



Church of Sweden 



International Symposium on Illegitimate Debt
Oslo, Norway
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CONCEPT PAPER

Background and Present Situation

Despite repeated crises, claims and attempts at correction, the problem of foreign debt, far from having been solved, continues to threaten the rights and dignity of millions of human beings. Debt management and renegotiations have often led to increased poverty, denial of people's rights, and the discouragement of indebted countries' development. These processes have often also resulted in the imposition of inappropriate and ineffective economic reform policies that have further undermined rights and development in affected countries.

There have been various attempts by the international community to bring the spiralling debt problem under control. The Jubilee Campaign, based on the activism of civil society movements around the world, made a deep impression on the political discussion. The adoption of the HIPC initiative was a leading attempt of the International Financial Institutions, politically supported by the G8, to respond to the evident unsustainability of the debt burden for many countries. However, HIPC failed to produce a lasting exit from unsustainable debt for most heavily indebted poor countries, and the conditions of the relief continued to require further and deeper liberalization of the already vulnerable economies of highly indebted countries. Although the important reforms introduced to the original initiative with the HIPC II are an acknowledgment of its fundamental weaknesses, HIPC II could not provide for a substantial betterment of the situation of indebted countries. Several other initiatives, including the G8 Gleneagles debt relief to Africa (2005), have not resulted in lasting release from the grip of indebtedness either. The reason is that they all have failed to look into the systemic problems and contradictions of lending and debt management practices at a global level.

An encouraging exception to this rule is the Norwegian government's recent decision to write off the debt of five African and South American countries (Egypt, Sierra Leone, Ecuador, Peru and Jamaica). What is exceptional is not the debt cancellation itself, but the conceptual basis for this initiative, involving an acknowledgement by the Norwegian government of its shared responsibility regarding the origin of the cancelled debts. Though this is a political decision, it acquires a legal character that goes beyond the relations between the Norwegian government and each of the benefited countries. The demand for creditors' co-responsibility

is a claim which has been put forward for many years by those who advocate on behalf of indebted countries. The decision of the Norwegian government is an invaluable help to the cause of international economic justice because it establishes a correlation between a creditor government's actions in establishing the loan and its responsibility for the consequences in the debtor government's country. This, at the same time, offers an opportunity for a new analysis of the legal substantiation of sovereign debt processes.

Another critical development in this context is the decision by the government of Ecuador in July 2007 to establish a 'debt audit commission', the first time that such an initiative has had the full support and involvement of government. The Commission's task is not to conduct a simple financial audit of the debt, but rather to consider all relevant legal, political and social factors that have led to the accumulation of illegitimate debt in Ecuador.

The initiatives of the Norwegian and Ecuadoran governments, however, are exceptions rather than the rule. The lack of judicial regulation of the contractual aspects of sovereign debt transactions, always controlled by the creditors' will, leads to the imposition of abusive conditions and consequences that entail indebted countries' complete abandonment of their right to an equal bilateral relation which respects general principles of law and justice.

Proposal

Given this background, concrete measures must urgently be taken in order to guarantee the rights and the legal security of all the indebted countries, particularly of the poorer ones. Neither ethical claims and statements nor unilateral acts of repudiation and non-payment can achieve this. It is necessary to refer to general legal norms, as a basis for constructing effective instruments that lead to just and impartial outcomes to debt crises. It is necessary to establish a fairer international system with solid legal foundations so as to approach the subject of debt from a new and original perspective. The discussion ought not to be framed in terms of 'forgiveness' of debts, but should rather be focused upon ways in which a given debt's origins, lack of democratic mandate, purpose, conditions, and effect on human development in the country concerned may render it illegitimate.

A broader approach to this issue is necessary, since it is an issue that goes beyond purely economic considerations and it is rather related to the duty to promote and protect the human rights and dignity of people affected by sovereign debt. Consequently, a serious and careful study of the applicable international legal framework must be undertaken. This scholarly task will provide the substantive basis for a new treatment of sovereign debt, free from the biases of asymmetric power relations.

This is more than a legal challenge, but more fundamentally a political one. The initiatives taken by the governments of Norway and Ecuador indicate the emerging possibilities for a political response to the problem of illegitimate debt, based upon a clear discernment of the legal substratum.

It is therefore proposed to convene an international symposium of government representatives from Norway, Ecuador and other interested countries, together with legal scholars and other experts in the field of sovereign debt crises and their resolution, in order to:

- review the current practice and policy with regard to the resolution of sovereign debt crises, including especially the recent Norwegian and Ecuadoran initiatives;
- review relevant legal principles, doctrines and jurisprudence concerning the establishment of sovereign debt contracts and the resolution of debt crises, and to examine these sources for the building blocks of a new international legal framework for debt management and resolution, based upon principles of justice, equity and human rights.

- make proposals for the further elaboration of this emerging framework and to political action to implement it.

The symposium will take place in Oslo, Norway, on 20-23 October 2008..

Objective

Defining the general principles of law which may be applicable to sovereign debt and its impacts on human development, and examining relevant political initiatives in this area, in order to develop proposals for future multilateral political action to bring the subject of sovereign debt under the rule of law, justice and ethics.

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The symposium is co-sponsored by the Norwegian Ministry of Foreign Affairs