NATIONS UNIES
DROITS DE L'HOMME
HAUT-COMMISSARIAT

UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Mandate of the Independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of human rights, particularly economic, social and cultural rights

Side event on foreign debt and human rights
co-hosted by the Permanent Missions of Argentina and Cuba
28th session of the Human Rights Council
4 March 2015, Room XXIV

Remarks by Juan Pablo Bohoslavsky
Independent Expert on the effects of foreign debt on human rights

Dear Deputy High Commissioner,

Excellencies, distinguished delegates and participants,

I would like to thank the Permanent Missions of Cuba and Argentina for co-hosting this event on foreign debt and human rights at a very timely moment.

Despite international debt relief for heavily indebted poor countries, on a global scale, the debt crisis in not over! Far from that: debt vulnerabilities around the world are high and growing. Debt relief initiatives appear to have only partly achieved their aims: in the low-income country group alone, around 16 countries are currently in debt distress, or at high risk of debt distress. Most Heavily Indebted Poor Countries are likely to miss this year the MDG targets.

The debt crisis in Greece and the negotiations between its new Government and the Eurogroup, ECB and IMF reminds us that it is not only least developed countries that are at risk. In recent years, access to affordable health care and housing, security of tenure, right to work and social security have become a key concern in many European countries, including Greece, Ireland, Iceland, Latvia, Spain or Portugal. My predecessor visited Greece in 2013, and while some economic and social indicators show improvements, the state of affairs is just a little bit less alarming: 35.7 percent of all people are at risk of poverty and social exclusion and unemployment is at 25.8 per cent.[1]

One can understand tax payers in other European countries fearing that funds may once again be necessary to bail out the country from default, but we should not forget the human rights of those who are at the very bottom of the Greek tragedy. Are European and international financial institutions not bound by the very human rights obligations and principles that members States have signed and ratified at regional and international level? Probably everybody here in the room will say yes, and European financial institutions may acknowledge this, but has sufficient priority been given to human rights and the protection of the most vulnerable?

[1] Eurostat, Survey on Income and Living Conditions; HELLENIC STATISTICAL AUTHORITY, Labour Force Survey, November 2014, 12 February 2015.

Distinguished participants,

In my view, States have various choices: They can try to minimize the negative impact of a financial crisis on the enjoyment of economic and social rights, or they can do more harm to their own people than necessary, distribute financial losses in an unjust, unequal or discriminative manner, hitting the most vulnerable in society.

One of my priorities is to identify good practices on how Governments facing a financial crisis have chosen to avoid unnecessary retrogressive measures and ensure that their responses to financial crisis can be more compliant with international human rights standards in the economic and social sphere.

In December last year I was invited by the Government of Iceland to visit the county. The 2008 banking collapse was a severe blow to the country, its social welfare system and especially, to its people. There was unprecedented unemployment, hitting in particular people working in construction and migrants, but it never reached the unprecedented levels that we have in many other countries. Adjustment policies in Iceland were based on the principle that the socialisation of the losses of the banking collapse should be avoided as much as possible. While cuts were made in the health and education systems, the Government increased significantly its social protection spending. Progressive income taxation was reintroduced and social benefits were strongly directed to low income households. Nearly everybody lost income, but the more affluent had to make a bigger contribution and inequality was reduced.

Not everything is perfect, there are gaps in Iceland, and the Government needs to pay particular attention to certain vulnerable groups I have identified in my report (A/HRC/28/59/Add.1). But in my view, international financial institutions and other States can learn a lot from the particular path chosen in Iceland. The most relevant is their choice of protecting the core social welfare system. Iceland imposed adequate capital controls, made several efforts to ensure citizens participation in the decision making process, and undertook endeavours to establish political, administrative and judicial accountability.

I talked earlier about avoiding unnecessary social damage in the context of debt crisis. The outcome of the litigation between the vulture fund NML Capital Ltd. and Argentina before New York courts has underlined the need to find better legal solutions for debt restructurings. There are reasonable fears that the ruling will make future debt restructurings more difficult and provide additional incentives to hold-outs not to agree to debt restructuring agreements. The ruling has further removed financial incentives for creditors to participate in orderly debt workouts. Future debt restructuring will be more difficult, in particular for outstanding bonds without or weak Collective Actions Clauses (CACs). I welcome that the Human Rights Council has requested its Advisory Committee to undertake further research on the impact of vulture funds on the enjoyment of human rights. Last week, I had the opportunity to share my views with them and contribute to their important work.

If vulture fund litigation in one country may impede another country to repay its restructured bond holders or trigger a debt crisis in another country, then there are certainly exterritorial effects on the enjoyment of economic, social and cultural rights. The Special Rapporteur on extreme poverty and human rights, Philip Alston, and myself have therefore raised our concerns with the United States of America, Argentina and the main litigating distressed debt fund, NML Capital Limited. Our communications and the responses received can be accessed in the joint communications report of special procedures submitted to the current session of the Human Rights Council.[2] In addition, we voiced our concerns in a public statement that was issued in November 2014. We regret that NML Capital Limited has to date not send a formal reply to our letter[3]

Hold-out litigation has dramatically increased during the last years. A recent study found that between 1976 and 2010 there have been about 120 lawsuits by commercial creditors against 26 defaulting Governments in the United States and the United Kingdom alone, the two jurisdictions where most sovereign bonds are issued. While in the 1980s only about 5 per cent of debt restructurings were accompanied by legal disputes, this figure has gone up to almost 50 per cent and the total volume of principal under litigation reached USD 3 billion by 2010. About 34 out of 120 lawsuits were targeting Heavily Indebted Poor Countries and such litigation has resulted in delays for debt restructuring agreements.[4]

The litigation between vulture funds and Argentina before New York courts has triggered another important initiative within the United Nations. In September 2014, the General Assembly adopted a resolution[5] to elaborate, through a process of intergovernmental negotiations, a multilateral legal framework for sovereign debt restructuring processes. Shortly afterwards the Human Rights Council adopted as well a resolution inviting States to ensure that such framework will be compatible with existing international human rights standards.[6] In this context I would like to mention the Guiding Principles on Foreign Debt and Human Rights, and the Guiding Principles on Business and Human Rights endorsed by the Human Rights Council in 2012 and 2011 respectively.

In December 2014 the General Assembly established an Ad hoc Committee open to all members States to design new rules. I have proposed to the Committee six human rights benchmarks that States may consider when discussing a future legal framework for sovereign debt restructuring. They include, amongst others:

---

[2] ARG 2/2014, USA 15/2014 and OTH 10/2014 from 20 August 2014, reported in A/HRC/28/85.

[3] "Human Rights Impact must be addressed in vulture fund litigation – UN experts", 27 November 2014, http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15354&LangID=E.

[4] Schumacher, Julian and Trebesch, Christoph and Enderlein, Henrik, Sovereign Defaults in Court (6 May 2014). Available at SSRN: http://ssrn.com/abstract=2189997 or http://dx.doi.org/10.2139/ssrn.2189997

[5] GA resolution 68/304

[6] HRC resolution 27/30

- The human rights principles of impartiality, transparency, participation and accountability should be reflected in the new legal framework;
- Human rights impact assessment must be part of debt sustainability analysis carried out in order to establish the legitimacy of a debt restructuring agreement. We need to seek for coherence between financial and human rights law; and
- Civil society organisations, national human rights institutions, regional and international human rights mechanism should be able to play a role in the decision making process of debt restructurings.

Dear delegates and friends,

Let me conclude with a brief reference to my thematic report to the Human Rights Council (A/HRC/28/59). This may resonate with my fellow panellists from Argentina and South Africa, two countries that had a history of past regimes violating human rights in a systematic manner. Both regimes received during these times external financial support.

My report on *financial complicity, lending to States involved in gross violations of human rights*, brings back to the Human Rights Council a question that has in my view not been fully addressed by this important body. In fact, since Antonio Cassese, the then Special Rapporteur of the former Sub-Commission on Prevention of Discrimination and Protection of Minorities, presented in 1977 his comprehensive study on the link between financial aid then being allocated to the Pinochet military regime and the human rights violations in Chile, this issue has not been discussed.

What should States, international financial institutions and private lenders do when they are confronted with the difficult question of whether they should lend to a country in which human rights are violated in a systematic manner? My report reviews existing empirical evidence of the relationship between sovereign financing, human rights practices and the consolidation of regimes engaged in gross violations of human rights to understand better when financial support may contribute to, or sustain the commission of, large-scale gross human rights violations. I do not pretend to have final answers, but I hope that the report contributes to a more informed debate on this important topic.

Thank you.