SDRM: Debt Restructuring or Liquidation?

C.P. Chandrasekhar, Jayati Ghosh and Smitha Francis.

Introduction

Financial crises are now the norm in those developing countries that were discovered as 'emerging markets' by international financial capital. In fact, the number of instances of crises of significant dimensions has been growing. Among the major crises that have accompanied the rise of finance are the ones in Southern Cone in the late 1970s; the third world debt crisis of the early 1980s; the savings and loan debacle in the US in the late 1980s; India's balance of payments crisis in 1991; the so-called ERM crisis in 1992; the Mexican crisis of 1994–95 and its follow-on crisis in Latin America; the East Asian crisis of 1997; the Russian meltdown of 1998; the collapse of the Real in Brazil and its impact on the rest of Latin America in 1998–99; the Turkish crisis in 2000 and the Argentinian crisis, which is still current. Over time, the occurrence of crises in different emerging markets has become more frequent.

It is not just that the number of crises and their intensity have increased, but that they have affected relatively 'strong' developing countries which were not characterized by large fiscal deficits or strongly interventionist regimes—factors which the Bretton Woods institutions (BWIs) have conventionally seen as triggering financial crises. Not surprisingly, when financial crises affected the East Asian economies, including South Korea and Malaysia, in the late 1990s, the World Bank and the IMF were taken by surprise. Large public deficits or repressed financial systems could hardly be held responsible for these crises. Refusing to seek alternative explanations, these institutions stuck to the ideological frame that supports their adjustment policies and made the generation of public sector surpluses a condition for financial support to these economies, which were already facing severe deflation. It was only when the folly involved in such a policy stance became the subject of widespread criticism that the IMF chose to revise its recommendations, paving the way for a hesitant recovery. Since the East Asian experience, a number of other countries that had adopted positive macroeconomic positions from the point of view of the Bretton Woods institutions have also experienced crises, the most damaging instance being Argentina which till recently was a favourite of both the BWIs and the financial markets.

The message was clear. Once countries went down the path of opening up their financial sectors, increasing the role of markets in determining exchange rates, financial returns and the scope of financial instruments, and providing space for less regulated private financial players and financial capital from abroad, the threat of crises was real and their timing unpredictable. Given that a total of 88 countries—belonging mainly to Africa, Asia and Latin America—have already been identified with heavy to moderate indebtedness,[i] this also meant that the threat of default by countries experiencing debt-servicing difficulties in the aftermath of a crisis would increase.

Even though an acknowledgement of this heightened vulnerability in the international financial system as a result of financial sector deregulation and liberalization may be implicit in the evolving IMF proposal for an international sovereign bankruptcy procedure, the Fund does not seek to address the underlying causes of instability to help prevent crises. Rather, the present concern of the IMF is that even in the face of crises, default on commitments by sovereign nations must be prevented at all cost. By aiming to deal with sovereign debt restructuring in a manner that prevents major losses to financial players and an implosion of the financial system, the IMF is complementing its efforts to forge an international financial architecture that provides pride of place to private financial capital.

The Intent of the Sovereign Debt Restructuring Mechanism (SDRM)

The Threat of Sovereign Default

The problem for institutions like the IMF, which want to tinker with the international financial architecture rather than reform it, is that the structure of financial markets increases the likelihood of sovereign default. Ever since the debt crises of the early 1980s, it has been clear that the growth of private lending to developing countries had generated an inherent tendency in global financial markets towards over-exposure of individual financial institutions in particular emerging markets. This was partly because banks and other financial institutions that were flush with funds were eager to lend to newly-discovered borrowers in emerging markets who were creditworthy because their lack of access to the commercial credit market in the past had kept their exposure to private debt extremely low. It was also because of the herd instinct characteristic of financial markets, which encouraged financial players to rush into the newly-discovered emerging markets that their competitors were entering.

The consequent over-exposure of the system as a whole meant that when an external shock eroded the ability of any developing country to meet its commitments, the task of ensuring an orderly debt work-out or restructuring of debt proved extremely difficult. This was because the exposure of individual agents/banks in an atomistic financial system differed substantially across debtor countries. Even if entities with a high exposure were willing to accept a negotiated restructuring package, those with smaller exposure, and therefore a smaller threat of loss, demanded that liabilities to them be liquidated rather than deferred or restructured. Thus, the presence of a large number of independent players in any one market, which was inevitable within a private-debt-dominated, market-driven system, both increased the probability of a debt crisis and made it difficult to resolve such crises.

This difficulty has been compounded with the further evolution of the global financial system, due to the fact that developing countries have diversified away from bank loans to bond issues, for raising capital. Since a range of financial entities can subscribe to such bond issues, the number of players, still with different degrees of exposure in individual developing country debt markets, has increased even more substantially. Individual creditors with smaller exposures, even more than banks in a similar situation, would prefer to hold out for the best terms and would even go to court for the purpose. Given that at present the restructuring of most sovereign bonds requires unanimity among bond-holders, these conflicts of interests clearly create hurdles in the way of an orderly debt work-out.

When financial difficulties afflict a country, large lenders with heavy exposures who would like to protect their investment as far as possible will want to provide the country a chance to adjust and meet its commitments by deferring them, even if on harder terms. However, investors and creditors with smaller exposures will want to cut their losses and leave, and therefore want immediate and not deferred settlement, on the best possible terms.

Faced with this situation, even though debtor countries have the option to unilaterally impose payment suspension, they could be deterred from applying temporary payment standstills and from seeking early restructuring for fear of litigation and asset seizure by creditors, as well as of lasting adverse effects on their reputation (which increases their credit costs). This behavioural pattern of developing countries experiencing debt-servicing difficulties due to the prevailing structure of the international financial market, serves to increase the possibility of a major debt crisis that could lead to default, with damaging consequences for debtors and the international financial system.

Thus, the conflict of interests among a growing number of independent private players who have come to dominate the global debt market could have two consequences that the IMF or international finance need not favour. First, since it makes restructuring difficult even in desperate situations of financial crises, it could force debtor nations into default as well as make it impossible for them to remain open to and integrated with the world economy. Second, it could destroy the very entities (the emerging markets) whose existence is necessary for the now omnipresent global financial system to function effectively and profitably. It is to stave off these consequences that the IMF advocates the Sovereign Debt Restructuring Mechanism (SDRM) which, like the administration provisions in the US domestic corporate law, seeks to offer some temporary 'relief' for the debtor, in order to protect the larger, long-term interests of creditors in the global financial community. Since atomistic players in the debt market are unlikely to come to the necessary agreement, the IMF has come in once again as the overseer of the global financial system, to enforce a system which it thinks is in the interests of global finance.

The IMF's Role in Sovereign Default Mitigation

Since, in theory at least, nations cannot be politically, and therefore economically, liquidated, creditors do not, in principle, have the guarantee that if any effort at restructuring unsustainable debt fails they will be at even partially compensated, with sums realised from the sale of assets. Nations finding their debt unsustainable would have to default, and then either repudiate the debt in part or full, or adopt policies that do away with the need for further borrowing and help conserve foreign exchange which can be used for gradually meeting previous debt commitments. (The likelihood that such policies would be adopted is all the greater because developing country governments do not 'own' their countries and their resources; since governments change, particular governments may be unwilling to be held responsible for the actions of their predecessors that have led up to the accumulation of unsustainable debt.)

Given this special characteristic of sovereign debt, we should expect that creditors will exercise far greater diligence when lending to countries as compared with lending to asset-rich corporations. The reason why this has not been true in practice is because there has been, in recent years, an implicit sovereign guarantee that developing countries will not renege on their international debt commitments. This sovereign guarantee has been extracted from developing country governments by the intervention of the Bretton Woods institutions, especially the IMF, which has coordinated and part-financed all debt restructuring exercises and overseen the 'resolution' of all financial crises in emerging markets.

Thus far, the IMF has managed to prevent any major default by financing large rescue packages that bail out creditors who had not exercised due diligence when lending to public and private agents in emerging markets. In all such instances the emphasis has been on redeeming commitments and adopting policies that help procure additional funding from international finance capital. The problem is that those policies themselves ensure that developing countries experience deflation which undermines investor confidence, remain externally vulnerable because of further liberalisation of capital markets, face currency depreciation and end up in new situations when their external debt becomes unsustainable.

The difficulty with this means of resolving crises is that it is crucially dependent on the confidence of the financial markets in the IMF's assessment of a country's debt repayment capacities since, unlike in the case of corporate bankruptcy, the government cannot liquidate the nation to meet public and/or private debt commitments. And the IMF has won that confidence on the basis of its ability to enforce fiscal adjustments and market-oriented policies that favour finance. Unfortunately, experience over the last two decades has shown that, although international finance favours such policies, they are no guarantee against the recurrence of financial crises. This creates a situation where the presence of the IMF in debt restructuring negotiations is not enough to fully restore investor confidence.

That being the case, unless the IMF itself comes up with substantial financial support, countries will not be in a position to meet their commitments, and the threat of default is real. Given the repeated instances of crisis in recent years, and the large and increasingly unfeasible debt work-outs that the IMF has had to coordinate and part-finance, this situation is clearly becoming unsustainable. The IMF is also facing substantial opposition from its own dominant members, especially the US, in this regard. The option of reverting to a regime of regulation of the financial sector in individual countries and of financial flows across borders into different countries would work against the interests of finance, and therefore is not acceptable to the IMF and the World Bank. It is in this context that the IMF has sought to ensure the 'prompt' and 'orderly' resolution of problems of unsustainable debt, through a scheme titled the 'Strategic Debt Restructuring Mechanism' (SDRM), advocated by Anne Krueger, its First Deputy Managing Director.

Contrary to what Krueger has claimed, this is not 'A New Approach to Sovereign Restructuring'. Adam Smith was the first to propose a fair and open bankruptcy procedure for the insolvent state, way back in 1776. In more modern times, UNCTAD was the first international organization to call for orderly work-out procedures for the international debt of developing countries, during the debt crisis of the 1980s. UNCTAD (1986) and economists like Lawrence Klein, Jeffrey Sachs and Kunibert Raffer drew on certain principles of national bankruptcy laws, notably chapters 9 and 11 of the United States legal code, to formulate an appropriate debt restructuring regime. Since 1995, NGOs such as

Jubilee Research have also been calling for a Fair and Transparent Arbitration Process (FTAP) to sort out the unsustainable debt burdens of the third world. The UN took up the proposal in its 'Financing for Development' process, while the Secretary General himself called for 'a debt arbitration process to balance the interests of creditors and debtors and introduce greater discipline into their relations' in his Millennium Report.

Thus, in itself, the IMF's espousal of an international insolvency framework is being considered as long overdue in the progress of the Fund's 'debt management' by several of its earlier proponents. However, as discussed above, the intention behind the acceptance of the framework by the IMF can be clearly seen as flawed and may influence the outcome of the ongoing debate.

The Evolving Structure of the Proposed SDRM

The IMF's proposed scheme has three components to it.

- The first is a mechanism to ensure that when creditors provide credit to emerging markets, they explicitly sign into a commitment to be bound by any restructuring exercise agreed upon by a majority of the creditors. This ensures that individual creditors forego the right to disrupt restructuring negotiations by resorting to litigation in national courts, which is at present the most significant hurdle preventing an orderly sovereign debt work-out. By making the terms of restructuring decided upon by a majority of the creditors binding on the rest, the IMF hopes that the SDRM will help secure restructuring prior to default.

- The second is to put in place mechanisms to ensure that debtors can request a stay on debt service payments until they restructure debt. While this is meant to give the debtors legal protection from creditors while negotiating, debtor countries are expected to use this facility in a manner that does not prove detrimental to creditors. Debtors must be 'well behaved' during the stay and adopt policies that are 'appropriate' according to the creditors. This provision is apparently meant to assure the creditors that the debtors will negotiate in 'good faith'.

- The third is the so-called seniority treatment of new claims. During and after the restructuring process, it is to be ensured that private lenders provide new financing with the assurance that they will be repaid in advance of existing creditors/claims.[ii]

This approach is obviously inspired by domestic bankruptcy laws, especially in the US, which permit corporations to undertake similar restructuring when faced with financial distress or 'bankruptcy', so that they do not have to go into liquidation in the first instance. Until the mid-1970s, the bankruptcy provisions were biased in favour of creditors. A bankruptcy petition could be filed either by the debtor or creditor, requesting a court of law to declare that an individual or company is insolvent and cannot meet its debt service commitments. The court would then appoint a receiver to investigate whether a debtor was indeed insolvent, and if the receiver considered it necessary, it could call a meeting of creditors to find out whether they wish to declare the debtor bankrupt. If they did, the company went into liquidation, its assets were realized and the proceeds distributed as per specified norms among the creditors and shareholders.

An effort was made in the US under Chapter 11 of the Bankruptcy Reform Act of 1978, to redress the obvious bias in favour of creditors in this scheme of things. Chapter 11 allows a firm to apply to a court of law for protection from its creditors while it undertakes a reorganization that enables it to pay off its debts. In a similar way, companies in the UK, under the Insolvency Act 1985 and 1986, can be placed under administration rather than go into liquidation, with the affairs of insolvent debtors being the responsibility of a registered insolvency practitioner. Chapter 11 in the US and insolvency provisions in the UK are laws that provide for an intermediate step between financial distress and liquidation, and thus seek to provide some degree of protection to debtors, so that the system is not completely loaded in favour of creditors whose short-run interests may result in unnecessary liquidation of still productive assets.

To achieve the three components of the proposed SDRM, the IMF has been authorized by the International Monetary and Financial Committee of its Board of Governors to adopt a 'twin-track' approach. The first, a statutory approach, will create a universal statutory framework to make a restructuring agreement binding on all creditors. The second approach would incorporate comprehensive restructuring clauses, called 'collective action clauses' (CACs) found in sovereign bond contracts, to limit the ability of dissident creditors to block a widely supported restructuring of individual bond contracts. Both of these would require changes in laws relating to the debt instruments issued by creditors, to the enforcement of creditor and debtor rights and to the realisation of creditor claims.

The IMF argues that working out a supra collective action clause (CAC) in the SDRM will prove to be difficult, given that debtors and creditors are already reluctant to include ordinary CACs. Further, the fact that emerging market sovereigns borrow in several legal jurisdictions makes it difficult to guarantee identical interpretation or application even in CACs that involve identical language of restructuring. Most importantly, the current domestic laws of some of the IMF members do not provide a clear statutory basis that allows the rights of minority creditors to be modified without their consent. The new restructuring mechanism would thus, in fact, require a universal reform of law across countries, which would be cumbersome and politically near-impossible to achieve.

To tackle these problems, the IMF has come up the idea of binding countries from above through an international treaty on the matter. The suggested route is to establish a treaty obligation by amending the Fund's Articles of Agreement, to empower a super-majority of creditors to reach agreement with the debtors and bind in the rest. The former would require the support of three-fifths of the IMF's members, holding 85 per cent of the Fund's total voting power. Once countries vote in the amendment, debtors confronted with unsustainable debt will be in a position to call for a temporary stay on payments, individual creditors will be bound into the decision of the majority with regard to restructuring, and the IMF can play the role of ensuring that the restructuring goes through and that the interests of the creditors are respected by the debtor countries.

The IMF insists that it will be necessary to change the laws of all countries, because otherwise vulture funds can always pick a country where they can successfully enforce their claims. The Fund has so far ignored alternative proposals, like that suggested by Kunibert Raffer, to have amendments to national insolvency laws in a few key constituencies. Based on the fact that currently almost all of the existing bond contracts are governed both by New York and London, Raffer (2001 and 2002) has proposed that it will be sufficient to change the US and British laws governing sovereign immunities.[iii] However, the Fund insists that an amendment of its Articles of Agreement is the only potential means of achieving universal legality. Clearly, the IMF wants to have powers akin to that of a supra-national world government. The Fund emphasizes that an amendment of its Articles will be used only as a tool to empower creditors and debtors, not as a way to extend the IMF's legal authority; that it will only influence the process as it does now, through its normal lending decisions. But the existing lending decisions themselves clearly show how the IMF's power relative to developed and developing countries is asymmetric, since it is the developed countries that control the IMF.

Previous and current experience shows that all such international negotiations proceed in the most undemocratic manner and involve widespread buying of votes by the powerful, and harrying and bribing of developing and less developed country representatives. Thus, the members of the developing countries will have little say in the decision-making process in any amendment to incorporate SDRM provisions.[iv] The record of another international institution, the WTO, is most telling in this context. Like its predecessor at Sydney, the WTO mini-ministerial at Tokyo was another example of the 'informal meetings' that have become the staple of international trade negotiations since the Uruguay Round. During that Round, 'consensus' was built by first getting a selected set of relatively 'influential' members to agree on a minimum agenda. Having achieved at that consensus, the other WTO members, especially the smaller countries from Africa, Asia and Latin America, were forced to accept that agenda during the infamous 'green room meetings', at which negotiators deprived of their aides were huddled together in long drawn-out sessions and tired into submission.[v] All these make a mockery of the 'Monterrey consensus' on global economic governance adopted at the United Nations conference in Mexico last year, where it was promised that there would be more consultation of stake-holder countries in international negotiations.

Thus, if the IMF is allowed to proceed along this path, it will not be difficult for it to achieve the necessary amendment according universal validity to the SDRM. But there are very serious issues involved in the way the IMF envisages the SDRM and its own role in it.

Stakeholder Criticism of the SDRM

The IMF proposal faces severe criticism from all stake-holders involved in sovereign debt problems. It is clear that an international treaty in the above-proposed form involves a loss of sovereignty, since it would supersede national laws relating to settling debt claims. Getting developed countries to agree to this will be difficult enough. Getting financial agents in developed country financial markets to agree to collective action clauses may be even more difficult.

It has been suggested that most financiers, whether bankers or bond-holders, distrust the SDRM.[vi] Their main concern is that by sanctioning the right of debtor nations to take emergency action to suspend debt payments, the SDRM will erode their rights as creditors. There has also been strong resistance on the part of some major creditor countries as well as private investors to a mandatory stay on creditor litigation, on the grounds that it will give rise to debtor moral hazard and weaken market discipline. Further, it is argued that as a procedure that allows a defaulting sovereign debtor to issue new bonds, SDRM will remove the most powerful deterrent to default—lack of access to foreign capital. It is feared that all of these will make defaults easier and more frequent, and, as a result, dry up the market for emerging market bonds. The most severe creditor disagreement over the SDRM has thus arisen over the stay on litigation and the incorporation of collective action clauses. At the same time, believing that an orderly framework might actually raise borrowing costs for the debtor, many emerging market governments are also been opposed to the SDRM.

But there is clear historical evidence to the contrary. Obviously, the US Bankruptcy Act of 1978 has not led to a liquidity crunch in the US corporate credit markets; in fact, the outcome has been quite to the contrary. Again, a predictable international bankruptcy procedure is no more likely to induce debtor countries to default than national bankruptcy laws are likely to induce corporate debtors to default.

The IMF has meanwhile attempted to pacify the creditor community by saying that by providing a legal framework within which a majority of the creditors can restructure a country's debt, its proposal strengthens the rights of the majority of bond-holders at the expense of individual dissenters; that is, it does not reduce the rights of creditors overall. In fact, bond-holders could benefit from making defaults less costly to work out, because the existence of a predictable debt work-out agreement will ensure that the value of bonds would fall less when defaults happen. Further, there is no credible evidence to suggest that the introduction of collective action clauses will increase the spreads on emerging market debt instruments.[vii] The experience in the private sector is that proper restructuring of debt makes corporations more creditworthy, not less.

Bankers, bond-holders and many emerging market borrowers worry that the IMF could use the SDRM, once it is in place, as an excuse to trim official bail-outs, by demanding that private creditors take more of the strain when governments run into trouble. This concern has arisen precisely because of the fact that the SDRM proposes from the start to treat creditors unequally, by excluding both multilateral and Paris Club (bilateral donors from the G-7) debts from the burden-sharing process.[viii]

One of the fundamental principles of a fair bankruptcy rule is that in any debt restructuring agreement all creditors are treated equally, and that when a country's debt needs to be reduced all creditors share in this debt reduction proportionately. The SDRM framework, however, seeks to exclude certain classes of creditors from the burden-sharing process. As a result of this inbuilt discrimination towards creditors, commercial creditors—who are expected to carry the entire burden of debt reductions or cancellations—are strongly opposed to the IMF proposal. By keeping the most important class of creditors out of the SDRM framework, the onus of responsible lending is to be shifted entirely on to the shoulders of the varied class of private sector creditors. Being outside the SDRM framework, multilateral bodies, including the IMF and the World Bank, and powerful bilateral creditors will be able to avoid both loss-sharing and responsibility-sharing. This is a fundamental flaw in the design of the IMF-proposed SDRM, and this is the basic and legitimate reason for the private sector and the debtor countries not agreeing to the SDRM in this form.

So far, the Paris Club has not taken an official position about joining the formal SDRM process. At the IMF conference on SDRM in end-January 2003, the Paris Club defended its option to stay out of the IMF's SDRM proposal saying that it has more predictability and efficiency than the private creditor side, and that it is the latter which creates problems in debt work-outs.[ix] So, only the latter needs to be brought under the SDRM framework. Even if we were to buy this argument of the Paris Club being more organized and forget the various instances where the Paris Club was not able to ensure orderly and timely work-outs or ensure debtors' sustainability, the fact remains that unless the SDRM can ensure that it meets the very basic rule of any bankruptcy law, that all creditors will be treated equally, its attempts to provide a comprehensive solution to sovereign debt problems will not be fruitful. Indeed, if it were sufficient to restructure the private debt of a sovereign country to ensure its sustainability, Ecuador, where private creditors had written off 45 per cent of debts under the Brady Plan back in the 1980s, would not have defaulted again in 1999.

Thus, clearly, in the event of official creditors not taking a share of the debt write-offs, they will only extend the period of unsustainability for the sovereign debtor. The problem with the Paris Club is also that it considers reduction of debt levels only for low-income countries. Meanwhile, contrary to the original proposal that SDRM should serve any sovereign debtor that needs it, the IMF has now stated that since HIPC is working for the poor countries the SDRM should be restricted to the emerging markets.[x] Saying that SDRM is meant for emerging markets and then keeping the Paris Club out of the proposed scheme is clearly not a useful mechanism at all.

The Fund's reasoning that the SDRM cannot be expected to cover everything is problematic for two reasons. First, the entire rationale behind an SDRM is to have a comprehensive framework that would enable orderly and fair debt work-out for countries undergoing payment problems. Thus, whether or not there already exists a functioning system for a sub-set of countries, the idea of an international sovereign restructuring mechanism is to consider all sets of countries. Second, the existence of HIPC-II is itself a testimony to the fact that the original HIPC failed in its objectives. As of March 2003, total debt cancellation stood at about $36.5 billion out of a total commitment of some $111 billion,[xi] and only seven countries have had the stock of their debts cancelled since the launch of HIPC-I in 1994. Further, even the small gains have been offset by a failure to provide enough debt relief to return a single country to sustainability; by a fall in aid flows, and by the IMF's insistence on using the debt relief programme to deepen and widen deflationary economic programmes. According to the Bank and the Fund's document itself, at least thirteen out of the twenty countries in the pipeline will not be sustainable after debt relief. Also, falling commodity prices have meant that for many countries, debt-to-export ratios have rocketed beyond the 150 per cent deemed 'sustainable' under the HIPC criteria. In other words, despite being the first historically comprehensive approach to solving the problem of unpayable sovereign debts, which included multilateral debts as well as bilateral debts, HIPC is not working for the poor countries for which they were designed. Clearly, as the next step in addressing sovereign debt work-out problems, and if the intention of the Fund is to really avoid prolonged and inefficient negotiations and reschedulings, the objective of an SDRM should be to encompass and provide an alternative to all these failed attempts. An SDRM that excludes classes of debts, creditors and debtor countries, therefore, can hardly be one that debtor countries agree with.

The Debate on an International Chapter 9 of the US Insolvency Law

It is clear that the loss of sovereignty implicit and explicit in the proposed SDRM is greater for the debtor countries than for the creditors, contrary to what the creditor community would have us believe. A crucial issue that arises is: what will be the nature of the debt restructuring exercise under the new mechanism to which countries are to be bound by a treaty?

In return for temporary reprieve at times of financial difficulty, the debtors are to be tied into working towards a negotiated restructuring agreement that would involve a range of policy and other concessions. Debtors obtaining a stay on their debt service payments have to pursue policies that protect asset values and supposedly restore growth. As Anne Krueger puts it:

> the debtor would have to conduct its economic policies in a way that would help put the country back on the road to growth and viability. Implementation of an IMF-supported program would be one way to provide these assurances. Creditors would have an interest not only in monetary, fiscal and exchange rate policies, but also in bank restructuring, the integrity of the domestic payments system, the operation of the domestic bankruptcy regime, and the nature of any exchange and capital controls.

This essentially means that they will be pushed further down the path of more trade, investment and financial sector liberalization, leading to increased external vulnerability and external indebtedness. That is, we are likely to have more of the policies that are already being thrust upon countries under various existing IMF and World Bank programmes, under the new mechanism.

Loans from the IMF have always been contingent upon the implementation of structural reforms, and countries seeking the IMF's international 'seal of approval' are always 'encouraged' to continue with structural adjustment programmes (SAPs) or SAP-style policies, in spite of the lack of evidence that these prescriptions have had any beneficial effect. The rigidity of these conditionalities has often led to postponement of much-needed debt reduction/relief (without which it becomes impossible for heavily indebted countries to carry on with their economic functions) and delays in renegotiation and resumption of capital inflows, eventually contributing to a worsening of the economic conditions of countries facing a payments crisis. Structural reforms have also had serious consequences on the budgetary capacities of debtor countries, which in turn affect the social services and the economic obligations to their populations. Conditionalities attached to the HIPC initiative through IMF programmes are similarly notorious, and have been severely criticized both in the North and the South, for being veiled mechanisms for transferring resources from debtor to creditor countries.

It is also known that for the existing IMF assistance packages, it is the country representatives on the IMF Board, not anonymous Fund staff, who decide which tax policy and exchange rate recommendations are preferable for the debtor countries.[xii] It is the powerful creditors—the United States and other hard currency countries who wield the maximum number of votes on the IMF Board—who call the tune. This undermines the ability of democratic governments to set their own priorities and policy objectives, and they often have to rush through economic reforms without adequate legislative or democratic processes. Thus, countries under SAPs have virtually no capacity for self-determination or control to determine their own policies.

Even when the IMF claims that the SDRM is not a mechanism for imposing a pre-cooked policy programme or debt-relief package or restructuring plan, in practice it would be just that. Saying that, under the SDRM, the creditors will retain the right to judge whether the policies adopted by the debtor countries during the restructuring process are 'appropriate', does not change matters much. If the IMF succeeds in achieving an international treaty on SDRM, it would be, in effect, forcing the developing and less-developed member countries to take 'ownership' of the SAP-type policies that are currently imposed on them.

Responding to the criticism that being a creditor itself, the IMF cannot take on the role of negotiating between private creditors and private or public debtors, Anne Krueger argues that the Fund has neither the intention nor the ability to interfere in the relationship between debtor and creditors. She suggests that the restructuring terms will emerge from negotiations between the debtors and creditors. The Fund will only mandate the process within which restructuring would be negotiated, not the outcome.

Given the fact that the IMF's SDRM proposal is based on the US corporate insolvency law or Chapter 11, this mandating of the process by treaty while leaving the outcome partially open (partially, because it is expected to include an IMF-supported programme, as discussed above) raises another very crucial question. Is the effort akin to moving the relation between creditors and debtor sovereigns at the international level in the direction of what prevails with regard to corporations in the national context, where there is always the guarantee that there exist some assets which can be liquidated to redeem at least a significant portion of the debt? In other words, will developing country governments bound into the restructuring process be pressurized to put up resources for sale as a means of liquidating sections of the debt? These resources can vary from public sector assets to publicly owned deposits of minerals and oil.

If that is so, by providing debtors a modicum of protection through the SDRM in the form of a temporary halt to payments while negotiating restructuring, the IMF will be binding them to arriving at a negotiated settlement, even if this requires some liquidation of assets and resources. In the name of maintaining an efficient, transparent and functioning global financial system, the IMF may be engineering an efficient process of transfer of resource ownership from the South to the North, leading to recolonization of the developing world.

By agreeing to such an over-reaching agreement, then, the developing countries will lose even the theoretical control they have over their resources and their national economies.

This important issue of sovereignty makes the imitation of US corporate insolvency law (Chapter 11) in the case of national debt totally inapplicable and objectionable. It is in this context that Kunibert Raffer proposed Chapter 9 of the US legal code as an alternative model for international bankruptcy, suggesting that it solves the sovereignty problem unique to insolvent governmental borrowers.

Chapter 9 regulates the insolvency of US municipalities, with clear protection granted to the municipality's governmental powers. Creditor interventions in the governmental sphere, such as those that are currently usual in developing countries, were rejected by the US lawmakers as unconstitutional way back, in the draft stage of the law, during the period of the Great Depression. Thus, Chapter 9 contains explicit ruling on the 'Limitation on Jurisdiction and Powers of Court', stating that the court's jurisdiction to interfere with any of the political or governmental powers of the debtor, or with any of the property or revenues of the debtor, depends entirely on the debtor municipality's volition and consent. A Chapter 9 proceeding also does not force debtor municipalities to stop providing essential services that affect the health, safety and welfare of its inhabitants, in order to meet their debt payments. The US Supreme Court rejected the idea that a city has unlimited taxation powers, and stated that a city cannot be taken over and operated for the benefit of its creditors. Thus, it prohibits municipal governments from increasing taxes 'to the point that quality of life is reduced' for local residents, in order to pay their debts. The court can confirm a restructuring plan only if it embodies a fair and equitable bargain openly arrived at. Furthermore, during the bargaining process between the creditors and the debtor municipality, both tax-payers and municipal employees have the right to defend their interests, and the creditors receive what can reasonably be expected under the circumstances.[xiii]

Clearly, an international bankruptcy procedure based on Chapter 9 will strike a balance between the interests of creditors and debtor sovereigns. Further, the people affected by the debt-restructuring negotiations will be able to express their views on the economic policies to be put in place to ensure that the burden of economic restructuring is not entirely on them.

Jubilee Research has also proposed that the 'Jubilee Framework', based on Chapter 9 (as proposed by Kunibert Raffer), should be put in place as an international insolvency procedure, to solve international debt crises.[xiv] This requires that while countries that are struggling with unsustainable debt burdens obtain legal protection from their creditors through a stay, the fundamental human rights of their people are not trampled upon at the end of the debt renegotiation process, in the name of economic restructuring.

A question that remains is whether an international insolvency law that protects national sovereignty (which, in principle, Chapter 9 does) may still be considered. Can a democratic, participatory process in which the interests and concerns of the population of the debtor country are attended to, be ensured in practice? If, as is the case nowadays in international negotiations, a few officials are chosen to represent the voice of the people affected by the economic restructuring policies, they can be easily enticed with the promise of the benefits of rapid trade and financial sector liberalization for the economy (faster economic growth through openness, which will then increase the per capita income of the population), and persuaded to forfeit the interests of the affected population. Further, according to Raffer, while the representatives of indebted developing nations can voice their views, they do not actually negotiate, because the supposed 'agreements' arise from decisions made by creditors in the industrialized North, which does not amount to 'a fair negotiation'. Only if the negotiation process is given publicity and if the affected population is represented by civil society organizations speaking on their behalf, can a fair and equitable debt restructuring and economic adjustment plan be arrived at. Ultimately, the fairness of the bargain and the final decision under the US Chapter 9 is ensured by the presence of the independent court.

The IMF has refused to acknowledge the usefulness of Chapter 9, which underlies the FTAP proposal. The Fund keeps insisting that its SDRM indeed involves truly independent and transparent decision-making, as UNCTAD and the NGO community have been calling for. However, the fact that the Fund does not propose the setting up of an independent arbitration panel renders this claim hollow.

Problems with the Proposed Dispute Resolution Forum

The way the IMF's proposal has been evolving, the creditors and the Fund will claim all the key positions in the SDRM, even as the Fund argues the opposite.

Even as it suggests that the SDRM can only be initiated by a sovereign debtor with unsustainable debts, the Fund now proposes that after the debtor has filed for the process, there needs to be confirmation of this unsustainability claim to prevent 'unjustified use' of the SDRM by debtor countries.[xv] Even as the question of who will play this role is finally left open, it is amply clear that the Fund, through the exercise of its existing financial powers—in terms of its own judgement about the scale of financing it would be willing to provide to the debtor in the absence of a debt restructuring, and the magnitude and feasibility of domestic policy adjustment—will have a crucial influence on a member's decision as to whether and when it will activate the mechanism. Moreover, under the current proposal, once creditor claims have been registered and verified, creditors anyway have the power to vote to terminate the whole SDRM procedure if they feel that activation is unjustified.

The IMF has also proposed the establishment of an exclusive dispute resolution forum to verify claims, oversee voting and adjudicate disputes once the SDRM is activated. The Sovereign Debt Dispute Resolution Forum (SDDRF), to be established through an amendment of its Articles of Agreement, is the Fund's version of the independent arbitration panel in the Free and Transparent Arbitration Process (FTAP) framework.

As the Fund envisages it, 'although it would be an organ of the Fund, the SDDRF would be established in such a manner that it would operate—and would be perceived to operate—independently'.[xvi] However, this 'independent' SDDRF will have no authority to challenge decisions made by the Executive Board of the Fund, including with regard to the adequacy of members' policies or the sustainability of the members' debts for purposes of financial assistance from the Fund. Just as importantly, it will have no authority to over-ride the decisions of a qualified majority of creditors on such issues as the terms of a restructuring plan or the length of a stay. Its role will be essentially reactive. For example, although the Forum can resolve disputes regarding the application of creditor classification rules, it will not be responsible for classifying creditors in the first place. The dispute resolution forum would, in effect, only certify that the vote of the creditors has taken place in accordance with the procedural requirements. The certifications themselves would be exclusively based on the decisions of a qualified majority of creditors. Thus, effectively, the IMF, both as a major creditor and as the agent of creditors, is the final authority in the 'independent' Dispute Resolution Forum of the SDRM. Given the fact that the SDRM will be the first ever attempt to bring together a diverse range of sovereign creditors, this suggestion by the Fund of leaving virtually no independent power with the Dispute Resolution Forum in eventual disputes is an unambiguous attempt to put in place a very weak institution within the overpowering reach of the IMF Board.

The entire selection process of the members of the SDDRF intends it to be an IMF undertaking. The IMF suggests the establishment of ad hoc panels of judges or arbitrators for the SDDRF, to be drawn from a permanent pool of judges or arbitrators that would be selected in advance, which are to be convened only in the context of a dispute. The permanent pool would itself be based on a 'selection panel', the members of which are to be originally chosen by the Executive Board from among a representative group of IMF member countries. Upon facing criticism that the Fund is not a neutral body and cannot, therefore, be expected to act as an independent arbiter, the IMF has now withdrawn its earlier claim to establish its own Executive Board as the centrepiece of the new conflict resolution mechanism.

In its recent version, the Fund has reduced the complicated five-step process of member selection to an equally complicated four-step process. At present, the ultimate right to appoint the 'selection panel', and to accept or reject the adjudication panel that the former selects, does not rest with the Executive Board, but with the Managing Director of the IMF, which, according to the Fund, is 'less political' than appointment by the Board! The Fund has also now conceded that the 'Dispute Resolution Forum' can be established at arms length from the Executive Board, that is, not at the IMF or in Washington, but 'independent' from its staff and Board and established in another city, so that 'the perception of the SDDRF's independence from the Fund' can be enhanced.

As mentioned earlier, Raffer (1993), the UN and Jubilee Research have all suggested that a neutral court of arbitration must be established to allow fair and equitable international Chapter 9 proceedings that are devoid of over-reaching, however subtle. Clearly, under such a neutral body, there will be no role for the IMF Board or its Managing Director to make or approve appointments to the arbitration panel.

The IMF has not considered any of these constructive suggestions in its proposed SDRM, and so far has been completely driven by its own institutional self-interests. It has, however made drastic changes to its original proposal, to accommodate criticisms raised by the private sector. In a major turnaround and in a clear attempt to appease the private creditor community, the IMF's latest version of the SDRM proposes that activation of the SDRM process by a debtor country will not automatically trigger suspension of creditor rights. Thus, there will be no generalized stay on creditor enforcement and no cessation of payments, as it will represent a very significant intrusion on contractual claims.[xvii] The automatic stay—one of the few positive elements of the original SDRM proposal—has been replaced with what is referred to as the 'hotchpotch' rule in the non-sovereign context. That is, if creditors eventually approve a restructuring agreement under the SDRM, any payment recovered by a creditor through litigation will be deducted from the sum that the creditor is entitled to receive under such an agreement, so that creditors who go in for litigation do not ultimately get any benefit out of it. That is, while creditors will retain their right to litigation, this right will be meaningless, as the above-mentioned rule is expected to act as a disincentive. The emphasis on the problem of disruptive litigation has clearly been shifted to an inter-creditor, rather than a debtor versus creditor perspective. Further, if and to the extent that vulture creditors get more through litigation than what they would get under the final settlement, there is clearly a problem.

The IMF therefore proposes an additional measure: that the debtor could request, through the SDDRF, for a court that is outside its jurisdiction to stay specific enforcement actions, if it is determined that actions by a litigating creditor (such as when there is a risk that creditors might attach assets of a sufficient value to benefit more than the other creditors) seriously undermine the restructuring process. But, again, the SDDRF has the authority to do this only with the approval of the creditors. Obviously, if other creditors have reason to think that a litigant might get more than they are likely to under the SDRM settlement, they will be in favour of a stay. As Raffer (2003)[xviii] rightly points out, they would even urge the debtor to demand this, as any money recovered over and above the amounts resulting from the SDRM would be recovered at their expense. Since there will be a delay before a vote by a qualified majority can be considered, the IMF proposes that a representative creditors' committee could be vested with this authority until the creditors are sufficiently well-organized to act collectively.

Issues that Remain

By removing one of the central components of the SDRM, namely, the right of the debtor to obtain a generalized stay on payments and a mandatory ban on creditor litigation during a debt restructuring process, the IMF's proposed international sovereign bankruptcy framework has become ineffectual. It is therefore unlikely to be of any use in its proclaimed fundamental objective—to ensure a timely and orderly debt work-out that would enable a debtor country in a payment crisis to restructure and become sustainable. A generalized stay on payments is absolutely necessary if the framework is to have some predictability and to avoid the unnecessary delays and costs/losses involved in a disorderly work-out. Creditors have to be made to accept that by allowing a stay on debt repayments for a particular time duration they are in effect gaining, as, instead of declaring a default, countries will be able to recover from an imminent payment crisis to deal with economic growth problems and get on to a path of recovery. But, rather than taking on the private sector financial community, for which the IMF had revealed the will for the first time, the Fund has bowed to market interests once again.

It is clear that the proposed framework is now heavily tilted in favour of the creditors and against the interests of the debtor countries, even more than before. Unlike a domestic bankruptcy court, creditors, and not an independent arbitration panel, will make all the big decisions under the SDRM. SDRM will allow a majority among the creditors to coerce a minority, but overall control of the procedure will remain with the powerful creditors. (A defaulting country will also need the agreement of creditors to gain access to new private finance.) While the IMF says that it will virtually play no part itself, by virtue of being a creditor—in fact one of the largest lenders to sovereigns—and given the proposed formulation and mandates of the SDDRF, the Fund's role will be immense in an SDRM in the present format. The debtors will remain at the receiving end in future debt restructurings.

As we have seen above, inter-creditor fairness and an assurance that debtors can be returned to a sustainable situation remain crucial issues that the IMF has failed to address in a systematic manner. For ensuring the latter, a restructuring plan should be considered feasible only if the debtor can emerge from the reorganization with reasonable prospects of financial stability and economic viability. This essentially means that debt servicing will have to be brought in line with the foreign-exchange earning capacity of the country. At one level, this might involve reduction in debt levels in specific cases; at another level, this is also about enhancing the country's capability to obtain increased foreign exchange in the medium to long term. The latter would entail addressing the fundamental structural imbalances in international trade, which persist despite the so-called free trade era heralded by the WTO agreements. While the creditors pressure debtor countries to pay their debts and to open up their markets to exports, they keep their own markets closed to the exports of debtor nations. Markets in which developing countries would have enjoyed a natural comparative advantage, such as agricultural products, are among the most protected. Moreover, even with WTO-related tariff reductions developing countries often face severe tariff escalation, whereby its raw material exports enjoy relatively easy access but processed goods face significant tariff or non-tariff barriers. This situation of discrepancy, although widely acknowledged, has only been aggravated by the policy of bringing in more and more products under various kinds of non-tariff barriers. Therefore, economic viability assessment related to debt restructuring has to be based on realistic projections about a country's existing (not potential) trade competitiveness and its existing market access options under the prevailing international trade environment. The SDRM debate being carried out by the IMF should also consider the experiences of the HIPC initiative with its concept of sustainable debt levels and debt relief, and the rich debate that has already taken place in this regard.

How the debtor countries will be expected to reform their economies and what degree of flexibility the debtor countries will have under the SDRM for protecting the basic welfare needs of its population are also questions that remain to be answered. As the civil society has been demanding, it has to be explicitly accepted and incorporated into an international insolvency procedure that no country can be forced to fulfil its obligations to its creditors while placing its population in an inhumane situation and subjecting it to serious basic failure, as happened in Argentina. This necessarily requires that IMF-type economic reform policies, which have failed time and again, not be made a part of the SDRM, explicitly or implicitly. The debtor country should have the flexibility to decide its own policies. That is, if the Fund and the creditor community are genuinely interested in finding a permanent solution to the sovereign debt problem, they should first give up the conditions imposing economic policy prescriptions, and let the concerned debtor country decide how to make economic recovery possible to then work out the repayment schedule.

Most discussions of the sovereign debt problem gloss over the fact that there are underlying structural causes for the creation and accumulation of debt, as discussed in the beginning. These have been aggravated by the changes in global macroeconomic policy from fiscal-driven development financing to debt-driven financing, combined with export-oriented growth under severe competition that is funded by subsidies and other incentives, leading to negligible net gains even during periods of boom.[xix]

On the one hand, there is ample evidence of the problems associated with these uncontrolled debt-creating financial and capital flows. On the other hand, as discussed above, the international trading system remains distorted and, especially, biased against developing countries. The standard 'solution' to balance of payments difficulties has principally taken two forms: (i) an improvement in the current account through domestic deflation that reduces imports substantially; (ii) a temporary restoration of investor confidence, resulting from access to IMF standby credit and from the adoption of more market-friendly policies, which leads to the renewal of capital inflows into the economy. This means that the fundamental sources of vulnerability, which are current account uncertainties created by trade liberalization and the growing reliance on unstable capital flows in the wake of financial liberalisation, are left unaddressed. This is in keeping with the ideology of the BWIs and the interests they represent, which requires keeping the economy open and finding other means, even if temporary, of dealing with financial vulnerability and crises. The SDRM debate is also in tune with this.

Meanwhile, as debt flows have turned negative since 1998 (in other words, countries are paying more in debt service than they are receiving in aid or new loans), the World Bank argues that borrowing is no longer viable for developing countries and that it is foreign direct investment (FDI), not borrowing, that will boost growth in the LDCs. It is not difficult to draw the links between such policy 'advice' and the demands of developed countries to change the laws on control over land, natural resources and public services such as water, energy, health, education, etc., via the GATS. What this will lead to is amply clear given the experience of privatization, with significant foreign investor participation, of water and electricity. The second 'key issue' for economic growth, say the Bank's forecasters, is removal of trade barriers. Thus, the overall thrust of the BWI's policies continues unchanged on the other side of the SDRM debate, through advocacy and imposition of further trade and investment liberalization.

The Fund and the supporters of SDRM in its present form[xx] argue that it is not fair to expect the SDRM to be linked up with all existing international problems and issues, and that it cannot be expected to solve the problem of crisis prevention. They insist that SDRM is only one element of a broader crisis resolution strategy and that other related issues should be discussed elsewhere. At the same time, the pressure on developing and least developed countries to continuously liberalize their trade and financial sectors is mounting through the forums of WTO and GATS, and safeguard measures on the capital account for balance of payments reasons are yet to be agreed on under GATS.[xxi] In this specific context of debt restructuring, the SDRM should explicitly include an agreement on the type of exchange controls which a country that files for SDRM can 'legitimately' undertake. However, this will prove to be useful only if the Fund considers the UNCTAD's suggestions that since standstills and exchange controls need to be imposed and implemented rapidly, the decision should rest with the debtor country concerned, though it can be subject to subsequent review by the independent panel.

Given the fact that the Fund now considers international financial stability a 'global public good',[xxii] it should not be too difficult for it (and the Paris Club creditors) to see the necessary link between the issues that need to be addressed by a comprehensive international insolvency framework meant to achieve effective crisis management and resolution, and the issues involved in the regulation of capital flows. In short, the debtor community needs to be careful that a potential international sovereign bankruptcy framework does not give scope to the creditor community to evade the responsibilities of effective crisis resolution. The IMF's ongoing discussions which suggests that these issues are unrelated, are therefore potentially risky.

Conclusion

The most important reason underlying the reluctance of the IMF and the official creditors reluctance to come to an agreement on a comprehensive framework, is that the existence of such a framework which enables any indebted nation to file for a standstill on payments, will serve to discipline both irresponsible lending and borrowing, and will in effect work as a regulation of international capital flows. This is clearly not what the Fund or its powerful members would like to see. According to the Fund, the root problems of sovereign debt markets are only the sovereigns' tendency to over-borrow and the lack of enforceable property rights for the creditors.[xxiii] There is still unambiguous evasion of the responsibility on the part of lenders. SDRM fails to even propose that the creditors need to take responsibility for imprudent lending.

More than a year after Anne Krueger launched the IMF's SDRM initiative in November 2001, all the parties involved in the sovereign debt discussion have only reached a consensus on defining the problem, which is that 'something new is needed to bring order to the process and to the problems that countries face when they have an unsustainable debt situation'! A consensus on the solution seems a far way to go. The Fund is due to come up with a very specific proposal by the time of the IMF–World Bank Spring Meetings, which take place during 12–13April 2003.

So far, the IMF's enlightened attempt to formulate an international solvency procedure that would include debtors' interests has only turned into an argument about which procedure is likely to deliver better results for the creditors. This reflects the extremely biased approach of the Fund and further clouds the prospect for a fair and transparent international sovereign debt restructuring framework under IMF auspices. Against this backdrop and in the light of historical and recent experiences with voluntary debt work-outs,[xxiv] the fundamental question regarding the need for an IMF-programmed SDRM remains.

Notes

[i] Source: *Global Development Finance*, 2002.

[ii] See Anne Krueger, International Financial Architecture for 2002, 'A New Approach to Sovereign Debt Restructuring', Address by First Deputy Managing Director, IMF, Given at the National Economists' Club Annual Members' Dinner, American Enterprise Institute, Washington DC 26 November 2001; Anne Krueger, 'Sovereign Debt Restructuring and Dispute Resolution, Bretton Woods Committee Annual Meeting', Washington DC, 6 June 2002, and Anne Krueger, 2002, 'Sovereign Debt Restructuring Mechanism-One Year Later', Presented at the European Commission Brussels, Belgium 10 December 2002, at www.imf.org.

[iii] He suggested that insertion into these laws of a sentence to the effect that 'Starting international insolvency procedures voids all waivers of immunity relating to this case', would serve to solve the problem of vulture funds for existing contracts, as law suits even outside the stipulated jurisdiction become annulled by having such a clause. See Kunibert Raffer, 24 January 2002, 'Raffer Answers Challenge from the IMF on Vulture Funds', at www.jubileeplus.org and Kunibert Raffer, CIDSE Conference, 26 September 2002: Towards a Fair and Orderly Resolution of Debt Crises at www.cidse.org.

[iv] In the ongoing formulation stage of the SDRM itself, Jubilee Germany has accused the IMF to be following a lopsided consultation process with the various stakeholders. It has suggested that a causal relationship between the mainly negative changes from what used to be Ms Krueger's first broad outline of the SDRM to the present elaborated proposal and the characteristics of the consultation process that the Fund has organized. This latter has been pretty long on listening to the concerns of private investors and those member governments which are strongly voicing their concerns, particularly the US government, and very short on consultation with debtor governments and civil society in the North. No consultation at all has taken place with Civil Society in the South. See 'Little common ground left: the SDRM draft-proposal from an FTAP perspective—Second Revised Version', at www.erlassjahr.de.

[v] C.P. Chandrasekhar, 'Tokyo Mini-Ministerial: No Takers for Free Trade', 21 February 2003, at www.macroscan.com.

[vi] See *Trade and Development Report*, 2001 and *Economist*, 30 January 2003.

[vii]See Jack Boorman, Special Advisor to the Managing Director, IMF, 2003, The IMF Economic Forum on 'A New Approach to Sovereign Debt Restructuring: An IMF Proposal', Panel discussion at the IMF's Sovereign Debt Restructuring Mechanism (SDRM) Conference, Washington DC, 22 January 2003.

[viii] Other classes of debts proposed to be excluded from the SDRM proposal are domestic debt which is being treated under domestic law, and claims that enjoy privileges, like collateral.

[ix] See Stephane Pallez, 2003, Vice Chairperson, Paris Club, Panel discussion at the IMF's Sovereign Debt Restructuring Mechanism (SDRM) Conference, Washington DC, January 22, 2003.

[x] Se Boorman, 2003, 'A New Approach to Sovereign Debt Restructuring'.

[xi] This includes the debt cancellation announced for Mali which has become the seventh country to reach 'Completion Point' under the World Bank and IMF's Enhanced HIPC Initiative, in March 2003. See http://www.jubilee2000uk.org/worldnews/africa/mali110303.htm.

[xii] 'Guess Who Calls the Tune at IMF?', Bob Russell, www.imfsite.org.

[xiii] The idea of an international Chapter 9, originally advocated in 1987, has been discussed and presented in several of his later publications. See Kunibert Raffer, 1993, 'What's Good for the US Must be Good for the World: Advocating an International Chapter 9 Insolvency' at www-personal/umich.edu/~russoj/debt/Raffer2.html, Raffer, 2001, 'The Final Demise of Unfair Debtor Discrimination? Comments on Ms Krueger's Speeches', Paper prepared for the G-24 Liaison Office, at http:mailbox.univie.ac.at/~rafferk5.

[xiv] See www.jubilee2000uk.org/HIPC/HIPCnews Chapter9/11? Resolving International Debt Crises- the Jubilee Framework for International Insolvency.

[xv] According to the Fund, examples of 'unjustified use' when a member's debt is not considered unsustainable are: where payment difficulties relate to either liquidity constraints or the debtor's willingness to cease making payments happens because of a change in domestic priorities. See IMF, 2003, 'The Design of the Sovereign Debt Restructuring Mechanism—Further Considerations', Prepared by the IMF's Legal and Policy Development and Review Departments, IMF's SDRM Conference, Washington, 22 January 2003. Clearly, these are also problematic concepts and infringe upon the debtor countries' choices for policy options.

[xvi] Ibid.

[xvii] See IMF, 2003, 'The Design of the Sovereign Debt Restructuring Mechanism'.

[xviii] See Raffer, Kunibert, 31 January 2003, 'To Stay or Not to Stay- A Short Note on Differing Versions of the SDRM' at www.jubilee2000uk.org

[xix] See for example, C.P. Chandrasekhar, 2002, 'New Financial Structures, Transmission Mechanisms and Deflation in the Global Economy', Paper presented at the IDEAs Conference on 'International Money and Developing Countries: Theoretical and Policy Issues in the Current Context', between 16–19 December 2002, Tamil Nadu, India.

[xx] The Paris Club representative at the January IMF conference Stephanie Pallez in fact attempted to silence precisely this kind of criticism. She argued that the crisis prevention mechanism is already there and only needs to be reinforced and this is not part of what the SDRM is trying to address.

[xxi] In fact, this would take us right back to the question of flexibility under the GATS to undertake crisis prevention safeguard measures on the capital account and to the need for regulating capital inflows in general. This would mean the regulation of capital inflows not only in the form of external borrowing and short-term portfolio inflows, but also of inflows of FDI, which too create foreign exchange liabilities. The emphasis should be on the logic that to be able to regulate the outflows of external liabilities, the inflows that create such liabilities would also need to be under some form of regulation. This can be achieved through the scope and application of investment definitions, which is still under negotiation at the WTO Working Group on Trade and Investment (WGTI). There is room for flexibility to consider such detailed regulations under the GATS, given that the timeframe for concluding negotiations on emergency safeguards under the GATS has been extended till 15 March 2004. See Smitha Francis, 2003, 'FDI Flows and Industrial Restructuring in Southeast Asia: A Case Study of Thailand, 1987–98', Ph.D. Thesis Submitted to the Jawaharlal Nehru University, New Delhi, pp. 469–70.

[xxii] 'The Role of the IMF in a Globalizing World Economy' Remarks by Horst Köhler, Managing Director of the International Monetary Fund at the Fourth Annual Conference of the Parliamentary Network on the World Bank, Athens, 9 March 2003.

[xxiii] According to Kenneth Rogoff, Director of IMF's Research Department, factors like political economy problems, short horizons of governments and institutional weaknesses in debtor countries generate a tendency for them to over-borrow and take on excessive risks, while there is absolutely no mention of the role played by overcrowding in emerging markets by lenders or on the lack of responsible lending by them. See Kenneth Rogoff, 'Emerging Market Debt: What is the Problem?', IMF's SDRM conference, Washington DC, 22 January 2003.

[xxiv] Some historical examples of countries with international debt and insolvency are France and Great Britain which, in 1930, voluntarily reneged (refusing to pay their debts), and at that time, far from taking direct charge of the debt, showed, by putting conditions on the payment of their debts, that the needs of their people were more important than their legal obligations in respect of their creditors. These countries considered that economic obligations to foreign countries and creditors should be subordinated to the primary interests of the people. Germany was granted cancellation of over 50 per cent of its debt, which made recovery or the so-called 'German miracle' possible. Ironically, today Germany is one of the main creditors of developing countries like Argentina, which would not seem to favour treatment on an equal basis with other debtors. The most recent case, and the most important as a point of reference regarding de facto insolvency, is that of Russia, which, in 1998, could not fulfil its credit obligations and went into 'default'. The solution consisted of a strategy whereby they managed to get 33 per cent of the total capital cancelled, reducing the costs of interest, by reaching an agreement with the IMF and the Clubs of Paris and London, among other important 'world creditors', though this did involve 'reforms'.