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Reforming the Process of Sovereign Debt Restructuring: A Proposal for a Sovereign Debt Tribunal

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I. Introduction

With its proposal in 2001 for a so-called Sovereign Debt Restructuring Mechanism (SDRM), the International Monetary Fund (IMF) triggered a debate about how best to reform the process of restructuring sovereign debt. While the SDRM proposal was shelved by the IMF in 2003 after the proposal faced strong opposition [redacted]

the voluntary approach as reflected in proposed Codes of Conduct for stakeholders in the sovereign debt process; and 4) the reliance on existing institutions, notably the Paris Club (used for the restructuring of official bilateral debt) and the London Club (used for the restructuring of commercial bank debt). We will leave a more detailed description of each of these approaches for the final publication of this paper. Instead, for the purposes of this paper, we will concentrate on considering an alternative approach for reforming the process of sovereign debt restructuring: our approach focuses on the establishment of a permanent international arbitral tribunal for resolving disputes arising in sovereign debt restructurings.

II. Establishing a Sovereign Debt Tribunal for Sovereign Debt Restructurings

In an ideal world, perhaps the best and most comprehensive solution for addressing

[redacted]

could, at least to a certain degree and depending on the ultimate shape of such an arbitral

In contrast, our proposal envisages as a model something along the lines of the Iran-United States Claims Tribunal, which was (and still is[6]) comprised of a small number of high-profile specialists. The arbitrators would almost certainly have the [redacted]

Some commentators have proposed that there should be enacted a kind of global bankruptcy court which might, for example, be associated with the International Court of Justice (ICJ).[8] As appealing as this idea may appear to be at first blush, it could potentially suffer from some of the same problems which the ICJ has sometimes been confronted with in the past when it comes to the acceptance of its decisions. Even if a special sovereign

would select individuals, either as members of the selection panel and/or as arbitrators themselves, who would come from a variety of country backgrounds.) This overall group of arbitrators would then elect one of their members as president of the tribunal.

The selection of arbitrators through such a neutral institution has the potential advantage of fostering trust, which is not a minor consideration given that the whole matter of perception is an important and delicate issue in the sovereign restructuring context. The elected president's task would be to draft the procedural rules for the tribunal, which would

States Claims Tribunal and the debt rescheduling of Iraq after 2003.[12] The remarkable feature of these two cases is that those tribunals became enacted after the rise of the crisis.

One cannot assume, however, that such an "ex post" result can be achieved in every

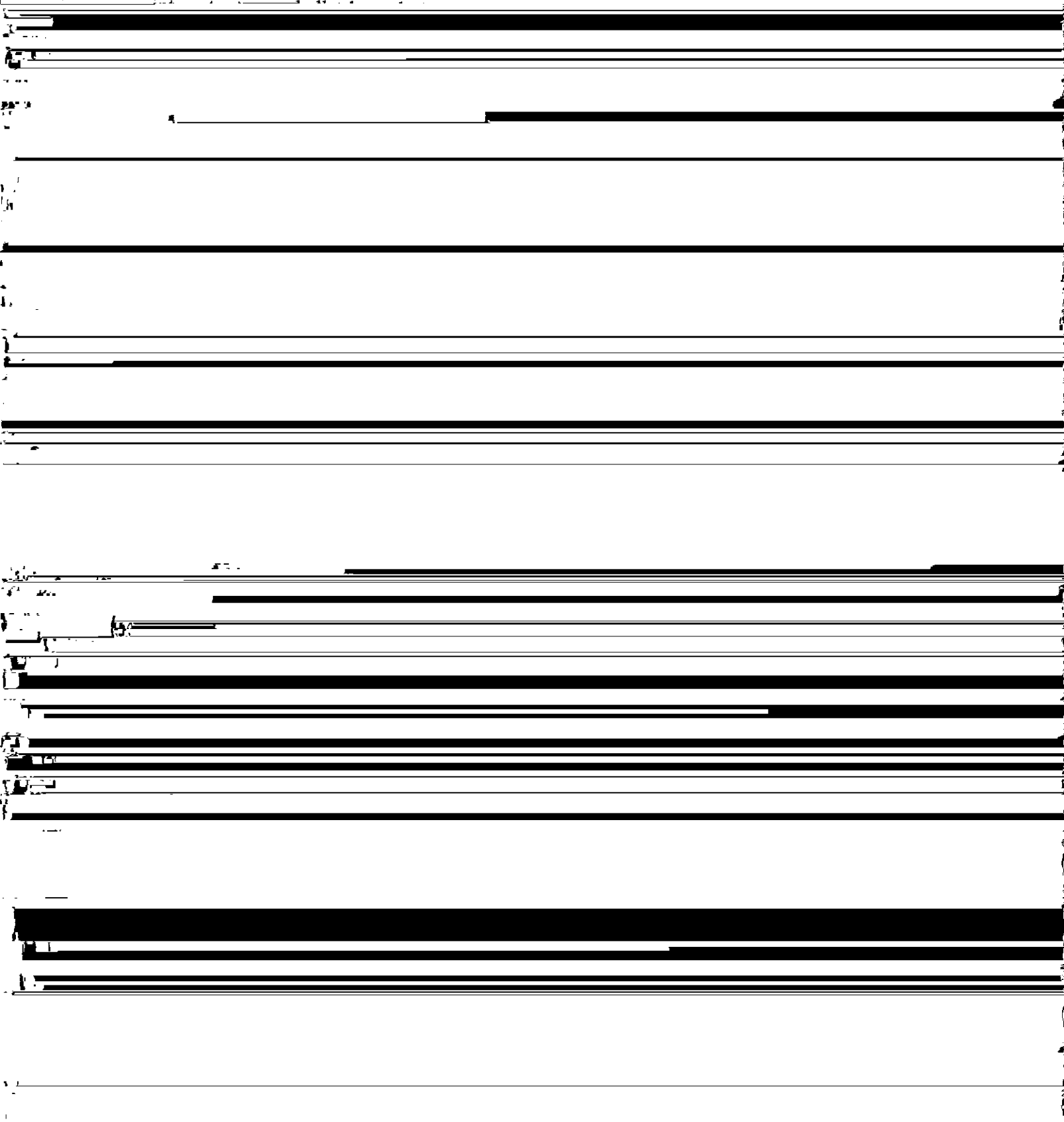
In accordance with what we consider to be our pragmatic and modest approach, we

[redacted]

- what constitutes "sustainable debt" for the sovereign in question (in this context, one might allow the IMF to make submissions on this matter even though it is not a party to the arbitration, possibly subject to certain confidentiality restrictions given the sensitivity of the information);
- whether the underlying economic assumptions underpinning any particular restructuring plan are reasonable or not;

[redacted]

issues of inter-creditor equity, this necessarily can be done only for those issuances that have their own respective arbitration clauses. The tribunal could then weigh, for instance, the different maturities, the risk level (rating) of each individual issuance, the promised



noted above, the parties to a sovereign debt issuance should consider whether the tribunal's competence should include the examination of whether or not the prerequisites of such a default trigger have in fact materialized.

As to the second question, it should also be specified which side shall be allowed to invoke the arbitration mechanism. The alternatives are either [redacted]

Given the complexity and intricacy of these questions, it might be worthwhile

and thereby assist the parties in any ongoing efforts to reach a restructuring agreement.

In this light, mediation might be seen as a useful mechanism for helping the parties reach

Finally, if our proposal for the Sovereign Debt Tribunal can be successfully