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The UN is not the solution for a rogue debtor

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By Arturo Porzecanski of American University

José Antonio Ocampo, a former United Nations official and co-president with Prof. Joseph Stiglitz of Columbia University's Initiative for Policy Dialogue, which promotes the adoption of heterodox economic policies in developing countries, recently wrote a guest post welcoming a UN General Assembly resolution calling for the launch of negotiations on a multilateral framework for sovereign debt restructuring. The resolution was Argentina's initiative and it passed with the backing of a coalition of developing countries (the so-called G-77 plus China) in the wake of, as Ocampo put it, "the absurd decisions of a New York judge on Argentine debt."

Nobody can tell if or when anything will come from this resolution. UN archives are stacked to the ceiling with well-intentioned resolutions calling for international peace and the promotion of social progress, better living standards and human rights. Yet whatever humanity has achieved in reaching these goals owes very little to General Assembly resolutions. One Argentina-related UN resolution, #2065 adopted in 1965, urged London and Buenos Aires to negotiate the sovereignty of the Falklands Islands (Malvinas) but nearly fifty years have passed and the islands are as disputed territory now as they were then. Chances are that today's call for negotiations on a multilateral framework for sovereign debt restructuring will fall on similarly deaf ears.

In fact, the call should be ignored, because there is no framework capable of dealing with the central problem: changing official attitudes in Argentina, a rogue debtor nation which regularly flouts national laws and international treaties.

Ocampo wrote that "a good model [for the UN to adopt] is the dispute settlement mechanism of the World Trade Organization. That model creates three consecutive stages with clear deadlines: one of voluntary negotiations, a second of mediation and a final of arbitration if the

former two fail… The decisions of the appeals court is binding for all parties involved. One of the advantages of this process is that the dispute settlement process is totally independent of the intergovernmental process and of the WTO secretariat."

The problem is, the government of Argentina has not only disobeyed again and again rulings in US courts which it previously committed itself to obeying, but also the decisions of independent tribunals which it also had pledged to respect. The country is infamous not just for the very large number of arbitration claims filed against it, whether in the World Bank-sponsored ICSID or in other fora, but for the number of adverse rulings it has refused to pay.

Late last year, the government made an exception and finally settled five investment-treaty arbitration awards that had been decided between 2005 and 2008, pursuant to which it had been ordered to pay a total of nearly $680m. However, Buenos Aires did not pay the successful claimants what it owed them: rather, it paid them 75 per cent of what they were entitled to, giving them government bonds trading at a discount rather than cash, and requiring them to purchase some $70m of new government bonds with their proceeds – in short, it paid them a fraction of their arbitral awards.

In the meantime, other companies in the queue, such as British Gas (BG Group), which won an award for $186m plus interest back in 2007 in the ICC Court, an award reviewed and ratified by the US Supreme Court in March of this year, are still awaiting payment. So is the French water and sewerage company SAUR International, which won an award in May in an arbitration against Argentina before ICSID. And in the queue stand also more than 50,000 small bondholders from Italy whose long-running case has been heard and is coming to a decision in a landmark ICSID arbitration.

Argentina's contempt for national laws and international treaties is currently being tested at the WTO itself. In August 2012, the US filed a complaint concerning Argentina's highly restrictive measures imposed on merchandise imports, and that December requested the establishment of a WTO panel to hear the dispute. The country's tightening controls on foreign exchange for imports, dividend remittances, tourism outflows and other payments motivated other governments to add to the US complaint and over 40 countries from Asia, Europe, Latin America and the Middle East soon joined the proceedings. A few weeks ago, on 22 August, the independent panel issued its report, ruling that a swath of import restrictions imposed in recent years violated global trade rules.

If history is any guide, Argentina will appeal the WTO panel's decision as part of an official strategy of the late Néstor, and now Cristina, Kirchner governments to flout all rules of conduct – and then buy as much time as possible to avoid being held accountable. This has been the disdainful way in which the country has handled all litigation defences in national courts and international arbitration tribunals. This was also the plan when it came to Argentina paying its

lawful obligations to bondholders – namely, to keep appealing in the US courts and leave all problems thus created up to the next administration to resolve.

Unfortunately for President Kirchner, the US Supreme Court saw through her contemptuous attitude and game plan, and last June it refused to review the not-at-all-absurd rulings of a federal judge sitting in New York, and of a federal Court of Appeals, on a case involving holdout creditors exercising their lawful rights to be paid what they are owed. And when the clock ran out, Buenos Aires chose to default on all of its obligations to bondholders rather than comply with the sentence handed out.

It is unfortunate that some observers are still naïve enough to believe that Argentina's self-inflicted problems are the world's – or the United Nations' – responsibility to resolve.

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