

**PRIVATE SECTOR INVOLVEMENT IN SOVEREIGN DEBT GOVERNANCE  
IN THE POST-PANDEMIC WORLD: THE ROLE OF THE  
'COMPARABILITY OF TREATMENT' PRINCIPLE**

Livia Hinz\*

*The article investigates recent developments in sovereign debt governance, focusing on the 'Common Framework for Debt Treatments beyond the DSSI', a G20 and Paris Club initiative to address debt sustainability issues in low-income countries in the post-pandemic world. The analysis revolves around the 'comparability of treatment' requirement, a longstanding principle of Paris Club debt management practice reintroduced in the Common Framework to foster private and public sector burden sharing and cooperation in financial crisis resolution processes. This requirement obliges debtor countries to seek debt renegotiation from external creditors on terms comparable to those negotiated within the Paris Club framework. By examining the operation of the 'comparability of treatment' principle in past Paris Club debt restructurings, this article traces the evolution of its meaning and economic function in parallel with the transformation of sovereign debt markets and identifies key challenges surrounding its implementation, focusing on the lack of transparency and on fundamental differences in the approach to debt treatments between official and commercial creditors. The concluding section puts forward options for future developments to foster private sector involvement. First, it investigates the possibility of embedding Common Framework debt treatments within a broader institutional arrangement capable of tying together official and private debt restructurings and explores the role of IMF policies on lending into arrears. It then highlights the potential complementary role of domestic statutory*

---

\* PhD Researcher, Department of Law, European University Institute, Fiesole, Italy; Livia.hinz@eui.eu. Previous versions of this paper were presented at the 10<sup>th</sup> Annual Cambridge International Law Conference (18–20 March 2021) and the 13<sup>th</sup> Annual Critical Finance Studies Conference (6–8 September 2021). I wish to thank Prof. Annamaria Viterbo for her valuable comments and suggestions and Marco Fisicaro for his engagement with the piece.

*solutions in influencing commercial creditors' incentives and preventing hold-out behaviors.*

**Keywords:** sovereign debt governance; G20; Common Framework; comparability of treatment; private sector involvement

## TABLE OF CONTENTS

I. INTRODUCTION .....	26
II. BACKGROUND: FROM THE DSSI TO THE COMMON FRAMEWORK.....	28
III. 'COMPARABILITY OF TREATMENT': HISTORY AND CHALLENGES.....	31
V. CONCLUDING REMARKS AND OPTIONS FOR THE WAY FORWARD.....	40

### I. INTRODUCTION

The COVID-19 pandemic exacerbated growing vulnerabilities in the international financial architecture. The effectiveness of the transnational framework for sovereign debt governance, in particular, was increasingly questioned long before the outbreak of the health emergency due to rising debt levels in many low- and middle-income countries. According to International Monetary Fund ('IMF', 'the Fund') estimates, already in 2019 around half of low-income economies were deemed to be in or at high risk of debt distress.<sup>1</sup> The global health crisis further aggravated strains on public finances and worsened pre-existing inequalities, as the limited fiscal space available to vulnerable countries severely constrained their capacity to mitigate its social and economic fallout.

This article assesses recent developments in sovereign debt governance, focusing on the so-called 'Common Framework for Debt Treatments

---

<sup>1</sup> IMF, 'The Evolution of Public Debt Vulnerabilities in Lower Income Economies' (2020) IMF Policy Paper 20/003, 1 <<https://www.imf.org/en/Publications/Policy-Papers/Issues/2020/02/05/The-Evolution-of-Public-Debt-Vulnerabilities-In-Lower-Income-Economies-49018>> accessed 5 October 2021.

beyond the DSSI' (the 'Common Framework'), a G20 and Paris Club initiative launched in the wake of the pandemic to address debt sustainability issues in low-income countries ('LICs').<sup>2</sup> The analysis revolves around the perennial challenge of enforcing effective burden sharing between the official and private sectors, a recurrent problem in sovereign debt crises currently reflected in the features of the Common Framework. As public debt stocks of several LICs comprise significant components of commercial debt, private sector involvement is key to achieving debt sustainability.<sup>3</sup> In this respect, the Common Framework exhibits significant continuity with previous debt crisis resolution patterns, relying on the contested 'comparability of treatment' principle, which requires debtor countries to seek debt treatment from commercial creditors that is at least comparable to that negotiated with G20 official creditors.<sup>4</sup> Indeed, comparability of treatment has always constituted one of the core principles of the Paris Club, the traditionally hegemonic forum for official bilateral debt treatment since the late 1950s.<sup>5</sup>

Notwithstanding its key role in modern sovereign debt governance, however, the adequacy of this requirement in ensuring equitable burden sharing among all public and private stakeholders has long been open to

---

<sup>2</sup> 'Common Framework for Debt Treatments beyond the DSSI' (Paris Club, 13 November 2020) <[https://clubdeparis.org/sites/default/files/annex\\_common\\_framework\\_for\\_debt\\_treatments\\_beyond\\_the\\_dssi.pdf](https://clubdeparis.org/sites/default/files/annex_common_framework_for_debt_treatments_beyond_the_dssi.pdf)> accessed 2 February 2021.

<sup>3</sup> IMF and the World Bank, 'Implementation and Extension of the Debt Service Suspension Initiative' (28 September 2020) <<https://www.devcommittee.org/sites/dc/files/download/Documents/2020-10/Final%20DC2020-0007%20DSSI.pdf>> accessed 23 January 2022.

<sup>4</sup> In principle, comparability of treatment applies to all external creditors except multilateral institutions, including commercial creditors and other non-G20 and non-Paris Club bilateral creditors.

<sup>5</sup> Official debt, as opposed to private sector debt, refers to obligations incurred with public sector creditors and comprises multilateral debt (owed to multilateral institutions) and bilateral debt (owed to individual public sector lenders on a bilateral basis).

doubt. This article investigates the complex and contentious role of comparability of treatment in achieving official and private sector cooperation through past Paris Club practice. It identifies the main obstacles and tensions surrounding the concrete operation of the comparability requirement and draws some insights on its future implementation within the Common Framework. In fact, comparable treatment is central to the success of the G20 initiative and the effectiveness of sovereign debt governance processes more broadly.

Section II briefly describes the evolution of the G20 policy response to the pandemic and the launch of the Common Framework. Section III analyses the issues surrounding the comparability of treatment principle under Paris Club practice and identifies present challenges. Finally, Section IV sketches tentative proposals to better implement comparability of treatment going forward.

## II. BACKGROUND: FROM THE DSSI TO THE COMMON FRAMEWORK

The extraordinary severity and global reach of the shock caused by the pandemic prompted a long-awaited evolution in sovereign debt governance, namely the emergence of the G20 as a new forum for coordination among official bilateral creditors. Since the late 1950s, the leading forum for official bilateral debt management has been the Paris Club, which began as an informal group of lenders and gradually evolved into an established intergovernmental apparatus.<sup>6</sup> However, its representativeness

---

<sup>6</sup> Alexis Rieffel, 'The Role of the Paris Club in Managing Debt Problems' (1985) Princeton University Essays in International Finance No. 161 <<https://ies.princeton.edu/pdf/E161.pdf>> accessed 2 March 2021; Mauro Megliani, *Sovereign Debt: Genesis, Restructuring, Litigation* (Springer 2015) 277-310; Annamaria Viterbo, *Sovereign Debt Restructuring: The Role and Limits of Public International Law* (Giappichelli 2020) 90ff. Nowadays, Paris Club permanent membership includes 22 states, mostly OECD countries (except Brazil and the Russian Federation). Other countries may participate in negotiations on an *ad hoc* basis.

and capacity to foster creditors' coordination has significantly decreased over the past decades with the rise of new bilateral lenders, most notably China.<sup>7</sup>

Following urgent calls for action by the international financial institutions, the academic community and civil society, in April 2020 the G20 and the Paris Club imposed a temporary moratorium on bilateral debt payments for LICs – the 'Debt Service Suspension Initiative' ('DSSI') – to ease immediate liquidity pressures.<sup>8</sup> This initiative, however, was subject to important limitations both in terms of scope and economic purpose. DSSI eligibility was restricted to the poorest economies – countries eligible for support from the International Development Association ('IDA') and Angola – whereas it excluded other low- and middle-income countries severely affected by the pandemic.<sup>9</sup> The economic purpose of the DSSI was confined to the alleviation of temporary liquidity pressures, while debt sustainability issues were left unresolved: the payments suspension was designed to be neutral in

---

<sup>7</sup> This is reflected by the gradual decrease in the amounts and number of debt treatments after the peak in the 1980s. The committee for the first debt treatment under the Common Framework, concerning Chad, consists of China, Saudi Arabia, India and France. All but France became prominent lenders only recently and occupy marginal roles within Paris Club practices, as none is a permanent member.

<sup>8</sup> G20 and Paris Club, 'Debt Service Suspension Initiative for Poorest Countries: Term Sheet' (15 April 2020) <<https://www.tresor.economie.gouv.fr/Articles/009a4adf-23c2-4283-b88f-83ce405e1272/files/ec1895a7-ac0d-4eaf-a300-e8d8a057a2fd>> accessed 4 May 2020. The DSSI was subsequently extended until 31 December 2021. 'Final Extension of the Debt Service Suspension Initiative (DSSI)' (Paris Club, 13 April 2021) <<https://clubdeparis.org/en/communications/press-release/final-extension-of-the-debt-service-suspension-initiative-dssi-13-04>> accessed 6 September 2021.

<sup>9</sup> IDA eligibility is based on a poverty threshold defined as GNI per capita below an annually updated level (\$1,205 for 2022). Angola was deemed eligible as it falls under the UN's least developed countries category. DSSI eligibility encompasses 73 countries, of which 48 applied for an effective amount of debt service deferment of approximately \$12.9 billion. World Bank, 'Debt Service Suspension Initiative: Q&As' (10 March 2022) <<https://www.worldbank.org/en/topic/debt/brief/debt-service-suspension-initiative-qas>> accessed 10 March 2022.

net present value ('NPV') terms, leaving the underlying debt stock unaffected. Most importantly, the initiative failed to secure voluntary private sector participation, notwithstanding some coordination efforts by the Institute for International Finance ('IIF').<sup>10</sup> This significantly curbed the initiative's effectiveness.<sup>11</sup> What is more, fear of market stigma appears to have deterred countries with relevant bond issuances from requesting DSSI activation, although preliminary research suggested that DSSI eligibility had positive effects on borrowing costs.<sup>12</sup>

The DSSI's constraints, coupled with rising concerns regarding the medium-term debt sustainability of LICs, ultimately induced the G20 and the Paris Club to adopt the Common Framework in November 2020, which was meant to signal a significant shift in policy approach.<sup>13</sup> Even though it shares the DSSI's eligibility restrictions, the Common Framework aims to address fundamental debt sustainability concerns through rescheduling and debt relief, allowing debt reductions in NPV terms and even debt cancellations in exceptional circumstances. Debt treatments are defined on a case-by-case basis according to a debt sustainability analysis within the framework of an IMF financing program. Crucially, the Common Framework also abandons the voluntary approach to private sector participation, introducing the contested requirement of 'comparability of treatment' of all external bilateral and commercial creditors. However, the

---

<sup>10</sup> See IIF, 'Terms of Reference for Voluntary Private Sector Participation in the G20/Paris Club DSSI' (28 May 2020) <<https://www.iif.com/Publications/ID/3920/Terms-of-Reference-for-Voluntary-Private-Sector-Participation-in-the-G20Paris-Club-DSSI>> accessed 14 January 2021, including links to related documentation released on 3 December 2020.

<sup>11</sup> IMF and the World Bank, 'Implementation and Extension of the Debt Service Suspension Initiative' (n 3).

<sup>12</sup> Valentin Lang, David Mihalyi and Andrea Presbitero 'Borrowing Costs After Sovereign Debt Relief' (2021) CEPR Discussion Paper No. 15832 <[https://cepr.org/active/publications/discussion\\_papers/dp.php?dpno=15832](https://cepr.org/active/publications/discussion_papers/dp.php?dpno=15832)> accessed 21 December 2021.

<sup>13</sup> 'Common Framework for Debt Treatment beyond the DSSI' (n 2).

concrete operation of this requirement remains rather unclear: the G20 statement merely specifies that debtors are required to provide updates on their negotiations with other creditors and identifies some potentially relevant metrics (duration of claims, changes in nominal debt service and debt stock in NPV terms).

The expiration of the DSSI in December 2021 leaves LICs vulnerable. Over the coming years, they will be obliged to repay accumulated suspended amounts under the DSSI on top of regular debt service. In this context, the Common Framework remains the only multilateral mechanism for the resolution of post-pandemic debt sustainability issues.

### III. 'COMPARABILITY OF TREATMENT': HISTORY AND CHALLENGES

The comparability of treatment requirement has always constituted a core principle of Paris Club practice.<sup>14</sup> By obliging debtor countries to seek treatment from all external official and commercial creditors that is at least as favorable as that granted by the Paris Club, it protects the finances of the Club's members by avoiding *de facto* subordination of their claims.<sup>15</sup> The only exception concerns multilateral debt, given the "lender of last resort" function of multilateral institutions. Notwithstanding the pivotal role of the requirement, however, legal scholarship has devoted only cursory attention to its concrete implementation.<sup>16</sup> The absence of systematic engagement

---

<sup>14</sup> Its first formulation dates to negotiations on Argentina in 1956, which marked the inception of the Club. Enrique Cosío-Pascal, 'The Emerging of a Multilateral Forum for Debt Restructuring: the Paris Club' (2008) UNCTAD Discussion Paper No 192, 5 <[https://unctad.org/system/files/official-document/osgdp20087\\_en.pdf](https://unctad.org/system/files/official-document/osgdp20087_en.pdf)> accessed 27 February 2021.

<sup>15</sup> It figures as a specific condition in the so-called "Agreed Minutes", the informal stipulation concluding the negotiations between the Paris Club and debtor countries that forms the basis for bilateral agreements with each lender. See Viterbo (n 6) 92ff.

<sup>16</sup> For notable exceptions, see Viterbo (n 6) 92-98; Rieffel, 'The Role of the Paris Club in Managing Debt Problems' (n 6) 10-14. For a brief explanation of

with the operationalization of this requirement is probably due to the lack of transparency surrounding Paris Club debt treatment practices, which has been only partially ameliorated through the recent launch of an official website.<sup>17</sup> The legal and institutional setting for assessing comparability throughout the negotiation and implementation of Paris Club debt treatments, as well as the relevant benchmarks, have always been obscure.<sup>18</sup>

Despite its deep historical roots, the economic rationale and concrete operation of the 'comparability of treatment' principle have profoundly evolved over time, along with the transformation of the global sovereign debt structure. During the initial period of Paris Club activity, in line with the predominance of official financial flows after WWII, the requirement was mainly aimed at influencing negotiations with other bilateral creditors.<sup>19</sup> Given the considerable expansion of private lending in the form of

---

comparability of treatment, see G Russel Kincaid and others, 'Recent Developments in External Debt Restructuring' (1985) IMF Occasional Papers no 40 <<https://www.elibrary.imf.org/view/books/084/05573-9780939934522-en/05573-9780939934522-en-book.xml>> accessed 26 April 2022. For an account of burden sharing arrangements between official and private creditors, see Daphné Josselin, 'Regime Interplay in Public-Private Governance: Taking Stock of the Relationship Between the Paris Club and Private Creditors Between 1982 and 2005' (2009) 15 *Global Governance* 521.

<sup>17</sup> The website provides some general information on standard terms of debt treatment and the main parameters of individual debt treatments accorded to debtor countries. See e.g. 'Standard Terms of Treatment' (Paris Club) <<https://clubdeparis.org/en/communications/page/standard-terms-of-treatment>> accessed 23 February 2021; 'The Paris Club Creditors Provide Debt Relief to Sudan' (Paris Club, 16 July 2021) <<https://clubdeparis.org/en/communications/press-release/the-paris-club-creditors-provide-debt-relief-to-sudan-16-07-2021>> accessed 26 April 2022. However, the Agreed Minutes, incorporating the agreement in principle among the Club's members and establishing the details of each planned debt treatment, remain confidential, as do the implementing agreements with individual lenders.

<sup>18</sup> n 46 and accompanying text.

<sup>19</sup> Alexis Rieffel, *Restructuring Sovereign Debt: The Case for Ad Hoc Machinery* (Brookings Institution Press 2003); Cosio-Pascal, 'The Emerging of a Multilateral Forum for Debt Restructuring' (n 14).



syndicated bank loans throughout the 1970s and 1980s, the principle pivoted towards ensuring the participation of syndicates in crisis resolution processes.<sup>20</sup> Official and private sector coordination was facilitated by the emergence of a parallel inter-bank forum, the London Club.<sup>21</sup> An in-depth analysis of the dynamics underlying commercial banks' involvement in the governance of the 1980s debt crisis lies outside the scope of this work: it is sufficient to highlight that, beyond the relative homogeneity of the nature of creditors and their business models, informal public sector pressures, especially through regulatory agencies, were crucial.<sup>22</sup> Around the turn of the decade, the implementation of the Brady Plan – aimed at overcoming the crisis through the securitization of outstanding syndicated loans – and the emergence of the secondary market for sovereign debt laid the foundation for the rapid growth of bonded debt, marking a fundamental shift in the composition of the global sovereign debt structure.<sup>23</sup>

The growing component of international bonds in sovereign debt stocks exposed the need to devise effective forms of bondholder involvement in the resolution of debt crises to avoid bailouts and moral hazard dynamics. Thus, it prompted an implicit evolution in the function of the comparability of treatment requirement, which began to encompass bonded debt. The first instance in which the clause was specifically intended to induce a 'comparable' restructuring of bonds was the 1999 Paris Club agreement on

---

<sup>20</sup> Charles Lipson, 'Bankers' Dilemmas: Private Cooperation in Rescheduling Sovereign Debts' (1985) 38 *World Politics* 200; Alexander Szodruch, *Staateninsolvenz und private Gläubiger: Rechtsprobleme des Private Sector Involvement bei staatlichen Finanzkrisen im 21. Jahrhundert* (BWV 2008) ch 3.

<sup>21</sup> Rieffel, *Restructuring Sovereign Debt* (n 19) ch 6.

<sup>22</sup> *Ibid.*

<sup>23</sup> Philip J Power, 'Sovereign Debt: The Rise of the Secondary Market and Its Implication for Future Restructurings' (1996) 64 *Fordham Law Review* 2701; Ross P Buckley, 'The Facilitation of the Brady Plan: Emerging Markets Debt Trading From 1989 to 1993' (1998) 21 *Fordham International Law Journal* 1802.

Pakistan.<sup>24</sup> However, the operation of the principle has proven extremely challenging with regards to bonded debt. The underlying reasons, as will be analyzed in detail below, are primarily related to the fragmentation of the creditor structure and the lack of transparency regarding sovereign obligations, as well as fundamental differences in approaches to debt treatment among official and private creditors. Indeed, comparability of treatment has come under increasing pressure, as epitomized by the tensions surrounding bonds exchanges in Ukraine (1999–2000) and Ecuador (2000) and growing private sector calls for 'reverse comparability'.<sup>25</sup> Especially after the turn of the century, the principle's operation has been marked by significant elasticity and inconsistency. Under the Heavily Indebted Poor Countries Initiative ('HIPC'), for instance, commercial creditors' comparable treatment was partially favored through IDA-financed discount debt buy-backs, but holdout creditors were still able to recover considerable amounts.<sup>26</sup>

Thus, the rise of bonded debt in sovereign borrowing exacerbated the challenges surrounding the comparability of treatment principle. These challenges relate, on the one hand, to the segmentation and diversification of public debt stocks and the lack of transparency on sovereign obligations and, on the other, to fundamental differences in debt treatment methods, depending on the nature of the affected creditors and debt instruments.

Regarding the first aspect, clarity on the nature, specific characteristics and amounts of outstanding obligations is indispensable for comparability of

---

<sup>24</sup> Josselin (n 16) 531. Pakistan restructured three Eurobond issues with \$600 million through a unilateral exchange.

<sup>25</sup> Josselin (n 16). For a brief description of the debt restructurings in Pakistan, Ukraine, Russia and Ecuador between 1998 and 2000 see IMF, 'Sovereign Debt Restructurings and the Domestic Economy Experience in Four Recent Cases' (2002) <<https://www.imf.org/external/NP/pdr/sdrm/2002/022102.pdf>> accessed 2 April 2021.

<sup>26</sup> Mark A Walker and Barthélemy Faye, 'Sovereign Debt Renegotiation: Restructuring the Commercial Debt of HIPC Debtor Countries' (2010) 73 *Law and Contemporary Problems* 317.

treatment. As Anna Gelpern aptly argues, sovereign debt constitutes a public good and there are strong public accountability and economic efficiency rationales for adequate transparency.<sup>27</sup> Nonetheless, incomplete reporting and disclosure of financial and legal terms by borrowers and lenders alike has long impeded effective sovereign debt governance.<sup>28</sup> This has been compounded by the growing heterogeneity of capital flows, as disclosure on bilateral lending by non-Paris Club members and on certain forms of commercial lending tends to be particularly scarce.<sup>29</sup> Even international bond issuances pose transparency challenges: creditor identity is easily obfuscated by secondary market trading, despite being a fundamental factor shaping creditors' incentives.<sup>30</sup> Public sector organizations and financial industry associations have undertaken several efforts to improve transparency and accountability on public debt, such as the G20 Operational Guidelines for Sustainable Financing from 2017 and the IIF Voluntary Principles on Debt Transparency ('IIF Principles') from 2019.<sup>31</sup> The latter is

---

<sup>27</sup> Anna Gelpern 'About Government Debt ... Who Knows?' (2018) 13 *Capital Markets Law Journal* 321; Shakira Mustapha and Rodrigo Olivares-Caminal 'Improving Transparency of Lending to Sovereign Governments' (2020) ODI Working Paper 583 <[https://cdn.odi.org/media/documents/200710\\_debt\\_transparency\\_final\\_v2.pdf](https://cdn.odi.org/media/documents/200710_debt_transparency_final_v2.pdf)> accessed 3 November 2021.

<sup>28</sup> Gelpern (n 27). There is no consensus even on the basic definition of public debt. Serkan Arlanap and others, 'Concepts, Definitions and Composition' in S Ali Abbas, Alex Pienkowski and Kenneth Rogoff (eds), *Sovereign Debt: A Guide for Economists and Practitioners* (Oxford University Press 2019).

<sup>29</sup> Insufficient transparency on Chinese lending is especially troublesome considering its growing relevance and the reported use of non-traditional financial structures and collateral arrangements. Sebastian Horn, Carmen M Reinhart and Christoph Trebesch, 'China's Overseas Lending' (2019) NBER Working Paper 26050 <<https://www.nber.org/papers/w26050>> accessed 1 February 2022.

<sup>30</sup> Gelpern (n 27).

<sup>31</sup> G20, 'G20 Operational Guidelines for Sustainable Financing' (March 2017) <[https://www.bundesfinanzministerium.de/Content/EN/Standardartikel/Topics/world/G7-G20/G20-Documents/g20-operational-guidelines-for-sustainable-financing.pdf?\\_\\_blob=publicationFile&v=4](https://www.bundesfinanzministerium.de/Content/EN/Standardartikel/Topics/world/G7-G20/G20-Documents/g20-operational-guidelines-for-sustainable-financing.pdf?__blob=publicationFile&v=4)> accessed 14 April 2021; IIF,

especially interesting for present purposes, as it aims to improve transparency on LICs' commercial debt exposures and recommends extensive information sharing encompassing both financial and legal terms.<sup>32</sup> The IIF Principles have been complemented by the OECD's recent Debt Data Transparency Initiative.<sup>33</sup> Through this initiative, the OECD actively promotes transparency by collecting and disseminating data provided by lending entities through a Debt Transparency Database and providing analysis and advisory services. However, the effectiveness of these initiatives is still curbed by their voluntary character and the absence of monitoring mechanisms.<sup>34</sup>

Regarding the second aspect, uncertainties and tensions surrounding the implementation of the comparable treatment principle also stem to a significant extent from legal and economic differences in the approaches to distressed debt treatment typically adopted by official bilateral and commercial creditors.<sup>35</sup> Commercial debt treatments usually take the form of stock treatments, affecting the entire stock of distressed debt. This is especially true for bonds, which are generally restructured through bond exchanges.<sup>36</sup> Given the diversity of creditors and their business models, bond

---

'Voluntary Principles for Debt Transparency' (10 June 2019) <<https://www.iif.com/Publications/ID/3387/Voluntary-Principles-For-Debt-Transparency>> accessed 14 April 2021.

<sup>32</sup> IIF, 'Voluntary Principles for Debt Transparency' (n 31). For now, these apply to countries eligible for support under the IMF Poverty Reduction and Growth Facility. They concern all financial transactions having the economic effect of borrowing, including not only traditional loans but also guarantees and asset-back facilities, repos and other transactions.

<sup>33</sup> 'OECD Data Transparency Initiative' (OECD, 29 March 2021) <<https://www.oecd.org/finance/OECD-Debt-Data-Transparency-Initiative.htm>> accessed 14 April 2021.

<sup>34</sup> Mustapha and Olivares-Caminal (n 27).

<sup>35</sup> Cosio-Pascal, 'The Emerging of a Multilateral Forum for Debt Restructuring' (n 14); IMF, 'Sovereign Debt Restructurings and the Domestic Economy Experience in Four Recent Cases' (n 25).

<sup>36</sup> On the function of collective action clauses, see e.g. Mark C Wedemaier and Mitu Gulati, 'A People's History of Collective Action Clauses' (2014) 54 *Virginia Journal of International Law* 51.

restructurings often comprise several options, from debt relief in NPV terms through coupon reductions and rescheduling to outright reductions of the face value of debt claims. By contrast, Paris Club treatments have traditionally been limited to flow treatments, which involve a rescheduling of outstanding payments over a pre-defined period to cover the financing needs of debtor countries as identified in IMF-supported programs.<sup>37</sup> Over time, the Club's practice has evolved towards more comprehensive and concessional forms of debt treatment, mainly through the elaboration of 'standard terms' for specific groups of countries based on income-levels.<sup>38</sup> However, flow treatments remain the dominant modality of crisis management and debt relief has been mostly limited to relief in NPV terms. Debt cancellation has been rather exceptional.<sup>39</sup> The 'Evian approach', launched to resolve Iraq's debt situation in 2003, was, in principle, meant to allow comprehensive debt treatments on a case-by-case basis, potentially opening space for convergence in the approaches and parameters of official and commercial creditors.<sup>40</sup> However, this approach has been significantly influenced by geo-political considerations and its scope of application has remained limited.<sup>41</sup>

The preceding analysis highlights a few key issues shaping the operation of the comparable treatment principle and the future of public and private

---

<sup>37</sup> Cosio-Pascal, 'The Emerging of a Multilateral Forum for Debt Restructuring' (n 14); Viterbo (n 6) 96ff.

<sup>38</sup> See 'Standard Terms of Treatment' (n 17). However, geo-political considerations have often motivated the Club to negotiate ad-hoc deals. Cosio-Pascal, 'The Emerging of a Multilateral Forum for Debt Restructuring' (n 14).

<sup>39</sup> Partly due to constraints in the budgetary and accounting rules of some bilateral creditors. See Viterbo (n 6).

<sup>40</sup> Thomas Callaghy, 'The Paris Club, Debt and Poverty Reduction: Evolving Patterns of Governance' in Rorden Wilkinson and Jennifer Clapp (eds.), *Global Governance, Poverty and Inequality* (1<sup>st</sup> edn Routledge 2010).

<sup>41</sup> Of the 14 countries who have undergone a debt treatment pursuant to this approach, only five have received debt relief. In three cases, the negotiations were deeply linked to the support of regime changes (Iraq in 2004, Nigeria in 2005 and Myanmar in 2013). Ibid.

sector interaction within the Common Framework. The first element concerns the degree of flexibility in the application of the comparability requirement. Past experience reveals that certain forms of commercial obligations could be exempted from restructuring due to concerns related to the preservation of market access or financial stability. However, the significance of commercial debt as a component of the public debt structure of some DSSI-eligible countries seems to reduce the scope for such flexibility, both from a political and an economic perspective. Incipient experience with the G20 initiative confirms this. The recent approval of an IMF financing arrangement for Chad, which provided the basis for the sole debt treatment effectively negotiated under the Common Framework as of this writing, was only possible following the partial opening of restructuring talks with its main commercial creditor, a bank syndicate led by Glencore.<sup>42</sup>

A second key factor will be the official creditors' approach in addressing debt sustainability issues. Under the Common Framework, treatments are defined on a case-by-case basis, in accordance with IMF debt sustainability analyses. While the agreement foresees the possibility of granting debt relief in NPV

---

<sup>42</sup> As of April 2022, only three countries – Ethiopia, Zambia and Chad – have activated the Common Framework. Negotiations regarding Ethiopia reached a stalemate and the creditor committee for Zambia is only currently being formed, more than one year after the debtors' request for debt relief. Michael Cohen and Felix Njini, 'China, France to Co-Chair Zambia's Debt Talks' (Bloomberg, 9 May 2022) <<https://www.bloomberg.com/news/articles/2022-05-09/china-france-to-co-chair-zambia-s-debt-talks-hichilema-says>> accessed 10 May 2022. As regards Chad, despite an agreement in principle reached by the committee of bilateral creditors in June 2021, final approval of an IMF financing arrangement which had already been negotiated in January 2021 remained suspended until December pending the initiation of negotiations concerning the restructuring of the country's commercial debt, mainly consisting of a \$1 billion resource-backed syndicated loan. See Karin Strohecker and Andrea Shalal, 'Glencore Ready to Enter Chad Debt Talks, Paving Way for IMF Program – Sources' (Reuters, 13 November 2021) <<https://www.reuters.com/business/glencore-assurances-chad-pave-way-imf-lending-program-sources-2021-11-11/>> accessed 10 May 2022.

terms, debt cancellations are explicitly reserved for exceptional cases.<sup>43</sup> Greater openness from bilateral creditors to comprehensive forms of debt treatment, including stock treatments and outright debt reductions, could positively influence cooperation with the private sector, facilitating a convergence of the metrics relevant to the comparability assessment.<sup>44</sup> Moreover, economic research has consistently shown that comprehensive restructurings, including debt write-offs, significantly enhance outcomes in terms of debt sustainability and economic growth.<sup>45</sup>

Finally, the operation of the comparability of treatment principle will largely depend on the degree of institutionalization and transparency of debt treatment processes under the Common Framework. In Paris Club practice, the assessment of the requirement and the consequences of violations remained obscure.<sup>46</sup> The Common Framework seems to perpetuate, at least in part, this lack of transparency, as it merely indicates broad benchmark criteria: 'assessment of comparable efforts will be based on changes in nominal debt service, debt stock in net present value terms and duration of the treated claims'.<sup>47</sup> The elaboration of detailed guidelines for the assessment

---

<sup>43</sup> 'Common Framework for Debt Treatment beyond the DSSI' (n 2).

<sup>44</sup> As discussed in Section II, a key benchmark for the comparability assessment is the ultimate impact on the sustainability of the debtor's public finances.

<sup>45</sup> E.g. Gong Cheng, Javier Diaz-Cassou and Aitor Erce, 'From Debt Collection to Relief Provisions: 60 Years of Official Debt Restructurings Through the Paris Club' (2016) ESM Working Paper Series 20/2016 <<https://www.esm.europa.eu/publications/debt-collection-relief-provision-60-years-official-debt-restructurings-through-paris>> accessed 26 January 2022; Carmen M Reinhart and Cristoph Trebesch, 'Sovereign Debt Relief and its Aftermath' (2016) 14 *Journal of the European Economic Association* 215.

<sup>46</sup> Agreed Minutes reportedly included a 'pullback clause' triggering the termination of Paris Club agreements in case of a violation of the comparability requirement. Viterbo (n 6). However, to my knowledge, no further information on instances of activation of that clause or procedures for assessing compliance is available.

<sup>47</sup> 'Common Framework for Debt Treatment beyond the DSSI' (n 2) 1. No further indications on the timing and institutional setting of review procedures or the consequences for non-compliance are provided.

of comparability and a process of review and close engagement with the private sector could foster clarity and transparency, increasing pressures on commercial creditors to share the burden of crisis resolution processes.<sup>48</sup>

## V. CONCLUDING REMARKS AND OPTIONS FOR THE WAY FORWARD

Two years into the COVID-19 pandemic, global financial stability remains precarious and a reform of the international financial architecture fostering effective sovereign debt governance processes is more urgent than ever.<sup>49</sup> The inclusion of the comparability of treatment principle within the Common Framework reflects the need to ensure equitable burden sharing among all public and private stakeholders in the prevention and resolution of debt crises in LICs in the aftermath of the pandemic. This section presents some tentative proposals to reinforce official and private sector cooperation. These involve embedding debt treatments under the Common Framework within a robust institutional setting and devising complementary statutory tools to influence creditors' incentives.<sup>50</sup>

First, the 'comparability of treatment' principle could be strengthened by tying bilateral and commercial debt treatments together within an institutional arrangement capable of ensuring, at least to some extent, parallel

---

<sup>48</sup> The need to institutionalize the dialogue among official and commercial creditors and the process for assessing comparability is demonstrated by difficulties faced by Chad's bilateral creditor committee in directly engaging with private creditors prior to the completion of the agreement on bilateral debt treatment. See 'Indonesian G20 Presidency Welcomes the Statement of the Creditor Committee for Chad' (G20, 7 January 2022) <<https://g20.org/indonesian-g20-presidency-welcomes-the-statement-of-the-creditor-committee-for-chad/>> accessed 10 February 2022.

<sup>49</sup> G30 Working Group on Sovereign Debt and COVID-19, *Sovereign Debt and Financing for Recovery after the COVID-19 Shock: Next Steps to Build a Better Architecture* (Group of Thirty 2021).

<sup>50</sup> On market-based contractual approaches to these issues, see e.g. Lee Buchheit and Mitu Gulati, 'Avoiding a Lost Decade—Sovereign Debt Workouts in the Post-Covid Era' (2021) 16 *Capital Markets Law Journal* 45.



progression on the restructuring of different types of debt. Attaching the implementation of successive phases of official debt treatments to identified stages in commercial debt restructurings would help lock the private sector into crisis resolution processes from the very beginning. In this respect, Paris Club practice offers a useful precedent, as debt treatments have often been structured around several phases strictly connected to the successful implementation of IMF programs.<sup>51</sup> Similarly, a tripartite arrangement could be developed linking IMF programs – a prerequisite for debt treatments under the Common Framework – to bilateral as well as commercial debt treatments.

Complete symmetry and uniformity in the structure and progress of different debt treatment processes would be unfeasible. The objective of a tripartite framework of this sort would be limited at ensuring coordination between the fundamental elements of these processes, conditioning the advancement of bilateral debt treatments upon the parallel involvement of the private sector. The IMF could play a vital role here. Leveraging the flexibility of its policies on lending into arrears, the Fund might signal the possibility of implementing financial assistance programs even in the case of default on commercial debt, strengthening the negotiating position of debtor countries.<sup>52</sup> This would help overcome an implicit 'veto power' of commercial creditors over the progression of debt treatments – a very concrete risk, as demonstrated by Chad, where negotiations protracted for over a year only reached a turning point following the opening of

---

<sup>51</sup> Enrique Cosío-Pascal, 'Paris Club: Intergovernmental Relations in Debt Restructuring' in Barry Herman, José Antonio Ocampo and Shari Spiegel (eds), *Overcoming Developing Country Debt Crises* (Oxford University Press 2010).

<sup>52</sup> The IMF Policy of Lending into Arrears to Private Creditors allows the provision of financing despite payment arrears subject to the effort of good faith negotiations, a discretionary and flexible criterium. See IMF, 'IMF Policy on Lending into Arrears to Private Creditors' (1999) <<https://www.imf.org/external/pubs/ft/privcred/lending.pdf>> accessed 29 December 2020; Lee Buchheit and Rosa Maria Lastra 'Lending into Arrears – A Policy Adrift' (2007) 41 *The International Lawyer* 939.

negotiations on private sector debt. Furthermore, IMF financing would alleviate debtors' concerns over rating downgrades and temporary loss of market access, incentivizing participation in the Common Framework.<sup>53</sup> Interestingly, it appears that this possibility is increasingly being considered within the Fund. In a recent comment, IMF Managing Director Kristalina Georgieva and Ceyla Pazarbasioglu advocated a debt service standstill pending negotiations to strengthen the Common Framework and stated that further clarification on the enforcement of the comparability of treatment principle is necessary, 'including as needed through implementation of IMF arrears policies'.<sup>54</sup>

Naturally, the development of a similar tripartite framework would require several preconditions. First, it would involve a close dialogue between official and commercial creditors. Notwithstanding the segmentation of the creditor landscape, financial industry associations such as the IIF could play an increasingly important role of representation and mediation, following an emerging trend.<sup>55</sup> Furthermore, as the principle of comparable treatment would become an explicit benchmark for the parallel progression of debt treatments, greater clarity and transparency would be required in its actual assessment, both in terms of institutional setting and metrics.

On a complementary level of analysis, a further option could be to implement statutory tools to influence private creditors' incentives by limiting the prospects of recovery through litigation, thus favoring cooperation in debt settlements. There are some relevant precedents at both

---

<sup>53</sup> On the contested role of rating agencies in sovereign debt governance, see Yuefen Li, 'Debt Relief, Debt Crisis Prevention and Human Rights: The Role of Credit Rating Agencies' (17 February 2021) UN Doc A/HRC/46/29.

<sup>54</sup> Kristalina Georgieva and Ceyla Pazarbasioglu 'The G20 Common Framework for Debt Treatments Must Be Stepped Up' (IMFblog, 2 December 2021) <<https://blogs.imf.org/2021/12/02/the-g20-common-framework-for-debt-treatments-must-be-stepped-up/>> accessed 23 February 2022.

<sup>55</sup> Cf text to n 10.

the international and national level, albeit exceptional and limited in scope.<sup>56</sup> Based on the political support of the broader G20 membership, domestic legislation could be enacted in key jurisdictions for international bonds issuances – the US, UK and Japan – staying or limiting litigation against DSSI-eligible countries pending debt treatments under the Common Framework.<sup>57</sup> Both the politics and design of such legal arrangements would undoubtedly carry several complexities. However, they could nonetheless represent a valuable complement to the Common Framework, evidencing the international community's strong commitment to achieving equitable burden sharing in the reform of the international financial architecture in the post-pandemic world.<sup>58</sup>

---

<sup>56</sup> The most significant example is the UN Security Council Resolution supporting Iraq's debt restructuring process through the time-bound immunization of its oil proceeds. UNSC Res 1483 (22 May 2003) UN Doc S/RES/1483. At the national level, the UK, Belgium and France have experimented with statutory solutions to curb litigation against HIPC countries. George Pavlidis, 'Vulture Litigation in the Context of Sovereign Debt: Global or Local Solutions?' (2018) 12 *Law and Financial Markets Review* 93.

<sup>57</sup> See Lee Buchheit and Mitu Gulati, 'Sovereign Debt Restructuring and U.S. Executive Power' (2019) 14 *Capital Markets Law Journal* 114.

<sup>58</sup> Even the IMF has contemplated statutory solutions, albeit as a last resort in the context of a systemic crisis. IMF, 'The International Architecture for Resolving Sovereign Debt Involving Private-Sector Creditors – Recent Developments, Challenges and Reform Options' (2020) IMF Policy Paper No 2020/043 <<https://www.imf.org/en/Publications/Policy-Papers/Issues/2020/09/30/The-International-Architecture-for-Resolving-Sovereign-Debt-Involving-Private-Sector-49796>> accessed 31 November 2021.