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# Let's Make A Deal

International debt campaigners, along with some nations in Asia and elsewhere, are calling for an arbitration system to help developing countries settle onerous international debts

BY Emma-Kate Symons



As many as 90 poor countries are wallowing in debts that threaten to swamp or have already overtaken the entire value of their economies. At least 40 are a direct result of the global economic crisis, according to the World Bank.

In the wake of the international economic turmoil with its disproportionate impact on development, Supachai Panichpakdi—the secretary-general of the United Nations Commission on Trade and Development (UNCTAD)—urges the international community to help these vulnerable nations, particularly those whose interest repayments exceed their gross domestic product.

Panichpakdi is calling for a temporary debt moratorium similar to that offered to Asian nations devastated by the 2004 tsunami. In harmony with groups representing developing nations, he says poor countries had not caused the global economic meltdown and should not be left paying a steep price in the form of an external debt crisis. Instead of spending to service loans, poor nations need to continue with fiscal stimulus packages

and spending on imports to develop their economies, he says.

Last year, Panichpakdi went even further in a speech at an international conference on the economic crisis and its effect on development. Calling for a deeper analysis of the debts of poor nations, he says the time had come to address the “missing link” in the financial system: a mechanism to deal with sovereign debt insolvency.

Reforming the structure of international finance so that indebted sovereign nations could “call a standstill and seek a restructuring of their debt” was essential, he says. A United Nations (UN) working group has already been formed to examine proposals for an international debt arbitration system for insolvent sovereigns.

All those lobbying for reform agree that the UN should be at the center of any international debt arbitration system, and that the system must underscore the mutual responsibility of lenders and borrowers.

## AN ORGANIZED APPROACH

Nongovernment organizations, legal

experts, politicians, and international organizations have long called for a global approach to deal with debtor nations. Not only does crushing debt threaten the survival of developing nations, the issue affects international finance institutions’ ability to maintain development programs that depend on revolving funds. In those funds, debts must be repaid to be circulated back into grants and lending for ongoing development programs in the world’s poorest nations.

With the global economic crisis, the need for an internationally recognized debt arbitration mechanism has become even more urgent, to prevent a further spiral into debt and poverty in scores of



**HELP WANTED** Supachai Panichpakdi—the Secretary-General of the United Nations Commission on Trade and Development (UNCTAD)—has urged the international community to help vulnerable nations repay foreign debts, particularly those whose interest repayments exceed their gross domestic product.

officials from more than 90 developing countries.

### ORDERLY RESTRUCTURING

While there is widespread agreement on the need for such a transparent international system, the specifics differ from one well-regarded group to another.

Steven Kargman is president of Kargman Associates, a New York City-based firm specializing in international restructuring, cross-border insolvency, and distressed debt, with a special focus on emerging markets. He has teamed up with Christoph Paulus, Professor of Law at Humboldt University, Berlin.

Together they have proposed a sovereign debt tribunal to handle disputes, which is frequently cited in the literature on debt arbitration

since being presented to the UN General Assembly in 2008. The idea was developed under the auspices of the International Insolvency Institute, a leading limited membership organization of professionals (lawyers, insolvency professionals, judges, and academics) from around the world specializing in international insolvency and restructuring matters.

In an interview, Kargman stresses the need for a more orderly, efficient, and predictable restructuring of sovereign debt.

“We have proposed the establishment of an independent international arbitration tribunal—a sovereign debt tribunal—that would address issues arising in sovereign debt restructurings,” Kargman says. “As a standing body, the sovereign debt tribunal would consist of

leading professionals who have proven expertise in sovereign debt restructuring issues.

“Sovereigns and their creditors could turn to the tribunal if they faced issues in sovereign debt negotiations that they were unable to resolve on their own. The sovereign debt tribunal would address issues specified by the parties, and such issues could range from the very basic, such as verification of creditor claims, to the more elaborate and complex, such as debt sustainability or matters related to restructuring plans.

“The tribunal would benefit from being an independent body providing the parties with a neutral forum as well as from drawing on the expertise of a standing group of experts in the field who would serve as arbitrators for the tribunal.”

The Kargman–Paulus proposal has some support in the legal and academic world. Geske Dijkstra, associate professor in economics at Erasmus University, Rotterdam, has studied the political economy of aid and debt issues. She says in an interview that “arbitration by an independent tribunal (with no money-lending capacity) is a good idea, and better than cancellation in the current situation.”

“Our tribunal does not attempt to prejudge what issues the parties will bring to the sovereign debt tribunal for purposes of international arbitration,” Kargman says.

“That will be for the parties—the lenders and the sovereign—to decide. In turn, any issues that are submitted to arbitration will be the province of the experts who serve as arbitrators for the sovereign tribunal. They will bring their professional expertise to bear in resolving issues that are submitted by the parties for international arbitration. Obviously, there would be no predetermined outcomes—any outcomes would be the result of a neutral arbitration process.” ■