

COMMENTS

The Renegotiation of Official International Debt: Whose Club Is It?

While international debt owed by developing countries is increasing, many borrowing countries are unable to meet their financial obligations. To prevent a declaration of default and to effectively manage international financial problems, debt is frequently renegotiated. The practices of the central organizations in this process, the Paris Club and the International Monetary Fund, have been criticized. This Comment discusses the procedures of international debt renegotiation, then proposes reform of the present system using internationally agreed guidelines.

INTRODUCTION

Borrowing by lesser developed countries (LDC's),¹ a necessary prerequisite to economic growth,² has dramatically increased in the last

¹ The World Bank, for its own statistical studies, has defined LDC's as "capital-surplus oil exporters, middle income countries (over \$360 per capita) and low income countries (\$360 or less per capita) based on 1978 GNP per capita in 1978 U.S. dollars." WORLD BANK, BORROWING IN INTERNATIONAL CAPITAL MARKETS, May 1980, at iv (World Bank quarterly publication).

² Economic growth depends to a large extent on accumulating productive capital. Wionczek, *External Indebtedness of the Developing Countries*, in LDC EXTERNAL DEBT AND THE WORLD ECONOMY 11, 24-27 (M. Wionczek ed. 1978). Many developing countries, due to low productivity, high rates of consumption, and technological unsophistication, are limited in ability to accumulate capital. *Id.* Foreign borrowing provides financing for capital accumulation above what the country would be able to accomplish on its own. *Id.* at 25. See generally M. SEIBER, INTERNATIONAL BORROWING BY DEVELOPING COUNTRIES 1-18 (1982) (role of external borrowing in domestic development).

The United States provides a good example of the use of external capital to finance development. McMullen, *Historical Perspectives on Developing Nations' Debt*, in DEVELOPING COUNTRY DEBT 3, 4 (1979). During the nineteenth century, the United

decade. Between 1973 and 1982, the total debt of LDC's rose almost fivefold.³ The average debt service ratio⁴ for non-oil exporting LDC's increased close to ten percent in ten years, from fourteen percent in 1973 to twenty-two percent in 1982.⁵ In 1983, some countries, notably Mexico and Brazil, paid foreign creditors more than they received from export earnings.⁶ Clearly, LDC's are borrowing more, although in-

States borrowed extensively to finance its development. In the 1830's, total foreign indebtedness, as a percentage of GNP, is estimated to have been 40%. By 1914, that ratio had dropped to 18%. *Id.* However, such loans were not without risk. As McMullen describes it:

Though data is fragmentary and incomplete, it is well known that there were periods in which American states, local governments and private borrowers defaulted on foreign loans in sizable numbers. Large borrowings by American states for canal and railroad construction in the 1830's were defaulted in 1841 and 1842 as the price of cotton collapsed and foreign exchange was not available to make debt payments. . . . In the 1870's and 1890's, there were some defaults on foreign bonds by railway companies and municipalities

Id. at 4.

³ The total debt of developing countries has risen from \$109.4 billion in 1973 to an estimated \$529 billion in 1982. *FIN. & DEV.*, Mar. 1983, at 22-23. The percentage of this debt owed to private creditors has increased from 50% to 60.1%; the share from financial institutions has increased from 25.7% in 1973 to 52.7% in 1982. *Id.* Private bank exposure is limited to a few countries: Argentina, Brazil, Mexico, and South Korea. *How Serious is the Debt Problem of the Developing Countries*, OECD OBSERVER, Jan. 1983, at 13. In the case of Mexico, six major banks (Manufacturers Hanover, Bank of America, Chemical Bank, Bankers Trust, Citicorp, and First Chicago) have lent amounts that exceed half of their shareholders' equity, according to George Salem, Prudential-Bache Securities. *The Debt-Bomb Threat*, *TIME*, Jan. 10, 1983, at 42, 45.

The banking community was motivated to lend in such large amounts because of potentially substantial profits, and the greatly increased liquidity that had become available through the recycling of OPEC generated petrodollars. STAFF OF THE SENATE SUBCOMM. ON FOREIGN ECONOMIC POLICY OF THE COMM. ON FOREIGN RELATIONS, 95TH CONG., 1ST SESS., INTERNATIONAL DEBT, THE BANKS, AND U.S. FOREIGN POLICY 33 (Comm. Print 1977) [hereafter INTERNATIONAL DEBT REPORT].

⁴ The debt service ratio represents the percentage of debt payments to a country's exports. World Bank, International Monetary Fund, *External Debt—the Continuing Problem*, *FIN. & DEV.*, Mar. 1983, at 22.

⁵ Some estimates of the debt service ratio for certain countries go even higher. *Id.*

⁶ 1983 estimates of Mexico's export earnings and debt repayment bill were \$10.9 billion and \$21 billion, respectively. Brazil's 1983 export earnings and debt repayment bill were \$10.2 billion and \$21.4 billion. Riding, *The New Crisis for Latin Debt*, *N.Y. Times*, Mar. 11, 1984, at F1, col. 2. Other countries where debt payment exceeds exports include Argentina, Venezuela, Israel, Zambia, and Bolivia. *The Debt-Bomb Threat*, *TIME*, Jan. 10, 1983, at 42, 43.

creasingly unable to afford it.⁷ As a result, renegotiating LDC debt has become a common feature of the international financial community.

The large amounts of foreign debt held by LDC's are the result of a number of factors. LDC's experienced severe payments problems in the 1970's. Following a large increase in the price of petroleum, the world economy plunged into recession.⁸ The ensuing drop in prices for raw materials forced LDC's to pay an increasing amount of debt out of severely reduced export earnings. The repercussions were most severe for those LDC's that had borrowed heavily in the international capital markets, and which depended upon exports of raw materials to support their increased debt burden.⁹ In addition, many LDC's borrowed excessively to finance consumption, and relied on short-term, high interest debt and poorly administered externally financed development projects.¹⁰ The resulting debt problems have hindered the ability of LDC's to develop robust economies.¹¹

Default on foreign debt is an option that neither debtor nor creditor, as of yet, has chosen.¹² Default could result in the debtor's ostracism

⁷ The International Monetary Fund (IMF) reports that 32 countries were in arrears on their debts in 1981, compared to 15 in 1975. *The Debt-Bomb Threat*, TIME, Jan. 10, 1983, at 42.

⁸ The poorest industrial countries and LDC's, particularly the semi-industrialized LDC's, have had to carry the largest share of the deficits of oil importing nations. INTERNATIONAL DEBT REPORT, *supra* note 3, at 33. For example, Brazil paid \$654 million for oil imports in 1973, and \$2.7 billion in 1975. South Korea's oil bill jumped from \$265 million in 1973 to \$1.24 billion in 1975. *Id.* at 32.

⁹ *Worry At the World's Banks*, BUS. WK., Sept. 6, 1982, at 81.

¹⁰ C. HARDY, RESCHEDULING DEVELOPING COUNTRY DEBTS, 1956-1981: LESSONS AND RECOMMENDATIONS 10-22 (Overseas Development Council Monograph No. 15, 1982).

¹¹ One authority has stated that increased debt has already made implementation of development plans more uncertain for LDC's. M. SEIBER, *supra* note 2, at 123; see also, e.g., *New Crisis Has Begun in International Debt, Banking Experts Warn*, Wall St. J., June 8, 1983 (developing countries will be unable to get financing for imports, restricting economic expansion in both developing and developed countries); *Brazil Struggles Under Its Unwieldy Debt Load*, Wall St. J., May 6, 1983, at 33, col. 1 (government austerity plans implemented due to large debt reduce economic well-being).

For an excellent account of the factors contributing to the LDC's indebtedness plight, see C. HARDY, *supra* note 10, at 10-22.

¹² The specter of default, or the withdrawal of a major lender, has caused widespread fear in the international community. According to British financier Lord Lever, "If lending abruptly contracts, there will be an avalanche of large-scale defaults that will inflict damage on world trade and on the political and economic stability of both borrowing and lending countries." *The Debt-Bomb Threat*, TIME, Jan. 10, 1983, at 42. This doomsday scenario — that withdrawal of a creditor or debtor from the game could

from public and private sources of financing.¹³ Default could also force creditor banks to declare large losses, and thus restrict domestic credit.¹⁴

To prevent default, LDC debt is renegotiated. Payments due under the initial obligation are stretched over a longer period.¹⁵ This process

set the international monetary system on edge — is best described in INTERNATIONAL DEBT REPORT, *supra* note 3, at 61:

The biggest threat to the system lies in the possibility that one of the passengers on this merry-go-round . . . finally decides to repudiate its debt, or one of the lenders says "no more" and calls in the chits. Other lenders then follow in order to protect their interest and a domino effect sets in [E]ven the disappearance of a relatively minor player can set the multinational banking system teetering.

See also Bennett, *A Banking View of the Argentine Debt 'Chasm,'* N.Y. Times, Apr. 2, 1984, at 26, col. 3 (worst case effect of possible Argentine default on world financial system). But see C. HARDY, *supra* note 10, at 40-41 (unrealistic to speak of countries defaulting on current obligations). A default by Argentina in March of 1984 might have realized such a doomsday scenario. Bennett, *supra*. Argentina, however, was pulled from the brink through loans from private banks, Mexico, Venezuela, Brazil, and Columbia. Kilborn, *Watershed Seen in Argentine Plan,* N.Y. Times, Apr. 2, 1984, at 1, col. 1.

Argentina's financial rescue was the result of Latin America's emerging solidarity toward debt problems. *Id.* Indeed, this solidarity may enhance debtors power in future renegotiations. *Id.* at 26; cf. Witcher, *Latin American Nations Pressure Banks But Stop Short of Forming Debtor Cartel,* Wall St. J., Sept. 12, 1983, at 32, col. 2 (mood is sweeping the cash-strapped region that debtors should stick together to bargain for easier repayment terms). Carlos Furtado, a former Brazilian Planning Minister and a leading member of the opposition Brazilian Democratic Party, has written, "The only remaining hope [to solving debt-caused social and economic problems] is therefore that debtor governments join together to demand that the interests of their populations also be taken into account in this difficult readjustment of the international economy." Furtado, *Time to Accommodate Debtor Nations,* N.Y. Times, Apr. 22, 1984, at F3, col. 1. However, Peruvian economist Javier Iguaziz has said, "There is no possibility of the formation of a 'debtors' cartel' in Latin America. Individual Latin American countries' political and economic dependency on the United States is much stronger than the ties among the Latin American countries." *For the Poor, the Problem is Economic, Political Structures,* Latinamerica Press, Mar. 29, 1984, at 5, col. 5 (English language publication of Noticias Aliadas).

¹³ See INTERNATIONAL DEBT REPORT, *supra* note 3, at 66.

¹⁴ *The Debt-Bomb Threat,* TIME, Jan. 10, 1983, at 42, 44; see also *Argentina's Inability to Meet Terms of IMF Seen Forcing U.S. Banks to Take Heavy Charges,* Wall St. J., Mar. 9, 1984, at 49, col. 3 (Argentina's inability to pay interest on debts will cause losses to U.S. banks).

¹⁵ Renegotiations of problem official debts repeatedly have been performed on a multilateral basis since 1957. The table set out in the Appendix lists the major, multilateral reschedulings of official debt.

Commercial lenders will also be forced to renegotiate their Third World credits. In Solomon, *Developing Nations and Commercial Banks, the New Dependency,* 12 J.

was extensively used in the debt crises of the early 1980's.¹⁶ However, several countries are presently unable to pay interest on their rescheduled obligations.¹⁷ Because these earlier renegotiations have failed, there are warnings of a second wave of debt crises which could deepen recession among LDC's and constrict any international economic recovery.¹⁸

The ability of the international financial system to manage the debt problem will depend, in large measure, on its ability to renegotiate both public and private debt.¹⁹ The renegotiation of public debt is central to

INT'L L. & ECON. 325, 328 (1978), the author states: "over the near-term, it appears difficult for commercial banks to reduce their exposure in the Third World. The most likely prospect is that banks will stretch their Third World commitments into the remainder of this century."

Renegotiation can be modeled, in terms of economic game theory, as a "prisoner's dilemma." In the prisoner's dilemma game, the prisoners can choose to cooperate with each other, or not cooperate. If the latter choice is taken, one prisoner will be set free, and the other will die. If the prisoners instead choose to cooperate, then both will receive a ten year prison term, after which they will be set free. A corollary to the dilemma, sometimes termed "size stability," postulates that as the potential loss to a prisoner due to noncooperation increases, there will be a greater incentive for that prisoner to cooperate. See generally R. AXELROD, *THE EVOLUTION OF COOPERATION* 3-24 (1984) (analysis and discussion of prisoner's dilemma); R. LUCE & H. RAIFFA, *GAMES AND DECISIONS* 95-97 (1957) (textbook discussion of prisoner's dilemma).

In renegotiation, both parties are faced with heavy potential losses. Debtors, if they default, would be ostracized, at least for a period of time, from international credit markets. Creditors would be forced to take extensive losses. This could lead to a contraction of both international and domestic credit, threatening the stability of creditor economies. Until a country perceives it has more to lose through renegotiation than through default, it will continue to opt for the renegotiation process.

¹⁶ See Appendix (official renegotiations occurring in 1980's) cf. *New Crisis Has Begun in International Debt, Banking Experts Warn*, Wall St. J., June 8, 1983, at 1 (news article referring to renegotiations as "rescue programs"); *The Debt-Bomb Threat*, TIME, Jan. 10, 1983, at 42 (inferring that renegotiations are "patchwork rescues").

¹⁷ *New Crisis Has Begun in International Debt, Banking Experts Warn*, Wall St. J., June 8, 1983, at 1.

¹⁸ For example, Norman Bailey, former senior director of national security planning for the United States National Security Council, states: "We've gone past the first wave. [However,] I think the chances of not getting into a second wave are just about nil." *Id.*

¹⁹ Cf. INTERNATIONAL DEBT REPORT, *supra* note 3, at 65 (no choice but to continue process of deficits, borrowing, and debt rescheduling, according to then Secretary of the Treasury W. Michael Blumenthal).

From the perspective of public international contracts, the economic and political factors that have encouraged debt problems will necessarily alter the relationship between what is and is not negotiable within the loan contract. Contracts between nations generally must take both international and domestic factors into account. For example, a loan agreement with Brazil must account both for the terms of the agreement and for the legal and economic climate of Brazil. The international factors are more negotiable

this process for three reasons.²⁰ First, renegotiation of public debt normally precedes, and provides a model for, renegotiation of private debt.²¹ Second, the recent decision by the Second Circuit in *Allied Bank International v. Banco Credito Agricola de Cartago* shows that rescheduling of private debt will be enforced against private creditors when the renegotiations of official debt are pursuant to national policy.²² Third, through the renegotiation of public debt, a pattern of norms for debt renegotiation emerges.

This Comment discusses the developing norms of international debt renegotiation and suggests changes by which debtors and creditors can reach mutually beneficial solutions. Part I describes the emerging norms in public debt renegotiation. First, the process of renegotiation is described by focusing on the group responsible for public debt renegoti-

than the domestic factors; it is easier to negotiate loan terms than to negotiate relevant Brazilian law. When state contracts are renegotiated, the matters that were previously nonnegotiable may become negotiable. For example, Brazil may be forced to change its domestic economic climate through an IMF stand-by arrangement, *see infra* notes 54-92 and accompanying text, before it can change the terms of its international loan agreements. In effect, the boundary between what is negotiable (i.e., purely international) and what is not negotiable (i.e., purely domestic) changes as the loan is renegotiated. Indeed, the political and economic factors that caused the debt renegotiation will lead to increased international attention to debt problems. Interview with Thierry Lauriol, Assistant Instructor, University of Paris XI, in San Francisco (May 25, 1984).

²⁰ Public debt, within the official renegotiation context, comprises mostly direct, bilateral government loans, and officially guaranteed suppliers' credits. C. HARDY, *supra* note 10, at 24. However, the division between public and private debt is blurred. For example, government guaranteed suppliers' credits begin as essentially private debts. The credits become public when they have fallen into arrears, and the private creditor is reimbursed for the insured portion of the debt by the relevant official export credit guaranteeing body. United Nations Conference on Trade and Development, Note by the UNCTAD Secretariat, Present Institutional Arrangements for Debt Renegotiation 1, U.N. Doc. TD/B/C.3/AC.8/13 (1975) [hereafter UNCTAD Institutional Arrangements].

²¹ INTERNATIONAL DEBT REPORT, *supra* note 3, at 57; *A Nightmare of Debt: A Survey of International Banking*, ECONOMIST, Mar. 20, 1982, at 1, 27; *see infra* notes 48-49 and accompanying text (private creditors should be granted no more favorable terms due to renegotiation than those accorded public creditors). For example, the 1976 renegotiation of Zaire's public debt agreed to treat official and private debt on an equal basis. Agreement Regarding the Consolidation and Rescheduling of Certain Debts, June 17, 1977, United States-Zaire, 28 U.S.T. 7593, T.I.A.S. No. 8731. Later private sector meetings concluded with a memorandum of understanding, similar to the Agreed Minutes of the Paris Club meetings. Aronson, *Politics of Private Bank Lending*, in PUBLIC DEBT AND THE LESS DEVELOPED COUNTRIES 291 (J. Aronson ed. 1979).

²² No. 83-7714 (2d Cir. Apr. 23, 1984) (available May 15, 1984, on LEXIS, Genfed library, Cir file), *affg* 566 F. Supp. 1440 (S.D.N.Y. 1983).

ation, the Paris Club. Second, the Comment analyzes the implementation of the Paris Club rescheduling terms in recent bilateral rescheduling agreements. Part II focuses on the International Monetary Fund (IMF) and its role in the renegotiation process. The operations of the Fund and the role of economic stabilization plans in the renegotiation process is described. Then, recent controversy concerning such plans and the possible adverse effect of the plans on eventual debt repayment is discussed. Part III describes international efforts to design an appropriate framework for public debt renegotiation. It concludes that Resolution 165 of the United Nations Conference on Trade and Development, a nonbinding resolution agreed to by both debtors and creditors, must be the starting point for reform of the present system. Using the Resolution as a basis for analysis, Part IV proposes guidelines for public renegotiation which could encourage an environment for international development.

I. NORMS OF INTERNATIONAL OFFICIAL DEBT RENEGOTIATION

The predominant sources to be used in determining the existence of an international law are the customary practices of nations and binding agreements between nations. Within the official debt renegotiation area, certain practices have become so routine that it can be argued that international norms have developed. These practices, and the rescheduling terms flowing from them, have also become memorialized within binding, bilateral agreements. This section describes the practices and binding terms of official debt renegotiation within the context of international law.

The accepted sources of international law are found in Article 38(1) of the Statute of the International Court of Justice.²³ Two of the most

²³ What constitutes international law is often an extremely difficult question. The United Nations, when designing the International Court of Justice, stated that treaties, custom, and generally recognized principles of law formed the basis of international jurisprudence:

- (a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- (b) international custom, as evidence of a general practice accepted as law;
- (c) the general principles of law recognized by civilized nations;
- (d) . . . judicial decisions and the teaching of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

U.N. CHARTER, STATUTE OF THE INTERNATIONAL COURT OF JUSTICE, art. 38. As stated in L. HENKIN, R. PUGH, O. SCHACTER & H. SMIT, *INTERNATIONAL LAW*:

important sources are (1) international custom, as evidence of a general practice accepted as law;²⁴ and (2) international conventions, such as treaties and international agreements.²⁵ Analysis of both general practices and international agreements shows that certain norms are emerging in official debt renegotiations.

The most pervasive practice of official debt rescheduling is the rene-

CASES AND MATERIALS 36 (1980):

Article 38(1) of the Statute of the International Court is regarded as the authoritative statement of the sources of international law. . . . [T]he first two sources — treaty and custom — are most important in practice. They are also generally regarded in doctrinal discussion and in judicial decisions as the “basic” sources on which the other sources depend, but this is by no means a universal proposition. . . . Whether article 38(1) is an exhaustive enumeration of sources is a debatable question raised especially by the apparent law-making role of international organization through their practices and decisions. Some international lawyers prefer to designate such practices and decisions as a new source, but, in the main, international lawyers and the courts tend to regard them (whether they are creative or evidentiary) as manifestations or derivatives of the other sources, particularly treaties and custom.

²⁴ Customary international law is an elusive concept. The United States Supreme Court, writing in 1820, suggested that evidence of a customary law “may be ascertained by consulting professedly on public law; or by the general usage and practices of nations.” *United States v. Smith*, 18 U.S. (5 Wheat.) 153, 160-61 (1820); *see also* *The Paquete Habana*, 175 U.S. 677, 700 (1900) (“Where there is no treaty and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations, and, as evidence of these, to the words of jurists and commentators . . .”); *Filartiga v. Pena-Irala*, 630 F.2d 876, 880 (2d Cir. 1980) (quoting *United States v. Smith*, 18 U.S. (5 Wheat.) at 160-61); Akehurst, *Custom as a Source of International Law*, 47 BRIT. Y.B. INT’L L. 1, 3 (1977) (force of law of an international practice is derived from general acceptance by community of nations that rule is one which ought to be observed). Custom is thus a concept which seeks to equate the general practices of nations with the force of law.

²⁵ Another important source of international law is the agreements by which nations bind themselves to perform certain acts. U.N. CHARTER, Statute of the International Court of Justice, art. 38(1)(a). Indeed, norms that form the basis of international law are often found in treaties and international agreements. Baxter, *Multilateral Treaties as Evidence of Customary International Law*, 41 BRIT. Y.B. INT’L L. 275 (1966); Jordan, *Creation of Customary Law by Way of Treaty*, JAG L. REV., Sept.-Oct. 1967, at 38. Jordan gives criteria for determining if custom has evolved from treaties: “Have similar problems been resolved in similar manners? How many states are parties to the treaties? Are the leading Powers parties thereto or do they concur in (or oppose) the principles contained therein? How far do the treaties spread over time and geography?” *Id.* at 41. Many of the renegotiation norms are repeatedly the basis of treaties between states. It can therefore be argued that these norms form a body of common practices among nations.

gotiation of official debt through the Paris Club,²⁶ the ad hoc, multilateral meetings at which official debt renegotiation occurs.²⁷ The Club is not a formal international organization per se — it has no express legal

²⁶ UNCTAD Institutional Arrangements, *supra* note 20, at 1; *International Debt: Hearings Before the Subcomm. on International Finance of the Senate Comm. on Banking, Housing and Urban Affairs*, 95th Cong., 1st Sess. 83 (1977) [hereafter *International Debt Hearings*]; INTERNATIONAL DEBT REPORT, *supra* note 3, at 57; P. DHONTE, CLOCKWORK DEBT 35-36 (1979); C. HARDY, *supra* note 10, at 23; M. SEIBER, *supra* note 2, at 65-66; Cizauskas, *International Debt Renegotiations: Lessons from the Past*, 5 WORLD DEV. 199, 201 (1979); Crowe, *International Public Lending and American Policy*, in DEBT AND THE LESS DEVELOPED COUNTRIES 40 (J. Aronson ed. 1979); Lewis, *How the Paris Club Deals with Debtors*, THE BANKER, Dec. 1983, at 67; McMullen, *supra* note 2, at 9; Wionczek, *supra* note 2, at 92; ECONOMIST, *supra* note 21, at 27; World Bank, International Monetary Fund, *Debt Rescheduling: What Does It Mean?*, FIN. & DEV., Sept. 1983, at 26.

As an alternative to the Paris Club, some countries, notably India and Pakistan, have renegotiated their debt through aid consortia sponsored by the World Bank, or as in the case of Turkey, an aid consortium sponsored by the OECD. Aid consortia are groups established for those countries receiving substantial external aid, as opposed to debt, from numerous sources. UNCTAD Institutional Arrangements, *supra* note 20, at 7; see also H. BITTERMANN, THE REFUNDING OF INTERNATIONAL DEBT 85-88 (1973) (comparison of Club reschedulings with aid consortium reschedulings). These groups, through major aid grantors and the debtor nation, recognize a substantial need for coordination among all parties. Further, the World Bank itself expects to provide financing for the debtor country's development program. UNCTAD Institutional Arrangements, *supra* note 20, at 7. It appears then, that aid consortia are used not only to renegotiate debt, but to solicit direct aid from creditor countries. See H. BITTERMANN, *supra*, at 88. The Paris Club stands in contrast. It is essentially a creditor's consortium making as few concessions to debtor problems as possible. Cizauskas, *supra*, at 201. However, one authority states that the framework and conduct of aid consortia debt renegotiations do not differ from those of the Paris Club. C. HARDY, *supra* note 10, at 23.

²⁷ UNCTAD Institutional Arrangements, *supra* note 20, at 1; P. DHONTE, *supra* note 26, at 35; C. HARDY, *supra* note 10, at 23; M. SEIBER, *supra* note 2, at 66; McMullen, *supra* note 2, at 9. One reason for the ad hoc short-term approach to renegotiations is found in the economic policies the debtor must agree to as a condition of renegotiation. One authority states:

[M]ost agreements . . . have been conditional on the prior implementation of remedial economic policies. In order to make that condition stick, the consolidation period has been defined restrictively, with full knowledge that further renegotiations would be necessary as it expired. Indeed, in many instances, there was an explicit or implicit willingness of creditors to reopen negotiations within a short time. This has been dubbed the "short leash" approach to debt relief, surely one of the more irritating features of the process for the borrowers.

P. DHONTE, *supra* note 26, at 37. *But cf.* UNCTAD Institutional Arrangements, *supra* note 20, at 4 (short-term nature reflects uncertainties involved in evaluating debtor nation's prospects and adequacy of renegotiation terms).

status.²⁸ The name derives from the usual meeting place of the Club, although official debt renegotiations have also occurred in London and the Hague.²⁹ The Club began in 1956, when Argentina requested a multilateral meeting to renegotiate its financial obligations.³⁰ Because of the ad hoc, confidential nature of the renegotiations, no extensive body of publicly available information about the Club's operations exists.³¹ Attendance is by invitation only, and is extended, presumably by the French Finance Ministry,³² to the major creditors of the debtor.³³ In addition, representatives from the IMF, the World Bank, the Organization for Economic Cooperation and Development (OECD), and relevant regional development banks attend as observers.³⁴ Non-OECD creditors, probable creditors, and private banks are not invited.³⁵

The procedures of the Club are informal, but complex. Meetings of the Club are convened in a state of emergency,³⁶ triggered when the

²⁸ Cizauskas, *supra* note 26, at 202; *ECONOMIST*, *supra* note 21, at 27.

²⁹ *ECONOMIST*, *supra* note 21, at 27; *cf.* UNCTAD Institutional Arrangements, *supra* note 20, at 1-2; M. SEIBER, *supra* note 2, at 65-66; Wionczek, *supra* note 2, at 92.

³⁰ P. DHONTE, *supra* note 26, at 35-36; C. HARDY, *supra* note 10, at 23.

³¹ Because there is no Paris Club code of procedure, C. HARDY, *supra* note 10, at 23, and because the meetings are secret, M. SEIBER, *supra* note 2, at 66, information is both difficult to obtain and extremely incomplete when found. For example, UNCTAD states:

Because of the confidential nature of discussions concerning debt rearrangement, and the ad hoc character of discussions within the various "Clubs," no extensive body of publicly available information exists on the operation of bodies within which debt renegotiation is discussed. . . . [T]he information which is available . . . is necessarily partial and incomplete.

UNCTAD Institutional Arrangements, *supra* note 20, at 1.

³² *Cf.* M. SEIBER, *supra* note 2, at 66 (debtors may apply to French Finance Ministry to convene Paris Club, and French Finance Minister chairs meetings); Crowe, *supra* note 26, at 40 (Paris Club meetings usually chaired by French Ministry of Finance).

³³ UNCTAD Institutional Arrangements, *supra* note 20, at 4; C. HARDY, *supra* note 10, at 23; Crowe, *supra* note 26, at 40.

³⁴ UNCTAD Institutional Arrangements, *supra* note 20, at 2. The staffs of the World Bank and the IMF not only attend as observers, but supply information, technical advice, and often materially helpful unofficial suggestions. Cizauskas, *supra* note 26, at 202. As a result of pressure by the UNCTAD Secretary-General, that organization is now invited to Club meetings, although some creditors, particularly the United States, are not pleased with the arrangement. M. SEIBER, *supra* note 2, at 67-68.

³⁵ C. HARDY, *supra* note 10, at 23.

³⁶ UNCTAD Institutional Arrangements, *supra* note 20, at 2; C. HARDY, *supra* note 10, at 23; Wionczek, *supra* note 2, at 92; *cf.* H. BITTERMANN, *supra* note 26, at

debtor has a deteriorating external payments problem (many times to the point of being in arrears) or has declared a moratorium on payments.³⁷ Thereafter, the debtor approaches either its major creditors, or the IMF, or the World Bank, to consult with the other major creditors as to the appropriateness of a multilateral meeting.³⁸ The French Finance Minister, as head of the Paris Club, then calls and chairs the meeting.³⁹ At the meeting, the participants evaluate the debtor's problem and future economic prospects. The Club then stages its first session, open only to creditors. The second session includes representative of the debtor and the IMF. At this session, the IMF presents an evaluation of the debtor's proposed economic stabilization policies. In the third session, the creditors meet to determine the extent of their offer of renegotiation terms to the debtor.⁴⁰ The results of this session form the basis of Agreed Minutes, which are signed by all participants of the meeting.⁴¹ Although Agreed Minutes are not legally binding, the terms are subsequently implemented in binding bilateral agreements.⁴²

86. See generally United Nations Conference on Trade and Development, Ad Hoc Group of Governmental Experts on Debt Problems of Developing Countries: Economic Developments Following Multinational Debt Renegotiations in Selected Developing Countries 2-7, U.N. Doc. TD/B/C.3/AC.8/9 (1974) (general economic developments preceding debt renegotiations) [hereafter UNCTAD Developments]; Wionczek, *supra* note 2, at 94 (common characteristics existing immediately before renegotiation).

³⁷ UNCTAD Institutional Arrangements, *supra* note 20, at 2; C. HARDY, *supra* note 10, at 23. Indeed, the United States will not participate in a Paris Club rescheduling unless it determines the debtor to be in a state of "imminent default." United States Department of State, Introduction to Paris Club Rescheduling (mimeograph available from United States Department of State) [hereafter U.S. Renegotiation Mimeo].

³⁸ UNCTAD Institutional Arrangements, *supra* note 20, at 2-3; Bee, *Lessons From Debt Reschedulings in the Past*, EUROMONEY, Apr. 1977, at 33-34; Lipson, *The IMF, Commercial Banks, and Third World Debts*, in DEBT AND THE LESS DEVELOPED COUNTRIES 324 (J. Aronson ed. 1979); *Argentina Bypassing I.M.F. Staff*, N.Y. Times, June 11, 1984, at 25, col. 6.

³⁹ M. SEIBER, *supra* note 2, at 66.

⁴⁰ UNCTAD Institutional Arrangements, *supra* note 20, at 3; P. DHONTE, *supra* note 26, at 36; M. SEIBER, *supra* note 2, at 66.

⁴¹ The agreed Minutes include the terms of the renegotiation, and general statements of what policy measures the debtor will take. E.g., UNCTAD Institutional Arrangements, *supra* note 20, at 3.

⁴² P. DHONTE, *supra* note 26, at 37; Crowe, *supra* note 26, at 41; Lipson, *supra* note 38, at 325; Wionczek, *supra* note 2, at 93. Wionczek refers to Agreed Minutes as "recommendations made ad referendum to the participants." *Id.*

In Schacter, *The Twilight Existence of Nonbinding International Agreements*, 71 AM. J. INT'L L. 303 (1977), the author notes two important aspects of nonbinding international agreements. First, the commitment of the state to the agreement is internalized through instructions to the domestic administration to act in accordance with

The ultimate rescheduling terms of Paris Club renegotiations have remained remarkably constant. The actual amount of the outstanding debt rescheduled is determined by calculating the amount in arrears and the amount of payments over succeeding years, consolidating these amounts, and rescheduling between eighty and ninety percent of the consolidated amount.⁴³ The duration of the repayment period, including a prepayment grace period, varies from two and one-half to seventeen years.⁴⁴ Interest rates for moratorium debts are set at widely varying rates,⁴⁵ because the interest rates are bilaterally determined and remain close to market rates.⁴⁶

the agreement. For example, each creditor in a Paris Club agreement instructs its administration to enter into a subsequent binding, bilateral agreement with the debtor. Second, the state's commitment to the agreement is externalized by allowing each state to offer representations or criticism regarding the behavior of commitment of the other states privy to the agreement. Allowing such criticism and representations reinforces the original commitment to the agreement. For example, Paris Club members often require the parties to treat each other according to the dictates of the Club agreement. Failure to do so could presumably lead to international protest regarding the actions of the deviating party. Such protest would act to reinforce the original commitment.

⁴³ The consolidation amount can be as low as 70%. See Agreement Regarding the Consolidation and Rescheduling of Certain Debts, Feb. 6, 1974, United States-Chile, 25 U.S.T. 1712, T.I.A.S. No. 7908, at art. II [hereafter Chile Agreement of Feb. 1974]; Agreement Regarding the Consolidation and Rescheduling of Certain Debts, July 3, 1975, United States-Chile, 28 U.S.T. 5587, T.I.A.S. No. 8649, art II [hereafter Chile Agreement of 1975]. The consolidation amount can be as high as 90%. See Agreement Regarding the Consolidation and Rescheduling of Certain Debts, Aug. 27, 1981, United States-Poland, T.I.A.S. No. 10255 [hereafter Poland Agreement]; Agreement Regarding the Consolidation and Rescheduling of Certain Debts, May 7, 1981, United States-Liberia, T.I.A.S. No. 10156, [hereafter Liberia Agreement]; Agreement Regarding the Consolidation and Rescheduling of Certain Debts, Oct. 24, 1980, United States-Turkey, T.I.A.S. No. 9909 [hereafter Turkey Agreement of 1980]; Agreement Regarding the Consolidation and Rescheduling of Certain Debts, July 28, 1980, United States-Zaire, T.I.A.S. No. 9907 [hereafter Zaire Agreement]; Agreement Regarding the Consolidation and Rescheduling of Certain Debts, July 5, 1979, United States-Peru, 32 U.S.T. 2, T.I.A.S. No. 9698 [hereafter Peru Agreement].

The range of the consolidation period is probably due to the terms accorded debtors who are forced to undergo subsequent renegotiations. C. HARDY, *supra* note 10, at 24. Compare Chile Agreement of Feb. 1974, *supra*, (consolidation period of one year, one month) with Agreement Regarding the Consolidation and Rescheduling of Certain Debts, June 17, 1974, United States-Chile, 25 U.S.T. 2683, T.I.A.S. No. 7940 (consolidation period of 2 years) [hereafter Chile Agreement of June 1974].

⁴⁴ C. HARDY, *supra* note 10, at 24-25. Pre-1975, the average repayment period was eight years. Since 1975, the period has increased. *Id.*

⁴⁵ *Id.* at 25.

⁴⁶ UNCTAD Secretariat, Debt Problems of Developing Countries 28, U.N. Doc. TD/B/C.3/AC.8/2 (1974) [hereafter Debt Problems]; C. HARDY, *supra* note 10, at

Although Paris Club renegotiations involve governments, and consider only debts between governments,⁴⁷ the renegotiations attempt to define the terms upon which other public and private debt will be re-scheduled. Usually, the debtor promises that it will not agree to less favorable terms with public creditors who were not represented at the Club renegotiation than the terms accorded the public creditors who attended the Club renegotiation.⁴⁸ For example, the debtor could not demand a lower interest rate of a public creditor who did not attend the Club renegotiation than the rate accorded a Club participant. Also, recent treaties which include the United States as a signatory require the debtor to reschedule debt with private creditors, such as commercial banks, on the same terms as those reached in the Paris Club.⁴⁹

25.

⁴⁷ C. HARDY, *supra* note 10, at 24. Debt rescheduled at these meetings is official debt, usually publicly guaranteed suppliers credits and bilateral government loans. *Id.* However, private debts, in the form of unguaranteed suppliers' credits, have been subject to renegotiation, although usually not for the country's first debt renegotiation.

⁴⁸ Liberia Agreement, *supra* note 43, at Agreed Minutes; Agreement Regarding the Consolidation and Rescheduling of Certain Debts, May 17, 1980, United States-Sudan, T.I.A.S. No. 9952, at art. IV [hereafter Sudan Agreement]; Zaire Agreement, *supra* note 43, at art. III; Agreement on the Consolidation and Rescheduling of Certain Debts, Mar. 28, 1980, United States-Togo, Mar. 28, 1980, 32 U.S.T. 933, T.I.A.S. No. 9740 [hereafter Togo Agreement]; Peru Agreement, *supra* note 43, at art. III.

Aid consortia use the same principle. *See* Turkey Agreement of 1980, *supra* note 43, at Agreed Minute; Agreement Regarding the Consolidation and Rescheduling of Certain Debts, Dec. 11, 1979, United States-Turkey, T.I.A.S. No. 9783 [hereafter Turkey Agreement of 1979]; Agreement Regarding the Consolidation and Rescheduling of Certain Debts, Sept. 21, 1978, United States-Turkey, 30 U.S.T. 2723, T.I.A.S. No. 9361 [hereafter Turkey Agreement of 1978]; Agreement Regarding the Consolidation and Rescheduling of Certain Debts, Mar. 4, 1976, United States-Pakistan, 27 U.S.T. 4231, T.I.A.S. No. 8447 [hereafter Pakistan Agreement]; Agreement Regarding the Consolidation and Rescheduling of Certain Debts, May 2, 1975, United States-India, 26 U.S.T. 951, T.I.A.S. No. 8082 [hereafter India Agreement of 1975].

This principle is known as nondiscrimination, and is included within the bilateral agreements through what is termed a most favored nation clause. Crowe, *supra* note 26, at 40. The principle of nondiscrimination follows from the idea that official creditors desire all creditors to share equally in the burden caused by the debtor's financial problems. U.S. Renegotiation Mimeo, *supra* note 37, at 1. Paris Club creditors, through nondiscrimination, attempt to force nonparticipating official creditors and private creditors to share the load in solving the debtor's economic problems. To ensure that debtors do not violate this agreement, Paris Club creditors threaten to withhold possible follow-up relief to the debtor if the debtor doesn't comply. *Id.*

⁴⁹ *See* Liberia Agreement, *supra* note 43, at art. III; Sudan Agreement, *supra* note 48, at art. IV; Turkey Agreement of 1980, *supra* note 43, at Agreed Minutes; Zaire Agreement, *supra* note 43, at art. IV; Togo Agreement, *supra* note 48, at art. IV; Peru Agreement, *supra* note 43, at art. III.

Although Club procedures and terms have remained relatively constant, controversy exists as to whether the process is satisfactory. Debtor countries are particularly troubled by IMF economic stabilization plans,⁵⁰ and by the ad hoc nature of the proceedings.⁵¹ Further, repeated debt renegotiations for a given nation imply that the Paris Club process may be inefficient in some respect.⁵² To determine if, and how, the Club process is to be improved, it is necessary to analyze the role of the IMF, and the problems with the present renegotiation framework.

II. THE IMF AND OFFICIAL DEBT RENEGOTIATIONS

The IMF plays a crucial role in debt renegotiations. During the Paris Club meetings, the IMF provides information and advice to the

Because of these conditions, private creditors that are not directly involved in Club meetings may be directly affected by the results of Club renegotiations. UNCTAD Institutional Arrangements, *supra* note 20, at 4. This requirement may also be the reason that the usual pattern in debt reschedulings is to have official debt renegotiated under the auspices of the Club before commercial debt is rescheduled. INTERNATIONAL DEBT REPORT, *supra* note 3, at 57. Thus, the distinction between a purely private and a purely public renegotiation is becoming increasingly unclear.

However, the effects of official renegotiations on private renegotiations should not be overstated.

To the extent that these clauses involve *pari passu* treatment in respect of security, they are common and usually easy to get, at least in the case of external debt. To the extent that they refer to interest rates and similar terms, they are less common, but I do not think that this is because the average debtor nation regards them as an affront to its sovereignty but merely as a matter of commercial bargaining.

Letter from C. Thorne Corse, Senior Vice President and Assistant General Counsel, Bank of America, to author (Mar. 26, 1984) (copy on file at U.C. Davis Law Review office). In addition, according to Richard N. Cooper, Under-Secretary of State for Economic Affairs, creditor governments have no legal authority to bind private creditors. *International Debt Hearings*, *supra* note 26, at 66. It is no wonder that no government has yet brought suit against a bank for receiving better terms than the government did. *ECONOMIST*, *supra* note 21, at 28.

⁵⁰ See *infra* notes 80-90 and accompanying text.

⁵¹ See *infra* notes 95-103 and accompanying text.

⁵² For example, Zaire has undergone five debt reschedulings since 1975, Chile has undergone four since 1965, and Turkey has undergone five since 1959. C. HARDY, *supra* note 10, at 2. While there is a commonly held view that LDC debt problems are due to poor economic management, the repetitive nature of renegotiations indicates that view is overly simplistic. Instead, Hardy concludes that the short-term approach adopted by creditors leads to an inefficient repetition of LDC debt reschedulings. *Id.* But see Crowe, *supra* note 26, at 44 (repeated renegotiations reflect continuance of economic problems that originally forced debt relief).

participants.⁵³ Its most crucial task, however, is completed prior to the actual renegotiation, when a stand-by arrangement is reached between the debtor and the IMF.⁵⁴ These arrangements provide creditors with a degree of confidence that the debtor is attempting to correct the imbalance within its economy.⁵⁵ Such arrangements are becoming known as "good housekeeping seals of approval,"⁵⁶ and are prerequisites to debt rescheduling and access to private capital resources.⁵⁷ The arrangements are designed to encourage short-term adjustment, although development-oriented criteria may be taken into account. Because the debtor must often adopt harsh domestic economic policies in order to reach a stand-by arrangement, the arrangements have caused considerable controversy. In addition, stand-by arrangements affect debt renegotiation in ways that may be counterproductive to eventual debt repayment, and may also be inconsistent with the best framework for debt renegotiation.

The purpose of the IMF is to promote international monetary stabil-

⁵³ Crowe, *supra* note 26, at 42; *ECONOMIST*, *supra* note 21, at 42; U.S. Renegotiation Mimeo, *supra* note 37, at 1; *see also supra* note 34.

⁵⁴ *See* Sudan Agreement, *supra* note 48; Chile Agreement of June 1974, *supra* note 43, at Agreed Minutes; Zaire Agreement, *supra* note 43, at Annex A; Turkey Agreement of 1980, *supra* note 43, at Annex A; Liberia Agreement, *supra* note 43, at Annex D; UNCTAD Institutional Arrangements, *supra* note 20, at 4; Debt Problems, *supra* note 46; U.S. Renegotiation Mimeo, *supra* note 37, at 1; C. HARDY, *supra* note 10, at 34; *ECONOMIST*, *supra* note 21, at 41.

⁵⁵ *ECONOMIST*, *supra* note 21, at 41; *Argentina Bypassing I.M.F. Staff*, N.Y. Times, June 11, at 25, col. 6.

⁵⁶ Comment by Richard N. Cooper, Under Secretary for Economic Affairs, Department of State, in SENATE COMM. ON FOREIGN RELATIONS, BRETTON WOODS AGREEMENTS ACT OF 1977, S. REP. NO. 603, 95th Cong., 1st Sess.

⁵⁷ According to Dr. William R. Cline, senior fellow of the Brookings Institution, "the most important thing to recognize about the policies is that they make it possible for the IMF to grant its seal of approval to a country, thereby unlocking the much larger lending resources of the international banking community." *To amend the Bretton Woods Agreement Act: Hearings Before the House Subcomm. on International Trade, Investment and Monetary Policy of the Comm. on Banking, Finance and Urban Affairs*, 96th Cong., 2d Sess. 19 (1980) [hereafter *Bretton Woods Hearings*]. *See generally* J. GOLD, STAND-BY ARRANGEMENTS (1970); Schumacher, *View From Argentina: Righteous Debt Battle*, N.Y. Times, June 13, 1984, at 29, col. 1.

Indeed, the private sector attempts to require debtor adherence with IMF policies as a condition of private rescheduling. "The private lending community . . . attempt[s] to 'piggy back' on the IMF, that is, to make compliance with IMF requirements a condition to the private sector restructuring." Letter from C. Thorne Corse, Senior Vice President and Assistant General Counsel, Bank of America, to author (Mar. 26, 1984) (copy on file at U.C. Davis Law Review office).

ity.⁵⁸ One method is to allow member nations to draw on the resources of the IMF to correct maladjustments in their balance of payments.⁵⁹ Fund resources are comprised of a subscription paid by members, one-fourth of which is paid in gold, and the remainder in the member's currency.⁶⁰ A nation may draw on resources equal to the amount of gold it has paid on an essentially unconditional basis.⁶¹ Any additional draw on Fund resources, often referred to as a stand-by arrangement, is justified only to stabilize the member's currency and balance of payments.⁶² Thus, the focus of the IMF is primarily on monetary adjustment;⁶³ the IMF is not a development organization.⁶⁴

⁵⁸ Articles of Agreement of the International Monetary Fund, Dec. 27, 1945, 60 Stat. 1401, T.I.A.S. No. 1501, 2 U.N.T.S. 185, *amended in* Amendment of Articles of Agreement of the International Monetary Fund, May 31, 1968, 20 U.S.T. 2775, T.I.A.S. No. 9748, *and amended effective* Apr. 1, 1978 [hereafter IMF Articles of Agreement]. For a general survey of the Fund, see J. FLEMING, *THE INTERNATIONAL MONETARY FUND, ITS FORM AND FUNCTION* (1964); J. GOLD, *THE INTERNATIONAL MONETARY FUND AND INTERNATIONAL LAW* (1965).

⁵⁹ IMF Articles of Agreement, *supra* note 58, at art. I(v). Balance of payments is defined as the difference between a nation's incoming receipts and outgoing payments. R. DORNBUSH & S. FISHER, *MACROECONOMICS* 582 (1978). Balance of payments fall into three general categories: transfer payments (such as foreign aid), capital transactions, and exchanges of goods and services. *See generally* P. HOST-MADSEN, *BALANCE OF PAYMENTS, ITS MEANING AND USES* (1967).

⁶⁰ IMF Articles of Agreement, *supra* note 58, at art. III, § 3; *see also* Gold, *Use of the International Monetary Fund's Resources: "Conditionality" and "Unconditionality" as Legal Categories*, 6 J. INT'L LAW & ECON. 1, 2 (1971) [hereafter Gold, "Conditionality" and "Unconditionality"]. The IMF may also supplement their resources through borrowing. Gold, ". . . To Contribute Thereby To . . . Development . . .": *Aspects of the Relations of the International Monetary Fund With Its Developing Members*, 10 COLUM. J. TRANSNAT'L L. 267, 268 (1971) [hereafter Gold, *IMF Development Aspects*]; *see also* Note, *Responding to the Call for Order in International Finance: Cooperation between the International Monetary Fund and Commercial Banks*, 18 VA. J. INT'L L. 445, 466-70 (1978) (suggesting greater IMF use of private financial markets).

⁶¹ IMF Articles of Agreement, *supra* note 58, at art. V, § 3(a); Gold, "Conditionality" and "Unconditionality", *supra* note 60, at 6-7.

⁶² Anthony Solomon, Under Secretary of the Treasury for Monetary Affairs, has stated:

[T]he IMF, oftentimes alone, tries to help by providing resources to maintain the economy and balance of payments temporarily. . . . To assure repayment, and the most beneficial results for the country, the Fund requires that the [debtor country] undertake appropriate measures to solve its balance of payments problem.

Bretton Woods Hearings, *supra* note 57, at 19.

⁶³ Bird, *The IMF As a Source of International Finance for Developing Countries: A Critical Appraisal*, 60 INDIAN J. ECON. 393, 427 (1980).

Access to IMF funds through the arrangements is only possible when the member designs domestic policies that will stabilize its currency and balance of payments.⁶⁵ These policies are designed by the debtor, with IMF assistance, and often include devaluing the debtor's currency and decreasing domestic spending by reducing social programs.⁶⁶ The policies are based on the need for the member to adjust its balance of payments position, and thus maintain a credible value for its currency within the international economic system.⁶⁷

The policies are commonly referred to as IMF conditionality.⁶⁸ According to Joseph Gold, former General Counsel and Director of the Legal Department of the IMF, conditionality is not a term of art,⁶⁹ but is "a concept that embraces all of the policies that the Fund takes into account in determining whether the use of its resources is likely to be in accordance with the provisions and policies of the Fund."⁷⁰ Thus, members can draw on the fund only when their use of the resources promotes international monetary stability.

Although the primary focus of stand-by arrangements is on short-term adjustment, development criteria are considered. First, the IMF

⁶⁴ *Id.*; Gold, *IMF Development Aspects*, *supra* note 60, at 267.

⁶⁵ See *supra* note 62 and accompanying text; see also Guitian, *Fund Conditionality and the International Adjustment Process: The Early Period, 1950-70*, FIN. & DEV., Dec. 1980, at 24; cf. Gold, "Conditionality" and "Unconditionality", *supra* note 60, at 8 (use of conditionality encourages monetary stability). See generally J. GOLD, THE LEGAL CHARACTER OF THE FUND'S STAND-BY ARRANGEMENTS AND WHY IT MATTERS (IMF Pamphlet No. 35, 1980) (legal characteristics of stand-by arrangements discussed by former IMF general counsel) [hereafter J. GOLD, LEGAL CHARACTER OF STAND-BY ARRANGEMENTS].

⁶⁶ *Bretton Woods Hearings*, *supra* note 57, at 51; UNCTAD Developments, *supra* note 36, at 18.

⁶⁷ Guitian, *supra* note 65, at 24-25.

⁶⁸ Gold, "Conditionality" and "Unconditionality", *supra* note 60, at 24. Stand-by arrangements are not agreements, but decisions of the Fund to allow the use of its resources. If the fund cancels an arrangement, it is because the use of the resources is improper, not because there has been a breach of an agreement. Therefore, conditionality should not be taken to mean the conditions for which the Fund might rescind an arrangement. *Id.* at 25.

⁶⁹ Gold, *IMF Development Aspects*, *supra* note 60, at 1.

⁷⁰ *Id.* at 24. For a thorough discussion of IMF conditionality, see J. GOLD, CONDITIONALITY (IMF Pamphlet No. 31, 1979); see also J. GOLD, LEGAL CHARACTER OF STAND-BY ARRANGEMENTS, *supra* note 65 (explaining the legal nature of conditionality in stand-by arrangements).

The popular press has often referred to the policies underlying IMF conditionality as "austerity measures" because of their effects on a debtor nation's economy. See *IMF Becomes Leader in Rescuing Debtor Lands, But Its Austerity Measures Are Called Too Rigid*, Wall St. J., Jan. 11, 1983, at 56, col. 1.

argues that development requires short-term adjustment, and that such adjustment is not at the expense of development.⁷¹ Two IMF studies indicate that balance of payments adjustment is not achieved at the expense of economic growth.⁷² Indeed, another IMF study indicates that when a stand-by arrangement is followed by a debt renegotiation, the debtor's balance of payments position improves.⁷³ Second, in a decision on March 2, 1979, the IMF required itself to pay "due regard" to the political and social objectives of its developing members when designing stand-by arrangements.⁷⁴ Thus, the IMF must attempt to balance short-term adjustment with long-term development prospects.⁷⁵ However, it need not underwrite a particular level of growth for its members.⁷⁶

The primary importance of stand-by arrangements to debt renegotiation lies not in the debtor's access to IMF resources, but in the policies the debtor agrees to meet. These policies provide creditors with confidence that the debtor is attempting to correct its short-term economic problems.⁷⁷ IMF conditionality is so crucial to debt renegotiation that the debtor may be forced to agree to similar policies even if it does not have a stand-by arrangement with the IMF.⁷⁸ In addition, allowing the

⁷¹ Guitian, *supra* note 65, at 24. The author, an IMF economist, argues that adjustment and development finance are mutually supporting strategies. This is because lack of adjustment would presumably result in a need to continually finance imbalances, an expensive and untenable process. *Id.*

⁷² *Cf.* IMF, *WORLD ECONOMIC OUTLOOK* 140 (1982) (countries with low or controlled inflation have better growth rates than countries with high inflation); Donovan, *Macroeconomic Performance and Adjustment Under Fund-Supported Programs: The Experience of the Seventies*, 29 *IMF STAFF PAPERS* 171 (1982) (LDC's with IMF programs had significantly greater improvement in deficits and better results in reducing inflation than LDC's without IMF assistance).

⁷³ Crowe, *supra* note 26, at 43 ("in about four-fifths of the cases in which stand-by arrangements were associated with debt renegotiations, there was an improvement in the overall balance of payments, performance, while in about two-thirds of the cases, the current account performance improved") (citing a Sept. 1976 IMF study entitled "Avoidance and Resolution of Debt Servicing Difficulties").

⁷⁴ "In helping members to devise adjustment programs, the Fund will pay due regard to the domestic social and political objectives, the economic priorities and the circumstances of members, including the causes of their balance of payments problems." Decision No. 6056-(79/38), in 1979 IMF Annual Report 136, *reprinted in* J. GOLD, *CONDITIONALITY* § 22 (IMF Pamphlet No. 31, 1979).

⁷⁵ Pirzio-Biroli, *Making Sense of the IMF Conditionality Debate*, 17 *J. WORLD TRADE* L. 115, 140 (1983).

⁷⁶ J. GOLD, *CONDITIONALITY* 23 (1979) (IMF Pamphlet No. 31).

⁷⁷ *See supra* note 57 and accompanying text.

⁷⁸ UNCTAD Institutional Arrangements, *supra* note 20, at 4. For example,

IMF and the debtor to design policies removes this politically difficult process from the Paris Club renegotiation.⁷⁹

Although it is crucial for the debtor to reach a stand-by arrangement with the IMF to encourage a successful renegotiation, IMF conditionality has been extensively criticized.⁸⁰ One study argues that IMF programs have been largely unsuccessful in adjusting balance of payments difficulties.⁸¹ Another study indicates that IMF conditionality promotes international stability only at the expense of debtor domestic stability.⁸² Other authorities criticize the arrangements because the IMF focuses on short-term adjustment at the expense of long-term development.⁸³ For example, in 1977, Jamaica and the IMF reached a stand-by arrangement on the condition that the country's currency be devalued, wages reduced, credit tightened, and social programs curtailed.⁸⁴ Soon thereafter, unemployment rose to twenty-five percent. In addition, the prices of essential imports, such as food, petroleum, and capital goods,

UNCTAD reports: "In one case where a Stand-by Arrangement was not signed, the creditors insisted that policy goals tantamount to Stand-by provisions should be written into the . . . Minutes." *Id.*; see also Chile Agreement of Feb. 1974, *supra* note 43 (Chile designed its own alternative policies).

⁷⁹ U.S. Renegotiation Mimeo, *supra* note 37, at 1-2.

⁸⁰ See, e.g., Gerster, *The IMF and Basic Needs Conditionality*, 16 J. WORLD TRADE L. 497 (1982) (reform conditionality to focus on basic needs; includes bibliography); Knieper, *The Conditioning of National Policy-Making by International Law: The Stand-by Arrangements of the International Monetary Fund*, 11 INT'L J. SOC. L. 41 (1983) (IMF conditionality fosters class subjugation under inhuman and unsocial conditions). For an excellent summary of the conditionality debate, see Pirzio-Biroli, *supra* note 75.

⁸¹ Reichmann & Stillson, *Experience With Programs of Balance of Payments Adjustment: Stand-By Arrangements in the Upper Credit Branches 1963-72*, 25 IMF STAFF PAPERS 293 (1978) (less than 24% of stand-by arrangements have, to a reasonable degree of statistical significance, improved LDC's balance of payments position).

⁸² Skogstad & Cebula, *A Note on the Domestic Monetary Policy Conditions of IMF Stand-By Assistance*, 60 INDIAN J. ECON. 109 (1979) (mathematical model of effect of IMF monetary policy on hypothetical LDC economy).

⁸³ According to United States Secretary of State George Schultz, IMF programs are not helping developing nations expand their economies. *IMF Becomes Leader in Rescuing Debtor Lands, But Its Austerity Measures Are Called Too Rigid*, Wall St. J., Jan. 11, 1983, at 56, col. 1. Mahbub ul-Haq, Pakistan's top planning official, complains that the IMF's actions do not give "full credit" to an LDC's need for time to repair its economy. *Id.* C. Fred Bergsten, Director of the Institute for International Economics, states: "International organizations that are still counseling that the dominant objectives should be to fight inflation . . . are still fighting the last war." *Id.*

⁸⁴ *Bretton Woods Hearings*, *supra* note 57, at 51. While Jamaica's arrangement with the IMF was not made pursuant to a renegotiation, the nation was forced to turn to the IMF after its private creditors refused to renegotiate its debt. *Id.*

drastically increased. By 1979, despite the arrangement, or perhaps because of it, malnutrition rose, while economic growth declined for the fifth straight year.⁸⁵ Turkey and Peru have had experiences similar to that of Jamaica.⁸⁶

Critics of IMF conditionality also assert that the internal political ramifications of the policies can be even more problematic than the detrimental economic effects.⁸⁷ For example, in Egypt, compliance with a stand-by arrangement led to widespread rioting.⁸⁸ In Latin America, Brazilian workers protested IMF-sponsored austerity measures, while Argentine nationalists accused the IMF of stealing the country's sovereignty.⁸⁹ Further, Mexico's Finance Minister has warned that the continuance of a domestic recession caused by compliance with an IMF stand-by arrangement would lead to social and political problems with "international repercussions."⁹⁰

The problems associated with IMF conditionality affect debt renegotiation in three ways. First, when stand-by arrangements have a recessionary effect on the debtor's economy, the debtor's ability to generate funds to repay its renegotiated debt may be severely hampered.⁹¹ Sec-

⁸⁵ *Id.*

⁸⁶ *Id.* at 52-53. For example, in Turkey, IMF-imposed measures have led to a 78% devaluation of the lira, steep increases in the price of gasoline, fertilizer, and other products, and a sharp decline in average wages. *Id.* at 52. In Peru, IMF measures have led to a 50% reduction in average real wages and widespread unemployment. Bishop Dammert of Cajamarca, when discussing the situation in Peru, stated: "The demands of the International Monetary Fund . . . have produced hunger, malnutrition of children, sickness, scarcity of work and education, in one word — misery — for numerous Peruvians." *Id.* at 88.

⁸⁷ Riding, *The New Crises for Latin Debt*, N.Y. Times, Mar. 11, 1984, at F1, col. 2; *Politics of Nations Are Intruding in Arena of International Debt*, Wall St. J., Oct. 7, 1983, at 1, col. 1.

⁸⁸ INTERNATIONAL DEBT REPORT, *supra* note 3, at 66-67.

⁸⁹ *Politics of Nations Are Intruding in Arena of International Debt*, Wall St. J., Oct. 7, 1983, at 1, col. 1; *see also* Schumacher, *View From Argentina: Righteous Debt Battle*, N.Y. Times, June 13, 1984, at 29, col. 1 (Argentina determined to restore economy on the nation's own terms); *Argentina Bypassing I.M.F. Staff*, N.Y. Times, June 11, 1984, at 25, col. 6 (Argentina states that the I.M.F.'s demands are both politically and economically unrealistic).

⁹⁰ *IMF Becomes Leader in Rescuing Debtor Lands, But Its Austerity Measures Are Called Too Rigid*, Wall St. J., Jan. 11, 1983, at 56, col. 1.

⁹¹ For example, the IMF austerity measures followed by Brazil and Mexico have eroded their capacity to meet future debt obligations. In addition, Chile's recent inability to conform to the terms of its stand-by arrangement with the IMF may force the IMF to back out of the country. This move could make Chile's ability to renegotiate its debt extremely arduous. Further, the country is unable to meet its obligations to foreign creditors because of a lack of foreign exchange. Wall St. J., Mar. 18, 1983, at 32, col.

ond, when the debtor's payment problem is due to structural and long-term development problems, stand-by arrangements should reflect a long-term perspective, especially in a context of renegotiating development-oriented debt.⁹² Third, when the stand-by arrangement is a seal of approval for a debt renegotiation, the focus of the stand-by arrangement must be consistent with the focus of the institution responsible for debt renegotiation. An ad hoc approach to debt rescheduling would imply a short-term adjustment perspective to the stand-by arrangement. However, it is far from clear whether such an institutional approach is adequate.

The IMF is the organization responsible for international monetary stability. It plays a central role within debt renegotiation by attempting to maintain a credible value for the debtor's currency. Unfortunately, the mechanism adopted by the IMF to ensure monetary stability — conditionality — has caused extensive controversy. Arguably, conditionality may be counterproductive to debt repayment. To make stand-by arrangements less counterproductive, the focus of conditionality must be consistent with the debtor's economic problems and the institutional framework responsible for official debt renegotiation.

III. THE DESIGN OF AN APPROPRIATE FRAMEWORK FOR OFFICIAL DEBT RENEGOTIATION

The ad hoc nature of Club reschedulings is a point of contention between creditors and debtors.⁹³ Creditors have sought to maintain the ad hoc character of debt renegotiations on the premise that debt difficulties are short-term in nature.⁹⁴ In contrast, debtors feel that official debt renegotiations are arbitrary, inequitable, and reflective of creditor interests.⁹⁵ This section explores the problems with the present institutional framework, and describes international efforts to reform the official debt renegotiation process. It concludes that Resolution 165 of the United Nations Conference on Trade and Development (UNCTAD)

3; *see also* Debt Problems, *supra* note 46, at 23. However, it is not unusual for the policies to change *ex post facto*. UNCTAD Developments, *supra* note 36, at 18; N.Y. Times, Nov. 19, 1983, at 33, col. 6 (target inflation rate for Brazilian stand-by arrangement eased by IMF).

⁹² UNCTAD Developments, *supra* note 36, at 19.

⁹³ M. SEIBER, *supra* note 2, at 125; Crowe, *supra* note 26, at 44-45.

⁹⁴ M. SEIBER, *supra* note 2, at 66-67; Wionczek, *supra* note 2, at 96-97. *But cf.* H. BITTERMANN, *supra* note 26, at 85 (multilateral consolidations advantageous to debtor countries).

⁹⁵ M. SEIBER, *supra* note 2, at 125; Crowe, *supra* note 26, at 44-45; Wionczek, *supra* note 2, at 97.

should be used as the basis for a proper renegotiation framework.

Although creditors have sought to maintain the short-term perspective of the Paris Club, this perspective may lead to unproductive results. According to a study performed by UNCTAD, the conditions which led to the necessity to reschedule debt were not, in most instances, eliminated through the renegotiation.⁹⁶ For example, the rates of growth of gross national product and capital formation in Brazil, Chile, and Ghana were actually lower following renegotiation of their debt during the mid-1960's.⁹⁷ This short-term approach has led to repeated reschedulings⁹⁸ and a failure to provide an adequate basis for development.⁹⁹ Only when the rescheduling took account of the long-term nature of the problem, as in the Indonesian renegotiation,¹⁰⁰ was adequate development encouraged.¹⁰¹

The ad hoc nature of the Club is also frustrating to debtors because it allows political considerations to color a primarily financial process. For example, the renegotiation terms accorded Indonesia in 1970 did not reflect the cautious and essentially commercial approach accorded Ghana in the same year. The terms granted Indonesia (rescheduling of all previous debts, stretched over a thirty year period at no interest) were much more favorable than those granted Ghana (rescheduling of the debts of the previous two years, at variable interest rates). In part, the Indonesian terms were due to the political reorientation of that country toward the capitalist bloc after a coup in the 1960's.¹⁰² Such

⁹⁶ UNCTAD Developments, *supra* note 36, at 19. The report states: "In most instances, however, repeated reschedulings of relatively small amounts and/or at short consolidation and repayment periods have failed to provide an adequate basis on which the debtor's long-term development programme could proceed."

⁹⁷ *Id.* at 9-10.

⁹⁸ *Id.* at 19; *see supra* note 52 and accompanying text.

⁹⁹ UNCTAD Developments, *supra* note 36, at 19. Debt Problems, *supra* note 46, at 28-29, states:

On the whole, the "Paris Club" appears to regard debt relief as a form of medium-term balance-of-payments support designed to help the debtor country to undertake the requisite stabilization measures and resume its debt payments.

. . . .
A notable shortcoming of most multilateral debt renegotiations is their failure to consider explicitly the question of the assistance required to attain minimum development objectives.

¹⁰⁰ UNCTAD Developments, *supra* note 36, at 19.

¹⁰¹ The rate of growth of Indonesian gross national product increased from .9% in the pre-renegotiation period to 5.9% in the post-renegotiation period. The growth rate of capital formation also increased from negative 5.1% to positive 12%. *Id.*

¹⁰² C. HARDY, *supra* note 10, at 31; Cizauskas, *supra* note 26, at 204-05. Cizauskas

political practices have led debtors to argue in favor of an organized renegotiation system that they could continually consult to find appropriate solutions.¹⁰³ Instead, they face a renegotiation mechanism triggered only by financial emergencies, which then reschedules debt on an ad hoc basis. These frustrations have led debtors to request international efforts to redesign the official debt renegotiation process.

The first international attempt to formulate debt renegotiation policies was the Conference on International Economic Cooperation in Paris in 1977-78.¹⁰⁴ The conference failed to agree on recommendations regarding external debt, but did clarify the positions of creditors and debtors on official debt renegotiation. Creditors reiterated their view of the short-term nature of official debt renegotiation, the importance of IMF stand-by arrangements, the principle of nondiscrimination of creditors,¹⁰⁵ and the need to take a debtor's development prospects into account.¹⁰⁶ LDC's proposed that renegotiations commence before any payment emergency arose, that renegotiation be specifically based on bringing the debtor back to its development path, and that a permanent institution be designed for the renegotiation of official debt.¹⁰⁷

In the late 1970's, it appeared that creditors and debtors had reached agreement on a renegotiation framework by passing UNCTAD Resolution 165.¹⁰⁸ Resolution 165 states four basic requirements for proper

concludes that:

[O]ne of the underlying causes for the difference in treatment accorded to two debtor countries by the same creditors during virtually the same years was the absence of any strong political motivation for the creditors to regard the Ghanaian debt problem as requiring anything more than typical creditor club arrangements.

Id. at 205.

¹⁰³ M. SEIBER, *supra* note 2, at 125; Crowe, *supra* note 26, at 44-45.

¹⁰⁴ For an account of how this conference handled the debt issue, see Navarrete, *External Debt of Developing Countries and the Paris Conference: Positions, Proposals, and Conclusions*, in LDC EXTERNAL DEBT AND THE WORLD ECONOMY 121 (M. Wionczek ed. 1978).

¹⁰⁵ See *supra* notes 48-49 and accompanying text.

¹⁰⁶ Navarrete, *supra* note 104, at 137.

¹⁰⁷ The LDC's position became known as the Manila Charter. *Id.* at 124.

¹⁰⁸ UNCTAD Resolution 165 (S-IX) on the Debt and Development Problems of Developing Countries, from Report of the Trade and Development Board, 33 U.N. GAOR, Supp. 15, at 43, U.N. Doc. A/33/15 (1978) [hereafter Resolution 165]. The Resolution, at Part II, para. 10, states:

(a) International consideration of the debt problem of a developing country would be initiated only at the specific request of the debtor country concerned;

(b) Such consideration would take place in an appropriate multilateral

official debt renegotiation. First, the debtor is responsible for initiating a rescheduling meeting. Second, the meeting must be in an appropriate multilateral framework, include the attendance of all relevant international financial institutions, and examine all facets of the debtor's difficulties. Third, the renegotiation should take into account the development prospects of the debtor. Fourth, rescheduling of the debt must protect the interests of both debtors and creditors.

The Resolution, however, is not legally binding,¹⁰⁹ and creditors have done little to implement it.¹¹⁰ For example, although creditors agreed in principle to the type of mechanism contemplated by the second clause, they have continuously opted for current Paris Club arrangements.¹¹¹ In addition, because the third requirement examines debt in terms of a nation's long-term development efforts, it is in direct opposition to creditor views of renegotiation as a solution to a short-term emergency.¹¹²

framework consisting of the interested parties, and with the help as appropriate of relevant international institutions to ensure timely action, taking into account the nature of the problem, which may vary from acute balance-of-payments difficulties requiring immediate action to longer term situations relating to structural, financial and transfer-of-resources problems requiring appropriate longer term measures;

(c) International action, once agreed by the interested parties, would take due account of the country's economic and financial situation and performance, and of its development prospects and capabilities and of external factors, bearing in mind internationally agreed objectives for the development of developing countries;

(d) Debt reorganization would protect the interests of both debtors and creditors equitably in the context of international economic co-operation.

¹⁰⁹ Under Article 38 of the Statute of the International Court of Justice, custom and treaties are the primary sources of law, while resolutions of international organizations have no binding force. Bollecker-Stern, *The Legal Character of Emerging Norms Relating to the New International Economic Order: Some Comments*, in *LEGAL ASPECTS OF THE NEW INTERNATIONAL ECONOMIC ORDER* 70 (K. Hossain ed. 1980). However, the lack of binding force often permits an easier adoption of some resolutions, leading nations to agree to certain emerging principles. *Id.*

¹¹⁰ The Implementation Proposal, submitted subsequent to Resolution 165, leaves to the IMF, the World Bank, and UNCTAD the task of designing appropriate procedures. Implementation of Trade and Development Board Resolution 165 (S-IX) on the Debt and Development Problems of Developing Countries, Sept. 26, 1980, U.N. Doc. TD/B/L.580, from Report of the Trade and Development Board, 35 U.N. GAOR Supp. 15, at G4, U.N. Doc. A/35/15 [hereafter Implementation Resolution]. Unfortunately, this task is as of yet uncompleted. *U.N. Session Unlikely to Yield New Aid Pact for Developing States*, Wall St. J., June 29, 1983, at 38, col. 1.

¹¹¹ C. HARDY, *supra* note 10, at 43-44.

¹¹² *Id.* at 43-44; M. SEIBER, *supra* note 2, at 67. *But cf.* United Nations Conference on Trade and Development, Selected Issues Relating to the Establishment of Common

Although resolutions such as Resolution 165 are not binding, they can constitute an instrument for the development of international law in two ways.¹¹³ First, nations, through a resolution, can become recon-

Norms on Future Debt Renegotiations, Annex, U.N. Doc. TD/AC.2/9 (1977) (creditors concede that reschedulings should be consistent with debtor's orderly development); Regan, *The United States and the World's Debt Problem*, Wall St. J., Feb. 8, 1983, at 32, col. 3 (U.S. Secretary of the Treasury states that it is in best interests of U.S. for debtors to move rapidly towards economic growth).

¹¹³ Bollecker-Stern, *supra* note 109, at 70. One authority writes that "international law can grow not only through ordinary practice of States but also by this extraordinary method of unanimous declarations which either immediately or in the course of time, become binding international law, as soon as the international community has accepted them as such." Sohn, *The Shaping of International Law*, 8 GA. J. INT'L & COMP. L. 1, 21-22 (1978). According to the Soviet view, lawmaking processes such as nonbinding resolutions can represent "critical stages in the formulation of international law." Osakwe, *Contemporary Soviet Doctrine on the Sources of General International Law*, 73 PROC. AM. SOC. INT'L L. 310, 313 (1979) (quoting 1 F. KOZHAVNIKOV, V. KORETSKII, D. LEVIN, G. TUNKIN, N. USHAKOV, V. CHKHIVADZE & V. SHURSHALOV, *TREATISE OF INTERNATIONAL LAW* 168 (1967)).

The conditions under which nonbinding resolutions may crystallize into law is discussed in the arbitration of *Texaco Co. & California Asiatic Oil Co. v. Libya*, 17 I.L.M. 1, 27 (1978). One authority states that the holding supports the conclusion that a General Assembly resolution may be declaratory of international law, but to do so, it must be accepted as such through the statements and practices of the member states. Schwebel, *The Effect of Resolutions of the U.N. General Assembly on Customary International Law*, 73 PROC. AM. SOC. INT'L L. 301, 305 (1979).

However, the strength of nonbinding resolutions as harbingers of international law is often dependent on passage by consensus. Sohn, *supra*, at 24. The advantages and disadvantages of decision by consensus can be considerable. The United States Department of State has defined consensus as "a way of proceeding without formal objection. Yet the result is virtually the same [as a unanimous vote]: a resolution is adopted with the support of all states present, albeit frequently with recorded statements of reservation or interpretation." Schwebel, *supra*, at 308 (citing a report by the U.S. Department of State on the Reform and Restructuring of the U.N. System, Publication 8940 (June, 1978)); see also Suy, *Innovations in International Law-Making Processes*, in *THE INTERNATIONAL LAW AND POLICY OF HUMAN WELFARE* 194 (1978) (brief discussion of consensus procedure). The Department of State Report concludes by saying that the United States is "Prepared to give substantially greater weight in the determination of national policy to decisions arrived at by genuine consensus." Schwebel, *supra*, at 308. The force of a resolution as an instrument of international law is often only as good as the validity of the consensus that led to the resolution's passage. Schwebel uses the example of the passage of the resolutions calling for the establishment of the New International Economic Order (NIEO) to illustrate a fake consensus: "the resolutions of the Sixth Special Session of the General Assembly on the establishment of a new international economic order were adopted 'without objection,' as the Assembly President put it — except that almost forty states then rose to state a cascade of objections, some of them profound." *Id.* However, as the NIEO illustrates, consensus is not the only factor contributing to the incorporation of a nonbinding resolution into

ciled to certain emerging principles.¹¹⁴ Such reconciliation often leads to an expectation that the signatories of the resolution will abide by it.¹¹⁵ Second, a nonbinding resolution permits nations to compare present with proposed practices to decide if the latter are appropriate.¹¹⁶ After such a comparison, the nation may then change its international practices in accordance with the resolution.¹¹⁷ Indeed, the contractual economic and political nature of the debt problem may force nations to reconsider both their international and domestic financial practices in order to adequately manage the international financial system.¹¹⁸ Because Resolution 165 is the most recent pronouncement of debtors and creditors on the appropriate framework for official international debt

international law. See generally, *The New International Economic Order: Development or Dependence?*, 3A ST. LOUIS U. PUB. L.F. 1 (1984) (symposium on NIEO and development issues).

¹¹⁴ Bollecker-Stern, *supra* note 109, at 70. According to the predominant Soviet view, resolutions can actually constitute binding law if such resolutions are declarative or interpretive of general international norms. This especially holds true if the resolution emanates from the U.N. General Assembly or Security Council. Osakwe, *supra* note 113, at 319-20.

¹¹⁵ The Office of Legal Affairs of the Secretary-General of the United Nations wrote in a memorandum that:

A 'declaration' or a 'recommendation' is adopted by resolution of a United Nations organ. As such it cannot be made binding upon Member States, in the sense that a treaty or convention is binding upon the parties to it, purely by the device of terming it a 'declaration' rather than a 'recommendation' However, in view of the greater solemnity and significance of 'declaration,' it may be considered to import, on behalf of the organ adopting it, a strong expectation that Members of the international community will abide by it. Consequently, insofar as the expectation is gradually justified by State practice, a declaration may by custom become recognized as laying down rules binding upon states.

U.N. Doc. E/CN.4/L.160 (1962), *quoted in* Schwebel, *supra* note 113, at 304. Non-binding agreements, in and of themselves, can create expectations among the signatories that national practices will be changed in accord with the resolution. Schacter, *supra* note 42, at 303. Professor Lissitzyn has concluded that if such resolutions emanate from a large number of states, they may be regarded in some circumstances as amounting to a norm of general international law. G. LISSITZYN, *INTERNATIONAL LAW, TODAY AND TOMORROW* 35-36 (1965). It may be misleading, therefore, to regard custom or general practice as the only bases of general international law. *Id.* at 36.

¹¹⁶ Bollecker-Stern, *supra* note 109, at 71; Schacter, *supra* note 42, at 303.

¹¹⁷ Schacter, *supra* note 42, at 303. Altering domestic practices in accordance with a resolution is crucial to the resolution's acceptance as law. According to Erik Suy, Legal Council of the United Nations, norms contained within a resolution cannot be considered law until the relevant states modify the relevant national policies. Suy, *supra* note 113, at 190.

¹¹⁸ See *supra* note 19 and accompanying text.

renegotiation, current procedures should be evaluated with a view toward implementing the Resolution within a nation's practices.¹¹⁹

IV. PROPOSED POLICIES AND PROCEDURES

To reform official debt renegotiation along the internationally agreed guidelines of Resolution 165, a number of factors must be addressed.¹²⁰ First, the debtor should be responsible for initiating a renegotiation.¹²¹ Second, the proper institutional framework is required for official debt renegotiation.¹²² Third, IMF stand-by arrangements as they pertain to debt renegotiation must be reformed.¹²³ Fourth, the United States must

¹¹⁹ *U.N. Session Unlikely to Yield New Aid Pact for Developing States*, Wall St. J., June 29, 1983, at 38, col. 1.

While a nation is not bound to accept a resolution, it is bound to give the resolution due consideration in good faith. Sohn, *supra* note 113, at 23-24 (citing Judge Lauterpacht's decision in *South West Africa — Voting Procedure Case*, 1955 I.C.J. 115). In Schacter, *supra* note 42, at 303, the author argues that nonbinding agreements, such as Resolution 165, lead to an expectation that national practices will be modified to conform to such expectation. The author also notes that the nation impliedly agrees that the matters covered in the resolution are no longer exclusively within its concern. *Id.* Nations that have agreed to Resolution 165 have thus created an expectation that they will change their internal policies in accord with the Resolution. Further, the nations have impliedly agreed that the matters covered by the Resolution are now the concern of the international community.

The strength of a resolution depends, in part, on whether it was achieved by consensus. See *supra* note 113 and accompanying text. Although the language of Resolution 165 does not indicate whether the Resolution was adopted by consensus, one authority states that it was. M. SEIBER, *supra* note 2, at 67. The implementation of Resolution 165 appears to have been adopted by consensus. See *Implementation Resolution*, *supra* note 110, at 167 (developed countries prefaced their interpretation of the Implementation Ruling with "In joining this consensus"); Press Release, Sept. 29, 1980, U.N. Doc. TAD/INF/1201 ("the consensus reached on features represented a breakthrough") [hereafter Press Release].

It is probably presumptuous to argue that creditors are bound to implement Resolution 165, even though they joined the consensus. However, creditors must give implementation of the resolution due, good faith consideration. Sohn, *supra* note 110, at 23-24. Indeed, by creditors joining the consensus behind the Implementation Resolution, they have created an expectation within the international community of their intent to consider the dictates of the resolution when designing domestic policies towards debt renegotiation. Schacter, *supra* note 42, at 303.

¹²⁰ For an excellent overview of recent proposals, see Seiber, *Alternative Proposals for Debt Relief*, in *DEVELOPING COUNTRY DEBT* 185, 190-206 (1979); see also Note, *Procedural Guidelines for Renegotiating LDC Debt: An Analogy to Chapter 11 of the U.S. Bankruptcy Reform Act*, 21 VA. J. INT'L L. 305 (1981).

¹²¹ Resolution 165, *supra* note 108.

¹²² *Id.*

¹²³ C. HARDY, *supra* note 10, at 45.

determine what perspective it should take to preserve its best interests.¹²⁴ This Part suggests policies that would reform official debt renegotiation along the guidelines of Resolution 165. The Part closes by noting that the development of debtors is in the best interests of the creditor countries.

Under Resolution 165, the debtor is responsible for initiating an official renegotiation.¹²⁵ Debtors should thus be allowed to initiate a renegotiation far in advance of a payments emergency.¹²⁶ Debtors have long advocated anticipatory rescheduling as a method of preventing damage to their development plans.¹²⁷ Anticipatory rescheduling also provides for a greater choice of solutions, and encourages greater coordination between all parties concerned.¹²⁸ Therefore, the Paris Club should encourage anticipatory rescheduling of official debt so as to allow greater coordination and less interruption of a debtor's development.

Given the number of official renegotiations in the past decade,¹²⁹ and the existence of practices so pervasive as to create norms, it is likely that the Paris Club will remain as the organization responsible for debt renegotiation.¹³⁰ However, as Resolution 165 implies,¹³¹ the Club must

¹²⁴ Resolution 165, *supra* note 108.

¹²⁵ *Id.*

¹²⁶ Implementation Resolution, *supra* note 110. The Implementation Resolution states: "whenever a country believes it faces difficulties involving debt it may initiate consideration of a debt operation in the context of appropriate multilateral fora agreed upon by debtor and creditor."

¹²⁷ Navarrete, *supra* note 104, at 134.

¹²⁸ C. HARDY, *supra* note 10, at 45; M. SEIBER, *supra* note 2, at 68 (citing studies by OECD and U.S. National Advisory Council arguing for early recognition of debt servicing problems); *see also id.* at 149 (advocating anticipatory rescheduling). One authority states: "creditor countries should be willing to consider applications for debt relief before the default or imminent default stage as long as the debtor demonstrates a willingness to undertake appropriate stabilization measures." *Id.* at 53.

Debtors also should be encouraged to seek early renegotiation of problem debts. One authority states: "Most applicants delay debt renegotiations until it is the unavoidable consequence of a severe economic crisis. In such situations, the complicated task of recovery is far more difficult than had they acted earlier." Crowe, *supra* note 26, at 44.

¹²⁹ From 1973 to 1983, there were 55 multilateral debt renegotiations. *See* Appendix.

¹³⁰ Indeed, developing countries concede that the best context in which to reform present operations is the existing machinery of the Paris Club. *Cf.* Press Release, *supra* note 119, at 1 (Roy Matter, speaking for LDC's, stated: "[The Resolution] provides a first effort at placing debt-relief operations in a coherent and mutually beneficial framework of creditor and debtor relationship using the *existing institutional framework.*" (emphasis added)).

¹³¹ Inspection of Resolution 165 reveals a strong implication that while the present Club is the appropriate vehicle for renegotiation, some reform is necessary before the Club can fairly represent the interests of both creditors and debtors. *See* Resolution

formalize its structure and encourage involvement by private creditors.¹³² Formalizing the structure of the Club would allow creditors to maintain the framework they have developed, while relieving debtors of the inequities caused by ad hoc proceedings. A formalized Club structure would also be consistent with anticipatory rescheduling, since the Club structure would already be in place to quickly resolve an external payments problem. Also, a permanent secretariat could act as a clearinghouse for economic information, relieving the IMF of this burden.¹³³ Lastly, a formalized Club structure is consistent with the long-term perspective necessary for successful renegotiation.¹³⁴

Resolution 165 requires that development prospects be reinforced by the renegotiation process.¹³⁵ Nowhere is the necessity to consider devel-

165, *supra* note 108; *see also* Press Release, *supra* note 119 (comments by Roy Matter, speaking for LDC's, following passage of the Implementation Resolution: "[The Implementation Resolution] will allow us to see if our faith in the effort to reform the existing machinery will have been justified").

¹³² Private debt is increasingly becoming the major component of the total outstanding debt of developing nations. *See supra* note 3 and accompanying text. This involvement of commercial banks has led one authority to state:

[P]rivate creditors also should take stock of their responsibilities as lenders and assess their role in creating the untenable financial situation in which developing countries find themselves. . . . [T]he race for profits and fever pitch of banker competition have contributed to the Third World's plight. Private creditors should accept responsibility for creation of the external debt and debt-servicing burdens and should work to develop means for easing those burdens. In the long run, it will be in their self-interest to do so.

M. SEIBER, *supra* note 2, at 148. American banks, and the United States government, must therefore work together if a proper solution to the debt problem is to be found: "the success of governmental efforts to solve a given debt problem — either directly or through the IMF — depends on large measure on the cooperation of the private banks, since in many countries the banks have superseded official lenders as the largest creditors." SENATE COMM. ON FOREIGN RELATIONS, BRETTON WOODS AGREEMENTS ACT OF 1977, S. REP. NO. 603, 95th Cong., 1st Sess. 30.

¹³³ The IMF has been described as "everybody's nanny" in debt renegotiations. *ECONOMIST*, *supra* note 21, at 42. However, the IMF has never been comfortable with the extent of its involvement within the renegotiation process. *Id.* at 41.

¹³⁴ *Cf. supra* notes 96-100 and accompanying text (ad hoc, short-term perspective leads to unsuccessful renegotiations). However, institutionalizing renegotiation might reduce the incentive to collect information on general economic conditions and specific investment options, because the risk of nonpayment is lower. Poor investment decisions may result, leading to more frequent renegotiation and slower development. Letter from Dr. Richard B. Norgaard, Center for Latin American Studies, Institute of International Studies, University of California, Berkeley, to author (Dec. 23, 1983) (copy on file at U.C. Davis Law Review office).

¹³⁵ Resolution 165, *supra* note 108.

opment more immediate than in IMF stand-by arrangements. One study has stated that multilateral institutions, such as the IMF, can contribute to the rescheduling process by adapting their lending policies so as to sustain growth.¹³⁶ Although the IMF is not a development institution, if the debtor's problems are long-term in nature, the IMF should avoid impeding the debtor's development.¹³⁷ The IMF must recognize that conditionality policies that lead to recessionary effects are counterproductive to eventual debt repayment.¹³⁸

Greater coordination of stand-by arrangement policies with debt rescheduling would facilitate the approach contemplated by Resolution 165. If debt is rescheduled in advance of a payment arrearage, an IMF stand-by arrangement can be designed as part of the renegotiation so that a coordinated package can be followed by the debtor.¹³⁹ Drafting stand-by arrangements and rescheduling terms as near as possible to each other would promote a view of conditionality as an encouragement toward debt repayment, rather than as a mere seal of approval.¹⁴⁰ IMF stand-by arrangements can be integrated into renegotiation terms while still preserving the seal of approval that conditionality provides.¹⁴¹

Resolution 165 demands that the interests of creditors be preserved.¹⁴² The United States must recognize that it is in its best interest to ensure that debt renegotiation encourages, rather than hinders, the

¹³⁶ UNCTAD Developments, *supra* note 36, at 20.

¹³⁷ *Cf. id.* (if a debtor's problems are long-term, the debt rearrangement should be of a long-term character).

¹³⁸ See *supra* note 80-92 and accompanying text.

¹³⁹ One authority, in discussing timing of stabilization policies and debt negotiations, states: "If necessary adjustments are adopted at an early point in an emerging problem, their disruptive impact on the debtor's economy would be far less traumatic than if reform is delayed until it becomes unavoidable." Crowe, *supra* note 26, at 53. Another authority states that the IMF should design its policies after the renegotiation, so as to ensure that the policies' effects on inflation and the debtor's balance of payments work with, not against, the rescheduling terms. C. HARDY, *supra* note 10, at 45.

¹⁴⁰ UNCTAD suggests that multilateral institutions, such as the IMF, can contribute to the success of debt renegotiations by adapting their lending policies so as to ensure economic growth. UNCTAD Developments, *supra* note 36, at 20.

Given the increased incidence of debt-related problems, it is highly probable that the IMF is taking greater account of an LDC's debt situation when designing stand-by arrangements. Telephone interview with Dr. Marilyn Seiber, United States Department of Commerce (Jan. 10, 1984). This might be especially true when the IMF uses the prospect of an official debt renegotiation as a bargaining chip in negotiating conditionality. See U.S. Renegotiation Mimeo, *supra* note 37, at 2.

¹⁴¹ Resolution 165, *supra* note 108; see also C. HARDY, *supra* note 10, at 45.

¹⁴² Resolution 165, *supra* note 108.

development of debtor nations.¹⁴³ The United States, because of its economic power, is in the best position to affect the norms of renegotiation practices.¹⁴⁴ Actions by the United States have a profound effect on the international economy,¹⁴⁵ and the United States has renegotiated sizable portions of its credits to other countries.¹⁴⁶ Recognizing the interdepen-

¹⁴³ Secretary of the Treasury Donald Regan has stated:

We no longer live — if we ever did — in a world where adversity in the economy of a foreign country will not impact on the United States.

. . . .

It is essential that the debtor nations move into a period of economic growth. But the soundness and prosperity of each of the national economies is inextricably linked. It isn't possible to get growth at home unless we have a sound world economy.

Regan, *supra* note 112, at 32, col. 4.

¹⁴⁴ According to Secretary of the Treasury Donald Regan, "It is crucially important to the debtor nations and to our economic interest . . . that these problems be dealt with in a constructive and orderly way, and the United States cannot escape playing a leading role in that effort." *Id.* at 32.

In the near default by Argentina in March of 1983, one of the most important elements of the rescue package offered Argentina was a \$300 million loan from the United States conditional on reaching a Stand-by Arrangement with the IMF. Kilburn, *supra* note 12, at 26. The United States might thus be adopting a more conciliatory position. According to Riorden Roett, director of the Latin American Studies Program at John Hopkins University, "The Administration is beginning to understand how serious this situation is. The United States had to come in, and it did . . . This is a national security issue for the United States. We can not allow private banks to make foreign policy." *Id.*

¹⁴⁵ *E.g.*, Johnson, *The International Monetary System and the Rule of Law*, 15 J.L. & ECON. 277 (1972).

¹⁴⁶ Between 1972 and 1977, the United States renegotiated \$1.4 billion of its foreign credits. *Foreign Indebtedness to the United States: Hearings Before the Senate Subcomm. on Taxation and Debt Management, Generally of the Comm. on Finance*, 96th Cong., 1st Sess. 30 (1979).

The policy of the United States regarding debt renegotiation is as follows:

1. Debt-service payments on international debt should be reorganized on a case-by-case basis and only in extraordinary circumstances where reorganization is necessary to ensure repayment. Debt relief should not be given as a form of development assistance.
2. Debt-service payments on loans extended or guaranteed by the U.S. Government to foreign governments will normally only be reorganized in the framework of a multilateral creditor club agreement.
3. When a reorganization involving government credits or government-guaranteed credits takes place, the United States will participate only if:
 - (a) the reorganization agreement incorporates the principle of non-discrimination among creditor countries, including those that are not party to the agreement;

dence of the world economy, the United States should adjust its policy of debt renegotiation as follows:

(1) Debt should be rescheduled as far in advance of a potential repayment moratorium as possible, but only after such rescheduling has been requested by the debtor;¹⁴⁷

(2) When the economic conditions leading to the renegotiation stem from problems related to long-term development, the consolidation and repayment periods¹⁴⁸ should be extended so as to encourage coordinated development;¹⁴⁹

(3) Debt problems should be viewed as primarily develop-

(b) the debtor country agreed to make all reasonable efforts to reorganize unguaranteed private credits falling due in the period of the reorganization on terms comparable to those covering government or government-guaranteed credits;

(c) the debtor country agrees to implement an economic program designed to respond to the underlying conditions and to overcome the deficiencies which led to the need for reorganizing debt-service payments.

4. The amounts of principal and interest to be reorganized should be agreed upon only after a thorough analysis of the economic situation and the balance-of-payments prospects of the debtor country.

The payments that are reorganized normally should be limited to payments in arrears and payments falling due not more than one year following the reorganizing negotiations.

U.S. TREASURY, INTERNATIONAL FINANCE, THE NATIONAL ADVISORY COUNCIL ON INTERNATIONAL AND FINANCIAL POLICIES, ANNUAL REPORT TO THE PRESIDENT AND TO THE CONGRESS FOR FISCAL YEAR 1978, at 81 (1979) [hereafter U.S. POLICY].

¹⁴⁷ See Resolution 165, *supra* note 108. The policy of the United States Government is to reschedule only when the debtor is in a state of imminent default. U.S. POLICY, *supra* note 147. Unfortunately, this policy may not be satisfactory. See *supra* note 128.

¹⁴⁸ See *supra* notes 43-44 and accompanying text.

¹⁴⁹ See Resolution 165, *supra* note 108. According to Norman A. Bailey, former senior director of national security planning for the United States National Security Council, the ability to manage and solve international debt problems is dependent on creditors lowering interest rates to debtors and extending repayment periods. Kilborn, *supra* note 12, at 26. Paul A. Volker, chairman of the Federal Reserve Board, has suggested that banks limit the rates they charge on loans to troubled countries. *Volker Suggests Limit on Interest for Third World*, N.Y. Times, May 13, 1984, at 1, col. 6. Latin American countries have also requested a ceiling on interest rates, and longer repayment periods. *Latin Lawmakers Bid U.S. Ease Bank Terms*, N.Y. Times, May 10, 1984, at 39, col. 5. Currently, some authorities have advocated multiyear renegotiation agreements and a cap on interest rates. Kilborn, *Borrowers and Lenders Hunt Solution to Latin Debt Crisis*, N.Y. Times, May 14, 1984, at 1, col. 1; see also Kellner, *New Fundamentals Have Bought Time*, N.Y. Times, June 3, 1984, § 3, at 3, col. 3 (new mechanism needed to facilitate renegotiation and reshceduling of debt on regular basis).

ment problems, rather than as collection problems.¹⁵⁰

These policy changes would concretely implement the dictates of Resolution 165 by basing renegotiation on debtor development, and extending the consolidation and repayment periods when long-term considerations so warrant. The proposals also require a change in the creditor's focus from collections to the debtor's prospects for development. Allowing anticipatory rescheduling, a formalized Paris Club, and a development oriented approach to conditionality, as suggested by Resolution 165, would go far in making renegotiation more conducive to long-term solutions. Most important, however, is that the policies recognize that it is in the best interests of creditors to encourage sustained debtor economic growth.

CONCLUSION

The need to develop, coupled with a precarious international economy, has led many nations to borrow extensively in the world capital markets. LDC's that have so indebted themselves have found it difficult to meet their financial obligations, and have been forced to stretch their present debt repayments over longer periods through renegotiation. At present, debt renegotiations are performed under conditions inequitable to many LDC's. The organization responsible for renegotiations, the

¹⁵⁰ Telephone interview with Dr. Marilyn Seiber, Department of Commerce (Jan. 10, 1984). Chandra Hardy, of the World Bank, has stated the economic rationale and necessity for a change in the perspective of creditors:

[I]t must be recognized that developing countries are borrowing to finance a process of development that has a gestation period of twenty-five to a hundred years

If debt rescheduling were looked at from this broader perspective, the present practices would be seen to be wholly inappropriate. . . .

It is now more generally accepted that the current world payments disequilibrium is a structural problem and requires long-term financing, but the balance-of-payments problem of developing countries always was and still is largely structural. . . . Therefore the mechanisms put in place in response to the need to finance the current structural disequilibrium . . . should be permanently established as a reform of development financing arrangements, and the restructuring of existing debt should bear a closer relationship to the long-term structural nature of the development problem.

. . . In short, reform of the arrangements for debt rescheduling requires a variety of new responses and attitudes to old problems. Discussion and analysis has largely focused on technical questions, but the major obstacles to reform are political, not technical.

C. HARDY, *supra* note 10, at 41-42.

Paris Club, has been criticized for its informal, ad hoc, and complex structure, and for its unbalanced concern for the interests of creditors. The IMF conditionality policies, to which debtors must conform as a prerequisite to the renegotiation, are arguably counterproductive to debtor development.

The proposals in this Comment are an attempt to make renegotiations more productive and less inequitable to debtors. First, by allowing anticipatory rescheduling and reforming the Paris Club along the dictates of Resolution 165, the emergency, ad hoc aspects of renegotiations can be replaced with a coordinated, pro-development adjustment mechanism. Second, requiring that conditionality be integrated with the renegotiation terms allows stand-by arrangements to work with the terms of the renegotiation, rather than against them. Third, altering the policy of the United States regarding renegotiation allows the United States to take an enlightened lead in making a debtor's development goals a basis of the renegotiation.

The interdependent nature of the world economy demands that all nations be given an opportunity to develop fully. The United States and other developed countries must recognize that it is in the best interests of creditor countries for the LDC's to further their development goals. Indeed, the Second Circuit's decision in *Allied Bank International v. Banco Creditor Agricola de Cartago* emphasized the importance of protecting a debtor's economic viability through debt restructuring.¹⁵¹ Formalizing and reforming the norms of debt renegotiation would go far in giving both debtors and creditors the ability to plan for a stable and healthy world economy.

Robert V. Hawn

¹⁵¹ No. 83-7714 (2d Cir. Apr. 23, 1984) (available May 15, 1984, on LEXIS, Genfed library, Cir file), *aff'g* 566 F. Supp. 1440 (S.D.N.Y. 1983); *see Ruling on Costa Rica Raises Debt Questions*, N.Y. Times, Apr. 27, 1984, at 31, col. 1.

APPENDIX
MULTILATERAL RESCHEDULINGS OF OFFICIAL DEBT

<i>Year</i>	<i>Country</i>	<i>Amount Resch. (Mil.)</i>	<i>Consolidation Period (Yrs.)</i>	<i>Repayment Period (Inc. Grace) (Yrs.)</i>
1956	Argentina	500	all arrears to 6/56	9
1959	Turkey	400	5.5	12
1961	Brazil	300	4.5	5.5
1962	Argentina	240	2	6
1964	Brazil	200	2	7
1965	Chile	96	2	N/A
	Turkey	220	3	variable
	Argentina	76	1	7
1966	Ghana	170	2.5	10
	Indonesia	247	1.5	11
1967	Indonesia	95	1	N/A
1968	India	300	3	N/A
	Peru	58	1.5	4.5
	Indonesia	85	1	11
	Ghana	100	3.5	9.25
1969	Peru	70	2	5
1970	Indonesia	2,100	all arrears	30
	Ghana	25	2	variable
1971	India	92	1	N/A
	Yugoslavia	59	2	12
	Egypt	145	4.5	7.25
1972	Cambodia	2	1	10
	Chile	258	1.2	8
	Pakistan	234	2.2	5
	India	153	1	N/A
	Cambodia	2.5	1	10
	Turkey	114	all arrears	30
1973	Poland	32	2	12
	Pakistan	103	1	5
	India	187	1	N/A
1974	Ghana	290	pre-'66 commercial	28
	Chile	460	2	10
	Pakistan	650	4	N/A
	India	194	1 °	N/A

<i>Year</i>	<i>Country</i>	<i>Amount Resch. (Mil.)</i>	<i>Consolidation Period (Yrs.)</i>	<i>Repayment Period (Inc. Grace) (Yrs.)</i>
1975	Chile	230	1	9.5
	India	167	1	N/A
1976	Indonesia	160	1	N/A
	Zaire	170	1	9.5
1977	India	N/A	1	N/A
	Zaire	200	1	9.5
	Sierra Leone	N/A	2	10
1978	Turkey	896	2	10
	Gabon	631	all arrears to 12/77	12
	Peru	518	1	11
1979	Togo	282	1.8	11
	Turkey	950	1	12.5
	Zaire	1,300	1	14
	Sudan	421	1.8	12
1980	Sierra Leone	24	2.5	14
	Turkey	3,000	3	14.5
	Liberia	30	1.5	11
1981	Pakistan	138	1.5 A	N/A
	Togo	98	2	14.5
	Madagascar	113	1.5	14.5
	Central African Rep.	27	1	14.5
	Senegal	85	1	13.5
	Zaire	100	2	15.5
	Uganda	100	1	15.5
	Liberia	25	1.5	14.5
1982	Sudan	175	1.5	17
	Romania	234	1	10
	Madagascar	107	1	13.5
	Malawi	25	1	11
	Senegal	74	1	14.5
	Uganda	19	1	15
1983	Costa Rica	107	1.5 plus arrears	10 7 (arrears)
	Sudan	536	1 plus arrears	16
	Cuba	413	1.3	11
	Togo	140	1	9.5
	Zambia	213	1 plus arrears	10

<i>Year</i>	<i>Country</i>	<i>Amount Resch. (Mil.)</i>	<i>Consolidation Period (Yrs.)</i>	<i>Repayment Period (Inc. Grace) (Yrs.)</i>
1983	Romania	200	1	6.5
	Morocco	1,400	1.25	N/A
	Mexico	1,650*	0.5 plus arrears	6
	Equador	178	1	8
	Central African Rep.	11	1 plus arrears	10
	Peru	319*	1	8
	Brazil	3,265	1.5 plus arrears	8
	Niger	N/A	1	8
	Zaire	285	1 plus arrears	8
	Senegal	68	1	8
1984	Liberia	17.2	1	8
	Malawi	25	1	8
	Sierra Leone	31	1 plus arrears	9
	Madagascar	N/A	1.5 plus arrears	11

* Represents lowest estimate of amount rescheduled.

The above figures were derived from the following sources:

1957-1977-- *Foreign Indebtedness to the United States: Hearings Before the Subcommittee on Taxation and Debt Management of the Senate Committee on Finance, 95th Cong., 2nd Sess., 34, 35 (1978)*

1978-1981-- C. HARDY, *supra* note 10, at 4-9.

1982-- UNITED STATES INT'L DEV. COOPERATION AGENCY, DEVELOPMENT ISSUES: U.S. ACTIONS AFFECTING DEVELOPING COUNTRIES, 1983 ANNUAL REPORT OF THE CHAIRMAN OF THE DEVELOPMENT COORDINATION COMMITTEE 34-37 (1983).

1982 (Repayment Figures), 1983, 1984 -- Telephone Interview with Larry Greenwood, Office of Monetary Affairs, Economic Bureau, United States Department of State (Apr. 2, 1984). Repayment figures for 1982-84 are estimates. An updated list of multilateral official debt renegotiations is kept by the Office of Monetary Affairs, United States Department of State.

