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Unbearable debt

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*Manfred Nolte**

I. Context of the problem

The dramatic asymmetry produced in financial markets with the 1973 oil crisis, which quadrupled the price of the black gold, led to an unplanned cash reserve in OPEC countries within a context of African political emancipation (the creation of new independent States) and the creation of new financial terms (petrodollars). International private banking, which had already funded emerging markets in the 1960s, found a competing partner in the World Bank, which increased its loans tenfold between 1968 and 1973, and even more during the following five years. The countries in the South fell into massive debt, whose total increased 12-fold between 1970 and 1980.[1]

Low economic growth and rising interest rates, on top of the collapse in the price of raw materials, and other economic deficits pushed a large number of countries into unsustainable debt. In 1992 the 33 Heavily Indebted Poor Countries (HIPC) were carrying debt whose existing value was twice that of 10 years earlier, and amounted to six times the value of their exports.[2]

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[1] CADTM (2003).

[2] WORLD BANK (2007).

In 1980, the total external debt of developing countries stood at 603 billion dollars. In 1990 the number had doubled to 1.48 trillion dollars.[3]

Currently their external debt exceeds 2.7 trillion dollars.[4] Half of the HIPC countries spend more on servicing their debt than on public health, for example.[5]

The rich countries, where the wealth of the world is concentred, bear a patent responsibility for the accumulation of this unsustainable debt. They annually devote 103 billion dollars in aid to the South,[6] while the South annually transfers 513 billion in debt service (principal and interest).[7]

This situation is exacerbated by the economic, political, and financial conditions imposed on debtor countries. In the absence of clear criteria and performance objectives, low income countries are at risk of what could be defined as *a certain arbitrary good will* that results in contradictory consequences.

This debt is immoral in that it drains vital scarce resources from the debtor countries. It is an instrument of supervision and even domination, due to the conditions placed on its allocation and reduction. Lastly, it is unjust and in many cases illegitimate.[8]

II. Fundamentals of debt cancellation

When the events and causes behind this devastating situation are analysed, the obvious response is to call for total relief or cancellation of the debt.

Given that sovereign nations, as well as individuals, businesses, and institutions rely on credit for their economic activities, not just any debt nor all debt can be deemed cancellable. The prevailing wisdom among social organizations distinguishes between unacceptable burdens due to ethical considerations, and bur-

[3] DETTE & DEVELOPPEMENT (2007). 1 trillion equals 1 million million.

[4] WORLD BANK (2007) 187.

[5] DETTE & DEVELOPPEMENT (2007).

[6] OECD (2007).

[7] WORLD BANK (2007f) 187.

[8] The net flows of external capital received by developing countries come from direct investments, portfolio investments, donations, and loans. Only the latter have to be repaid. Aside from internal debt, external debt is classified as public or private depending on the debtor. A public debtor can also be in debt to either a bilateral or multilateral creditor. The Paris Club is a special case. Although we are focusing here on external multilateral public debt, this only represents 31% of the total. The rest is made up of private debt (40%) and bilateral debt (29%). WORLD BANK (2005b).

dens that are unjust and/or illegitimate because the basis for the loan was irregular or simply illegal.

In the first instance we refer to an *unpayable* debt – the debt that a country cannot pay without simultaneously denying basic services to its population.[9]

In the second instance we are concerned with assumptions of *illegitimacy* commonly classified under the heading of *odious debt*, identified as including one or more of the following traits or characteristics:

- Debt resulting from loans in which the lender finances projects that serve the personal interests of dictators or repressive regimes.[10]
- Debt resulting from loans in which the lender is aware of the distinct possibility of corruption through the fraudulent appropriation and disposal of funds.[11]
- Debt allocated to projects that have failed through the incompetence or bad faith of the lenders and their tendentious counsel.[12]
- Debt resulting from a legitimate loan, but one which was awarded under abusive conditions, such as manifestly higher interest rates than those in effect in the market at the time of the loan, abusive fees, or collateral disproportionate to the market situation.
- Debt incurred illegally by directly ignoring procedures laid down in public legislation.[13]

Odious debt is a well-established doctrine with over 80 years of legal history,[14] but is not invoked more often for political reasons and for fear on the part of interna-

[9] For example, in 2005/2006, Kenya's debt service exceeded its allocations for water, health, agriculture, and transportation combined. JUBILEE DEBT CAMPAIGN (2007).

[10] Financing of the *Apartheid* regime in South Africa. The lender countries were aware that the true purpose of the funds was not the stated purpose of defence and development. JUBILEE USA (2007).

[11] In 1986, according to the *Wall Street Journal*, Zairean President Mobutu had over 5 billion dollars deposited in Western Banks, equivalent to 50% of the entire external debt of Zaire.

[12] Case of the Bataan Nuclear Plant in the Philippines, constructed on a seismic fault, which has never been come into operation and that generates 360 million dollars a year in debt service. JUBILEE USA (2007).

[13] Debts negotiated and incurred by the Argentinean dictatorship without the mandatory approval of Congress.

[14] The origin of the doctrine is attributed to Alexander Sack, a Russian citizen and law professor in Paris, who in 1920 published an important treatise on State debts.

tional institutions of the spiral of consequences that its strict application could entail. The British parliament once applied it in relation to a loan provided to Rwanda.[15] It was also applied in the case of the debt incurred by Cuba with Spain,[16] and in the case of Costa Rica in its dispute over a loan from the Royal Bank of Canada.[17] In the case of Iraq, the lender countries largely based their cancellation of 30 billion dollars of foreign debt on this doctrine in 2004.

In order to be effective, the recovery of this doctrine that is being proposed in different legal venues[18] must be accompanied by political backing and application,[19] both in sovereign nations and in international financial institutions (IFIs)[20] so as to attain the necessary levels of effectiveness demanded by the development community.[21]

The cancellation of debt due to *incapacity* is based above all on moral, but also on rational grounds.[22]

The most important is that the elimination, reduction, or restructuring of the debt can serve as a superior form of resource transfer and, as such, is an efficient and effective source of development funding. In situations where governments have the intention of promoting development and eradicating poverty, debt relief is superior to other forms of aid because it places resources at the disposal of the Treasury, enabling them to be distributed through government channels and with government priorities. This avoids both the transactional costs as well as the distortions imposed by conventional aid packets.[23]

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[15] HOUSE OF COMMONS (1998).

[16] After the 1898 colonial expulsion, the United States established the first precedent by rejecting the Cuban debt incurred with Spain, arguing that the debt had been imposed by force of arms to serve more the interests of Spain than Cuba. JUBILEE USA (2007).

[17] Regarding a loan granted by the Canadian bank to the dictator Tinoco. The Cuban precedent was used successfully by the British Court in favour of Costa Rica (1923) and the debt was annulled when it was alleged that the lender had full knowledge of the facts. JUBILEE USA (2007).

[18] The Legal Team of McGill University, Montreal, is writing an extensive study on the Odious Debt Doctrine.

[19] The Belgian Senate (April 2007) adopted by majority (34 votes against 29) a resolution asking the government to "set up an audit on the odious nature of Belgian debt-claims on developing countries." In the same paragraph, the Senate considers "that at the very least an odious debt is one contracted by a non-democratic government, that the borrowed amount did not benefit the local population, and that the loan was granted while the creditor was aware of the two above-mentioned facts."

[20] World Bank and IMF, among others.

[21] Bibliography on the subject of Odious Debt can be found on the Web at www.odiousdebts.org.

[22] CAFOD (2005).

[23] Some authors, such as MOSS, T. (2006), differ appreciably from this proposition, arguing that the income from debt remission programs is negligible as a percentage of total ODA.

Secondly, applied analysis contains arguments for the improvement of the lender/borrower relationship, unsuccessfully alluded to by the IMF in its search for new models of concerted debt negotiations, which we will refer to later.[24]

Finally, let us remember that making debt sustainable for low income countries is one of the objectives agreed in the Millennium Declaration.[25] Throughout the 1990s, ODA decreased, and its percentage in relation to the GNP of donor countries decreased even further. In 2002, donor countries met in Monterrey and undertook to increase their aid by 20 billion dollars per year by 2006, and to grant more than 100 billion dollars per year in aid in 2010. But major aid transfers have in actuality been directed only to countries such as Iraq, Afghanistan, Nigeria, and the Democratic Republic of the Congo.[26]

In fact, the 23 DAC[27] member countries granted 104 billion dollars of ODA in 2006, 5% less than in 2005 in 2005 constant dollars. This number includes 19.2 billion in debt relief and special aid packets by the Paris Club. Excluding the debt relief figures, aid fell by 1.8%.[28] This figure represents 0.3% of the combined GNP of the member countries.

III. Technical viability: Multilateral Initiatives

The debt incurred with International Financial Institutions has grown dramatically in recent years. These institutions are, by virtue of their foundational objective, large lenders and as a result large creditors to low income countries.[29] Their total

[24] KRUEGER, A. O. (2002c). First, once a country's debt is unsustainable, the true Net Present Value (NPV) of its debt stock is lower than its nominal value. New loans would dilute even further the value of the creditors' loans. Second, as the Debt/GNP ratio increases, the interest rates of the debtor country rise. The country will raise taxes or undertake other measures to service its debt, measures that slow down GNP growth, thus even further raising the Debt/GNP ratio and increasing the costs of the debt. Third, in circumstances in which the growth rate of the economy as a percentage of GNP is lower than the interest paid as a percentage of GNP, the Debt/GNP ratio will grow indefinitely. Fourth, as the debt service grows the lenders increasingly deem its substantiality as improbable and a drainage of new funds ensues. Under these circumstances restructuring, relief, or remission of the debt is the only possible measure.

[25] Millennium Development Goals: Goal 8, Target 15.

[26] WORLD BANK (2004).

[27] OECD Development Assistance Committee.

[28] OECD (2007).

[29] In the case of low income countries, one third of external debt (31%) is incurred with IFIs, in particular with the World Bank, IMF, and other regional development banks such as the African Development Bank (ADB), and the Inter-American Development Bank (IDB). This is so-called "multilateral" debt. As previously mentioned, we are not considering here either bilateral country to country debt (aid loans and export credits), which represents 29% of the total, nor private debt (banking or commercial), which accounts for 40% of the total. Nor is internal debt dealt with. PARIS CLUB (2007). For an exhaustive description of debt according to the various types of creditors see BIS-IMF-OCDE-WORLD BANK (2007).

impact is greater than just the percentage of loans they provide, since other groups of lenders use IFI standards to apply their own debt relief criteria.[30]

In response to this, in 1996 the IMF and the World Bank (through its lending arm, the IDA[31]) launched the HIPC initiative (highly indebted poor countries).[32]

In 2006 these same institutions created the Multilateral Debt Relief Initiative (MDRI), which consolidates an initiative adopted by the G8 in 2005 at the Gleneagles summit.

Due to its particular significance as the number one development lender, and in the context of debt relief, we must mention –albeit only in passing– the new initiatives adopted by the Paris Club.[33]

a) **The Highly Indebted Poor Countries Initiative (HIPC)** is led by the WB and the IMF, although it has tried to engage other lenders, with mixed results. It was restructured in 1999 at the request of the G8, in order to streamline its internal operations.

   As of January, 2007, according to IMF sources,[34] 30 countries have benefited from the initiative, 22 of which have reached their *completion point*, after which the multilateral commitment to debt relief is classified as irrevocable.[35]

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[30] The Paris Club in particular.

[31] International Development Agency, the World Bank agency that grants soft loans and financial aid to poor countries.

[32] WORLD BANK (2007b).

[33] Created in 1956 as a result of the Egyptian debt crisis, and later consolidated with the Argentinean crisis, the Paris Club is an informal group that defines itself as *non institutional*, and whose role is the investigation into coordinated and sustainable solutions to the payment problems of debtor countries. The latest approach of the Paris Club dates from October 2003 (*Evian Approach*) confirming the basic principles of individualized (case by case) treatment, consensus, conditionality along the lines of IMF/WB, solidarity, and *more favourable* treatment. Sustainability is the core of Paris Club action. Despite the fact that the amount of debt covered by the Club since 1983 amounts to 509 billion dollars, the lack of binding and objective rules, and therefore the discretionality that guides its behaviour, has made the Paris Club the focus of harsh criticisms on the part of social organizations. The Paris Club is made up of 18 permanent members, which are the main industrialized countries of the world. Partners of the Club are the 9 most important multilateral organizations on the planet.

[34] WORLD BANK (2007c). It should be noted that under the MDRI programme, the decision of debt reduction is the individual responsibility of each institution, and that the countries that qualify vary from date to date (between 2005 and today). In each case the number is in keeping with the institution that provides the reduction and the date of the reduction.

The Initiative is open to countries with per capita income below the eligibility threshold for concessional loans (825 dollars per year or less), with debts that exceed 1.5 times the product of their annual exports, and when applicable, 2.5 times their budgetary income. There are 40 *potentially eligible* countries for this line of aid. To be *eligible* a country must have a history of at least three years of collaboration with the IMF. The first qualification level is the *decision point* where a country follows a poverty reduction strategy (PRS), implementing some agreed-to monetary policy measures dictated by the IMF. Once an eligible country reaches its *decision point*, it starts to benefit from some debt reduction, although it is still revocable. As stated earlier, the relief becomes irrevocable once a country reaches its *completion point*. At this point the country fulfils a series of criteria within its PRS regarding both social issues as well as government improvement and the fight against corruption. The estimated costs of the HIPC initiative at the end of 2004 are outlined in Table No. 1.[36] The presentation refers to the nominal figures and the NPV[37] of the debt flows for the time frame of the initiative.

[35] The 22 countries that have reached *completion point* are: Benin, Bolivia, Burkina Faso, Cameroon, Ethiopia, Ghana, Guyana, Honduras, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nicaragua, Niger, Rwanda, Sao Tome and Principe, Senegal, Sierra Leone, Tanzania, Uganda, and Zambia. Eight countries have reached the *decision point*: Burundi, Chad, the Democratic Republic of Congo, the Republic of the Congo, Gambia, Guinea, Guinea-Bissau, and Haiti. Also eligible for the MDRI I-Trust (per capita income below US $380) are two non-HIPC countries: Cambodia and Tajikistan. In addition 10 countries are potentially eligible: the Central African Republic, the Comoros, Ivory Coast, Eritrea, Kyrgyzstan, Liberia, Nepal, Somalia, Sudan, and Togo. Detailed analysis of the progress of HIPC countries can be found at IMF (2007c).

[36] We should highlight that of the potential cost distribution of the HIPC initiative, the World Bank accounts for 20%, the IMF 9%, the African Development Bank (AfDB) 7%, other multilateral institutions 10%, commercial debt 5%, other bilateral aid 13%, and the Paris Club 36%. IMF and IDA (2006).

[37] Net Present Value.

Table 1. HIPC Initiative. Breakdown of Estimated Costs by Main Creditors (In billions of dollars)					
	Interim Countries (10)	Post-Cumpl. (19)	Post-Decision (29)	Pre-Decision (11)	Total (40)
Multilateral	**5.4**	**15.3**	**20.7**	**8.6**	**29.3**
• WB	2.4	7.4	9.8	3.1	12.8
• IMF	0.8	2.3	3.1	2.5	5.6
• AfDB	1.6	1.9	3.5	1.0	4.5
• IaDB	0.0	1.4	1.4	0.1	1.5
• Others	0.7	2.3	2.9	1.9	4.9
Bilateral	**7.0**	**13.5**	**20.5**	**13.3**	**33.8**
• Paris C.	5.6	9.6	15.2	7.1	22.3
• Other Bilat.	0.6	3.2	3.8	4.4	8.2
• Commercial	0.8	0.7	1.5	1.8	3.4
Total	**12.5**	**28.8**	**41.3**	**21.9**	**63.2**
Total Costs In NPV (2004)	**11.9**	**26.3**	**38.2**	**21.0**	**59.1**

Source: IMF and IDA (2006)

b) **The Multilateral Debt Relief Initiative (MDRI).**[38] In June 2005, the Finance Ministers of the G8 meeting in London reached a new agreement for the relief of external debt of low income countries, which they ratified at the Gleneagles summit in July, 2005. Finally, in September, 2005 the Joint Assembly of the IMF/WB held in Washington adopted the G8 agreements, which became the G184 agreements.

In 2006, the Boards of the World Bank and the IMF ratified the participation of both bodies in the MDRI for the HIPC countries that reach the *completion point*, with reference to their net present value of debt on 31/12/2003 and 31/12/2004 respectively.[39] The practice of debt relief effectively began in 2006.

The MDRI initiative exclusively applies to debt originating from the World Bank, IMF, and African Development Fund (ADF). The value of the debt relief

[38] WORLD BANK (2007).

[39] Later the World Bank would extend the term to 31/12/2004, with an additional cost of 5 billion dollars.

for the 22 countries at completion point in terms of NPV at the end of 2006 is more than 18 billion dollars (13 billion from IDA). The MDRI initiative should also protect the financial capacity of the IFIs. The donor countries undertake to compensate the IDA for the assistance provided under the MDRI program. Table No. 2 shows the breakdown of the costs of the MDRI initiative by lender groups, in nominal costs and net present value.

Table 2. MDRI Initiative: Breakdown of Estimated Costs by Creditors
(In billions of dollars)

	Post-Completion Countries	Interim Countries	Pre-Decision Countries	Total
Nominal Costs	**35.5**	**7.6**	**5.8**	**48.9**
• IDA	26.7	5.4	4.5	36.5
• IMF	3.0	0.7	0.4	4.1
• AfDB	5.8	1.6	0.9	8.3
Total Cost in NPV (end of 2005)	**18.3**	**3.9**	**2.7**	**24.9**
• IDA	12.8	2.5	1.9	17.3
• IMF	3.0	0.6	0.4	4.0
• AfDB	2.5	0.7	0.4	3.6

Source: IMF and IDA (2006).

IV. Political Viability of the MDRI Initiative

The precursor of the MDRI programme was the Gleneagles summit held in July, 2005. Gordon Brown, President of the Group, announced that “the G8 has agreed… that all of the debts owed by eligible heavily indebted poor countries to IDA, the International Monetary Fund and the African Development Fund should be cancelled, as set out in our Finance Ministers agreement on 11 June.”[40]

On September 23rd the G8 Finance Ministers, in their declaration before the Joint Assembly of the International Monetary Fund and World Bank in Washington, stated “we reaffirmed our support for the G-8 proposal on debt relief for Heavily Indebted Poor Countries, while ensuring that the financing capacity of the IFIs is not reduced. This proposal will provide additional resources for countries' efforts

[40] Complete text available at www.g8.gov.uk

to reach the goals of the Millennium Declaration, foster longer-term debt sustainability, and improve balance of payments positions. We call upon all shareholders of the IDA, African Development Fund, and IMF to expeditiously complete and implement this historic and crucial initiative."[41] The term historic was used again in reference to the agreement when Wolfowtiz announced its final assumption by the IDA.[42]

The previous statements should be accompanied by other internal working documents, such as the draft submitted by the staff of the IMF/WB to the Development Committee of the IMF/WB Assembly in September in preparation for the G184 agreements.[43]

The memo heading states that "The G8 proposal calls for 100 percent cancellation of IDA, AfDF and IMF debt stocks for HIPCs that have reached or will reach completion point. ...Annual gross assistance flows from IDA and AfDF to a country would be reduced by the amount of relief during that year. Additional resources provided to IDA and AfDF by the donors (to compensate for the foregone debt service from the country) would be re-allocated to a larger subset of IDA and AfDF recipients than that contemplated for debt relief, based on each institution's existing performance-based allocation mechanism. Donors would provide additional contributions to IDA and AfDF to offset 'dollar for dollar' the foregone principal and interest repayments due over 40 years."[44]

In other words, what we have is a more stringent formulation of the HIPC programme, but framed on a premise of supplying additional resources to International Financial Institutions.

Therefore, a first evaluation of the political scope of the initiative leads us to conclude that the G8 agreement doesn't add anything new to the HIPC Initiative, nor to multilateral policy on debt relief in general, other than the explicit acknowledgement that servicing the debt of HIPC countries is met to the extent that Multilateral Institutions accede to its refinancing with additional funds. It is a

[41] Complete text available at www.ustreas.gov/press/releases/js2943.htm

[42] WORLD BANK (2006a).

[43] DEVELOPMENT COMMITTEE (2005).

[44] Ibid.

question of trying to avoid the old economic concept of "moral hazard"[45] –that is, the systemic risk latent in the fact that since the new loans repay the old ones–, they will refinance the debt without having any real impact on the development goals of the country. The International Multilateral Institutions openly assume the hard fact that the debt of the HIPC countries will never be repaid, and that it makes no sense to pretend or falsely affirm its soundness. Of course it is true that by not provisioning their loans to the developing countries, IFIs will have to confront an atypical situation of restatement of their assets requiring new resources –dollar for dollar– from their shareholders.

The *historic agreement* is centred, therefore, on the asset reconstruction of the multilateral entities, and not on the debt cancellation that is anticipated in the framework of the HIPC Initiative and that dates from 1996. In addition, the beneficiary countries of the debt relief, the amounts to be cancelled, and the eligibility criteria and conditions are the same as for the HIPC Initiative, and therefore it is difficult to see this historic agreement as entirely disinterested.

In declarations made to *The Economist*, Gordon Brown himself, Chairman at the time of the IMF Finance Committee, admitted that these countries pay the debt service but only because multilateral institutions offer them new loans and donations to help them repay older loans. According to Brown, this recycling of funds keeps up appearances in the Balance Sheets of the Bank and the Fund, making the failed loans appear better than they really are. However, the G8 proposal (MDRI) would "end this charade", according to him. The Bank, Fund, and AfDF would cease debt collection and the flow of new funds to these countries in equal amounts. It is, he said, "an exercise in accounting and not in altruism."[46]

[45] In general, *moral hazard* is the term given to the risk of a problematic (or immoral) conduct and its negative consequences, given that the person causing the problem doesn't suffer its consequences and can even benefit from them. This concept arises typically in the context of insurance contracts. It can also refer to questionable loan award practices on the part of creditors (www.wikipedia.org). Jubilee USA, in the context of the debt of developing countries, argues that IFIs create *moral hazard* when they lend irresponsibly while fully aware that they will not be able to collect failed loans. Thus low income countries suffer the consequences of inconsistent loans, with no repayment capacity. JUBILEE USA (2007).

[46] THE ECONOMIST, 2 Oct. 2005.

V. The positive aspects of cancellation

The decision to cancel as of a given date all the World Bank, IMF, and AfDB debt owed by some developing countries is an important step[47] and represents a qualitative change in the official approach to debt reconstruction. Until now, the dominant ideology was geared toward partial cancellation, taking the debt to officially *sustainable levels*, at which the countries in question would be able to pay their debt service.

One hundred percent cancellation, regardless of sustainability levels, is based on evidence that debt service was generally being paid with new loans and aid from donors, through a system of tacit renewals whereby debt service was accomplished through newly conceded loans. Putting an end to this accounting ruse is the first positive outcome of the new official approach. The decision of the G8 is still ironically apt: it hardly resolves the problem of poverty in disadvantaged counties, but at least it rebuilds the balances of their bankers.

It is also important to highlight that the current mechanisms promoted by IFIs will facilitate the long-term sustainability of the debt of eligible countries by reducing their debt ratios. For the 18 initial HIPC countries at *completion point* (at the end of 2005), the Net Present Value of debt to Exports ratio will decrease from the current 140 percent to an estimated 52 percent. This lessens the appearance of external debt, improves their relative solvency in the markets, and facilitates access to larger new loans in better financial conditions. Table No. 3 provides a perspective of the impact that the MDRI has on the small initial number of beneficiaries, and helps us to place its importance in context.[48] In fact, the World Bank has warned about the consequences (free riding[49]) that this new situation could favour.

[47] In the case of many African countries debt has been substantially relieved. Uganda will cancel 80% of its debt. Ghana, Tanzania, and Zambia 75%. Mozambique fares worse (50%). The four qualified Latin-American countries (Bolivia, Guyana, Honduras, and Nicaragua) would see their debt reduced between one quarter and one third. The situation has ostensibly improved since the addition of the IDB to the MDRI. JUBILEE DEBT CAMPAIGN (2006).

[48] IMF (2005b).

[49] WORLD BANK & IMF (2007).

Table 3 - Debt Relief under the MDRI and Flows of ODA to HIPC Countries at *Completion Point*				
	MDRI as % of GDP*	MDRI as % of Exports	MDRI as % of ODA**	ODA as % of GDP
Benin	1.2	8.8	2.7	9.0
Bolivia	2.8	9.4	4.6	8.0
Burkina Faso	1.6	17.0	2.8	12.3
Ethiopia	1.8	8.9	2.3	13.5
Ghana	3.7	10.7	7.5	9.4
Guyana	8.6	9.0	7.2	15.8
Honduras	2.0	5.1	4.2	7.8
Madagascar	4.1	13.2	5.6	10.7
Mali	2.0	7.9	3.3	12.4
Mauritania	3.9	11.6	3.7	19.1
Mozambique	2.3	7.6	1.9	25.9
Nicaragua	4.1	11.4	3.8	17.7
Níger	3.4	20.2	5.1	12.8
Rwanda	3.8	39.4	2.9	18.5
Senegal	1.7	6.4	3.9	8.9
Tanzania	2.8	14.2	3.9	11.9
Uganda	1.5	12.2	2.2	11.5
Zambia	9.5	26.5	13.2	14.9
HIPC Countries *at Completion Point*	**3.4**	**13.3**	**4.2**	**13.3**

Source: IMF (2005b).
* GDP and Exports for 2005.
** ODA: Streams collected from 1996-2004.

There is reason for hope in the possible expansion of countries eligible for total debt relief. According to a press release from the IMF and WB on April 18, 2006, the two institutions have identified 11 countries that could qualify for debt reduction of 21 billion dollars in a new round of the HIPC initiative. The Central African Republic, the Union of the Comoros, Ivory Coast, Liberia, Somalia, Sudan, Togo, Eritrea, Haiti, Kyrgyzstan, and Nepal meet the debt and income requirements of the HIPC programme. Afghanistan may also possibly qualify.[50] Other borderline cases include Bangladesh, Bhutan, Myanmar, Sri Lanka, and Tonga

Lastly, debt management is a complex and basic responsibility of a State and requires technical capacity and political influence, though it may be difficult to measure its administrative costs. A study by Moss and Chiang[51] reveals that countries with the most debt consume more resources in negotiation, travel, and other incidentals than others. Senegal has renegotiated its debt with the Paris Club on 13 occasions, and Madagascar and Nigeria have done it on 10.[52] Although it is conjecture, as Radelet points out,[53] putting an end to exhausting negotiations over past debts will liberate qualified human resources in both the lending and borrowing countries, which can be dedicated to other productive activities with a larger impact on development and poverty reduction.

VI. Programmes with patent limitations

Nevertheless, these positive features cannot conceal a number of patent limitations:

a) Cancellation affects only a few countries

Firstly, it should be noted that the proposal for cancellation refers to "HIPC countries that have reached, or will reach, *completion point*. Eighteen completion point HIPCs would be immediately eligible; the remaining 10 interim and 10 pre-decision point HIPCs would become eligible once they reach completion point, as would countries that qualify for the HIPC Initiative under the sunset clause extension."[54] The expected debt cancellation of low-income countries, under the most generous of assumptions applies to 40 countries for up to 63 billion dollars, of which, in the words of Gordon Brown, 40 billion would be cancelled "immediately."

When the leaders of the G8/G184 speak of debt cancellation they do not include, for example, the countries hit by the Tsunami in Southeast Asia, or countries such as Angola and Nigeria, important drivers of the African economy, or Haiti,[55] the poorest country in Latin America.

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[50] WORLD BANK (2006a).

[51] MOSS, T. and CHIANG, H. (2003).

[52] MOSS, T. (2006)

[53] RADELET, S. (2005).

[54] IMF/IDA (2005).

[55] 20 million dollars is aid agreed to by the IDB within the MDRI programme (2007) if it does not reach completion point.

The measure has a limited effect. The 18 *immediately* affected countries account for 1/8 of the population of low income countries and 10% of the debts that should be cancelled in at least 62 additional countries, which will pay 10 billion of debt service to multilateral institutions through 2015[56], mostly due to the breach of conditions imposed on them through non-democratic means. Sub-Saharan Africa alone owes 230 billion in external debt. Low income countries as a whole owe 2.7 trillion dollars.[57]

Theoretically, the immediate cancellation of 100 percent of the debt of some countries significantly benefits these while ignoring others. As a result, we will find ourselves faced with a basic legal problem that raises issues of comparative injustice under the principle of *uniformity of treatment*, if additional funds are not forthcoming for further debt release and the amount of aid to remaining countries remains unaltered.

The IMF/WB Meeting in September, 2005 was the stage of intense negotiations on this issue, since some countries found it unfair to grant unilateral debt cancellation to particular countries without providing equal treatment to low income countries that had better managed their loans. Upholding this principle in examining the specific circumstances of each country has led to new criteria in the list of eligible countries. As of December 21, 2005, 19 countries fulfilled the requirements for IMF debt relief for 3.3 billion dollars. At a press conference, Rodrigo Rato (then Executive Director of the IMF), referred to income thresholds for the principle of uniformity of treatment, which would lead to the classification of 37 countries as potential beneficiaries of debt cancellation: 35 of the 38 HIPC (minus Liberia, Somalia, and Sudan, who are persistently in arrears), to which would be added Cambodia and Tajikistan. Although these last two would not be classified as HIPC countries, they would receive aid from the IMF but not from the World Bank.[58] At the same press conference, Rato refused to speak of injustices and stuck to the simple

[56] KAPOOR, S. (2005).

[57] Kenya owes 7 billion dollars and its debt service in 2005 exceeded the annual budget for health, water, communications, agriculture, transportation, and finances combined. The majority of Indonesia's debt was incurred by previous dictators. In 2004, it owed 140 billion dollars with an annual debt service of 31 billion dollars. In 2006 one quarter of its budget was allocated to debt service, four times the amount devoted to health and education combined. JUBILEE DEBT CAMPAIGN (2007).

[58] IMF (2005a).

fact that “there are countries… in which the international community has come to the conclusion that the level of debt is impossible to face. They are also the same countries in which the international community is committed to alleviate poverty in the MDGs.”[59]

b) For a small portion of external global debt

Secondly, the proposal would only apply to those debts owed to the World Bank, AfDB, and IMF. Initially excluded are debts owed to the Inter-American Development Bank (IDB) and other multilateral agencies, such as the Caribbean Development Bank (CDB), for example. Four of the 18 eligible countries (Bolivia, Guyana, Honduras, and Nicaragua) will pay 1.4 billion in debt service to the IDB during the upcoming five years. Through the next 10 years, the five poorest Latin-American countries are obligated to pay 3.3 billion dollars in debt service to the Inter-American Development Bank. Accordingly, the project does not apply to 100% of multilateral institutions.

On March 16, 2007, The IDB announced that it would cancel 4.4 billion dollars in debt owed by five Latin-American countries classified under the HIPC initiative.[60]

But above all, it does not apply to the remaining international creditors. We have already stated twice previously that only one third of the debt accumulation owed by developing countries is held by multilateral organizations.

c) It does not even affect all HIPC debt

Not all debt of approved countries is cancelled, only the amount current at the established cut-off dates, that is to say, the existing balances on 31/12/2004. All other agreements reached after that date do not enter into the scope of the agreement. Nor is debt to other multilateral creditors, bilateral debt, or commercial debt taken into account.

[59] Ibid.

[60] EURODAD (2007a). These are Bolivia (1 billion dollars), Guyana (467,000 dollars), Haiti (20 million dollars until it reaches completion point expected in 2009), Honduras (1.4 billion dollars), and Nicaragua (984,000 dollars). The closing figure is the live debt as of December, 2004. Since there is no mention of additional funds, the Fund for Special Operations (FSO) of the IDB must undertake the internal reconstruction of its assets, or else suspend new concessional aid. The United States is the principle IDB shareholder. The terrible situation of Haiti is clear.

Table No. 1 outlines the anticipated cost of the HIPC initiative without and prior to the MDRI agreement. The table shows all bilateral and multilateral agreements referred to in the HIPC initiative, but not all these agencies are part of the MDRI agreement,[61] only the three previously referred to.[62]

In addition, the project numbers – 37.6 and 56.3 billion dollars of the MDRI programme for 19 of the 38 eligible HIPC countries – represent a payment schedule over 40 to 50 years. Their present value is substantially lower, depending on the capitalization rate. Since the programme does not contemplate a one off but rather a staggered debt cancellation, the amount is much lower, as shown in the column giving net present values. Sony Kapoor (2005) has estimated that 35 billion dollars up front would be sufficient to cancel the HIPC multilateral debt of 42 countries in net present value. For a broader group of low income countries (all low income countries except India according to the World Bank definition), the amount in net present value would rise to 80 billion dollars.

d) With a reduced immediate effect

The MDRI initiative has its origins in the 1996 HIPC initiative. Agreed to in April,2005, ratified in July 2005, and completely sanctioned in September 2006, it entered into effect for the World Bank[63] for 37 billion dollars on July 1, 2006, and the IMF (April 2006) for 4 billion dollars (for an approximate 40 year term). On April 19, 2006, the AfDB approved total debt relief under the MDRI programme of 8.5 billion dollars in 50 years, between 2006 and 2054.[64]

The completed estimates indicate that the approved countries (post-completion) will save about 1 billion dollars a year in and from 2007, reaching 1.7 billion dollars in 2010 and diminishing thereafter.[65] The average benefit during 40 years will be 1.25 billion dollars a year.[66]

[61] DEVELOPMENT COMMITTEE (2005).

[62] Which the IDB joined in 2007.

[63] WORLD BANK (2006a).

[64] AFRICAN DEVELOPMENT BANK GROUP (2006).

[65] THE WORLD BANK (2007f).

[66] JUBILEE DEBT CAMPAIGN (2006).

To put the above into context, if the debt of HIPC countries[67] amounts to 500 billion dollars, it is considered that, in order to attain the MDGs, these countries need to cancel their debt, which in turn cancels debt service of 10 billion dollars a year. The cancellation of 50 billion, which frees 1 billion of debt service per year, accounts for only 10 percent of what the HIPC countries need.

In addition, this does not take into account medium income countries that are equally under serious pressure due to debt service.

e) Cancelling debt, but without adding more

The MDRI proposal has a dual objective: to conditionally cancel debt owed by HIPC countries, helping them to reach MDGs, and simultaneously to safeguard the financial capacity of the IDA and AfDF.

For the IMF the question is relatively simple. The cancellation of its debt will be financed through the capital gains from limited gold sales in 1999-2000 (Special Disbursement Account) and with the subsidies account of the PRGF-HIPC Trust and MDRI-I and MDRI-II (which will have repercussions on the future capacity of both funds). The entire 43 contributors to the subsidy accounts have approved the use of funds for this purpose.[68]

Regarding the IDA and AfDF debt,[69] the 100 percent cancellation of debt has other repercussions. Because of the accounting and net worth impact of the technical debt remission, the losses recorded by IDA and AfDF[70] should normally be charged to equity, an arresting possibility from the point of view of balance sheet structure, with its effect on future capacity for generating ODA. As noted by previously cited official sources,[71] the World Bank (IDA) estimates the cost of debt relief under the G8 proposal at around 42.5 billion dollars over 40 years, which represents 27% of IDA assets as of the

[67] JUBILEE DEBT CAMPAIGN (2006).

[68] IMF (2007b).

[69] The same occurs with the cancellation announced by the IDB. Debt service to the IDB is predicted to be cut by 30%, but these cancellation expenses will be offset by cutbacks in new concessional loans and the cancellation of amounts not obtainable on failed debts. EURODAD (2007a).

[70] As can be read in ADB (2006), "in order to preserve the financing capacity of the ADF, the ADB group reached an agreement with donors on a compensatory financing mechanism by which donors have pledged to provide full financing of the MDRI programme. In addition, donors have pledged that debt relief under the MDRI will be provided as **additional** contributions to the regular ADF replenishments over time."

[71] DEVELOPMENT COMMITTEE (2005).

end of June, 2005. This percentage would rise to 36% if the number of HIPC countries were expanded under the *sunset clause*. As of September 2005, total IDA assets amounted to 144.5 billion dollars.

Because of this, at the request of the G8, the World Bank has successfully convinced its main partners to fully compensate the financial reflows resulting from debt cancellation. The compensations are in addition to the 18 billion dollars that the donor countries have already committed to the Bank for the years 2006 to 2008. In fact, the Finance Ministers of the G8, both as a group and individually, signed a letter to Paul Wolfowitz (President of the WB at the time) promising to compensate the Bank for the effects of cancellation *dollar for dollar*.[72] This important document from the Bank's main shareholders indicates that they would maintain the "IDA 14" agreements in their entirety, working for the proposed cancellation of the debt *in addition* to committed resources. Analogous declarations exist around the necessary compensation to the AfDF.

However, the long term financing mechanisms are not explicitly outlined in any official communication, and the *additionality* of the project, key to the net increase of ODA, will be difficult to monitor. After 2008 it will be impossible to know how much donors would have contributed in the absence of debt relief. As a consequence, it will be difficult to evaluate whether the money they offer is *on top of* or *instead of* the money they would have otherwise allocated. Multilateral institutions have performed a zero sum swap between debt repayment risk and the value of their future pledges. Meanwhile, low income countries, which need 50 billion dollars a year through 2015, will not reach the MDGs.

f) Under a strict conditionality

According to official documentation,[73] to secure the benefits of debt relief requires adequate standards of governance and fiscal management in the post-completion receptor countries. In order to achieve this, a two step process can be followed. Firstly, countries will need to abide by the key HIPC criteria that made them eligible for the completion point. This includes a satisfactory record under the Poverty Reduction Strategy Programme (PRSP), if one is in place. If the country does not have a programme with the

[72] www.ustreas.gov/press/releases/js2495.htm. 27/09/05.

[73] DEVELOPMENT COMMITTEE (2005).

Fund it will need a satisfactory evaluation of the result of its recent macroeconomic policies, as evaluated by the Fund. Secondly, the Bank will perform a Country Policy and Institutional Assessment (CPIA) to determine whether there has been some level of progress in governance, management of public expenditures, and related factors. Some of the measures (there are 16 in total) that form the CPIA refer to property rights, rule-based government, quality of budgetary and financial management, efficiency of revenue mobilization, quality of public administration, transparency, accountability, and corruption in the public sector. According to these criteria, after evaluation by staff from the IMF and AfDB, it is the Executive Directors of the IDA who decide which countries will receive debt relief. The official proposal also lays emphasis on the amount and conditions of new credit activity after the relief. The Debt Sustainability Framework (DSF) plans to safeguard against non viable post-relief debts through the monitoring and reporting of *free riding* financial behaviours.

The true dimensions of this conditionality[74] and imposition of orthodox economic policies are highly controversial. Conditionality in debt cancellation policy is based on two areas frequently addressed in the academic literature. First, the capacity of countries in the South to absorb aid. The technical and institutional fragility of those countries renders them incapable of maximizing a yield on the received aid, reaching a saturation point which leads to decreasing marginal returns. The second area, defined as *Dutch disease*, has to do with the inflationary effects and deterioration of a country's real exchange relationship, which generates a balance of payments deficit by reducing the competitiveness of its exports. Neither of these arguments seems to justify a reduction in the rate of aid, although there is general consensus that an increase in aid in and of itself does not guarantee the achievement of the MDGs.[75] In fact, the World Bank itself recognized that "debt reduction is not sufficient for the sustainability of the debt."[76]

All in all, a study[77] of the World Bank's 50 Poverty Reduction Strategy Paper (PRSP) programmes, which outline the conditions in which low income countries obtain debt relief, indicates that 90% require privatization of

[74] OLIVIE, I and STEINBERG, F. (2006).

[75] OLIVIE, I and STEINBERG, F. (2007).

[76] WORLD BANK (2006b).

[77] WORLD DEVELOPMENT MOVEMENT (2005).

public services, 96% demand strict fiscal policy, and 70% include trade liberalization measures. Two reports by UNCTAD[78] charge that trade liberalization undertaken by low income countries in the 1990s was associated with growing poverty and unemployment, an increase in wage inequality, and a reduction in average salaries, to a greater degree the higher the level of liberalization undertaken.

Nevertheless, the MDRI has done nothing to re-establish the autonomy of government of these developing countries. On the contrary, the G8 announced that it would request a report from the Wold Bank and the IMF on the measures adopted to ensure optimized use of the new funds. In fact, the Debt Sustainability Framework implemented in 2005 covers this requirement.[79]

g) DWhere vulture funds have also surfaced

We cannot discuss debt remission in the South without mentioning an initiative that while legal is morally abhorrent. *Vulture Fund* is the name given in the English language media to an organization[80] that seeks to benefit from buying a defaulted debt at low cost, with a heavy discount, and then attempts to recover the nominal value plus expenses and interests through the Courts.

The most recent case is that of DONEGAL International Ltd., registered in the British Virgin Islands, whose corporate objective is the collection of Zambia's debt. Unfortunately, the British justice system has partially ruled in its favour, which has raised an alarm within society and led civil organizations to request the intervention of the World Bank, since such practices flourish thanks to the indirect improvement in solvency gained through debt relief from IFIs.[81] The British Government has joined the protest.[82]

[78] UNCTAD (2002a).

[79] WORLD BANK (2007a).

[80] These are secretive companies, generally based in tax havens, whose ultimate ownership is hidden behind a complex web of interposed companies.

[81] In 1979, Romania granted a 15 million dollar credit to Zambia to buy agricultural equipment. The unpaid debt, worth a cumulative sum of 30 million dollars between principal and interest, was bought by DONEGAL for the price of 3.3 million dollars, whereupon it sued Zambia for 55 million dollars. The English courts have awarded DONEGAL rights to Zambia in the United Kingdom in the amount of 17.5 million Euros.

[82] SEAGER, A. (2007).

Far from this being a deplorable but isolated instance, the World Bank itself has recently warned about this assault against certain HIPC countries, which takes advantage of their higher payment capacity resulting from the debt relief they were awarded. At the end of 2005, at least 11 HIPC countries that had reached the decision point were subject to 38 lawsuits to reclaim private commercial debt. The total claims are estimated at 2 billion dollars (including principal, late payment interest, and penalties), when the original debt was only a quarter of that being reclaimed.[83]

VII. In search of sustainability

According to the World Bank and the IMF,[84] "a country reaches sustainability of its external debt if it can fully assume the external service of current and future debt, without recurring to refinancing or the accumulation of arrears and without compromising growth." The level of relative debt burden is assessed according to sustainability indicators.[85] Although all provide advantages, there is no unanimity on the prevalence of one specific indicator.

For a long time the G8 and the IFIs focused on the debt problem of low income countries with one only obsession: to continue lending and to obtain repayment of the debt. During the 1990s the focus changed, seeking a more enduring success, including a mechanism to prevent developing countries from falling once again into the debt trap[86] with the mechanisms described above.

Even so, the criteria that the IDA and IMF[87] use to reach sustainability reinforce the current state by focusing on a series of principles of which three are especially relevant: a) avoiding refinancing processes; b) the track record of the country as evidence that the provided relief set it on the right path; c) the availability of additional financing were it to be necessary.[88]

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[83] WORLD BANK (2007d).

[84] DEVELOPMENT COMMITTEE (2001).

[85] IMF (2003). Examples of indicators are the following ratios: a) debt/GDP; b) debt/exports; c) government debt/current fiscal revenue. Others refer to liquidity requirements: a) debt service/GDP ratio; b) external debt service/exports ratio; c) debt service/current fiscal revenue ratio. Also the ratio of the average interest rate on outstanding debt in relation to the growth rate of nominal GDP. These indicators are most valuable in their dynamic comparison over time periods.

[86] CIDSE (2007).

[87] DEVELOPMENT COMMITTEE (1996).

[88] DEVELOPMENT COMMITTEE (2001).

In Spring, 2005, the World Bank and IMF introduced the new DSF (Debt Sustainability Framework)[89] for Low Income Countries (LICs), providing advice and guidance on new lending to developing countries whose principal source are official loans, with the mission of preventing the accumulation of unsustainable debt.

Although the Framework proclaims that the responsibility belongs to both lenders and borrowers, developing countries have to promote policies and strengthen institutions that reinforce their capacity to manage debt and reduce their vulnerability to external shocks, which range from unfavourable international trade conditions to natural disasters.[90] In addition, the aforementioned institutions (WB and IMF) keep watch so that the improved solvency and debt capacity of the LIC counties does not translate into *free riding*[91] with unmanageable access to non concessional lenders.

The DSF is based on individualized case by case analyses called Debt Sustainability Analysis (DSA), which rigorously monitors the evolution of the countries in question.[92] One DSA[93] includes 20-year projections on the country in question, analyzing its vulnerability, anticipating adverse scenarios, and formulating recommendations.

Meriting special mention is an initiative embarked on between 2001 and 2002 by Anne Krueger, a senior executive at the IMF, who led the proposal for a *Sovereign Debt Restructuring Mechanism* (SDRM),[94] which produced an unexpected twist in the official thinking on debt restructuring.

The SDRM is based on the established fact that “for years there has been a broad discussion both inside and outside the IMF about the need for a new focus on the restructuring of sovereign debt. There is a growing consensus that the current

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[89] WORLD BANK & IMF (2007).

[90] WORLD BANK (2007a).

[91] Previously described as the policy of seeking financing from other bidders outside of the IFIs. However, the World Bank itself recognized that part of the complexity of the *free rider* problem derives from the fact that there is no institutional framework for a formal process of coordination of creditors, or for the prevention of serious violations of the concessional benchmarks by opportunistic commercial lenders. RESOURCE MOBILIZATION DEPARTMENT (2006).

[92] WORLD BANK & IMF (2006a).

[93] The detailed characteristics of a DSA can be found in WORLD BANK & IMF (2006b).

[94] KRUEGER, A. (2002b).

restructuring process is longer, more detrimental to the debtor country and its lenders, and more unpredictable than is desirable."[95] In its original form, later refined, the IMF would be given additional legal authority to manage key decisions in implementing the mechanism, including restructuring agreements.[96] The mechanism is based on three principles: first, provide the debtor with legal protection from creditors during the negotiation process; second, provide guarantee to the creditor that the debtor will negotiate in good faith and will follow policies to protect the value of its assets and re-establish growth; third, guarantee that current private financing will not be restructured. Finally, as with national insolvency laws, it is necessary to have an independent and centralized forum to verify the claims, monitor the votes, and adjudicate disputes (Debt Resolution Forum).[97] The naming of members to the Debt Resolution Forum would be an additional responsibility of the IMF.[98]

The SDRM initiative was primarily oriented to the private sector and less so to multilateral debt. It also did not include the HIPC countries. In any case, it was rejected at the IMF and WB Spring 2003 meetings.

Without entirely rejecting the benefits of the multilateral and other initiatives in effect, the description of the *official* focus on sustainability takes us directly back to what we said above about the *conditionality* strategy openly proclaimed by IFIs and other parallel institutions, strategies that are imposed and not negotiated with developing countries.

There should therefore be new and more accepted sustainability guidelines, based on the legal (odious debt) and ethical (unpayable debt) criteria mentioned at the beginning of these pages.

It would be difficult to list all those initiatives that uphold the banner of justice initiatives that are often more idealistic than pragmatic, but always react to institutional irrationality.

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[92] WORLD BANK & FMI (2006a).

[93] Las características detalladas de un DSA pueden verse en WORLD BANK & IMF (2006b).

[94] KRUEGER, A. (2002b).

[95] KRUEGER, A. (2002a and 2002c).

[96] Alternatively, other approaches were considered based on "collective action" and the so-called "contractual approach." KRUEGER, A. (2002a).

[97] KRUEGER, A. (2002d).

[98] CIDSE and CARITAS INTERNATIONALIS (2003).

The creation of the Bank of the South can be considered within this independent strategy. It is an instrument promoted by six Latin-American countries that positions itself against the trend toward the financial liberalization of Latin America, striving instead to change its relationship with the financial world. Imagining a Latin America that finances itself through its own Bank, without depending on IFIs, could go from being a utopia to a concrete possibility.[99] The Bank would deploy new types of policies, with a creative model of political, social, and economic relations, even leading to the creation of an anti-cyclical Fund for the region. It would be an egalitarian Bank, where votes would be independent of the capital provided and above all independent from the dictates of the IMF and World Bank and their conditionality.

An interesting area of innovation is promoted by CADTM[100] through the creation of guidelines for action to which parliamentarians from democratic countries are invited. The text of the declaration establishes the following: [101]

“Recognising that there have been abuses in international sovereign lending in the past; Recognising that we, as elected representatives of the people, have a right and duty to scrutinise the sovereign lending and borrowing decisions of our countries; We, the undersigned parliamentarians/legislators commit ourselves to:

- Support further research into the concept of illegitimate debt as it relates to international sovereign lending in order to develop an international consensus around the issue;

- Initiate and support parliamentary audits of existing claims and debts in our own countries, in order to distinguish between proper and improper lending and borrowing and to encourage responsible lending and borrowing procedures in the future;

- Work to give greater legal force to the concept of illegitimacy in international sovereign lending; particularly by initiating and supporting legislation, motions or other parliamentary measures;

- Support principles of shared responsibility in sovereign loan agreements;

[99] ATTAC Argentina (2007): The six countries are Argentina, Bolivia, Brazil, Ecuador, Paraguay, and Venezuela. The region’s economic boom has meant that the foreign currency reserves of these six countries amount to 160 billion dollars. Their goal includes establishing a single currency of the Union of South American Nations.

[100] CADTM (2007).

[101] www.debtdeclaration.org

- Support greater parliamentary participation in loan contraction processes to ensure judicious public scrutiny of the purpose, financial terms, and conditions of loans."

Finally, other initiatives focus on the equitable reversal of the total global stock of debt. One proponent is the so-called Fair and Transparent Arbitration Process (FTAP).[102] This proposal cannot escape our attention. Its principal positions are the following:

- The process shall be open to ALL debtor countries, including HIPC countries.

- The start of the process shall automatically trigger a standstill on all external debt repayments. This would protect countries from litigation by creditors such as "vulture funds".

- The debtor and the creditor alike shall choose the members of an independent arbitration panel that could be established in an *ad hoc* manner. Ultimately a more permanent independent body to deal with successive debt crises could be institutionalized within a structure such as the United Nations, given its special responsibility for the follow-up to the Financing for Development process.

- Debt sustainability shall be judged by this independent panel. It will ensure considerations of debt sustainability within the development context of each debtor country whereby government revenues are balanced against the needs to finance poverty reduction programmes.

- Similarly, creditors and debtors would reach a specific agreement for using the debt savings in part to benefit the poorest and most vulnerable sectors of the population. The independent panel would judge the adequacy of this agreement.

- The population of the debtor country, through its representatives (parliament, chambers of commerce, trade unions, grassroots organisations, churches, NGOs, etc.) shall have a right to be heard before the panel and will assess the balance of interests between the creditors, the priority need to finance poverty reduction programmes as well as the debtor country's medium to long term economic interests.

[102] CIDSE and CARITAS INTERNATIONALIS (2004) and CIDSE (2007).

- The role of the IMF shall be restricted to that of a lender. The IMF cannot act in any "independent role" because of its credit function.

- The whole process as well as the decisions of the panel shall be made public.

VIII. In conclusion

There are good reasons for bringing up proposals that are utopian instead of official in nature.

Their importance lies in the blatant absurdity that creditor countries are both party and judge deciding how and how much of the debt to cancel, while the debtors have no voice or vote in the procedure. HIPC, MDRI, and the Paris Club are reflections of the control of wealthy countries over low income countries. There has not yet been the necessary mental leap to standardize legal structures for debtor protection in cases of precariousness. This protection exists in all domestic legal systems in both the civil and commercial arenas. It includes such things as bankruptcy laws and their precedents and the protection of certain subsistence assets, which are decided when necessary by an impartial authority, and could form the basis for an international mechanism in cases of external debt. Only an independent international regulatory framework that deals with sovereign debt can prevent recurring indebtedness. This framework could also tackle the thorny issue of non-concessional lenders who benefit unfairly from the relief provided by other creditors.

The application of certain independent, objective legal measures would simultaneously entail the creation of an International Court of Arbitration, an International Court of Justice, or a Tribunal for Sovereign Debt, where all sides would be heard. The Court would hear cases of difficult repayment, judging the liability of all the parties involved, and taking into account the previously described doctrines of odious debt[103] and moral hazard,[104] which have been unjustly ignored in arguments on the issue under discussion.

To benefit the populations concerned, all relief initiatives should help to overcome the economic and political dependency suffered by the countries in the

[103] CIDSE (2007).

[104] See footnote number 45.

South, promoting the sovereignty and autonomy of the population, and the full implementation of human and environmental rights. They should also recognize the illegitimacy of debts that are being collected, many of which were incurred by non-constitutional or corrupt governments, without consultation with the population, and with the object of implementing adjustment, privatization, and liberalization policies, as has been tirelessly denounced by the socially aware.

As long as the so-called donor countries continue to be both judge and party, employing a process which is plainly unjust, we are unlikely to see fair agreements on external debt.

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