

International Trade, Sovereign Default and Jurisdictional Immunities

Preliminary draft

Introduction. Environment of international trade is shaped by both economic and social factors. Legal framework may influence the trade by both those channels simultaneously by changing contract terms directly and by influencing conduct of parties to a transaction. This is the case of jurisdictional immunities – a legal institution with a potential of threatening the very fundamentals of the free market economy: the sanctity of contracts.

Shielding States from private claims abroad had been conceived as a means of protecting national dignity and preventing unjustified intrusion by domestic courts into foreign Sovereign's internal affairs. Gradual increase of public activity in the economic field produced, however, a perverse effect. In case of international trade an immunity from jurisdiction may prevent a private party from enforcing its contractual rights against a foreign State. In terms of international financial transactions immunity veil prohibits lenders from recovering the debt. Originally this was perceived as a domestic problem of the State concerned (and of the private party thus suffering a loss). This changed, however, due to ever tighter global economic integration. Without entering into details behind the current indebtedness crisis in the European Monetary Union (EMU), it is sufficient to notice for the purposes of the paper that macroeconomic imbalances among EMU member-States have been unsustainable¹. The crisis eventually curtailed any doubts as to the “domestic character” of one's fiscal stability, at least between members of a monetary integration zone. This, paradoxically, may be a counterbalance for the “immunity weakness”², as breach of a contract entails both direct and indirect (investors and the public) consequences for numerous market actors³. On the contrary legal instruments that shield States from both their trading partners and lenders may render both areas of public activity even more interdependent.

While considering any changes in this area one shall thus seek: - confidence-building measures, - to limit spillovers, - to stem capital outflow, - and to provide credible tools for crisis management⁴. The question key question of why sovereigns repay their debts is a decisive factor in terms of severity of any confidence crisis.

¹ See for instance: C. Alcidi, *Macro Imbalances and Macro Adjustment. The Experience of Two Peripheries: EU Versus Euro Zone* [in:] M. Koczor, P. Tokarski (eds.), *The EU Economy. Response to the Crisis and Prospects for the New Decade*, Polish Institute of International Affairs, Warsaw 2011, pp. 45-51.

² Weak enforcement measures are often mentioned alongside poor inter-creditor coordination and information asymmetries as particular features of sovereign debt restructuring, P. Bedford, A. Penalver, C. Salmon, *Resolving sovereign debt crises: the market-based approach and the role of the IMF*, International Finance Division, Bank of England, 2005.

³ Accordingly incentive to avoid a default is proportional to internalised costs thereof, B. de Paoli, V. Saporta, *Costs of sovereign default*, Financial Stability Paper no.1, Bank of England, 2006.

⁴ IMF, *Crisis Resolution in the Context of Sovereign Debt Restructuring: A Summary of*

Sovereign Immunities. Immunity from jurisdiction denotes a procedural obstacle that prevents courts from initiating or continuing proceedings against beneficiary thereof. Immunity from execution prevents authorities from enforcing the judgement against a foreign States or its property. Historically the doctrine of absolute sovereign immunities halted private parties from impleading foreign States in domestic courts, which was supposed to protect friendly inter-state relations. Private actors entering into transactions with foreign States, and States often resorted to private financing, had been deprived of legal instruments of enforcing their contractual rights. The legal uncertainty on the part of the lender also increases transaction costs, which lies in the interest of neither party, at least were the State honestly undertakes to repay its debts⁵. Abuse of the immunity privilege by States, covering behind it in cases which did not involve exercise of sovereign powers, raised doubts, why foreign States' sovereignty shall prevail over interest of the local sovereign in protecting public order on its territory, which in turn paved the way for the restrictive theory of the immunity⁶.

To lower transaction costs in international dealings and to protect one's own nationals entering into transactions with foreign governments, States have gradually accepted exceptions to the immunity from jurisdiction and, to lesser extent, from execution⁷. Among substantive exceptions⁸ exclusion of commercial transactions from the immunities protection was of utter importance. Its actual scope is, however, unclear. It is based upon a distinction between acts performed in the exercise of a public authority (*acta iure imperii*) and those in which a State and private actors act alike (*acta iure gestionis*). Accordingly State enjoys protection from foreign jurisdiction, where it acts as a sovereign; once it engages in relations as a private party, the protection fades. Yet it is not even clear, whether assessment of the facts upon which the claim of immunity is based shall be performed according to its purpose or nature⁹.

Considerations, 2003.

⁵G. Delaume, *Economic Development and Sovereign Immunity*, AJIL, Vol. 79, No. 2 (1985), ss. 319-346.

⁶For a complex analysis of the sovereign immunity see for instance: H. Fox, *The Law of State Immunity* (2nd), Oxford University Press, New York 2008; G. Badr, *State Immunity. An Analytical and Prognostic View*, Martinus Nijhof Publishers, Hague, 1984; A. Dickinson, R. Lindsay, J. Loonam, *State immunity: selected materials and commentary*, Oxford University Press, New York 2004; E. Bankas, *The state immunity controversy in international law: private suits against sovereign states in domestic courts*, Springer, Berlin-Heidelberg 2005.

⁷ Since the motivation may be twofold, proportion between government's own foreign dealings and its nationals economic presence abroad dictated political preference of sovereign immunity or courts' right to adjudicate.

⁸ Customary law on immunities is codified in the United Nations Convention on Jurisdictional Immunities of States of 2004 (not in force) and Their Property and the European Convention on State Immunity of 1972 (very few State-parties), but the extent to which both convention codify and where develop substantive norms is unclear.

⁹ For instance purchase of medicines of arms assessed by its nature is a commercial activity; if the purpose of the transaction was taken into account, for instance humanitarian assistance or public defence, both would be considered as an exercise of public authority, M. Ogiso, *Third*

Adding to the general problem of commercial transactions, sovereign debt *per se* is not easily qualified under broad categories of private or public acts. Due to those uncertainties private lenders often require States to include immunity waiver¹⁰ or arbitral clauses¹¹ in loan agreements. For instance government actions, where it does not act like a regulator, but an actor at a market, emitting debt instruments denominated in foreign currency may be considered as commercial¹². Despite budgetary necessity a refusal to service external debt was considered as a commercial act¹³.

As for the holdout creditors, even though they occasionally achieve considerable results, a full repayment under a threat of litigation remains an exception, while motives behind

report on jurisdictional immunities of States and their property by Mr. Motoo Ogiso, U.N. Doc. A/CN.4/431 and Corr.1, art. 2-3 and S. Sucharitkul, *Fourth report on jurisdictional immunities of States and their property*, U.N. Doc. A/CN.4/357 and Corr.1, par. 48 See also: R. Wei, *The Commercial Activity Exception to Sovereign Immunity and the Boundaries of Contemporary International Legalism* [in:] C. Scott (ed.), *Torture as Tort: Comparative Perspectives on the Development of Transnational Human Rights Litigation*, Hart Publishing, Oxford 2001, pp. 213-245.

¹⁰ T. Duval, *Legal Aspects of Sovereign Lending* [in:] T. Klein, *External Debt Management: An Introduction*, World Bank Technical Paper, 1994, p. 40.

¹¹ M. Waibel, *Sovereign Defaults before International Courts and Tribunals*, Cambridge University Press, Cambridge 2011, pp. 121-128, 157-168.

¹² The U.S. Supreme Court ruled that both emissions of treasury bonds and seizure of bonds repayment due to unstable economic situation are commercial acts, *Republic of Argentina and Banco Central De La Republica Argentina, Petitioners, v. Weltover, INC.*, 504 U.S. 607 (112 S.Ct. 2160, 119 L.Ed.2d 394), June 12, 1992. On the other hand an Italian court of appeals faced with Argentina government's unilateral debt restructuring for the purposes of protecting national fiscal stability considered the action in question as an exercise of sovereign power, *Borri Loca c. Repubblica Argentina* (ord. n. 11225, 27 May 2005, *Rivista di Diritto Internazionale* 856 (2005) [in:] R. Luzzato, *La Giurisdizione sugli Stati Stranieri tra Convenzione di New York, Norme Internazionali Generali e Diritto Interno*, Giuffrè, Milano 2007, p. 63) and even in the U.S., where a court ruled in favour of the creditors, majority of motions for attachment have been rejected.

¹³ Decision on the grounds of the *Act of State Doctrine*; on the appeal this argument was rejected, however, the possibility of claiming immunity by the Costa Rican government was maintained thanks to the principle of international comity, *Allied Bank International v. Banco Credito Agricola de Cartago*. 566 F.Supp. 1440. Since then the sovereign debt market evolved considerably due to, at least partial, replacement of banks, unwilling to write down losses in case of default of the debtor, by other actors dealing with debts on the secondary market. Most importantly this stems was possible due to creation of securitised loans and emergence of the so-called vulture funds, just as in the hallmark sentence in *CIBC Bank and Trust Co. Ltd. v. Banco Central do Brazil* (94 Civ. 4733 (LAP)). Even though in the latter case Brazil could not claim immunity or Act of State defences, the court agreed with the U.S. government brief that "holdout creditors" that had purchased debt at the secondary market shall not be permitted to free ride on the willingness of the remaining creditors to reach a compromise. The Central Bank of Brazil was thus shielded from the claim on the grounds of comity against the holdout. This approach weakened in time however. In several cases courts granted protection to holdout creditors including famous rulings in *Elliott Associates v. Banco de la Nación* (Peru) and *Elliott Associates v. Republic of Panama*.

meetings vulture creditors' demands included a real threat of attachment of foreign assets and a possibility of interference with international transactions¹⁴.

At the same time a written waiver of immunity in a loan agreement will allow to continue judicial proceedings even in case of exercise of sovereign powers by a central bank¹⁵. The central banks responsibility for their conduct before foreign court also raises a set of legal doubts¹⁶; certain States keen on protecting their position of an international finance centre tend to grant such entities a broader protection, while others do not differentiate between central banks and other State organs.

Sovereign Debts Features. Alike other organisms facing health emergencies, also a State may require a drip to its financial circulatory system: a sovereign loan. Any loan reflects lender's readiness to delay its own consumption. The principal reason for doing so is, usually, the interest rate (discount rate) on the loan; the precondition for such an agreement is certainty of repayment.

In dealings between private parties the borrower can be compelled to repay its debts, which shall discourage it from taking a loan without due consideration. In the private-public context this mechanism is considerably weaker. Apart from scarce juridical remedies available to the lender against an uncooperative foreign State sovereign borrowing is characterised by additional particular features.

- Decision-makers are usually not the same actors as those obliged to repay the debt. Unlike private companies they do not necessarily share the sense of continuity of the predecessors' work.
- Political benefits are separated from political costs, especially were the funds were appropriated, misused or used inefficiently. Accordingly, even in case of a flagrant abuse at the stage of the loan-taking, one cannot claim debt restructuring on equity grounds without threatening its creditworthiness.
- Another consequence of the time span between the loan desimbursement and repayment is separation of social benefits from burdens, particularly striking given that a loan decision is taken in the name of the unborn generations, who are deprived of possibility to express their view on the matter or at least decrease the loan's value.
- Loan purpose and management may entail further problems, including legal doubts surrounding financing of distasteful regimes or odious debts.

Given the insufficient personal motivation on the part of the political decision-makers to adopt long-term, strategic vision in the first place, and then to repay contested debts, remedies

¹⁴U. Panizza, F. Sturzenegger, J. Zettelmeyer, *The Economics and Law of Sovereign Debt and Default*, Journal of Economic Literature, vol. 47, no. 3 (2009), pp. 1-47.

¹⁵Libra Bank Limited, et al. v. Banco Nacional de Costa Rica, S.A. 676 F.2d 47 (1982).

¹⁶D. Gaukrodger, *Foreign State Immunity and Foreign Government Controlled Investors*, OECD Working Papers on International Investment, 2010/2, OECD Publishing, pp. 24-27.

available to the parties to a loan agreement acquire even greater significance than in the private dealings.

Default Penalties. Given the limitations to judicial means of compelling a debtor country to repay its obligations, it is sometimes unclear why do States actually meet their contractual obligations.

Basing upon literature surveys¹⁷ one can distinguish between theoretical assumptions (studies) and empirical analysis.

Theoretical model used to focus on the financial credibility predominantly¹⁸. The most optimistic approach – from the transaction safety perspective – assumes that even without any legal remedies available to creditors, if debtors can shield themselves from financial instability only through a recourse to an external funding and defaulting on such a credit deprives them of the access to capital markets, then the reputational costs alone would be sufficient for the purposes of ensuring compliance¹⁹. The assumption of a permanent exclusion from the capital markets has been criticised as unrealistic, as the resumption of credit action lies in the interest of both parties²⁰. Furthermore, it has been pointed out that foreign credit is not the only instrument for countering liquidity and output shocks, just to mention appropriate storage policies, insurances or foreign investments as means of assets diversification²¹. The latter approach also reiterates unfeasibility of lending based merely on borrower's reputation without some sort of sanctions (judicial, financial or trade pressure).

¹⁷ U. Panizza, F. Sturzenegger, J. Zettelmeyer, *op. cit.*; Y. Li, R. Olivares-Caminal, U. Panizza, *Avoiding Avoidable Debt Crises: Lessons from Recent Defaults* [in:] C. Primo Braga, G. Vincelette (eds.), *Sovereign Debt and the Financial Crisis: Will This Time Be Different?*, World Bank 2010, chapter 10, pp. 243-271.

¹⁸ M. Drelichman, H.-J. Voth, *Serial defaults, serial profits: Returns to sovereign lending in Habsburg Spain, 1566–1600*, *Explorations in Economic History* Vol. 48, Iss. 1 (2011). F. Cesarini, *Utilità dei Banchieri, Tedeschi e Genovesi per Carlo V e Filippo II di Spagna. Prestiti considerevoli e insolvenze*, <http://bit.ly/HAM5cN>, 13.04.2012. K. Béguin, P.-C. Pradier, *Emprunts Souverains et Vulnérabilité Financière de la Monarchie d'Ancien Régime. Tout s'Est-Il Joué Sous Louis XIV?*, Université Paris 1, Le portail archives ouvertes HAL, hal-00623714. F. Velde, D. Weir, *The Financial Market and Government Debt Policy in France, 1746-1793*, *The Journal of Economic History* Vol. 52, No. 1 (March 1992), pp. 1-39.

¹⁹ J. Eaton, M. Gersovitz, *Debt with Potential Repudiation: Theoretical and Empirical Analysis*, *Review of Economic Studies*, vol. 48, no. 2 (1981), pp. 289-309.

²⁰ K. Kletzer, *Sovereign Immunity and International Lending* [in:] F. van der Ploeg (ed.), *Handbook of International Macroeconomics*, Blackwell Malden, Mass. and Oxford 1994, pp. 439–79 as cited in U. Panizza, F. Sturzenegger, J. Zettelmeyer, *op. cit.*

²¹ For instance some authors pointed out to the possibility of buying consumption insurance contracts by paying cash in advance, which would replicate cash flows in times of a financial crash, J. Bulow, K. Rogoff, *Sovereign Debt: Is to Forgive to Forget?*, *American Economic Review*, vol. 79, no. 1 (1989), pp. 43-50. The reputation costs may, however, be higher than those scholars expected, H. Cole, P. Kehoe, *Reputational spillover across relationships: reviving reputational models of debt*, National Bureau of Economic Research (1996), NBER Working Paper no. 5486

Together the threat of a permanent exclusion from the sovereign debt market has thus been undermined.

Theoretical responses to this criticism focus on direct punishments, as the principal reason for payment, through interference with country's current transactions²², approach the creditworthiness from a new angle²³, or finally analyse "collateral damage" of a default born by the government or entire economy due to loss of reputation²⁴.

Empirical studies attach greater attention to the relationship between defaults and capital markets condition. Scholars adopting this approach tend to reiterate market circumstances in which governments declare a default. Also empirical studies allowed addressing certain theoretical concerns, including worries that an increased creditors' heterogeneity would entail greater difficulties for debt restructuring, which in practice proved unjustified.

Most important, however, are the actual international costs of a default, which due to lack of efficient enforcement measures are sometimes considered as inherent by-product of the imperfect international sovereign debt market. Although costs may include some period of capital market exclusion²⁵, rising costs of borrowing²⁶, and – particularly important for the purposes of this paper – certain trade coercive measures, all those tools are used in a limited way and higher borrowing costs (without additional output losses) alone is insufficient to discourage defaults²⁷.

²² It is worth noticing that success probability for economic sanctions is greatest where the relative cost of a threat is low as compared to expected benefits for the lender, whereas elevated for the borrower country as opposed to the cost of repaying the debt. Although implementation of sanctions reflects information asymmetry – threat insufficiently credible or debtor's determination underestimated – given gradual nature of economic sanction (as opposed to military sanctions) the debtor will be tempted to test lender's dedication to recover its debts, M. Menkes, *Stosowanie sankcji gospodarczych – analiza prawnomiędzynarodowa*, Adam Marszałek, Toruń 2011, pp. 198-201.

²³ For instance undermining the assumption that a debtor State can invest funds abroad, as a cash-in-advance insurance, without concerns about recovering its assets upon declaration of a default.

²⁴ As information available is incomplete, all government's partners are compelled to continuously reassess its credibility taking into account general history of commercial transactions. This approach may imply inclusion in the default CBA also domestic factors (public opinion).

²⁵ Studies reveal, however, that the median of years of capital market exclusion following a default fell from 4 in 1980's to 0 in the subsequent decade, R. Gaston Gelos, R. Sahay, G. Sandleris, *Sovereign Borrowing by Developing Countries: What Determines Market Access?*, IMF Working Papers WP/04/221.

²⁶ Somewhat similarly also capital access costs raises appear limited and temporary. S. Ozler, *Have Commercial Banks Ignored History?*, National Bureau of Economic Research, Working Paper no. 3959 (1992).

²⁷ L. Alfaro, F. Kanczuk, *Sovereign Debt as a Contingent Claim: A Quantitative Approach*, Journal of International Economics, Forthcoming. Available at SSRN: <http://ssrn.com/abstract=524902>.

As an indirect consequence a sovereign facing default might also experience a banking and currency crisis. The former follows usual increase of internal indebtedness in the period before the crisis, as foreign funding becomes unavailable or excessively costly. Hence a default may shake domestic banking market. As fears concerning foreign assets reserves and capacity of defending exchange rate spread, a government adopting restrictive monetary measures – to escape one peril – may lower liquidity of the domestic financial sector. Lack of confidence in national currency may also prevent government from issuing debt otherwise than in foreign currencies, which increases debts servicing costs. Sovereign, banking and currency crisis may all contribute towards an output loss²⁸.

While capital markets reactions could have been excepted as the principal sanctions vehicle against a defaulting state, other scholars scrutinise coercive trade instruments against an unreliable borrower.

Although various trade repercussions have been suggested in the literature²⁹, empirical proofs thereof remain scarce, including relatively unimportant problems with avoiding attachment of state property – as defaults do not occur unexpectedly, a reasonable State will secure its assets in a major creditor country – or minor disruptions of short-term trade credits. Furthermore, majority of penalties is subject to renegotiations, since both parties to a contract may be interested in (partial) default or debt restructuring³⁰. There are also problems with tracing casual nexus between debt servicing and trade restrictions³¹.

What confirms, however, express use of trade sanctions as a penalty for a default is positive influence of bilateral trade on bilateral lending patterns, resulting from the fact that countries with stronger trade ties have greater capacity of compelling the borrower to service its debt or to punish for irresponsible behaviour³².

Some scholars reject all the above mentioned sanctions, indicating that those are rather shocks to domestic output that motivate sovereign borrowers to repay their international debts³³.

Tort liability and default precaution. Let the

p = probability of a default

²⁸ B. de Paoli, G. Hoggarth, V. Saporta, *Costs of sovereign default*, Financial Stability Paper no. 1, Bank of England, 2006.

²⁹ A. Rose, *One Reason Countries Pay Their Debts: Renegotiation and International Trade*, Journal of Development Economics, vol. 77, no. 1 (2005), pp. 189–206.

³⁰ K. Kletzer, B. Wright, *Sovereign Debt as Intertemporal Barter*, American Economic Review, vol. 90, no. 3 (2000), pp. 621–639.

³¹ E. Borensztein, U. Panizza, *The Costs of Default*, IMF Staff Papers, vol. 56, no. 4 (2009), pp. 683–741.

³² A. Rose, M. Spiegel, *A Gravity Model of Sovereign Lending: Trade, Default and Credit*, National Bureau of Economic Research, Working Paper 9285 (2002).

³³ M. Dooley, *Can Output Losses Following International Financial Crises be Avoided?*, NBER Working Paper No. 7531, 2000.

x = precaution level, and

A = value of default damages

then the costs of a default constitutes expected loss: $p(x)A$.

Expected loss added to precaution costs $w(x)$, where

$w(x)$ = precaution costs

constitute a social cost of a default

$$SC = wx + p(x)A^{34}.$$

The lowest default social cost marks the optimal precaution level x^* .

Let $-p'(x)$ denote the smallest probability of a default.

In case of a precaution level below optimal the marginal social benefit of financial precaution exceeds its marginal social cost:

$$(x < x^*) \rightarrow [w < -p'(x^*)A]$$

In which scenario an increased precaution is desired. The precaution marginal costs exceed marginal benefits, than precaution level is likely to be lowered. Now the question remains who shall carry precaution costs.

In case of lack of liability on the part of a sovereign borrower it will be the lender who internalises precaution costs and benefits. Accordingly it will be the lender, who will attempt to secure efficient precaution level. Who will be also motivated to act with caution in a fault-liability regime, as he internalises precaution costs and externalises benefits. This will not be the case where the sovereign borrower could be held responsible on a no-fault basis.

On the contrary the sovereign borrower is inclined towards precaution in case of prospective liability independently of its rules. If there are no liability mechanisms or a he default option is available has weak or no reasons to adopt safety measures as insolvency costs are externalised.

The desirable joint-precaution scenario thus requires introduction of a fault liability principles. This, however, raises practical problems of information asymmetry, as the lender is unlikely to access all information relevant for the purposes of assessing sovereign borrower's standard of care and, having already scarce information, creditors are not likely to share those between themselves.

Conclusions. The retreat from the absolute theory of immunity allowed private lenders to implead their borrowers in domestic courts³⁵. The commercial exception to the immunity,

³⁴R. Cooter, T. Ulen, *Ekonomiczna analiza prawa*, C.H. Beck, Warszawa 2011.

³⁵ L. Buchheit, G. Mitu Gulati, *Responsible Sovereign Lending and Borrowing*, UNCTAD Discussion Papers No. 198 (2010), UNCTAD/OSG/DP/2010/2.

arguably covering also sovereign debts, may suffice to seize the court in order to adjudicate in the dispute at hand. It does not, however, translate automatically into possibility of enforcing the judgement against the uncooperating defendant-State. Accordingly, as in the times of absolute immunity, it is the State's reputation that constitutes the principal reason for meeting one's obligation.

Defaults entail considerable financial and social costs and therefore are shall be prevented. To this ends precautionary codes on both borrowers' and lenders' can provide a desirable guidance³⁶. This at least could minimise probability of "unwanted" defaults, where a sovereign-borrower acts in good faith.

Independently of the desired care level, parties acting reasonably assess their individual costs and benefits of a possible default respectively. Economic considerations – including direct and indirect financial costs, output loss and trade damages – do not provide obvious reasons for not defaulting.

On the one hand a State cannot be liquidated and therefore it cannot externalise default costs similarly to an insolvent company. If a claim against a defaulting State is admitted, the borrower could be held liable on a no-fault basis. Under those circumstances the lender will not be motivated to increase the precaution level, as the default costs would burden the borrower. On the other, immunity from jurisdiction, and even more from execution, may in some jurisdictions free a State from liability from mismanagement of borrowed funds. Furthermore, a State may be tempted to confer parts of its activity on enterprises with a distinct legal personality. Even if an immunity veil is pierced, this will not necessarily entail subsidiary liability of the State itself. Here only the lender would be interested in discouraging State's excessive activity and providing funds only in the amount, in which they can be reasonably expected to yield profits necessary for the repayment. Although the latter problem could be partially addressed by insurance policies and/or regulation *ex ante*, but since they are often left unresolved in contracts, and even more so in law on immunities, it is the lack of sovereigns' interest in changing the current situation and not a legal loophole setting the current legal framework.

Although law of immunities pertains to international law, due to international codification failures it is shaped mainly by national legislators and courts. Not only it means that its application may vary considerably from one jurisdiction to another, but it has a high evolutionary potential. Furthermore, as confirmed by the International Court of Justice in the recent *Ferrini* judgment, immunity is a procedural-law institution, so its application in each dispute is subjected to the norms in force at the time of the proceedings at hand. In other words debt instruments issued at some point, once they became an object of a dispute, may be assessed from a very different legal perspective. All this – not to mention jurisdictional uncertainties of choosing adequate forum to adjudicate and possible doubts as to choice of binding substantive rules – introduce a high level of legal uncertainty.

³⁶ See for instance UNCTAD *Principles on Responsible Sovereign Financing* released on 10 January 2012.

Given that adoption of international insolvency law appears improbable, while a partial solution by increasing legal certainty (not necessarily paramount to greater legal safety to private lenders) would provide clear points of reference for deliberate defaults CBA, perhaps the current situation is not so detrimental to international lending as it could seem. Mutual trust stems from adequate conduct and not institutional solutions. With the ever growing economic interdependence, which increases peer pressure on borrowers, and the recent initiatives including UNCTAD principles on responsible lending, perhaps it should not be the legal norms to shape social patterns and economic environment, but a rank-and-file initiative shall change the rule of the game.