It is an honor to participate in this session. I am grateful for the opportunity to rethink recent experience, and my own views in light of recent events.

I. Introduction

The past five years have seen record-breaking restructurings (notably in Greece); new treaties to deal with sovereign debt crises in Europe; spectacular court victories for creditors, notably in the case of Argentina; major institutional reforms addressing debt management at the International Monetary Fund (IMF); and dramatic contract changes, which go beyond anything accomplished since the League of Nations first tackled sovereign debt contracts—a product of collaboration among market participants, the official sector, and issuers ranging from Mexico to Kazakhstan and Vietnam.

And yet, Greece is on edge, struggling to repay its official debt; Argentina’s unpaid debt has quadrupled; Ukraine is looking at another restructuring months after its debt was judged sustainable; and Ecuador has returned to the international markets with great fanfare, only to face a new lawsuit from creditors.

To be sure, recent reforms have not been fully implemented, and each of these countries is “unique” (what sovereign isn’t?)—but together, they add up to an embarrassing record for those, like me, who have maintained that the system is reasonably efficient, orderly, and adaptable, even if not altogether apparent to outsiders.

Is sovereign debt doomed? Can we do better? Where do we start?
First, we must get past debates over form. It would be unfortunate if the United Nations process turned into another endless and fruitless contest between “statute” and “contract.” Recent experience shows that there is room for both: There have been contract and statutory reforms at domestic and international levels. Both are important; neither is sufficient.

Second, the UN process is an opportunity to consider big gaps in the system, not the myriad lesser gaps and inefficiencies that are continuously addressed by governments, their public and private creditors, and regional and international organizations, as they deal with exigencies of the moment. These big gaps are not new, but recent events highlight their importance. They are Enforcement, Fresh Start, Inter-Creditor Equity, and Legitimacy.

I elaborate on them in the remainder of my remarks.

II. Four Big Gaps

A. **Enforcement.** Perhaps the most spectacular lesson of litigation against Argentina is just how disruptive yet utterly ineffective sovereign debt enforcement can be. Whatever one might think of Argentina, its creditors, or the US courts, it is a fact that despite a series of resounding victories, the plaintiff creditors have not collected—while unpaid debt has grown by $30 billion, ensnaring a host of third parties, including payment and clearing systems, in lawsuits around the world. This is not a success story for anyone.

On the other hand, the case highlights the fact that sovereign debt could be enforced indirectly, by boycott. A debtor cut off from access to external finance has serious trouble functioning as a sovereign. Perhaps the most troubling thing about recent enforcement litigation is that this potent sanction is in the hands of individual self-appointed enforcers—creditors, courts—while most creditors, other stakeholders, and the international financial system are in passive or reactive mode.

It is vital for sovereigns to be able to make credible commitments in order to get access to the financing they need. However, any individual commitment cannot come at the expense of the majority of claimants against the sovereign, or the system as a whole. Recent experience thus points to the value of collective enforcement.

Filling the enforcement gap requires balancing sovereignty with commitment, and balancing the needs of particular debtors and creditors with the needs of the rest of the world.

B. **No Fresh Start.** Recent experiences in Ecuador, Argentina, and Grenada, and earlier incidents involving Zambia, Liberia, Nicaragua and Peru, make plain that a country is not free of its debt unless and until every last creditor has been accommodated. For some countries, this might take decades—or might never happen. The risk of post-restructuring
attack, and damage from such an attack, go up when new avenues for enforcement emerge.

It is no use to say that most countries take care of this risk by settling with most creditors. This many outliers in a universe of a few dozen countries with market access, and in a relatively short period of time, point to a structural problem.

Finding a mechanism to replicate the effect of permanent debt discharge is more challenging than finding sources of interim financing or temporarily shielding the debtor from lawsuits. However, especially if enforcement is to become more potent, the system cannot function without the prospect of a fresh start for the debtor.

C. Inter-Creditor Equity. The latest crises in Europe and Latin America make plain that the promise of equality among claims on the sovereign is simply false. In sovereign debt, “equal treatment” is never equal.

This is because, first, there is no consensus among regime participants on what equality should mean—quite apart from the convoluted argument over the meaning of the Latin phrase *pari passu*. In a fragmented regime, every participant can and does insist on his or her own definition of equality.

Thus some find it unequal for creditors who held out to recover many times the amount collected by creditors who restructured. Others insist that past history is irrelevant, and equality should be based on current contract claims. US federal courts agreed; other courts might hold a different view. Some find it unequal that public sector entities holding ordinary bonds should escape restructuring—a controversy in several ongoing crises. In response, government creditors might either claim special treatment because of their public mission, or use bond provisions to their advantage—defining equality in a different way. Yet others’ sense of equality is offended when domestic and external debt are treated differently, when international institutions at the heart of the restructuring process stand first in line, or when essential services are cut to pay the debts of departed dictators.

The objective is not to endorse any single vision of equality, but to highlight the fact that such competing visions are a natural byproduct of a highly fragmented regime. Different claims are treated separately in loosely linked fora; each of these is self-judging. No creditor can be forced to restructure its claim in any given forum. It is relatively easy to arbitrage differences among fora based either on creditor identity (foreign, domestic, public, private) or debt form (bond, loan, public, private).
Contracts are a part of this fragmented regime, and contract reform is absolutely essential to promote consistency and fairness within categories of claims. They cannot ensure fairness across categories.

A comprehensive system that manages relationships among different categories of debt and restructuring fora can help negotiate these competing visions of equality, and foster trust on the part of system constituents.

**D. Legitimacy.** Perhaps the toughest challenge facing sovereign debt today is a legitimacy crisis. Constituents of sovereign debt restructuring, real people from pensioners with their lives’ savings in government bonds to taxpayers straining to repay them, do not see the system as a system, and have no faith in its distribution outcomes.

The concern is not chaos or unpredictability. As I have said and written many times, sovereign debt crisis management is remarkably stable and predictable for an informal regime. The challenge instead is intelligibility and accountability. People who pay for debt restructuring do not see, understand, or have a voice in the system. Therefore, it should not be surprising that many do not trust its outcomes.

This is one area where taking small, practical steps could help close a big gap. For example, making restructuring information publicly available in a systematic way, including legal and financial terms, and open to public input, could help foster learning, effective monitoring, institution building, and, eventually, public trust. For now, such information is the province of enterprising academics and research departments at large institutions. Changing this is low-hanging fruit.

**III. Conclusion**

Our task on this panel is easy—to diagnose problems. Solutions will come later in the program. These need not be radical, and certainly need not take the shape of a new batch of uniform rules. Rules have a uniquely dismal record in sovereign debt. Meanwhile, rules that are repeatedly broken or evaded are worse than no rules at all, because they destroy trust in the system—something that is already in short supply when it comes to sovereign debt. New rules might feel good, but meaningful progress entails changing norms and practices in a durable way, balancing sovereignty and commitment, adaptability and accountability. Visible steps to achieve this balance would be revolutionary indeed.