Department of Economic & Social Affairs

CDP Background Paper No. 41
ST/ESA/2018/CDP/41

May 2018

International tax cooperation and sovereign debt crisis resolution: reforming global governance to ensure no one is left behind

José Antonio Alonso[1]

ABSTRACT

The paper focuses on two crucial issues that hinder the fiscal sovereignty of developing countries: the reduced level of international tax cooperation, and the lack of appropriate procedures for sovereign debt crisis resolution. The low level of international tax cooperation enables a 'race to the bottom' in tax rates among countries, tax avoidance through profit-shifting activities by companies and tax evasion by individuals and companies, based on the existence of non-cooperative jurisdictions. In the last five years, the international community has made some improvements in this field, but the situation remains far from satisfactory. On the other hand, the current procedure for sovereign debt resolution, through negotiations at the Paris Club with the support of the IMF, is not only unfair, but also inefficient. The paper explores alternatives in both fields. Appropriate responses to these international problems would have to show benefits in terms of efficiency and welfare at the global level, and establish fundamentals for countries to take full advantage of their resources, which is a necessary condition for funding policies that will not leave (or push) any nation or social sector behind.

Keywords: tax system, international tax cooperation, tax avoidance, tax evasion, tax havens, external debt, restructuring debt, sovereign debt resolution

JEL Classification: E62, F34, F38, F55, F65, H63

1 Professor of Applied Economics (Universidad Complutense de Madrid), member of the Committee for Development Policy (CDP) (j.alonso@ccee.ucm.es). I would like to thank comments from Marc Fleurbaey, Stephan Klasen and Valpy FitzGerald. All errors remain those of the author.

CONTENTS

CDP Background Papers are available at https://www.un.org/development/desa/dpad/cdp-background-papers/. The views and opinions expressed herein are those of the author and do not necessarily reflect those of the United Nations Secretariat. The designations and terminology employed may not conform to United Nations practice and do not imply the expression of any opinion whatsoever on the part of the Organization.

Typesetter: *Nardos Mulatu & Nancy Settecasi*

UNITED NATIONS
Committee for Development Policy
UN Secretariat, 405 East 42nd Street
New York, N.Y. 10017, USA
e-mail: cdp@un.org
http://cdp.un.org

1 Reforming global economic rules and governance

The principle that inspires the 2030 Agenda for Sustainable Development, "leaving no one behind", should be understood as a cross-cutting approach that assesses public policies in terms of their distributive effects, in order to ensure that they meet the needs of the most vulnerable social groups. That principle should be applied not only at the local and national levels, where public policy is primarily defined, but also internationally, in order to guarantee that global regulatory frameworks and norms are in keeping with the aim of building more inclusive and sustainable societies.

However, shortcomings and inconsistencies are ubiquitous in global rules. Most such rules have been developed in ways that are hardly compatible with a fair distribution of development opportunities among countries and people. Among the most important shortcomings, three deserve to be underlined (Alonso *et al*., 2014):

- International policies and multilateral regulatory frameworks have been built, by and large, on the *level playing field* principle, without consideration of the extraordinary diversity and heterogeneity of national capacities and resources.
- In a number of areas, such as trade, finance, and intellectual property rights, multilateral regulatory frameworks have substantially *reduced the room for manoeuvre of national policies*, limiting the ability of countries to determine their own destinies.
- The process of *liberalisation has been highly imbalanced,* with deregulation already pushed too far in some areas (financial markets, in particular) and costly shortcomings in others (such as international migration or tax cooperation).

In order to address these shortcomings, major reforms to global rules are needed in very different areas (Alonso and Ocampo, 2015; CDP, 2014). We focus here on two crucial issues that hinder the fiscal sovereignty of States in terms of their ability to raise sufficient tax resources, to manage macroeconomic stability, and to fund the public policies demanded by their societies. These are, on the one hand, the lack of appropriate international tax cooperation, and on the other, the non-existence of a suitable mechanism for sovereign debt crisis resolution.

In a context of liberalized markets and mobile capital, the paucity of appropriate international coordination favours tax competition among countries, encourages aggressive tax avoidance strategies by multinational corporations (MNCs), allows tax evasion by wealthy individuals, and facilitates illicit flows and capital flight. These are all factors that erode national tax bases, alter national taxation structures, and hamper the redistributive fiscal purposes of States (OECD, 1998). Although the effects are global, immobile productive factors, impoverished people, and poor countries are most affected by these shortcomings in international rules. Putting a halt to international tax evasion and abusive tax avoidance requires a cooperative response at the global level, but international agreements on this field, even if recently improved, are far from adequate.

At the same time, developing countries frequently go through periods of intense capital inflows and external debt accumulation. Although many national factors may activate these processes (i.e., macroeconomic imbalances, temporary upsurges in investment opportunities, or simply speculative bubbles), conditions in international capital markets generally associated with periods of excess liquidity are crucial for encouraging the dynamic of debt accumulation. When the international conditions change, countries may fall into a situation of overhanging debt, making it difficult to honour international financial liabilities. Following sovereign debt default, any new international financial support or agreement on debt restructuring subjects affected countries to acceptance of policy conditions agreed to by lenders in an informal and exclusive mechanism (the Paris Club). As a result, lenders' conditions are imposed with limited respect to national sovereignty and the democratic demands of the indebted country, frequently implying high social and human rights costs (Bohoslavsky and Raffer, 2017). This procedure of sovereign debt resolution is not only unfair, imposing unequal distribution of costs to the detriment of the debtors and poor social sectors; it is also inefficient, as negotiation processes tend to be long, segmented and open to discriminatory treatment among lenders.

The issues here mentioned refer to two important areas where global responses are clearly imperfect and unfair, exemplifying the international community's inability to build governance mechanisms and rules consistent with a level required by economic interdependence. These shortcomings generate costs in terms of both efficiency and welfare at a global level, and they have perverse distributive consequences, benefiting a small group (the wealthiest) and penalising the majority (the poorest countries and constituencies). Moreover, as the "Ricardian equivalence" suggests, the two issues are tightly connected as levels of debt today compromises tax capacities in the future; and in the opposite sense, expectations of future taxes can condition the level of debt issued today. [1]

2 International tax cooperation

The increase in international economic interdependence has important effects on national tax systems. Greater mobility of taxpayers and taxable income, more complex structures of cross-border transactions (including within companies), more sophisticated payment methods, and differences in regulatory frameworks and national institutions – all in a context of limited international cooperation – affect the likelihood of countries designing a tax system that is both sound and equitable. However, a tax system with those characteristics is essential to ensure that poor countries are able to draw fully on domestic resources, have means for funding public policies, and reduce their dependency on international aid. This is why it is vital to reinforce cooperation between countries in fiscal areas, and to work more consistently in creating an international economic order that is subject to tax rules that clarify opaque areas and close regulatory loopholes.

The 2030 Development Agenda incorporates these purposes into Goal 17, where it proclaims the need to improve "domestic capacity for tax and other revenue collection"; and Goal 16, which underlines the need to "significantly reduce illicit financial (…) flows". Elsewhere, the Addis Ababa Action Agenda (AAAA) dedicates seven paragraphs (23 to 29) to these same aspects, insisting on "scaling up international tax cooperation" and reaffirming that international tax cooperation "should be universal in approach and scope and should fully take into account the different needs and capacities of all countries".

In practice, in the absence of more effective international cooperation, it will be difficult to curb the race to the bottom in corporation taxation, to limit tax avoidance, or to effectively combat tax evasion and capital flight. All of these phenomena erode national tax bases, condition the tax system design and distort the distribution of the tax burden among national social sectors. In other words, they limit the fiscal self-determination of States, which denies one basic component of an internationalist theory of global justice (Rixen, 2011; Diestch and Rixen, 2014; and Diestch, 2015). As traditionally established, a necessary (not sufficient) condition for justice is that States have the capacity to effectively ensure domestic distributive policies (Rawls, 1999).

2.1 Main problems

Among the main problems in this field, four should be underlined: i) problems arising from the presence of companies (or individuals) operating in more than one tax jurisdiction; ii) the effect of mobility factors on income tax rates; iii) the problem of tax avoidance related to profit-shifting activities by multinational companies; and iv) consequences arising from the existence of tax havens, both on capital flight and consequent tax evasion.

1 Governments can fund their expenditures through either taxes or debt (including bonds); but the debt should be repaid, which is a way to bind taxes in the future.

Double taxation and its responses

The problem of international double taxation arises when a taxable event is subject to two different fiscal jurisdictions, so that an economic agent might be taxed more than once for the same concept. To avoid this problem, a wide range of agreements have been generated between countries involved, so a taxpayer can declare him/herself non-resident in the country where he/she makes income subject to taxation; also, correlatively, mechanisms of cooperation and data-sharing have been established between countries concerned.

In developed countries, tax agreements have been drawn up in accordance with the *OECD Model Tax Convention*, which applies the principle of taxation on residence. This principle seriously damages the tax-raising capacity of developing countries, which have few multinationals based in their territories. It is true that such deals allow taxes to be withheld at source in the country where the income was generated, but the size of that retention is always subject to the asymmetric bargaining power of the two sides.

The United Nations has developed an alternative model which, although based on the OECD's model, contains some important differences in terms of the definition of permanent establishments and tax retentions at source, allowing developing countries to obtain a larger share of the taxes (*UN Model Double Taxation Convention between Developed and Developing Countries*). In 2017, the latest revision was approved for the UN Model, following recommendations from the UN Tax Committee, to now include a code of conduct[2] that supports the automatic exchange of information for tax purposes.

The UN's proposal, while more balanced than the OECD's, still leaves ample margin for companies to reduce their payable taxes in a country where income was generated. In any case, it is the OECD framework which has been adopted by most developed countries, where most of the world's multinationals are based. The IMF (2014) recently drew attention to the costs of this type of deal for developing countries.

Tax competition: the race to the bottom

In a context of high capital mobility and sharp competition in the markets, the costs associated with taxation may have effects on decisions to locate investments or to attract capital. As a result, many developing countries in need of capital join a race to the bottom, setting tax rates or promoting tax incentives with the aim of attracting investment to their territory. To this end, they adopt temporary tax exemptions, tax incentives for exports, reduced tax rates for corporations, or tax-free zones, among other measures.

Despite the generalisation of such tools in the developing world, empirical studies are not conclusive about their effectiveness as mechanisms for attracting foreign investment. Studies are numerous, and results ambiguous (Devereux and Loretz, 2012; Devereux and Griffith, 2003; Bretschger and Hettich, 2002; OECD, 2008, among others). A recent survey of an ample collection of econometric studies by IMF (2015) confirms the ambiguity of the effects of corporate income tax reductions on economic growth. If their impact on investment and growth is doubtful, the costs that this type of policy entails are clear, in terms of complexity of tax administration, less progressive tax structure and loss of taxes collected (Gomes and Pouget, 2008; Leibrecht and Hochgatterer, 2012). Additionally, the advantages offered to international companies, if they are to be seen as advantages, need to be more generous than those offered by similar countries, which leads to a fiscal competition with net negative consequences for all countries involved. This is a typical case of a "social dilemma" where the search for the best for individuals generates an inefficient aggregate result.

2 The UN Code of Conduct on Cooperation in Combating International Tax Evasion. See http://www.un.org/esa/ffd/wp-content/uploads/2015/09/11STM_CRP4_ProposedCodeOfConduct_clean.pdf

The aforementioned competition affects the distribution of payable taxes among taxpayers and different sections of society. Tax exemptions and incentives tend to most benefit those taxpayers who enjoy greater international mobility (capital versus labour, qualified employment versus unqualified employment), which means that the fiscal burden tips against less-mobile taxpayers (who also benefit least from the process of globalisation). Additionally, as governments want to maintain expenditure levels, the reduction of income taxes has shifted the structure of taxation towards consumption taxes over the past decades. But consumption taxes are basically on labour income, which means that the level of tax progressivity has significantly declined (Fitzgerald and Siu, 2018). In this way, competition may have negative consequences not only on the total volume of public income, but also on the sharing of the tax burden.

Empirical estimates confirm these assumptions and suggest that costs are higher in developing countries than in developed ones. In the case of the latter, corporate tax reforms have been both rate-cutting and base-broadening, leaving revenues basically unchanged (Devereux et al., 2003). But in the case of developing countries, the downward pressure on corporate tax resources has been more marked than in developed countries, moving from 2.6% of GDP in the early 1990s to 2% in the early 2000s (and in lower middle-income countries, from 2.9 % of GDP to 2.1 %) (Keen and Simone, 2004). This result is in accordance with evidence – confirmed by panel data for 173 countries over 33 years – that the spillover effects on the tax base are substantially larger in developing countries than in developed ones (Crivelli et al., 2015).

Tax avoidance

The tax-raising capacity of national fiscal systems is also undermined by complicated and opaque ways to avoid and evade taxation.[3] The most significant forms of tax avoidance are linked to trade price distortions and other corporate profit-shifting activities: basically, through the mispricing of goods and services traded between independent parties; the distortion of transfer prices charged to goods and services traded within a multinational firm; and fake transactions. Although this is a global problem, this phenomenon is more serious in developing countries, due to the greater institutional and regulatory fragility that characterises those countries (and, more precisely, due to the weakness of their tax administrations).

Empirical studies have tried to offer a measure of the resources lost by developing countries due to these types of practices. The figures vary greatly, depending on the methodology used. In one well-known study, Baker (2005) estimated the resources that leave developing countries via distortion in prices on trade of goods at around $200 billion annually; moreover, he calculated cross-border capital flows due to fake transactions at close to $150 billion. Therefore, in one rough estimate, the amount of capital leaving through mispricing and fake transactions might be $350 billion (calculated with 2003 data). These estimates are not dissimilar to those obtained by other studies on the same subject, Pak (2007) being the most ambitious. Following a similar approach, Hollingshead (2010), in a *Global Financial Integrity Report*, raised the estimated profits shifted out of developing countries via mispricing activities to $371 billion annually during the 2003-2006 period. Amounts have shown an upward trend in recent years, to an estimate of more than $700 billion in 2011 and 2012, as a new *Global Financial Integrity Report* contends (Kar and Spanjer, 2014).

The aforementioned activities reduce the corporate taxes collected by developing countries. Oxfam (2000) estimated taxes lost through corporate shift out of developing countries at around $50 billion dollars annually; Christian Aid (2008 and 2009), in two consecutive studies using different methodologies, evaluated this figure at between $122

3 Tax avoidance is a legal practice and internationally involves tax planning and arbitrage across borders, in order to reduce tax payments by individuals or corporations. Tax evasion is an illegal action that is, in most countries, characterized as a crime (when a taxpayer does not fulfill legal obligations).

and $160 billion; and Hollingshead (2010) put it between $98 and $106 billion, on average for the 2002-2006 period.[4] Although the differences in estimates are clear, all highlight the significance of these practices and their cost to the tax revenues of affected countries.

However, it is worth mentioning that most of the descriptive literature rests on strong assumptions, given the poor information available, thus leaving its methodological procedures and results open to criticism (as Fues and Riedel, 2009, showed). New and richer sources of data have recently allowed researchers to move from aggregated country-level approaches to firm-level microdata, which has allowed them to apply more appropriate econometric techniques (such as panel data) based on corporate tax elasticities. This literature, mainly focused on OECD countries, has tended to significantly downsize the magnitude of tax-motivated income shifting (see Dharmapala, 2014, for a good review of this literature). Based on these studies, some experts, while admitting the phenomenon, consider such figures to be "far removed from the great expectations to transformation amounts of public revenue" (Fostater, 2017). These voices put resources lost by developing countries due to profit-shifting activities at less than a tenth of what descriptive studies have estimated.

Clearly, more reliable data and more robust procedures are required to clarify this debate. In any case, many recent studies, with different approaches and new access to microdata, confirm that tax revenue effects of income shifting are significant. This is in accord with national case studies: for example, Huizinga and Laeven (2008) estimate that Germany (the country with the highest taxes in their sample) lost 0.6% of its tax base due to profit shifting by European multinational companies in the European market; Clausing (2003, 2009 and 2016) confirms that revenues lost to the US Treasury through income shifting by US multinational companies is close to $100 billion (around 45% of corporate tax revenue); and Cobham and Jausky (2015 and 2017) estimate revenue losses in the US in a range from $130 to $200 billion.

Cross-country studies based on the analysis of the tax spillover effects also confirm these results. For example, in their influential paper, Crivelli *et al.* (2015), taking a large sample of countries, counted the total tax revenues lost as a consequence of profit shifting at $650 billion, of which around one third ($200 billion) related to developing countries. Cobham and Jausky (2017) revisited these estimates from a new database and basically confirmed the original findings, although the global losses were reduced to $500 billion. They additionally confirmed that developing countries are particularly affected by such practices, showing the most affected regions to be Sub-Saharan Africa, Latin America, and South Asia. On the other hand, Cobham and Gibson (2016) suggested that the lost revenue represents around 2 to 3% of total tax revenue in OECD countries, but which easily amounts to between 6 and 13% in developing countries.

Finally, three international institutions (OECD, UNCTAD, and the IMF) have added their respective estimates around revenue losses due to base erosion and profit-shifting activities. The amounts are similar among these estimates, though they use different approaches (Table 1).

In sum, although the methodological procedures and the quality of data should be improved in the future, most empirical evidence suggests that the problem is serious in terms of the cost for developing countries' capacity to raise resources.

4 Global Financial Integrity Reports refer to "illicit flows", a concept that is both broad and evasive, referring to funds that are "illegally earned, transferred and/or utilized". It is clear that moneys from terrorism, human or drug trafficking, or trade in protected natural species form part of this concept, as do activities related to tax evasion. More debatable is whether tax avoidances (such as base erosion or profit-shifting activities) should be considered part of these illicit flows. In any case, Global Financial Integrity does include them in its reports.

Table 1

Estimated tax avoidance due to base erosion and profit-shifting activities

Estimate provider	Date of estimate	Volume	Underlying data
G20/OECD BEPS Action 11 Report	2015	$100-$240 billion annual revenue loss	Corporate financial information databases
UNCTAD	2015	$100 billion annual revenue loss	Locational data on FDI flows and MNE profitability reporting
IMF staff paper	2014	$123 billion in short-run revenue loss	Macro-differences in statutory corporate income tax rates and effective tax rates

Source: Inter-Agency Task Force of Financing for Development, https://developmentfinance.un.org/international-efforts-combat-tax-avoidance-and-evasion

Tax havens and tax evasion

Besides income-shifting activities by corporations, developing countries lose another significant portion of their tax-raising capacity due to wealthy individuals holding financial assets in foreign places (particularly tax havens) without declaring the income derived from such investment to tax authorities in their countries of residence. On many occasions, as law demands that residents declare income on a worldwide basis, the non-declaration of income from foreign assets must be considered an illicit activity (tax evasion). However, on other occasions wealthy individuals take advantage of loopholes in national regulations, and their investments in off-shore financial assets might instead be considered tax avoidance. Tax revenues lost due to off-shore holdings of financial assets by private individuals are even more difficult to estimate than losses to revenue generated by companies' profit-shifting activities.

The existence of so-called tax havens plays a crucial role in tax avoidance and evasion activities by individuals. There is no a single set of criteria for defining tax havens.[5] The OECD (1998) highlighted four traits for havens: i) they impose low (or zero) taxes on capital; ii) they have a special tax regime for international companies based in the haven, even when they don't actually operate there (shell companies); iii) they show a lack of transparency in relation to ownership, and a low level of supervision; iv) they refuse to share information on fiscal matters with other countries and jurisdictions.

Given the vague nature of the concept, the very definition of a tax haven is subject to debate, with certain countries considered havens by some analysts but not under the more restrictive criteria used by the OECD. In fact, the OECD corrected its own list by allowing countries that sign on to defined standards on transparency and tax-information sharing to be removed. That option opened the door to fraudulent behaviour by ostensible tax havens that established agreements between one another to guarantee meeting the OECD criteria. As a result, the OECD's classification of tax havens has been shrinking in recent years, excluding places that are considered tax havens by the NGOs that work most closely in the fight against illicit capital flows (such as the Tax Justice Network or Oxfam).[6]

In addition, tax havens distort the regulatory framework that governs international business; they cause unjustified discriminatory treatment between economic agents; and they undermine national taxation capacities and create areas

5 Even the term is debatable. Some analysts prefer the concepts "secrecy jurisdictions" or "non-cooperative jurisdictions".

6 After the process of endorsing standards of "transparency" defined by the OECD, the list of tax havens published by that organization in June 2016 was reduced to just only country: Trinidad and Tobago. This confirms that the criteria used by the OECD are so weak as to be meaningless. In December 2017, the EU considered a list of 25 tax havens, none of which was an EU country. Four of the countries in the list –Panama, Marshall Islands, Samoa and Guam – may be removed following significant reforms. In spite of this, Oxfam issues a list of 35 countries it considers tax havens, including EU members the Netherlands, Ireland, Luxembourg, and Malta. Finally, the Tax Justice Network extends this list to 48 countries and jurisdictions.

of impunity for illicit economic practices and money laundering. The argument used to justify such places is that they serve as a refuge from the judicial insecurity caused by corrupt regimes or shadowy dictatorships; but this argument collapses when confronted with the fact that more than 60% of fortunes managed by Swiss banks come from Europe.

Not without difficulty, several empirical estimations have tried to measure the capital attracted by tax havens. In 2002, the Merrill Lynch/Capgemini consultancy estimated the assets of wealthy individuals (in other words, with liquid assets above $1 million) based in the tax havens in the world at $27.2 trillion, of which $8.5 trillion (almost a third) were assets held abroad. In 2003, the Boston Consulting Group estimated wealth maintained abroad at a very similar amount: $9 trillion internationally. The NGO Tax Justice Network raised those figures to $11.5 trillion in 2005 and updated them to more than $21 trillion in 2010 (with more than $7 trillion coming from developing countries) (Henry, 2012; and Knobel and Meinzer, 2014).[7]

Lastly, Zucman (2013), using a careful analysis of discrepancies in countries' international positions (assets and liabilities), estimates that 8% of world financial assets (totalling €73 trillion) are kept off-shore in tax havens around the globe: in other words, €5.8 trillion – of which some 30% is in Switzerland and 70% in other havens. This is a deliberately prudent estimate that carefully adheres to properly checked figures. At the same time, an estimated 80% of those resources (€4.7 trillion) are not declared.

The revenues lost by countries as a result of their inability to tax such assets is very high. The Tax Justice Network (2005) evaluates the taxes lost (i.e., that could be raised by taxing those assets) at $225 billion a year, estimating the result of applying a 10% tax on the income generated ($860 billion). Oxfam (2009) estimated financial wealth in tax havens as equivalent to $6.2 trillion, and the revenue lost annually by developing countries in a range of $64 to $124 billion. Finally, FitzGerald (2012) offers an estimate by applying a real average tax rate of 20% on overseas assets, which results in a loss of $214 billion in developing countries alone. That includes $101 billion in Asia, $44 billion in Europe, $39 billion in Northern Africa and the Middle East, and a little over €3 billion in Sub-Saharan Africa. The estimated tax losses amount to about 2.5% of the GDP of developing countries, or the equivalent of a 10% share of the taxes of those countries.

Based on his estimate of financial wealth maintained by individuals in off-shore locations, Zucman (2013) places the accumulated losses by national tax authorities due to residents holding overseas assets at around €130 billion (of which €80 billion relates to income tax, €45 million to inheritance tax, and €5 million to wealth taxes). Figures are not exact, but the order of magnitude of the results is testimony to the draining effects that tax havens entail for countries' tax-raising capacities.

Two recent studies give two estimates of capital flight from Africa. The High-Level Panel created to analyse the subject of tax losses in Africa due to illicit outflows of capital and capital flight estimated them at around $50 billion per year; and Ajayi and Ndikumana (2015), in a very similar estimate, put the figure at $289 billion for the 2005-2010 period.

It is worth mentioning that these estimates are also subject to criticism. As many of the activities refer to illicit or opaque transactions, obtaining reliable information around the exact amounts of financial wealth held off-shore by individuals – and the tax treatment that returns on investments receive in the investor's country of residence – is very difficult. To achieve such estimates, debatable assumptions have to be adopted, making the figures subject to criticism (see again Fues and Riedel, 2009). In any case, most estimates underline the negative effect of tax havens on national capacities for raising fiscal resources, along with their facilitation of illicit flows and capital flight. These problems particularly affect developing countries, given their institutional weakness.

Thus, there are many reasons for the international community to do away with tax havens. The first and most important is linked to the need at the international level to address legal loopholes and zones of immunity for potentially

7 This figure includes non-financial wealth held off-shore, such as real-estate properties.

illegal practices. A second rationale is a restoration of national capacities to fully mobilize their domestic savings, and to build sound and fair tax systems – two important conditions for fostering a sustained process of investment and growth. Thirdly, tax havens need to be shut under the principle of fair distribution, since the most powerful classes (and companies) benefit most from the tax evasion encouraged by havens.

2.2 Recent improvements

Growing awareness of the costs involved in the limited degree of international fiscal cooperation has led various international bodies (the United Nations, the IMF, the G20 and the OECD) to put forward initiatives to reform the system. While there have been clear improvements in recent years, there is still a long way to go in this field (Johansen and Zucman, 2014).

Important advances have been made in terms of improving transparency on financial information for tax purposes at the international level. Notable among recently adopted measures is a proposal by the UN Tax Committee for a 'UN Code of Conduct in Cooperation in Combating International Tax Evasion'. This code of conduct was approved by ECOSOC in 2017, and it sets a new standard on the exchange of information for tax purposes.

Other efforts for improving transparency and reporting standards have been promoted by the OECD. Some refer to standards of transparency and information sharing through *Tax Information Exchange Agreements* (TIEA), now generally accepted by many countries, although application and development within national regulations has so far been limited. The G20/OECD Global Forum on Transparency and Exchange of Information for Tax Purposes has been enlarged to include 139 members who commit to implementing information standards. The forum has meanwhile adopted a more active role in monitoring progress in this field, including the promotion of peer review processes among members (begun in 2016). However, the remit of the TIEA is limited, as it relies on information-sharing at the request of one party and is based on those elements considered relevant for taxation matters, under conditions of confidentiality (with the exception of judicial procedures).

The *Multilateral Convention on Mutual Administrative Assistance in Tax Matters*, developed by the OECD and the Council of Europe in 1988, was amended in 2010) to align its content with international standards on exchange of information on request. Currently, 108 countries participate in the Convention. This is the most comprehensive international mechanism for tax cooperation to tackle tax evasion and avoidance. Under article 6 of the Convention, the Multilateral Competent Authority Agreement was created, defining a multilateral framework for facilitating automatic exchange of information in accordance with the Standards of Automatic Exchange of Financial Information in Tax Matters. In 2014, the OECD took an important step toward a more effective framework for Common Reporting Standards (CRS) defining procedures for sharing tax data automatically (*Automatic Information Exchange*, AIE). It is worth mentioning that although this is a multilateral mechanism, the actual exchange of information occurs bilaterally, in a voluntary way, only between competent authorities which agree to become exchange patterns and use the information only for fiscal purposes.[8] This limits the effectiveness of this mechanism (Knobel and Meinzer, 2014).

For effective progress to be made in eliminating the secretive practices on which tax havens are based, information-sharing should be automatic and obligatory, accompanied by penalties for breaches and robust supervisory mechanisms. This would be in line with what the U.S. regulation contained in the Foreign Account Tax Compliance Act (FATCA) pursues. Under this legislation, a breach of the obligation to provide information is penalised with a tax (of 30%) on dividends and interests made in the U.S. Nevertheless, this regulation has two significant shortcomings: i) it relates to just one country (however important that country might be), leaving margin for banks to escape penalties by investing abroad; and ii) the procedure for detection and control could clearly be improved (it is currently based on informants filing a complaint with authorities).

8 Nearly 100 jurisdictions agreed to such exchanges of financial account information, and by 2017, close to 1,800 bilateral exchange relationships have been formed.

In Europe, the initiative in this field is the European regulation on fiscal savings (Directive 2003/48/EC). Shortcomings of this regulation include its limited application remit (it relates only to interest accrued, not to dividends) and the fact that not all countries are equally affected (with special conditions for Luxembourg and Austria). An approved directive on administrations mutually helping one another (Directive on Administrative Cooperation), implemented in 2015, aims to encourage the sharing of information, but tax havens (including Switzerland) are again outside its regulatory reach.

Lastly, one of the most interesting and ambitious advances in this domain is that which has resulted from implementation (by the OECD, in agreement with the G20) of the BEPS (*Base Erosion and Profit Shifting*) project, which aims "to provide governments with more efficient tools to ensure the effectiveness of their sovereign tax policies" (OECD, 2015). The initiative hopes "to better align rights to tax with economic activities" (OECD 2010) by ensuring that corporations do not shift profits to low tax jurisdictions, and that they pay taxes where the economic activity occurred. Actions include the harmonization of domestic legislation to prevent hybrid mismatches (which may cause double non-taxation), additional safeguards in tax treaties to prevent profit-shifting practices, and sounder transparency requirements via automatic information exchange.

In 2015, the OECD presented a comprehensive package of measures which was endorsed by the G-20. These measures were grouped into 15 areas of action, related to various matters having to do with international standards, as well as recommendations that countries might implement. In 2016, the OECD established an Inclusive Framework (IF), equally open to OECD members and non-members, committing to implement a set of minimum standards. A process began to monitor progress through annual reports, the first of which was presented in 2017,[9] and peer reviews were scheduled among those involved. Areas that have received the most attention are related to tax treaty shopping, transparency on tax rules, harmful preferential tax regimes, transparency on the global operations of multinationals, and improvement of dispute-resolution mechanisms.

In June 2017 a *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (MLI) was signed by representatives of 78 fiscal jurisdictions. The MLI tries to offer solutions for solving the problems caused by the transposing results from the OECD/G20 BEPS project to bilateral tax treaties worldwide. At the same time, an update of OECD Transfer Pricing Guidelines for Multinational Enterprises was published, including the outcomes of some relevant BEPS recommendations.

One of the most important results of the BEPS initiative is related to the promotion of standardized requirements for Country by Country Reporting (CBCR) tax information on revenues, profits and assets of each entity in a multinational group. In 2015, the G20 and OECD agreed to a template for CBCR, and the Multilateral Competent Authority, signed by nearly 60 jurisdictions in 2017, was trusted to allow automatic exchange of CBCRs (the CBCR Agreement). Though subject to debate, information drawn from CBCRs is so far kept confidential. In the case of the EU, there is a Directive for automatic exchange of CBCRs that went into force in 2016.

Although the BEPS initiative was promoted by the OECD, 102 jurisdictions have signed up, including many developing countries. The whole BEPS package is clearly relevant in protecting the tax base of any country. Nevertheless, backing for the initiative is not unanimous, and some developing countries have reservations about whether the agreements are suited to their interests or conditions. Several BEPS recommendations are considered too complex and difficult to apply by developing countries with limited institutional and technical capacities. At the same time, not all actions defined in BEPS properly reflect the priorities and capacities of developing countries; and, complementarily, there are fields of interest for developing countries that are not considered in BEPS[10]. Thus, although the broader the support, the more effective BEPS will be, developing countries should carefully assess the relevance of

9 http://www.oecd.org/tax/beps/inclusive-framework-on-BEPS-progress-report-july-2016-june-2017.pdf

10 The UN Tax Committee identified some areas of interest for developing countries that are not parto of the BEPS. See http://www.un.org/ga/search/view_doc.asp?symbol=E/C.18/2017/8

joining IF[11] (taking into account both national priorities and capacities). Likewise, in accordance with their network of international tax treaties, developing countries should decide whether signing the MLI is in their interest or if they prefer a gradual and bilateral process for renegotiating tax treaties (Barrogard et al., 2018).

Finally, other initiatives have been rolled out to promote involvement by companies in promoting transparency and sanctioning criminal behaviour in international business. That is the case, for instance, with the Stolen Assets Recovery Initiative (StAR), which seeks to return resources removed from a country through illicit means; and the Extractive Industry Transparency Initiative (EITI), which seeks to deliver information on extractive industries. The problem with some of these initiatives is that participation is voluntary, and the capacity to impose penalties for breaches is limited.

2.3 Future lines of work

Stopping international tax evasion and abusive tax avoidance practices requires a cooperative response at a global level. Up to now, the international community advanced mainly on setting more demanding standards of transparency and on combating certain tax avoidance practices by international companies. However, improvements are far from what would be required if the tax-raising capacity of developing countries is to be improved. Five lines of future work in this field deserve to be highlighted:

- Firstly, even though the advances of the BEPS initiative are promising, international agreements in this field are still partial and limited. Some areas of developing countries' interest are not in BEPS; and some of the BEPS recommendations seem not adapted to developing countries priorities and capacities. Additionally, since implementation of the BEPS recommendations is basically voluntary, the results of the BEPS initiative may be far from what is required to restore the fiscal capacity of States. More robust monitoring, dispute settlement, and enforcement mechanisms are all needed in this area.
- Secondly, there have not been significant advances in avoiding the consequences of tax competition practices (and other international negative externalities in the tax field). Tackling these externalities is crucial if sound and fair national tax systems are to be built in a world that is interdependent.
- Thirdly, it is essential to support the promotion of developing countries' capacities to identify and combat fraud, tax evasion, and tax avoidance. Part of those capacities should be aimed at carrying out better tax treatment of their extensive informal sectors and combating the fraudulent practices of large fortunes. It is also important to strengthen fiscal capacities to guarantee that measures be taken against multinationals that roll out fiscal evasion and avoidance practices. To this end, the Practical Manual on Transfer Pricing for Developing Countries, drawn up by the United Nations' Committee of Experts in Fiscal Cooperation Matters, is particularly useful. This Manual was recently updated, including some BEPS recommendations. Additionally, the development of the capacities of the poorest countries to negotiate and implement fiscal information-sharing agreements (TIEA) is also important.
- Fourthly, it is vital to support fiscal international cooperation bodies in order to encourage shared norms and standards. In this area, work carried out by the Committee of Experts for the United Nations in Fiscal Cooperation is very useful, and this body should strengthen and intensify its work. The work of the OECD becomes increasingly relevant in the last decade; while the IMF and the World Bank also are active in this field. The recent creation, in 2016, of the Platform for Collaboration on Tax (PCT) is a way to coordinate the efforts of these international organizations (such as, the IMF, OECD, UN and World Bank). It is equally important to

11 Joining IF implies the implementation of the minimum stantandards agreed, something that may not always be the priority of some developing countries.

strengthen those organisations born of regional initiatives such as the CITA (Inter-American Centre for Tax Administrations) or the ATAF (African Tax Administration Forum), to name just two.

- Finally, up to now most global decisions in tax cooperation have been adopted in an exclusive forum (G20 and OECD), but the nature of the problems would require that tax cooperation be governed by a more inclusive and representative global tax authority. The Zedillo Report, which prepared the 1st Conference on Development Financing, did speak of creating an International Fiscal Organisation, and the possibility existed in Addis Ababa of revisiting this and of discovering a formula for the UN to lead efforts in international fiscal cooperation, transforming its Committee of Experts into a specialized body. Both the United States and various European countries opposed that move, preferring to keep this field under the leadership of the OECD. The agreement referred to strengthening the effectiveness and operational capacity of the UN Tax Committee, but avoiding any initiative to modify the status of the Committee. As a consequence, a very valuable opportunity to build a more inclusive and representative global institution for tax cooperation was lost.

3 Treatment of the sovereign debt crisis

3.1 A fault in global governance

Given the magnitude of their shortcomings, the scale of economic and social investment that developing countries require is far greater than the domestic resources that they can mobilize. Turning to international capital markets is often crucial to closing that gap. However, resources from capital markets may put a country at high vulnerability if the resulting debt is beyond its economic capacities to service, or if international conditions change negatively, increasing the cost of acquired debt or abruptly modifying investor expectations. In such cases, countries can submerge in severe financial distress akin to sovereign insolvency. Emerging from that situation is extremely costly for the affected country, which can suffer significant setbacks in income levels and in progress previously achieved.

This is not a hypothetical matter. As we know, since the 1980s, the international economy has been racked by successive financial crises, most in developing countries (middle-income countries, mainly) and related to prior processes of excessive debt accumulation. Often, these processes were a result of maintaining inconsistent economic policies by borrower countries, but also a consequence of relaxed prudence in the awarding of credit by banks and other investors during moments of excessive liquidity in international markets. As a result, a number of developing (and more recently European) countries have faced sovereign debt crises that forced them into costly negotiated processes of asset restructuring and economic adjustment.

With the crisis that erupted in 2007, the international community reacted by trying to strengthen mechanisms of regulation and supervision, under the leadership of the Council for Financial Stability, while a larger and better-structured counter-cyclical financing mechanism was being created (to be run by a strengthened IMF). Other responses included new regional financial agreements, the capitalisation of multilateral development banks, the largest issuance of Special Drawing Rights (SDR) in history, and the configuration of a system of macroeconomic cooperation among some of the most largest economies in the world. However, the desire to effect reforms, which the crisis had heightened, has since decreased, the most severe bouts of instability having faded from immediate concern. As a consequence, the financial regulatory framework retains significant imbalances. Among these is the absence of an agreed-upon, efficient, and equitable mechanism or procedure to resolve the sovereign debt crises (Guzman et al., 2014).

This matter was the subject of extensive debate in the mid-1990s, following the difficulties associated with the debt crisis of the previous decade; and it was discussed again in the early 2000s, at the initiative of the IMF. Finally, it returned to international debate as a result of the most recent crisis. However, the support required to produce a satisfactory solution to sovereign debt crises was not achieved on any of these occasions, despite such crises being a repeated problem for the international economy, and despite the fact that a restructuring procedure, if well designed, could benefit both creditors (who would recover part of their assets in the event of a default) and debtors (who would see their debt costs scaled down). Existing mechanisms are clearly imperfect, so it is not surprising that many analysts (from different quadrants) believe that the absence of a coherent multilateral framework for managing problems of excess debt remains one of the most worrying shortcomings in global economic governance (Ocampo, 2015, and Schneider, 2014, among others).

The 2030 Agenda tackles this problem, although in rather vague language, pointing in Goal 17 to the need for "coordinated policies aimed at fostering debt financing, debt relief and debt restructuring, as appropriate". The Addis Ababa Action Agenda (AAAA) dedicates one section (paragraphs 93 to 102) to external debt issues, reiterating that "debtors and creditors must work together to prevent and resolve unsustainable debt situations", reaffirming "the importance of debt restructuring being timely, orderly, effective, fair, and negotiated in good faith". Even if the AAAA acknowledges the improvements in "enhancing the processes for cooperative restructuring of sovereign obligations" through collective action clauses (CACs), it also underlines that "there is scope to improve the arrangements for coordination between public and private sectors and between debtors and creditors", in order to minimize problems of moral hazard, to facilitate fair burden-sharing as well as a timely, orderly, efficient restructuring.

3.2 Current procedures

The procedure used by the international community to tackle sovereign debt crises was drawn up through voluntary negotiation, case by case, between creditor and debtor via informal mechanisms: the Paris Club, which brings together defaulting debtors and official bilateral creditors, and the London Club, which brings together defaulting debtors and international bankers. The Paris Club's process of negotiation and condition-setting has traditionally convened the most important international official creditors, with technical support from the French treasury, to coordinate the handling of the most striking cases of debt overhang. Once a restructuring has been arranged at the Paris Club, the terms of agreement provide the basis for the negotiation process with private creditors. Most debt-restructuring processes of the past six decades (since the negotiation of Argentinian debt in 1956) have taken place within this forum. Negotiation in the Paris Club framework results in the ad hoc search for solutions for each case analysed, albeit using shared criteria and practices, such as those included in the "Evian approach", adopted in 2003, which the creditors themselves have refined over time.[12]

In this process, the IMF has traditionally played an important role, as it tries to facilitate effective creditor-debtor engagement. Its role is particularly important in two areas. Firstly, the IMF is well-equipped to overcome problems related with coordination failures that might otherwise hold up a restructuring. Accordingly, the IMF tends to assume leadership in the process of debt restructuring, assuring creditors access to the same information about the debtor, including their capacity to repay, exercising moral suasion among creditors and sizing the debt service that the borrower can afford, taking into account the balance between financing and adjustment. Secondly, and relating to this last point, the IMF plays a crucial role in defining the conditions of debtor access to financial support, which condition borrower capacity for debt service.

Even after an agreement is reached at the Paris Club, the restructuring process faces two kinds of problems. The first refers to the difficulties of organizing private creditors – which hold very different instruments and have different interests – around a consistent and integral process. As debt relief shares certain characteristics of a public good[13],

12 See http://www.clubdeparis.org/en/communications/page/evian-approach

13 In the sense that if a creditor accepts debt relief, the market value of the remaining creditors increases.

there are incentives for creditors to free ride on the efforts of the others. This could lead to a small group of creditors blocking a restructuring process in order to obtain higher pay-out (as the Argentina case showed). This problem has been exacerbated in recently due to the proliferation of heterogeneous private actors among the creditors of governments. The second problem refers to the bargaining process itself, as both sides, with uneven power and room to manoeuvre, will try to impose their respective interests at expenses of the other. As a consequence, both parts can have the incentive to dissemble in order to increase their respective bargaining power.

That procedure for solving excess debt problems can clearly be improved upon in several ways (Stiglitz, 2010). Firstly, the voluntary nature of the negotiation has sometimes led to very drawn-out procedures and to inadequate debt restructuring, leading to repeated renegotiations, which entail costs for everyone involved, especially the debtor country. At the same time, this process leaves room for opportunistic behaviour by certain creditors. Finally, due to the fact that the procedure rests on general principles that give creditors discretionary capacity of decision[14] and is not based on a legal framework, the Paris Club sometimes has led to long processes of negotiation and unfair treatment of different parties and cases. In short, it is a “non-system” (Ocampo, 2015) that produces debatable results in terms of efficiency and fairness.

In fact, the limitations presented by the Paris Club in treating the excess debt crisis of the 1980s led the United States to offer alternative restructuring mechanisms through the Baker and subsequent Brady plans. The latter in particular opened an opportunity for debt ‘haircuts’, albeit of limited dimension, and helped to create a debt bond market for affected countries. The route of a partial debt waiver acquired greater significance in the handling of the Russian debt.

In the case of the poorest countries, neither the Paris Club’s approach nor the previously mentioned U.S. Treasury’s initiatives proved adequate. With leadership from the IMF and World Bank, the international community found itself obliged to implement the Heavily Indebted Poor Country (HIPC) initiative in 1996, and it was strengthened in 1999 with the aim of giving the poorest and most indebted countries some measure of relief and concessional credit to reduce the debt cost to sustainable levels. Such an approach has been accompanied by a framework of reforms that the debtor government commits to carrying out, initially through Structural Adjustment Plans and, afterwards, through Poverty Reduction Strategies. Once a country shows proof that it is carrying out the required reforms, it is considered to have reached a *completion point*, with the right to receive full debt relief measures agreed to at the outset (the *decision point*). The HIPC initiative was supplemented in 2005 by the MDRI initiative, which allows the total cancellation of eligible debt by three multilateral institutions (IMF, the World Bank and the African Development Fund) for countries in the completion point phase. In 2007, the Inter-American Development Bank (IBD) joined that initiative in cases of potentially eligible countries with its region.

In general terms, the HIPC initiative has met its goal: there are currently 39 countries classified as HIPC, 36 of which have already reached the completion point, with three eligible countries (Eritrea, Sudan, and Somalia) not yet having passed the decision point.[15] At the same time, levels of debt in poor countries were significantly reduced between 2000 and 2008. However, since 2013, debt levels in low income countries have risen again and at a rapid pace. As a consequence, some African countries (such as Mozambique, Chad, Sudan or South Sudan) have run into financial troubles. Problems were aggravated as a result of widening primary deficits, slowing growth and rising interest rates (IMF, 2018). This tendency underlines the relevance of reviewing the existing procedures for debt restructuring.

14 The basic principles are the following: i) solidarity, as the Paris Club members act as a group; ii) consensus among the participating creditor countries; iii) information sharing, with deliberation kept confidential; iv) decisions on case by case basis; v) conditionality, as the debtor country have a program supported by the IMF; and vi) comparability of treatment.

15 See http://www.worldbank.org/en/topic/debt/brief/hipc

3.3 Principles for an alternative mechanism

In relation to private default, the treatment of sovereign debt crises presents differences that are worth considering. Among these differences, three are particularly important:

- Firstly, unlike a private company, a sovereign entity cannot be dissolved; it is not possible to liquidate debtor's assets for creditors' compensation. This means that any response to a sovereign debt crisis should pursue the recovery of the affected economy, driving debt to sustainable levels.
- Secondly, while the usual procedures of private bankruptcy try to maximize the value that creditors can extract from a defaulting institution, this is not appropriate in the case of sovereign entities. The economic value of sovereign assets is uncertain and depends on the economic situation of the country, and on the government's capacity to steer the economy and collect resources[16]: therefore, even in the creditors' interest, it is important to preserve the country's economic and financial capacity for growth and the government's conditions to perform its basic functions.
- Thirdly, in a community of democratic nations, conditions for debt resolution must ensure that debtor States remain capable of protecting the human rights and dignity of citizens and providing the public goods and services required to cover basic social needs. Foreign direct intervention in a debtor's public affairs, or conditions that oblige a debtor State to neglect its obligation to citizens' rights and public services, should not be conceivable as solutions.

The aforementioned differences suggest that the range of instruments for dealing with sovereign debt crises is narrower than what is available for dealing with private defaults. Even so, it is useful to consider the common elements that are present in most of the bankruptcy regimes in the world. Three principles are prevalent (Bolton 2003): i) address the "common pool" problem that emerges when many creditors have conflicting claims on the firm´s assets; ii) enforce absolute priority, as claimants with higher priority are paid first; and iii) cancel (or discharge) debts following liquidation to allow for fresh start.

At the international level there is no framework comparable to domestic bankruptcy systems, but these principles should inspire the efforts to improve sovereign debt restructuring procedures. It is crucial to define a mechanism for negotiation between debtors and creditors, seeking a balanced solution that responds to the interests of both parties: the lenders, who expect repayment of their loans, and the debtor State, which must fulfil its obligations as a public power. Indeed both parties should be interested in the rapid economic recovery of the debtor, implying that debt restructuring should be accompanied by 'fresh' international financial support.

In this line, the aforementioned principles could be translated into more operative guidelines. The following five seem particularly appropriate as criteria for an international debt resolution procedure:

- Seek shared distribution of costs among all agents involved: the organized procedure should not incentivise debtors to declare default instead of servicing the debt, nor should it encourage creditors to give loans beyond prudent criteria in the hopes of subsequent debt resolution (the classic problem of borrower-debtor moral hazard);
- Define clear rules that encourage relatively early engagement of creditors and debtors in the process of sharing information, as well as negotiations to reduce the uncertainty of bondholders/creditors, and to avoid unnecessary costs for the debtor. This also reduces the problem of coordination among bondholders prior to a default

16 In fact, the term 'bankruptcy' is not appropriate for sovereign crises. There can be no sovereign bankruptcy, because it is impossible to assess that total sovereign liabilities are higher than a country's total assets.

declaration, when some rush to sell off bonds, leading to a reduction in the bond price that affects other bondholders and aggravates the situation;

- Solve the problem of coordination among bondholders after a default declaration, to avoid refusal by a minority to agree with the restructuring of debt in the hopes of being bought out in full by the majority (which means certain limitations in contractual rights);
- Provide a mechanism for conducting negotiations, arbitrating among conflicting interests, and, if needed, enforcing agreements: this is the role of arbitration courts in national bankruptcy legislation, but there is no equivalent body at the international level.
- Provide a fair, independent, sound and disinterested claim verification process and expert judgements on debt sustainability and economic policy (Gelpern, 2016).

As an asymmetric mechanism under the dominance of creditors that embraces only a portion of the official lenders and that operates under a voluntary basis, the Paris Club does not properly fulfil these requirements.

3.4 The search for solutions

A financial system that is adequately governed should avoid excess debt accumulation in countries. Some of the measures adopted in response to crises are aimed at strengthening the regulation and supervision mechanisms needed for early detection of such situations. The role of the IMF in this process is important, through its country financing and surveillance mandate.

IMF surveillance over countries is important in order to avoid risk accumulation in a context of access to private capital markets. Among the IMF instruments, the Debt Sustainability Analysis (DSA) plays a crucial role, as a tool to better detect, prevent and resolve potential crises. However, defining a balanced and robust DSA faces many challenges. The IMF can be biased towards very optimistic assumptions in order to encourage the restructuring process (as the Greece case showed), but this leads to insufficient debt relief. On the other hand, with the proliferation of private creditors and demanding public opinions, the DSA must be sufficiently robust, impartial and sound to be credible by the borrower country and by its creditors, and the IMF is not always in a position to provide these credentials. Finally, the DSA should integrate not only economic considerations, but also the social and political variables that condition the governability of the adjustment. Again, the IMF may not be the best positioned for that purpose.

As a provider of financing, the role of the IMF is crucial both before and after financial distress. Both types of activities are related, as the less IMF exposure prior to the crisis, the more room the IMF has for an active involvement in the restructuring process. Through *ex ante* financial support, the IMF can avoid liquidity problems transforming into problems of sovereign insolvency. This financial support, however, can raise problems of moral hazard. In order to reduce (but not eliminate) this kind of problem, the IMF modified the exception access policy (EAP) in 2002.

The primary goal, therefore, is to avoid crises of excessive debt; but once these have occurred (as they sometimes will), it is essential to have mechanisms in place to treat them, subject to a balanced and efficient international consensus that avoids negative incentives between creditors and debtors and provides the support the borrower country needs, combining financing and adjustment. The role of the IMF is also important in this stage as it can bring financial support to countries in difficulties through its Policy of Lending into Arrears to Private Creditors (LIA). This policy was revised by the IMF in different moments to make it more effective. The key condition of the LIA policy is that the country negotiates in good faith with its creditors. Although the IMF has tried to define the concept, it is clear that principle of the "good faith" is subject to different interpretations. Moreover, it seems a principle more adapted to the restructuring process of the past, with a small number of banks implied, than to the current era, when the restructuring process involves a vast array of private creditors. In these circumstances, "good faith" seems to be a weak principle to address the collective action problems inherent to modern restructuring processes.

In sum, a serious improvement is necessary in the existing procedures for sovereign debt resolution. This is no simple task, but it is essential, according to the 2002 Monterrey Consensus on Development Financing, which called for mechanisms to manage financial crises that "offer a fair division of the burden between public and private sectors and between debtors, creditors and investors". Similarly, the AAAA states that "there is scope to improve the arrangements for coordination between public and private sector and between debtors and creditors to minimize both creditor and debtor moral hazards, and to facilitate fair burden-sharing and an orderly, timely and efficient restructuring that respects the principle of shared responsibility".

In reality, the first initiatives to find an adequate alternative to the Paris Club date back decades. In 1995, at the request of those in charge of the G-10 central banks, a report was produced including a proposal for clauses in bond contracts equivalent to those currently known as collective action clauses (CACs), in order to encourage cooperative response during a crisis. It was argued that CACs would enable bondholders of a given class to vote and to accept a restructuring offer if a certain percentage were in favour. In that case, the result would bind the other holders of that class of bonds to accept the offer. Although this initiative received favourable responses in the European Union, the U.S. Treasury was less enthusiastic.

In 2001-2003 there was a fresh attempt to tackle this problem, this time after the proposal of the IMF to create a mechanism to encourage creditor and debtors to adopt an orderly, predictable, and fast negotiation process, through a statutory approach[17]: the Sovereign Debt Restructuring Mechanism (SDRM) (Krueger, 2002; Rogoff and Zettelmeyer, 2002). This proposal underwent a tortuous path involving multiple versions, during which some of the initial criteria were modified. It moved from a centralised system with ample room for the IMF to another where private creditors´ decisions had more weight. But the proposal met with opposition from both the U.S. Treasury and from developing countries (including Brazil and Mexico).

In the absence of an alternative that could elicit consensus, the international community continued to depend on the traditional procedure of voluntary negotiations via the Paris Club and in the leadership of the IMF in debt restructuring processes. The main innovation came by way of the more generalised use of CACs and their technical improvement. In its initial version, CACs applied only to individual specific bond issues, so a problem of coordination could emerge as a result of the process of bond issues aggregation in the restructuring process. The second generation of CACs aims to reduce the possibility of this holdup problem, as it considers supermajority voting across different bond issues (Kahn and Makeoff, 2015).

The situation, however, remains far from satisfactory. The problems that have always accompanied the negotiation process in the Paris Club have been exacerbated by: i) the presence among debtors of an increasing and heterogeneous segment of bondholders and other private actors, which makes coordination more difficult; and ii) a growing segment of international creditors (including China) are outside that forum, which further complicates the adoption of appropriate responses. In addition, the CACs haven't prevented the incentive for creditors and debtors to delay and prolong their restructuring processes, as the IMF has recognised (2013). The case of Argentina has shown the capacity of opportunistic bondholders to undermine negotiations, considerably reducing the incentives to participate in a restructuring process.

Under these conditions, there would seem to be three preferable alternatives to improve the cooperative response to a debt crisis (Ocampo, 2015; Schenider, 2014). All of them rest on a balance between the demand of good faith in

17 A distinction is commonly made between a "contractual approach", when the procedure to deal with insolvency is included in the debt contracts, and a "statutory approach", when the procedures rest on domestic or international law, with different methods of arbitration.

borrowers´ behaviour, on the one hand, and creditors´ acceptance of some limitation on their contract enforcement, on the other (Haley, 2017).

The first alternative is the use of the contractual and decentralised formula of the CACs, generalising them in bond contracts. This formula faces important challenges. Firstly, there is a problem of transition because while new bonds can include the second generation of CACs, there is a large stock of bonds in the market without such provisions, which introduces a factor of uncertainty conditioned by judicial interpretations. Secondly, it would be essential to maintain the process of improving in the CACs design, trying to overcome the limitations that can emerge, as the life of the second generations of CACs is still very short. Thirdly, it should be considered that if CACs reduce the costs of coordination, they can increase the costs of negotiation (as the process is open to opportunistic behaviour). Finally, the CACs should include some cram-down clause that binds dissenting creditors to keep them from blocking a majority agreement. The conclusion that can be drawn is that CACs are an imperfect solution for international bankruptcy (Haley, 2017).

The second option would be to use a statutory type of regime, based on the creation of a debt court or some kind of agreed-upon arbitration formula. This would be a way to guarantee that the interests of both creditors and debtors as well as the protection of citizen's rights' be taken into account in a balanced manner. An initial proposal in this line was suggested by Raffer (1990), the Fair Transparent Arbitration Process (FTAP) based on the provisions of Chapter 9 of the U.S. Bankruptcy Code.[18] This chapter applies to municipalities and guarantees that, in the process of debt resolution, unless the debtor consents, the court may not interfere in any of the political or governmental powers of the municipalities or any of their properties or revenues.

More recently, Gianviti *et al*. (2010) based their proposal for a European Mechanism for Sovereign Debt Crisis Resolution (ECRM) on a statutory regime. The same approach was adopted by the Stiglitz Commission in its report *Reforming the international monetary and financial system in the wake of the global crisis*, which offers some suggestions on how to set up such a mechanism. Opting for a statutory option is more complex both in terms of achieving coordination, in a world with very heterogeneous creditors, and in collecting enough political support, as new global institutions and mandates should be created. In spite of that, it could offer clearer and more balanced solutions to the problems associated with negotiation and the share of burdens between creditors and debtors.

Lastly, the third alternative combines the two previous options, seeking a mix between voluntary action and judicial response, in the same way the WTO operates in the field of commercial disputes (Ocampo, 2015). The proposal would entail the option, within a set time limit, for an agreement to be reached through a process of voluntary negotiation; once the deadline has run out, response to the excess-debt crisis would be left to an arbiter. The threat of an arbiter's decision would encourage creditors and debtors to become involved in the process of negotiation, and for the chosen formula to share the burden reasonably. Although the most reasonable location for such an arbitration court would be the United Nations, it may be more pragmatic to base it at the IMF through an amendment to its foundational document (such as Ocampo, 2015, suggests).

18 This is one of the few formal mechanisms to deal with sovereign debtors, in this case oriented to municipalities

3 Final remarks

If the principle of "leaving no one behind" is to be made effective, it is not enough that national policies take into account the needs of more impoverished, marginalised, and vulnerable social sectors: it is also necessary that global rules promote a fair distribution of development opportunities at the international level, in order to enssure that countries have the capacities and resources to implement such policies. This latter purpose would require, at least:

- Firstly, that countries have the ability to build sound, efficient, and fair tax systems, in order to collect the resources required for managing the economy and to properly fund their public policies;
- Secondly, that countries have the capacity to define and implement their own policies in accordance with the social preferences and priorities of their citizens and without external impositions;
- Thirdly, that an international mechanism of income redistribution be instituted, in order to correct asymmetries between countries, to ensure universal minimum standards of social protection, as well as provision of global public goods.

The two first conditions seek to guarantee the principles of economic allegiance[19] and fiscal self-determination of nations, which are basic components in any approach to global justice. But in a world of deep distributive inequalities, this is not enough, because fiscal capacities are highly correlated with countries' income levels (van Apeldoorn, 2016). Therefore, mechanisms of redistribution at the international level are needed (the third requirement). Development cooperation should be part of those mechanisms, even if more binding and centralized procedures of international redistribution would be more efficient and effective.

The lack of sufficient tax cooperation at the international level frustrates the two first requirements, insofar as it reduces national capacities for raising tax resources and funding public policies. This opens the gates to a 'race to the bottom' in tax rates among countries, to tax avoidance through profit-shifting activities by companies, which reduces the tax basis, and to tax evasion by individuals and companies, based on the accepted existence of opaque and non-cooperative jurisdictions. In the last five years, the international community has improved some of these areas significantly, but the situation is far from satisfactory: as many studies show, the resources that developing countries lose through these practices are at least double what they receive as international aid.

The absence of a mechanism for an orderly, timely, and fair procedure for sovereign debt-crisis resolution also works counter to the two first criteria. This obliges debtor countries to follow procedures clearly controlled by creditors that are limited in efficiency and highly asymmetric in the distribution of costs among the parties involved. In spite of attempts, the international community has been unable to build an appropriate alternative to this problem.

Appropriate responses to these international problems would have to manifest benefits, in terms of efficiency and welfare at the global level, and establish fundamentals for countries to take full advantage of their resources, funding policies that will not leave (or push) any nation nor social sector behind.

19 The principle of economic allegiance suggests that anyone who obtains significant benefits from an economic community should pay taxes to that community

REFERENCES

Ajayi, S.I and L. Ndikumana (eds.) (2015): *Capital flight from Africa: Causes, effects and Policy Issues*, Oxford, Oxford University Press.

Alonso, José Antonio, G. Andrea Cornia and Rob Vos (eds) (2014): *Alternative Development Strategies for the Post-2015 Era*, New York Bloomsbury Academic

Alonso, José Antonio and José Antonio Ocampo (eds) (2015): *Global Governance and Rules for the Post-2015 Era*, New York, Bloomsbury Academic

Baker, R. (2005): *Capitalism´s Achilles Heel: Dirty Money and How to Renew the Free Market System*, New Jersey, John Wiley and Sons.

Barrogard, Emma; Diana Calderón; Jan de Goede; Carlos Gutierrez; and Guido Verhelel (2018): *Implementing OECD/G20 BEPS Package in Developing Countries*, German Cooperation and IBFD, https://www.ibfd.org/sites/ibfd.org/files/content/pdf/wp_implementing_beps_package_developing_countries.pdf

Bohoslavsky, Juan Pablo and Kunibert Raffer (eds) (2017): *Sovereign Debt Crisis. What Have We Learnt?*, Cambridge, Cambridge University Press.

Bretschher, L. and F. Hettich (2002): "Globalisation, capital mobility and tax competition: Theory and evidence for OECD countries", *European Journal of Political Economy*, 18, 695-716.

Christian Aid (2008): *Death and taxes: the true toll of tax dogging*, Christian Aid, London.

Christian Aid (2009): *False Profits: Robbing the Poor to Keep the Rich Tax Free*, Christian Aid, London.

Clausing, K. A. (2003) "Tax Motivated Transfer Pricing and US Intra-firm Trade Prices" *Journal of Public Economics*, 87, 2207-2223.

Clausing, K.A. (2009): "Multinational firm tax avoidance and tax policy", *National Tax Journal* 62 (4), 703-25

Clausing, K.A. (2016): "The Effect of Profit Shifting on the Corporate Tax Base in the United States and Beyond," *National Tax Journal.*
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2685442.

Cobham, Alex and Gibson (2016): "Ending the Era of the Tax Havens", Oxfam Briefing Paper, March, http://oxfamilibrary.openrepository.com/oxfam/bitstream/10546/601121/4/bp-ending-era-tax-havens-uk-140316-en.pdf

Cobham, Alex and Petr Jansky (2015): Measuring misalignment: the location of US multinationals´ economic activity versus the location of their profits, *ICTD Working Paper 42*, http://www.ictd.ac/index.php/ju-download/2-working-papers/91-measuring-misalignment-the-location-of-us-multinationals-economic-activity-versus-the-location-of-their-profits

Cobham, Alex and Petr Jansky (2017): "Global distribution of revenue loss from tax avoidance: Re-estimation and country results", *WIDER Working Paper* 55, Helsinki UNU, https://www.wider.unu.edu/publication/global-distribution-revenue-loss-tax-avoidance

Committee for Development Policy (CDP (2014): "Global governance and global rules for the post-2015 era", *CDP Policy Note*, New York, UN DESA

Crivelli, E., R. De Mooij and M. Keen (2015): "Base erosion, profit shifting and developing countries, IMF, Oxford University Centre for Business Taxation, Working Paper 15/09. https://www.sbs.ox.ac.uk/sites/default/files/Business_Taxation/Docs/Publications/Working_Papers/Series_15/WP1509.pdf

Devereux, M. and R. Griffith (2003): "Evaluating tax policy for location decision", *International Tax and Public Finance* 10 (2), 107-26

Devereux, M. and S. Loretz (2012): "What do we know about corporate tax competition?", Oxford University, Centre for Business Taxation.

Devereux, M; B. Lockwood and M. Redoano (2003): "Capital account liberalization and corporate taxes", *IMF Working Papers* 03/180, Washington, IMF

Dharmapala, D. (2014): "What do we know about base erosion and profit shifting? A review of empirical literature, *Coase-Sandor Institute for Law and Economics Working Paper* 702, University of Chicago.

Dietsch, P., (2015): *Catching capital: the ethics of tax competition*. Oxford: Oxford University Press.

Dietsch, P. and Rixen, T., (2014): Tax competition and global background justice. *Journal of political philosophy*, 22 (2), 150–177.

FitzGerald, Valpy (2012): "Global capital markets, direct taxation and the redistribution of income." *International Review of Applied Economics* 26: 241-252

FitzGerald, Valpy and Erika Daile Siu (2018) : "The Effects of International Tax Competition on National Income Distribution", in Eric Helleiner and José Antonio Ocampo (eds), *International Policy Rules and National Inequalities: Implications for Global Economic Governance*. Columbia University Press, 2018

Fostater, Maya (2017): "How big is the transfer pricing prize for development?", Center for Global Development, https://www.cgdev.org/blog/how-big-transfer-pricing-prize-development

Fuest, Clemens, and Nadine Riedel (2009): "Tax evasion, tax avoidance, and tax expenditures in developing countries: A review of literature", Oxford University Centre for Business Tax, Report prepared by the UK DFID.

Gelpern, Anne (2016): "Soverign Debt: Now What?, Yale Journal of International Law Online 41 (2): 45-95

Gianviti, Francois, Ann O. Krueger, Jean Pisani-Ferry, Andre Sapir and Jürgen von Hagen (2010): A European Mechanism for Sovereign Crisis Resolution: A Proposal, Institute Bruegel, http://citeseerx.ist.psu.edu/viewdoc/download;jsessionid=D3F7B3C5CAEAB9F21EE9A283A226B99D?doi=10.1.1.670.8852&rep=rep1&type=pdf

Gomes, Pedro and Francois Pouget (2008): "Corporate Tax Competition and the Decline of Public Investment", *ECB Working Paper 928*, Frankfurt, European Central Bank

Guzman, Martin, José Antonio Ocampo, and Joseph E. Stiglitz (eds) (2014): *Too little, too late: The quest to resolve sovereign debt crises*, New York, Columbia University Press

Haley, James (2017): "Soverign Debt Restructuring. Good Faith or Self-Interest?", *CIGI Papers* 150, Waterloo, Center for International Governance Innovation, https://www.cigionline.org/sites/default/files/documents/Paper%20no.150web.pdf

Henry. J.S. (2005 and 2012): *The Price of Offshore* y *The Price of Offshore Revisited,* Tax Justice Network.

Hollingshead, A. (2010): *The implied tax revenue loss from trade mispricing*, Washington, Global Financial Integrity.

Huizinga, H. and L. Laeven (2008): "International Profit Shifting Within European Multinationals" Journal of Public Economics 92, 1164-1182.

IMF (2018). Macroeconomic development and prospects in Low-Income developing countries, Washington http://www.imf.org/en/Publications/Policy-Papers/Issues/2018/03/22/pp021518macroeconomic-developments-and-prospects-in-lidcs

IMF (2015): "Fiscal Policy and Long Term Growth." IMF Policy Paper. Washington DC: International Monetary Fund.

IMF (2014): "Spillovers in international corporate taxation." IMF Policy Paper. Washington DC: International Monetary Fund. http://www.imf.org/external/np/pp/eng/2014/050914.pdf

IMF (2013): *Sovereign Debt Restructuring: Recent developments and implications for the Fund´s legal and policy framework*, April, Washington.

Johansen, N. and G. Zucman (2014): "The end of bank secrecy? An evaluation on the G20 Tax Heaven Crackdown", in *American Economic Journal: Economic Policy*, 6 (1), 65-91.

Kahn, Robert and Gregory Makoff (2015): "Sovereign Bonds Reform: Implementing the new ICMA pari passu and Collective Action Clauses", *CIGI Papers* 56, Waterloo, Center for International Governance Innovation, https://www.cigionline.org/sites/default/files/cigi_paper_no_56.pdf

Kar, Dev and Joseph Spanjer (2014): Illicit financial flows from developing countries: 2003-2012, Global Financial Integrity, in http://www.gfintegrity.org/wp-content/uploads/2014/12/Illicit-Financial-Flows-from-Developing-Countries-2003-2012.pdf

Keen, M., and A. Simone (2004): "Is tax competition harming developing countries more than developed?", Tax Notes International, 28 June, 1317-25.

Knobel, A. and M. Meinzer (2014): "The end of bank secrecy? Bridging the gap to effective automatic information exchange. An evaluation of OECD's Common Reporting Standards (CRS) and its alternatives", Tax Justice Network, preliminary report.

Krueger, A. (2002): A new approach to sovereign debt restructuration, Washington, IMF.

Leibrecht, M., and C. Hochgatterer. (2012): "Tax Competition as a Cause of Falling Corporate Income Tax Rates: A Survey of Empirical Literature." Journal of Economic Surveys 26: 616–48

Ocampo, J.A. (2015): Resolution of Balance of Payments Crises: Emergency Financing and Debt Workouts, WIDER Working Paper 11. Helsinki, UNU

OECD (1998): Harmful Tax Competition: An Emerging Global Issue. Paris. Organisation for Economic Cooperation and Development.

OECD (2008): "Tax effects on FDI: Recent evidence and policy analysis", OECD Tax Policy Studies, nº 17, París, OECD.

OECD (2010): Promoting Transparency and Exchange of Information for Tax Purposes. Paris: Organization for Economic Cooperation and Development.

OECD. 2015. Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5 - 2015 Final Report. OECD/G20 Base Erosion and Profit Shifting Project.

Oxfam (2000): Tax Havens – Releasing the Hidden Billions for Poverty Eradication, Oxfam GB Policy Paper

Oxfam (2009): Tax haven crackdown could deliver 120 bn a year to reduce poverty - Oxfam, March 13, 2009, http://www.oxfam.org.uk/applications/blogs/pressoffice/?p=3912.

Pak, Simon (2007): Closing the Floodgates – Collecting Tax to Pay for Development, Commissioned by the Norwegian Ministry of Foreign Affairs and Tax Justice Network.

Raffer, Kunibert (1990): "Applying chapter 9 insolvency to international debts: An economically efficient solution with a human face, World Development 18 (2), 301-11

Rawls, J., (1999): Law of peoples. Cambridge, MA: Harvard University Press.

Rixen, T., (2011): Tax competition and inequality: the case for global tax governance", in Global governance: a review of multilateralism and international institutions, 17 (4), 197–227.

Rogoff, K. and J. Zettermeyer (2002): "Bankruptcy procedures for sovereigns: A history of ideas 1976-2001", IMF Staff Papers 49 (3), 470-507

Schneider, B. (2014): "Sovereign Debt Restructuring: The Road Ahead", in J.E Stiglitz and D. Heymann (eds.), Life after Debt: The origin and resolution of debt crises, London, Palgrave-Macmillan.

Stiglitz, J.E. (2010): "Sovereign Debt: Notes on Theoretical Framework and Policy Analysis", in B. Hermann, J.A. Ocampo y S. Spiegel (eds.), Overcoming Developing Countries' Debt Crises, Oxford, Oxford University Press.

UNCTAD (2015): World Investment Report, Geneva

Van Apeldoorn, Laurens (2016): "BEPS, tax sovereignty and global justice ", Critical Review of International Social and Political Philosophy http://www.tandfonline.com/doi/full/10.1080/13698230.2016.1220149

Zucman, G. (2013): The hidden wealth of nations, Chicago, Chicago University Press.