sovereign Debt: Politics, Reputation, and Legitimacy in Modern Finance (2014). **3**

1902, Britain, Germany and Italy blockaded Venezuelan ports to press for repayment of debts. The

Argentine foreign minister, Luis María Drago, protested that force should never be used to collect public debts. Five years later, the Hague Convention of 1907, often called the Porter Convention, limited the use of armed force to recover contract debts, unless the debtor refused arbitration or refused to carry out an award.[9] Some countries, such as Egypt in 1876, lost real control over their finances to foreign debt commissions.[10]

A very different example came after the Second World War. In the London Agreement of 1953, Germany's foreign debts were reduced and the repayment schedule was linked to its ability to earn foreign currency through exports.[11] The aim was to let a defeated country rebuild rather than spend decades paying. Many lawyers still point to it as proof that large-scale debt relief can be fair and can work.

In the 1980s, many Latin American countries ran into trouble after Mexico announced in 1982 that it could not pay. Banks and debtors negotiated through what became known as the London Club, usually bank by bank and country by country. The crisis dragged on until the Brady Plan of 1989 turned bank loans into tradable bonds, often at a discount, and some of those bonds were partly backed by collateral.[12] That created a new problem. Once debts became bonds held by many investors, it was harder to negotiate with all of them at once, and holdouts became a bigger threat.

For the poorest countries, the answer came in the form of the Heavily Indebted Poor Countries (HIPC) Initiative from 1996 and the Multilateral Debt Relief Initiative from 2005, which cancelled part of the debts owed to international institutions.[13] These were important, but they were charity programmes run by creditors, not legal rights that a debtor could invoke.

## IV. The Contract Is the First Line of Defence

Today, most of the rules that actually govern a restructuring are written into the bond documents themselves. Two clauses matter most.

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[9] Convention Respecting the Limitation of the Employment of Force for the Recovery of Contract Debts, Oct. 18, 1907, 36 Stat. 2241.

[10] *See* Reinhart & Rogoff, *supra* note 1 (discussing Egypt's 1876 debt administration).

[11] Agreement on German External Debts, Feb. 27, 1953, 333 U.N.T.S. 3.

[12] *See* Panizza et al., *supra* note 7 (discussing the Brady Plan).

[13] Int'l Monetary Fund, *Heavily Indebted Poor Countries (HIPC) Initiative* (launched 1996, enhanced 1999); Int'l Monetary Fund & World Bank, *Multilateral Debt Relief Initiative* (2005).

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### A. Collective Action Clauses

A collective action clause (CAC) lets a large majority of bondholders agree to new terms, such as a lower interest rate or a longer repayment period, and makes that decision binding on everyone, including those who voted no. It is the closest thing the market has to a bankruptcy vote.

English-law bonds have contained such clauses for a long time. New York-law bonds, however, usually required every single holder to agree before payment terms could be changed, which gave any holdout a veto.[14] After a series of emerging-market crises, the market changed. Mexico's 2003 bond issue under New York law, which included CACs, is usually seen as the turning point, and other issuers followed. In the euro area, the Treaty Establishing the European Stability Mechanism made standard CACs compulsory in government bonds from 2013.[15]

The early clauses had a weakness. They worked bond by bond, so an investor could buy up a blocking share of one bond and stall a deal. In 2014 the International Capital Market Association (ICMA) published new model clauses that allow votes across all the bonds together, and updated them again in 2020.[16] The IMF supported this reform.[17] These clauses were put to the test in Argentina's 2020 restructuring, where most bondholders accepted the new terms.

CACs are useful, but they have limits. They apply only to bonds that contain them, and many older bonds do not. They do not cover bank loans, loans from other governments or trade debts. And they do nothing about the question of how to treat different groups of creditors alike.

### B. The Pari Passu Clause

"Pari passu" is Latin for "on equal footing". Many bonds include a promise that the debt will rank equally with the country's other unsecured debts. For years, lawyers treated this as routine wording. That changed with Argentina.

After Argentina's default at the end of 2001, on roughly 95 billion dollars of debt, the country offered exchanges in 2005 and 2010 and eventually persuaded about 93 per cent of

[14] Lee C. Buchheit & G. Mitu Gulati, *Sovereign Bonds and the Collective Will*, 51 Emory L.J. 1317 (2002); Mark Weidemaier & Mitu Gulati, *A People's History of Collective Action Clauses*, 54 Va. J. Int'l L. 51 (2013).

[15] Treaty Establishing the European Stability Mechanism art. 12(3), Feb. 2, 2012.

[16] Int'l Capital Mkt. Ass'n, Standard Collective Action Clauses (CACs) for the Terms and Conditions of Sovereign Notes (Aug. 2014) (updated 2020).

[17] Int'l Monetary Fund, Strengthening the Contractual Framework to Address Collective Action Problems in Sovereign Debt Restructuring (Oct. 2014).

bondholders to accept new bonds worth much less. A group of holdouts, led by funds such as NML Capital, refused and sued in New York. Judge Thomas Griesa ruled that Argentina had breached the pari passu clause by paying the restructured bondholders while paying nothing to the holdouts, and he ordered that Argentina could not pay the first group unless it paid the second in the same proportion. The Second Circuit upheld the order in *NML Capital v. Republic of Argentina*, and again in 2013.[18] The US Supreme Court refused to hear Argentina's appeal and, in a separate case, allowed the holdouts wide rights to search for Argentina's assets worldwide.[19]

The effect was dramatic. In 2014 Argentina fell into a "technical default" because payments to the restructured bondholders were blocked. The dispute only ended in 2016, when a new government paid the holdouts more than nine billion dollars.

Many people saw this as a warning. If a court could read a standard clause in a way that lets a small group block everyone else's deal, then a voluntary restructuring would always carry a risk. ICMA responded in 2014 with new model language that says the clause only means equal ranking, not equal payment at every moment.[20] Even so, the lesson is a worrying one: a whole system was found to depend on how one court read a few words that few drafters had thought hard about.[21]

## V. Courts and Their Limits

Since most sovereign bonds are governed by New York or English law, the courts of those two places have an outsized role. Their decisions have shaped the rules, even though they were never designed to run a restructuring.

### A. Holdouts and Distressed-Debt Buyers

*Elliott Associates v. Banco de la Nación* is one of the most cited holdout cases. Elliott bought Peruvian debt on the secondary market at a deep discount and sued for the full face value. Peru argued that this was champerty, an old rule against buying debts mainly to sue on them. The Second Circuit disagreed, holding that the champerty rule did not apply, because Elliott's main aim was to collect on the debt and not simply to start a lawsuit.[22] Peru ended up paying

[18] *NML Capital, Ltd. v. Republic of Argentina*, 699 F.3d 246 (2d Cir. 2012); *NML Capital, Ltd. v. Republic of Argentina*, 727 F.3d 230 (2d Cir. 2013).
[19] *Republic of Argentina v. NML Capital, Ltd.*, 573 U.S. 134 (2014).
[20] Int'l Capital Mkt. Ass'n, Pari Passu Clause for the Terms and Conditions of Sovereign Notes (Aug. 2014).
[21] Lee C. Buchheit & Jeremiah S. Pam, *The Pari Passu Clause in Sovereign Debt Instruments*, 53 Emory L.J. 869 (2004).
[22] *Elliott Assocs., L.P. v. Banco de la Nación*, 194 F.3d 363 (2d Cir. 1999).

well over fifty million dollars to settle. The case showed that buying distressed sovereign debt in order to sue is a workable business plan.

In England, the *Donegal* case produced a similar result on a smaller scale. Donegal International bought a Romanian claim against Zambia for a small fraction of its face value and sued in the High Court in London. The court awarded a substantial sum, though far less than the creditor had claimed, to one of the poorest countries in the world.[23] The public reaction was strong enough that Parliament passed the Debt Relief (Developing Countries) Act 2010, which limits what commercial creditors can recover from the poorest countries in UK courts.[24] Belgium passed a law in 2015 aimed at stopping speculators from profiting from distressed debt of the poorest states.[25]

### B. Where a Debt Is Located

Another case from the same family is *Allied Bank International v. Banco Crédito Agrícola de Cartago*. Costa Rica had blocked its banks from paying foreign loans during a crisis, and some US banks sued. The Second Circuit refused to give effect to Costa Rica's decree, partly because the debts were payable in New York.[26] The case shows that a debtor country cannot simply rewrite its foreign obligations by passing a law at home. Courts abroad will not always honour it.

### C. What Courts Cannot Do

Courts decide disputes between parties, one case at a time. They cannot bring all creditors together, set a timetable or consider whether a country's people can afford a deal. The result is that a restructuring runs along two tracks at once: negotiation and litigation, each affecting the other.

## VI. Investment Treaties and Human Rights Claims

Some bondholders have tried a different route. Many countries have signed bilateral investment treaties that let foreign investors bring claims before international tribunals, often at ICSID. The question is whether government bonds count as an "investment".

[23] *Donegal Int'l Ltd. v. Republic of Zambia* [2007] EWHC (Comm) 197 (Eng.).
[24] Debt Relief (Developing Countries) Act 2010, c. 22 (UK).
[25] Loi du 12 juillet 2015 relative à la protection du territoire belge contre les agissements de certains fonds vautours [Law of July 12, 2015 on the Protection of Belgian Territory Against the Activities of Certain Vulture Funds] (Belg.).
[26] *Allied Bank Int'l v. Banco Crédito Agrícola de Cartago*, 757 F.2d 516 (2d Cir. 1985).

In *Abaclat v. Argentine Republic*, a tribunal decided in 2011 that it had jurisdiction over a claim brought by tens of thousands of Italian bondholders, and it treated their bonds as protected investments.[27] A second case, *Ambiente Ufficio v. Argentina*, followed a similar path in 2013.[28] Both decisions were criticised, partly because they allowed what looked like a collective claim without a clear legal basis for it.

Other tribunals were more cautious. In *Poštová banka v. Hellenic Republic*, a Slovak bank that held Greek bonds claimed that Greece's 2012 restructuring violated the treaty. The tribunal rejected jurisdiction, finding that the bonds were not an investment in the way the treaty and the ICSID Convention required.[29] The two lines of cases do not fit together, and the law remains unsettled.

Human rights law has also been tried. After Greece's 2012 restructuring, some bondholders argued before the European Court of Human Rights that losing part of their bonds violated the right to property. In *Mamatas v. Greece* (2016), the Court found no violation. It accepted that a state facing a severe crisis may reduce its debts in the public interest, as long as it does not act in a clearly unreasonable way.[30]

The practical point is that more forums do not mean more order. A country in restructuring can face claims in New York, London, an arbitration panel and a human rights court, and nobody coordinates them.

## VII. The Official Lenders

So far we have looked at private creditors. Governments and international institutions are creditors too, and often the biggest ones.

### A. The Paris Club

The Paris Club has been meeting since 1956, when it first handled Argentina's debts to a group of governments. It is an informal group of creditor governments that follows a few simple rules: decisions are made by consensus, each case is looked at separately, relief is tied to an IMF programme, creditors share information, and the debtor must seek "comparable"

[27] *Abaclat v. Argentine Republic*, ICSID Case No. ARB/07/5, Decision on Jurisdiction and Admissibility (Aug. 4, 2011).

[28] *Ambiente Ufficio S.p.A. v. Argentine Republic*, ICSID Case No. ARB/08/9, Decision on Jurisdiction and Admissibility (Feb. 8, 2013).

[29] *Poštová banka, a.s. v. Hellenic Republic*, ICSID Case No. ARB/13/8, Award (Apr. 9, 2015).

[30] *Mamatas v. Greece*, App. Nos. 63066/14, 64297/14 & 66106/14, Eur. Ct. H.R. (July 21, 2016).

terms from other creditors.[31] It is flexible, and for many years it was effective. But it has no treaty, no legal powers and, importantly, it does not include many of today's large lenders, such as China, India or the Gulf states.

**B. The IMF**

The International Monetary Fund has no legal job of restructuring anyone's debt. Yet in practice it sits in the centre. It lends to countries in crisis, and it decides whether a country's debt is "sustainable", which in turn tells creditors how much relief is needed. Its rules also say it should not lend to a country that is behind on payments to official creditors unless those creditors agree to relief or the IMF is satisfied that the country is making a good-faith effort.[32] This gives the IMF a lot of influence, but also a conflict. It is a creditor, and its biggest shareholders are creditor countries, so it is not entirely neutral.

**C. The Common Framework**

The G20's answer to the new world of lenders was the Common Framework. In 2020, the pandemic pushed many poor countries to the edge. In April, the G20 launched the Debt Service Suspension Initiative, which paused official payments for the poorest countries. In November, it adopted the Common Framework for Debt Treatments beyond the DSSI, which lets low-income countries that were eligible for the pause ask for a proper restructuring.[33] An official creditor committee brings together Paris Club members and others, including China. The debtor needs an IMF programme, and it must get the same level of relief from private creditors, which is the rule of "comparability of treatment".

On paper, this was the missing piece. In practice, it has been slow. Chad, Zambia, Ethiopia and Ghana have used it, and Senegal has asked to as well. Zambia defaulted in November 2020, the first African default of the pandemic period, and took years to reach agreements with its creditors. Ethiopia asked for treatment in early 2021. Reports indicate that its agreement with France was signed in February 2026 and that it reached a settlement with China in April 2026,

[31] Paris Club, *Principles of the Paris Club*, https://clubdeparis.org (last visited Nov. 11, 2026); Anna Gelpern, *Building a Better Seating Chart for Sovereign Restructurings*, 53 Emory L.J. 1115 (2004).

[32] Int'l Monetary Fund, *Policy on Lending into Official Arrears* (April 9, 2024); Int'l Monetary Fund, *Sovereign Debt Restructuring—Recent Developments and Implications for the Fund's Legal and Policy Framework* (Apr. 2013).

[33] Group of Twenty, *Common Framework for Debt Treatments Beyond the DSSI* (Nov. 13, 2020).

but its defaulted bond was still being negotiated with bondholders in late 2026.[34] Commentators have pointed to a lack of transparency among creditors, and to the lack of clear deadlines, as the main reasons for the delay.[35]

To speed things up, the IMF, the World Bank and the G20 presidency created the Global Sovereign Debt Roundtable in 2023, during India's G20 presidency. It brings debtors, official creditors and private creditors together to share information and agree on timelines.[36] Its latest reports describe progress in Ghana and Zambia, a pending bond exchange in Ethiopia and a new request from Senegal. Ethiopia's central bank governor used the 2026 Annual Meetings to call for clearer deadlines, better coordination among creditors and early caps on advisers' fees, which shows that the basics are still being argued about.[37]

## VIII. What Recent Cases Teach Us

Three cases are worth putting side by side, because each one shows something different.

### A. Argentina

Argentina shows what happens when a small group of creditors can block a deal. It took fifteen years and a change of government to close the book on the 2001 default, and in the meantime Argentina was cut off from international markets. In 2020, Argentina restructured again, this time using the strengthened CACs, and the process was much quicker. The change in the contracts made a visible difference.

### B. Greece

Greece shows what a country can do when most of its debt falls under its own law. In early 2012, Greece passed Law 4050, which added a CAC to bonds governed by Greek law after the fact. With it, Greece restructured roughly two hundred billion euros of privately held debt,

[34] African Sovereign Debt Justice Network, *Sovereign Debt News Update No. 172: Ethiopia's Sequential Debt Agreements with France and China, and the Enduring Limits of the G20 Common Framework*, Afronomicslaw (2026), https://www.afronomicslaw.org/category/african-sovereign-debt-justice-network-afsdjn/sovereign-debt-news-update-no-172-ethiopias (last visited Nov. 11, 2026).

[35] *Ethiopia's Latest Impasse Shows Inter-Creditor Transparency Must Improve*, GlobalCapital (2026), https://www.globalcapital.com/article/2fgh1um5xnv03yuw97ocg/people-and-markets/gc-view/ethiopias-latest-impasse-shows-inter-creditor-transparency-must-improve (last visited Nov. 11, 2026).

[36] Andrea Shalal, *Sovereign Debtors, Creditors Agree Steps to Jumpstart Debt Restructurings*, Reuters (Apr. 13, 2023), https://www.business-standard.com/world-news/sovereign-debtors-creditors-agree-steps-to-jumpstart-debt-restructurings-123041300092_1.html (last visited Nov. 11, 2026).

[37] *African Debt Restructurings Advance*, Capital Ethiopia (Oct. 18, 2026), https://capitalethiopia.com/?p=83345; *Ethiopia Calls for Faster, Better-Coordinated Sovereign Debt Restructuring*, allAfrica (Oct. 15, 2026), https://allafrica.com/stories/202610150081.html (last visited Nov. 11, 2026).

and about 97 per cent of bondholders ended up bound by the deal.[38] The method worked, but it only worked because the law of Greece governed most of the bonds. A country whose debts are mainly under foreign law cannot do the same.

### C. Zambia and Ethiopia

Zambia and Ethiopia show what happens in the Common Framework when the lenders are many and the rules are loose. The deals took years, with the debtors in default, and arguments about who should accept the largest loss. The comparability rule says every creditor should accept similar relief, but there is no agreed way to measure it, and so each side can accuse the other of getting a better bargain.

## IX. Sri Lanka and Ghana: Two More Tests

Two other cases from the same wave of defaults are worth a short look. Sri Lanka stopped paying its external debt in April 2022, after a severe shortage of foreign currency that led to fuel and food queues and political upheaval. Because it was not a low-income country in the technical sense, it did not use the Common Framework. It followed a different path, with an IMF programme and a committee of official creditors, and later reached terms with its bondholders. Ghana stopped paying at the end of 2022 and did use the Common Framework. Reports from 2026 describe most of the cases that began in 2021 and 2022 as largely completed, whether inside the Framework, as with Ghana and Zambia, or outside it, as with Sri Lanka.[39]

This is real progress, and it should be acknowledged. But the same reports show how long it took. Counting from the first missed payment to a settled deal, most of these countries needed between two and five years. That is a very long time for a government to run an economy with no access to normal borrowing.[40]

## X. The Human Cost Behind the Numbers

Debt restructuring is usually discussed in the language of haircuts, coupons and net present value. It is easy to forget that these decisions land on real people.

[38] Law 4050/2012 (Greece); Jeromin Zettelmeyer, Christoph Trebesch & Mitu Gulati, *The Greek Debt Restructuring: An Autopsy*, 28 Econ. Pol'y 513 (2013).

[39] Ashenafi Endale, *Bondholder, Commercial Creditor Deals Remain Out of Reach in Ethiopia Debt Saga*, The Reporter Ethiopia (Apr. 18, 2026), https://www.thereporterethiopia.com/50299/ (last visited Nov. 11, 2026).

[40] *See* Global Sovereign Debt Roundtable, *Co-Chairs' Progress Reports* (2023–2026).

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When a country is in default, it is often shut out of the bond market, and sometimes it struggles to get trade finance as well. Importers cannot find enough dollars to buy fuel, medicine or fertiliser. Prices rise. The government, meanwhile, may be asked to cut spending as part of an IMF programme, and the interest it still pays on its debts can take up a large share of its budget, leaving less for hospitals and schools. The longer the process goes on, the deeper these effects go. This is the reason that the 2015 UN principles speak of sustainability and of protecting a state's ability to serve its people, not only its ability to repay.

It would be unfair to paint the creditors as faceless. Many bondholders are pension funds, insurers and ordinary savers. In *Abaclat*, the claimants were tens of thousands of small Italian investors who had bought Argentine bonds through their banks. They too lost money, and they too had little say in how the restructuring was done. A fair system has to think about both sides: the citizens of the debtor country, and the savers who lent in good faith. That is one more reason why rules that are clear and known in advance are better than improvised bargaining.

## XI. Where the System Falls Short

Putting all these pieces together, I would point to five main weaknesses.

### A. The Pieces Do Not Fit Together

Contracts, courts, official clubs and treaty tribunals each do part of the job, and none of them can bind all the creditors at once. A CAC can bind bondholders but not other governments. The Common Framework can bring official creditors together but cannot force private creditors to accept a deal. A court can order payment to one creditor, but cannot decide what is fair for all.

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### B. It Takes Too Long

When a country stops paying, it is often shut out of international markets, which makes it harder to import fuel, medicine and food. Every extra year of negotiation makes the original crisis worse. A restructuring that takes five years, as Ethiopia's has, is not much comfort to the people living through the crisis.

### C. A Few Creditors Can Disturb Everyone

Even with stronger CACs, the Argentine saga shows that holdouts can still do real harm. And the mere possibility of a lawsuit changes how countries negotiate. A country may agree to pay

a small group on better terms to avoid a court order, which in turn makes other creditors angry.

**D. The Debtor Has Little Say**

Debtor countries, especially small ones, often lack the legal and financial expertise to negotiate with big institutions. They rely on expensive advisers, and the fees can be heavy. The rules are largely written by creditors and creditor countries, and the debtor's citizens have almost no formal voice.

**E. There Is No Pause Button**

In a company bankruptcy, creditors are stopped from suing while a plan is worked out. For countries, there is no such stay. A country that is negotiating in good faith can still be sued, and its assets pursued, at any time.

**XII. Is There Another Side?**

Not everyone agrees that major reform is needed, and the arguments against it deserve a fair hearing.

Some creditors and market lawyers argue that strong enforcement is what keeps borrowing cheap. If a country knows that it cannot be forced to pay, it may borrow too much, and lenders will charge more to protect themselves. A global bankruptcy court, they say, could raise borrowing costs for the very developing countries it is meant to help. There is also the fear of "moral hazard": if default becomes too easy, governments may be tempted to take it as an option.

Others point out that the system is slowly improving. CACs are now standard, the pari passu clause has been clarified, and the Roundtable is starting to push timelines. Argentina's 2020 restructuring was faster than its first. On this view, patience is better than a dramatic rebuild.

These are serious points. But they do not answer the problem fully. Strong enforcement and fairness are not opposites. A good system can punish bad-faith defaults and also protect countries that negotiate honestly. And the improvements so far have come mostly from market practice and soft guidelines, which are voluntary and leave the hardest cases untouched.

**XIII. Ideas for Reform**

### A. A Sovereign Bankruptcy Mechanism

The boldest idea is a formal bankruptcy process for countries. Scholars suggested versions of this in the 1980s and 1990s, and in 2000 Steven Schwarcz proposed adapting corporate reorganisation law to states.[41] In 2001, Anne Krueger, then the IMF's First Deputy Managing Director, put forward a concrete proposal, the Sovereign Debt Restructuring Mechanism (SDRM). It would have required an amendment to the IMF's Articles, allowing a large majority of creditors to bind the rest and giving the debtor a temporary stay on lawsuits.[42] Support was thin, particularly from the United States and some borrowing countries, and the IMF's members set it aside in 2003.[43]

The idea has not gone away, but the obstacles remain. It would need powerful states to give up an advantage, and it would need a body that is neutral. The IMF, being a creditor itself, is not an obvious choice.

### B. Stronger Contracts

The most realistic route is to keep improving the bond documents. That means including aggregated CACs in every new bond and loan, adding clear standstill provisions that let a debtor pause payments while it negotiates, and making sure that the pari passu clause is written in a way that does not allow the Argentina outcome to be repeated.[44] The weakness is speed. Contract reform only works as old bonds mature, which can take decades.

### C. Laws in New York and London

Since most sovereign bonds are under New York or English law, a change in the law in either place would have an immediate effect. The UK's 2010 Act is an example. Several bills have been proposed in New York over the years to limit holdouts' ability to make large profits on distressed debt, or to protect countries that are negotiating in good faith.[45] There is a risk that capital markets might respond by moving to other jurisdictions. But laws that apply only to restructurings recognised by the IMF, and that are narrow in scope, would likely be absorbed without much disruption.

[41] Steven L. Schwarcz, *Sovereign Debt Restructuring: A Bankruptcy Reorganization Approach*, 85 Cornell L. Rev. 956 (2000); Patrick Bolton & David A. Skeel, *Inside the Black Box: How Should a Sovereign Bankruptcy Framework Be Structured?*, 53 Emory L.J. 763 (2004).

[42] Anne O. Krueger, A New Approach to Sovereign Debt Restructuring (2002).

[43] Kenneth Rogoff & Jeromin Zettelmeyer, *Bankruptcy Procedures for Sovereigns: A History of Ideas, 1976–2001*, 49 IMF Staff Papers 470 (2002).

[44] Int'l Monetary Fund, *supra* note 16.

[45] See, e.g., Sovereign Debt Stability Act, S.B. 2333, 2025–2026 Leg., Reg. Sess. (N.Y. 2025) (in committee).

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### D. A Better Official Sector

The Common Framework could be improved without any new treaty. The most useful changes would be:

- fixed deadlines for each stage, from the request for help to the final agreement;
- a clear, public method to measure whether creditors are giving comparable relief;
- full sharing of data about who owes what to whom, including loans from state-owned lenders;
- early limits on the fees paid to advisers; and
- an interim standstill from the date a country enters the process.

Many of these are under discussion in the Roundtable.[46] What is missing is a firm commitment to turn the talk into practice.

### E. A United Nations Framework

In September 2015, the UN General Assembly adopted the Basic Principles on Sovereign Debt Restructuring Processes, by a vote of 136 to 6, with 41 abstentions. The principles include a state's right to restructure its debt, good faith, transparency, impartiality, equal treatment of creditors, respect for sovereign immunity, legitimacy, sustainability and the rule that a majority of creditors should not be blocked by a minority.[47] They are not binding. UNCTAD also published a practical guide for debt workouts in the same year.[48] Civil society groups and some governments have called for a full UN framework convention.[49]

The strength of this idea is legitimacy, since every country has a vote at the General Assembly. The weakness is that the major creditor countries opposed or abstained on the 2015 resolution, and a convention without them would have limited effect. Still, the principles are useful as a shared language, and courts, legislators and negotiators could draw on them even though they are not law.

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## XIV. A Practical Way Forward

A grand treaty is unlikely in the near future. Rather than wait for one, I suggest a step-by-step approach, built on what is already working.

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[46] *See* Global Sovereign Debt Roundtable, *supra* note 39.
[47] G.A. Res. 69/319, Basic Principles on Sovereign Debt Restructuring Processes (Sept. 10, 2015).
[48] U.N. Conf. on Trade & Dev., Roadmap and Guide for Sovereign Debt Workouts (2015).
[49] *See* African Sovereign Debt Justice Network, Afronomicslaw, https://www.afronomicslaw.org (last visited Nov. 11, 2026) (collecting materials advocating a U.N. framework convention on sovereign debt).
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In the short term, the creditor governments that run the Common Framework should agree on fixed timelines, a public comparability test and early limits on advisers' fees. These steps cost little and need no new law.

In the medium term, New York and the United Kingdom should pass narrow laws that protect countries negotiating in good faith. They should apply only when a restructuring is recognised through an IMF process, so that markets can see the rules clearly.

In the long term, contract reform will do its work as older bonds are replaced, and the system will become more predictable. A statutory regime or a UN convention can remain a goal for the future, with the 2015 UN principles as a starting text.

This approach is not elegant. But it matches how the system has actually developed: through market practice that became habit, then custom and finally law. The 1953 German agreement, the Brady Plan and the move to CACs all started as practical solutions to urgent problems.

**XV. Conclusion**

The law on sovereign debt restructuring grew out of crisis after crisis. Each time, a gap was found and then patched, with a new clause, a new club or a new court decision. The result is much better than the improvised bargaining of the past, but it is still not a system anyone would design from scratch.

The weaknesses are real, and they hurt most in the poorest countries, where delay means shortages of medicine, lost schooling and years of lost growth. Argentina's long fight with its holdouts, Greece's use of its own law, and the slow processes in Zambia and Ethiopia all lead to the same conclusion. The rules are uneven and the process depends too much on power and patience.

Fixing this does not require a perfect plan. It requires steady work on contracts, on national laws and on the official process, guided by two simple tests: how fast a country can recover, and how fairly the burden is shared. By those tests the present framework still falls short, which is why reform remains necessary.

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