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SUMMARY OF PROCEEDINGS: INTERNATIONAL FACULTY SEMINAR ON CORPORATE AND CAPITAL MARKET LAW, ARROWWOOD CONFERENCE CENTER, October 20–22, 1983

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1. Introduction – the seminar

From October 20 through October 22, 1983, the International Faculty on Corporate and Capital Market Law conducted a seminar in Rye, New York, on the developing country debt crisis. The seminar, organized and chaired by Friedrich K. Kübler and Robert H. Mundheim, included participants from Germany, the Netherlands, Switzerland, the United Kingdom and the United States [1]. This summary of the seminar's proceedings is intended to reflect the opinions and suggestions of the participants and, to the extent possible, reflects events occurring after the seminar and before October 1, 1984.

2. The changing environment for international lending

2.1. The current situation

As of the end of 1983, the estimated external debts of less developed countries to banks (excluding debts of Eastern European countries and of members of the Organization of Petroleum Exporting Countries) exceeded $343 billion [2]. This debt is largely concentrated among such Latin American countries as Mexico, Brazil and Argentina [3].

Debtor countries face increasing difficulty satisfying their external debt obligations. As of August, 1984, Mexico, Argentina and Brazil had completed or were in the process of negotiating agreements with the International Monetary Fund (IMF) to set forth programs for dealing with their external payment problems [4]. In addition, all of the major Latin American countries except Colombia had approached their bankers for a restructuring of their payment obligations [5]. The difficulty that developing countries experience in

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servicing their external debt and, in some cases, their inability to do so, has been popularly characterized as the "international debt crisis" [6].

This crisis presents two threats to the world economy. First, developing country inability to service debt could precipitate bank crises in developed countries and major international monetary disruptions. Second, debt servicing difficulties could slow growth in developing countries and reduce exports from industrial countries to developing countries. A reduction in exports from industrial countries contributes to worldwide recession.

2.2. A possible manifestation of the crisis

Seminar participants questioned the effectiveness of current efforts to address the international debt crisis because of the illiquidity of developing countries. In particular, participants focused upon short-term and medium-term restructuring of debts by banks, and the provision of new funds by banks, the IMF, and other multilateral agencies and creditor governments. Their primary concerns with short-term debt restructuring was the low probability of meaningful debt service in the foreseeable future and the political implications of the debt crises on debtor countries.

An American regulator suggested that, despite existing cooperation among bankers and official agencies, there is an increasing likelihood that the present methods of handling the developing countries' inability to meet their debt obligations will not work in the long run. The basic problem, it was argued, is that these methods place the developing countries in the politically untenable position of becoming capital exporters, with corresponding declines in domestic economic conditions. Participants expressed doubts about the political will of countries, such as Brazil and Argentina, where at the time of the seminar lame duck governments had neither the political and economic fortitude nor the social stability to enter into adjustment programs with a view toward long-term solutions [7].

Reliance on a worldwide economic recovery to restore the liquidity of debtor countries leads to the conclusion that the current recession is a major cause of the crisis. Normal growth rates of three or four percent per annum could permit the world economy to resolve the current debt problem without major disruption [8]. Lessening the crisis through worldwide recovery will require time, however, and the availability of such time was questioned.

To emphasize the gravity of the situation, this participant explored how the possible resolution of the crisis through worldwide recovery and the adjustment of debtor country domestic and foreign trade policies might be jeopardized. Challenges to this solution and the breathing space provided by the current system of debt restructurings can come in two possible forms, even if developing countries do not expressly repudiate their foreign debt. First, a developing country could express its need for relief from its interest burden by

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asking for a temporary moratorium on interest payments or a substantial reduction in interest rates by means of a private or public statement. Second, such a country may advise the IMF that the conditions imposed for the availability of IMF credit cannot be met. Although restrictions on a debtor country's external and exchange rate policies may be tolerable, IMF discipline on the country's internal policies, such as its public service deficit, subsidies, and import controls, would be unacceptable. In essence, the IMF would be advised that the internal political and income distribution consequences of IMF discipline are too great. The threat of either or both of these challenges from a major developing country (other than Mexico) cannot be easily dismissed because of the uncertain prospects for a return to sustainable economic growth in the short term and a general drift to the political left in developing countries.

The American regulator argued that, although the threats are manifest, there is no clear method of contingency planning for private banks because of the large number of banks and the diversity of views involved. The current techniques being employed by both private and governmental institutions are part of a system based on reaction to specific crisis situations. Reliance on a system of response to crisis results in the increasing risk that, as the frequency of crises accelerates, the group of participants dealing with the problems will be overwhelmed. As a result of the constant crisis atmosphere surrounding the conduct of the international business of their banks, these individuals may also become insulated from the other, and perhaps more important, concerns of their banks. This combination of factors may even cause some parties to refuse to react or cooperate in formulating a response to a specific crisis. Accordingly, it was suggested that appropriate methods of contingency planning must be explored and that only central banks and the IMF could lead the appropriate adjustment process.

2.3. Background of the crisis

A number of factors were repeatedly identified as the major causes of the debt servicing difficulties of developing countries. Global economic conditions were perhaps of greatest importance. Prolonged worldwide recession has cut demand for commodities exported by developing countries. At the same time, international interest rates have risen significantly. Because much of developing country debt either is short term or bears a floating interest rate, developing countries have confronted substantially increased interest payments while their foreign exchange earnings from exports have dropped sharply.

The sheer magnitude of developing country indebtedness compounds the problem created by economic conditions. The enormous external debt levels of developing countries resulted from the huge influx of money from OPEC oil producers into the international banking system. OPEC producers deposited

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large portions of the substantial surpluses resulting from the increase in oil prices in 1973 and 1979 with major banks. Faced with depressed conditions in industrialized countries, these banks took the money from the oil countries and loaned it to the developing countries which needed the money, were growing, and were willing to pay the interest rates and large fees demanded. This "recycling" of petro-dollars may have prevented a major disruption to international financial markets, but it also produced huge absolute debt levels which, together with recession and high interest rates, have now precipitated the debt crisis.

Rapid changes in the environment for international lending were another cause of the debt crisis. Lending groups changed from a small number of banks and countries with similar interests to syndicates comprised of many money center banks and small banks with different views and interests. Borrower country governments increasingly emphasized domestic employment and export levels. These three events – increasing debt, increasing interest rates, and the changes in the environment for lending – further complicate the current debt crisis.

Underlying any attempt to resolve this crisis, a German banker argued, must be an understanding that interest rate levels and world trade directly affect the differing abilities of developing countries to service their debt. Debtor country import reduction policies can no longer make up for their interest payment obligations. Furthermore, debtor countries are understandably reluctant to pursue economic policies which might jeopardize their internal stability.

Given this background, participants questioned whether the banking system can afford continued and increasing exposure to debtor countries and whether private funding sources may disappear. A few suggested that commercial banks are approaching their funding capacity limit. Even without that limitation, commercial banks will continue to provide new financing only if the IMF and other official lenders demonstrate that medium-term financing is available to debtor countries. This financing should be available, it was argued, because the IMF, World Bank and others have sufficient resources, instruments and procedures to accept this responsibility. A solution to the debt problem will be found, however, only if there is improved coordination and a frank discussion of the distribution of roles and burdens among official lenders, banks and debtor countries.

In light of the inability to employ traditional methods of restructuring (as is done in the case of domestic corporate debt problems) in the country risk situation, the cooperation of major public and private financial institutions is essential to develop long-term solutions and new standards for foreign loans and risk-taking. In developing solutions, two principles are clear: (1) the interdependence of world economies resulting from international lending precludes an isolationist policy for any single nation, and (2) if banks expect

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official support in rescheduling, they must be willing to make concessions to regulators, including accepting a more expansive disclosure policy.

2.4. Suggested cooperative approaches

A number of different and sometimes inconsistent views were expressed concerning the best method of contingency planning for commercial lenders.

A European regulator suggested that emphasis should be placed on providing lasting relief to borrowers (*i.e.* "30 years at 5%"). Without such relief, joint action by lenders to preserve short-term positions will ultimately prove futile. Recognizing the difficulty of providing such relief, some banks are acting more realistically by writing down their loans and/or setting aside reserves. Regulators should encourage this difficult step.

Depending upon one's perspective, the current problem resulted either from a lenient lending and interest rate policy or from an imprudent judgment by lenders, borrowers, regulators and central bankers. Whatever the cause, all lending countries now find themselves in a similar situation and must cooperate to expand world trade and ease interest rate levels. The banking community must persuade lending country governments not to adopt protectionist policies. Tariffs and quotas would effectively exclude developing countries' products from world markets, depriving these countries of the benefits of an upturn in the world economy. There is some question, however, whether world trade can expand rapidly enough to prevent huge losses for banks and provide time for the revamping of the international financial system.

One suggested approach focused on the use of bank creditor committees to continue renegotiating debt because of the speed required and the political awareness of the participants in the process. Debt problems would continue to be handled on a case-by-case basis through the restructuring of existing bank credits and the extension of a limited amount of new credit. Many participants argued that reliance on this private mechanism must be supplemented by governmental action, particularly leadership in difficult reschedulings.

2.5. Conclusion

Participants ultimately agreed that current problems cannot be solved solely by the commercial banks; the coordinated action of commercial banks, central banks, international institutions and national regulators is essential. Currently, however, commercial banks sometimes receive contradictory signals from these other participants. Thus, the IMF is encouraging lenders to contribute new money to debtor nations while some regulators are encouraging the writing down of loans and more conservative international lending practices [9]. Accordingly, better coordination, combined with an economic recovery and lower interest rates, is vital. Given the different regulatory, legal and business

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structures of the lending nations and competing political interests, however, the likelihood of concerted action is questionable, even in an emergency. The practical difficulties of inducing a large number of banks to act in an anticipatory manner were recognized. The impediments to joint action arising from differing business interests and regulatory constraints, and the determination of alternative methods to overcome these differences in order to deal with the crisis, ultimately became a central theme.

3. Legal remedies against sovereign borrowers that default on their obligations

The next session of the seminar examined the risks faced by commercial banks which have lent to developing countries. Loans to foreign governments and government-owned instrumentalities and agencies (sovereign borrowers) are usually unsecured and afford the lender fewer realistic remedies than loans to private borrowers. An American banker suggested that in spite of lenders' literal contractual rights in the sovereign lending context, there is a real question whether any practical remedies exist in the event of a default [10].

The banks' current predicament and the reasons for uncollateralized lending, it was argued, resulted from a number of factors: (1) the presumed high quality and low risk of sovereign borrowers during the 1960s and 1970s; (2) competition among banks whose liquidity had been enhanced by petro-dollars; (3) the use of negative pledge clauses [11] in loan agreements; (4) local law and constitutional restrictions on sovereign grant of security interests or waiver of immunity from judgment; (5) the sensitive political situation for sovereign borrowers; (6) the impossibility of adequate collateral because of the magnitude of the total debt; and (7) the impracticability of foreclosing on a sovereign's collateral located within the sovereign's jurisdiction.

3.1. Comparison with remedies against private borrowers

In general, the participants agreed that the standard remedies which may be asserted against a defaulting private borrower have little application against a sovereign. For example, bankruptcy, liquidation and receivership procedures ordinarily are unavailable. The immunity of the sovereign borrower from suit and its assets from prejudgment attachment and execution may constitute insurmountable impediments to the exercise of legal remedies [12].

Even when possible, debt-collection ligitation rarely produces meaningful results. The value of any judgment against a sovereign must be measured against the assets which may be used to satisfy the judgment. If a "good" judgment against a sovereign is obtained, there are usually no significant assets located outside the country which can be used to satisfy the judgment. A sovereign's domestic assets are generally immune from attachment, waivers of

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such immunity are rare, and, in any event, may be prohibited under domestic law. Even if sovereign assets were seizable, they are typically unmarketable. Moreover, the political and psychological impact of obtaining a judgment must be considered. And enforcement of a judgment in a sovereign's local courts is likely to produce a hostile reaction with concomitant delays.

Accordingly, lenders are limited to the sovereign's assets located outside the sovereign's jurisdiction. For practical reasons, lenders try to use the set-off remedy: the creditor applies debtor deposits in its possession against the debtor's obligations. Because influential banks demand compensating balances in connection with the extension of credit, this remedy can be significant. Set-off, however, is generally limited to large money-center banks. Smaller banks must rely on sharing clauses in loan agreements.

A sharing clause is a contractual arrangement among creditors providing that in certain circumstances one creditor receiving from the debtor a disproportionate payment on a loan must pay over to the other creditors a pro rata share of that payment [13]. The underlying concept is that all members of a loan syndicate should share risk equally. Sharing clauses were recently applied in loans to Iran, where the interests of U.S. banks relative to other banks were implicated, and Argentina, in which the interests of British banks were uniquely at risk because of the Falkland Islands crisis.

The relationship between sharing and set-off clauses raises a number of issues. Agreements now consider whether individual creditors can set-off only against their portion of a loan. The majority view is that the syndicate should act as one, with each participant bearing its proportionate share of the loan risks. The sharing clause, by implication, preempts a bank from using the right to set-off solely for its individual benefit. Accurate information concerning individual bank interests and deposits is necessary to enforce this approach.

The Argentine refusal to pay U.K. creditors during the Falklands conflict has raised the policy matter of whether there should be exceptions to sharing where a debtor refuses to pay certain lenders on political grounds. A consensus emerged that no political exception should be allowed because it would provide an easy out for debtors and weaken the common interest of creditors.

Two advantages of the set-off remedy are the diminished probability of a successful sovereign immunity defense and the possibility of increasing seizable assets under a "Big Mullah" theory. In the latter case, the creditor's court may take an expansive view of the debtor's identity. As a result, a bank may be able to set-off not only deposits of the sovereign but also deposits of government agencies and public-sector entities such as airlines and manufacturers which are distinct legal entities and not parties to the loan agreement.

In addition to the set-off remedy, lenders may look to certain other limited remedies. Continental legal systems based on civil law provide many remedies available only by contract under common law systems. In practice, loan agreements specify all available remedies. Standard contractual remedies in the

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event of default include cancellation of the commitment to disburse funds and acceleration of maturity of outstanding advances.

Of course, an event of default is a prerequisite to the use of contractual remedies. Such events include payment defaults (after a grace period), cross defaults (which may include agreements involving other governmental agencies), and representation defaults (of particular concern are representations relating to necessary governmental approvals). Drafting of these definitions requires balancing the security needs of the lending banks against the trade policy and internal political needs of the sovereign borrower.

An American lawyer argued that, despite the meticulous drafting and lengthy negotiation devoted to contractual remedies, with the exception of set-offs, they are rarely exercised because of business considerations and the legal and practical difficulties of enforcement. The current experience with Latin American debtors clearly illustrates the limited application of contractual remedies. Nevertheless, such remedies may provide banks with a certain amount of flexibility and leverage in dealing with a default. The lender's right to refuse to disburse any new money regardless of its decision not to seek other enforcement action is probably of greatest significance.

3.2. Two principal concerns in international lending agreements

Two issues dominate the drafting of foreign loan agreements. First, the question arises whether a sovereign can change its law to redefine or repudiate the rights of foreign creditors. Generally, under conflict of law principles, foreign courts will recognize such changes if the loan agreement is governed by the sovereign's law. Consequently, banks are reluctant to accept the borrower's law, particularly if the borrower is a sovereign.

Second, a sovereign borrower's ability to avail itself of IMF resources is generally of paramount importance to a lender, since it is an indication of creditworthiness. Accordingly, loan agreements usually contain a representation that the borrowing sovereign is a member in good standing of the IMF.

3.3. Discussion

A regulator noted that the exercise of such remedies as a denial of additional credit and further disbursements may be affected by the regulatory, accounting, and disclosure rules applicable to a given lender. The classification of loans and the income and balance sheet consequences of creditor action may induce certain actions and discourage others.

Certain loan agreement clauses, such as negative pledge clauses, may cause more trouble than is justified by their inclusion because they may discourage the infusion of new money where such loans would be made only on a secured

basis. This is particularly true in the case of emergency official lending. Thus, certain sources of bridge financing, such as central banks and the Bank for International Settlements, which are willing to lend only on a secured basis, have been virtually foreclosed from assisting borrowers. Considerable cooperation and innovation have been necessary to involve these entities [14]. The advantage of retaining negative pledge clauses – keeping all lenders in an equal position, which forces cooperation in a crisis – can be mitigated by exceptions for emergency funds or by obtaining waivers from lenders when needed. The efficacy of these clauses, however, is questionable in light of the general view of the participants that the clauses are frequently violated or circumvented.

The participants also discussed the ability of lenders to respond to changing circumstances. Loan agreements typically provide flexibility to deal with changed circumstances by amendment and waiver provisions. These provisions recognize that it is both impractical and imprudent to require unanimous consent to all but the most fundamental changes in loan agreements. Nevertheless, the issue of whether to permit a majority of lenders to bind a minority may present significant business concerns to the participating lenders.

On the other hand, problems arise when a minority of lenders have a veto power. This situation ordinarily arises in connection with payment defaults and reschedulings requiring the provision of new money. It is doubtful that the majority can compel cooperation of all syndicate members on the basis of a syndicate member's implied duty not to harm the syndicate if that right is not expressly contained in an amendment or waiver provision [15]. Insofar as such a contractual duty, if included, would require the contribution of new money by each syndicate member, concern was expressed about a bank's fiduciary duty under German and perhaps other laws to review the status of a borrower before making a loan. This problem could probably be solved by careful drafting.

The problem is complicated by the existence of numerous loan syndicates. A proposal to coordinate action within and among syndicates through the adoption of procedures analogous to an international Chapter XI [16] proceeding received a mixed reaction. One participant suggested that post-maturity dispute resolution mechanisms in restructuring agreements could provide similar procedures without official action. Such mechanisms could establish a priority ordering of claims or provide for arbitration of disputes. Individual debt restructuring agreements could formalize rules that are now devised on an *ad hoc* basis. The analogy to Chapter XI was criticized because the leverage of an involuntary legal solution present in corporate restructuring is not present in international situations. Only the entity willing to provide new money, such as the IMF, has leverage in these circumstances. Drafting will not provide a viable framework when the participation of the IMF and central banks is unpredictable. Thus, dependence on the leadership of official lenders, using the leverage of new money, is both necessary and unavoidable.

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Even if this view is accepted, it was argued that some mechanism is also necessary to deal with the numerous commercial banks involved in any restructuring. The objective should be to reduce by advance planning the anarchy which otherwise might accompany efforts to handle debtor liquidity problems.

4. Recurring problems in the workout of troubled international loans

The next report examined the restructuring, rescheduling and refinancing (R/R/R) process developed by loan syndicates to deal with problem loans to developing countries.

4.1. Overview

Sources of problems in international loans include: (1) political situations, as in Poland and Iran; (2) persistent overvaluation of currency leading to an exodus of capital, as in Mexico; (3) mismanagement and corruption; (4) worldwide recession, high interest rates, declining commodity prices, and trade protectionism; and (5) bankers' emphasis on short-term loans, which exposes debtors needing long-term funds to uncertain and potentially volatile financial conditions.

Generally, upon perceiving difficulty in meeting its debt service obligations, a debtor country requests that its creditors formally restructure its debts. An advisory or lead committee is formed. Private lenders typically are represented on the committee, which identifies the borrower's obligations, devises an appropriate restructuring, and formulates an agreement. This committee should consider the current economic performance of the debtor country in devising a program of R/R/R. Ideally, problems of economic origin should be dealt with in a single rescheduling involving all public and private creditors. In 1984, such a cooperative effort had not been achieved. It was suggested that the IMF is in an ideal position to organize and lead private banks in the R/R/R process because IMF "conditionality" is generally a precondition to the restructuring [17].

The advisory committee's greatest problem is persuading all banks to accept the restructuring and not to create chaos by pursuing individual remedies. Achieving complete cooperation is particularly difficult when R/R/R requires the commitment of new funds. Smaller banks may prefer to write off loans instead of increasing their exposure, or they may attempt to pressure the larger lenders into taking over their positions. Acceptance of the advisory committee's work, however, does insure that all are being treated equally.

Although the form and terms of a restructuring are important and should be tailored to the needs of a given debtor country, the fundamental objective is to achieve a workable financial solution.

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4.2. The advisory committee

Typically, the advisory committee, organized at the request of the debtor country after a restructuring need is perceived, represents the major lenders in the restructuring and implementing of new loan agreements. Members of the committee are nominated by the debtor and generally are drawn from the large multinational banks.

Unlike loan syndicate managers, the committee owes no duty to the debtor, but only to itself and other lenders. Its role towards the debtor is advisory, while committee members pursue their individual interests as creditors [18]. The advisory committee does not have the authority to commit lenders to restructuring terms or putting up additional funds. Committee members are only middlemen offering their good offices to bring parties together. Their recommendations, however, are influential and represent the interests of at least a number of the major parties.

Other functions of the advisory committee include: (1) coordinating existing lending groups; (2) harmonizing syndicated and single lender agreements; (3) establishing intercreditor agreements if there is no master loan agreement, as in the case of Mexico; (4) reducing the risk of a race to the courthouse by competing creditors; (5) obtaining the cooperation of bank regulators and governments; (6) securing the assistance of the IMF and the Institute of International Finance [19] with respect to information; and (7) structuring arrangements to appeal to both large and small banks.

Generally, the committee is limited to approximately fifteen members in order to increase its effectiveness. Smaller bank representation may be desirable but may not be practical. Recently, participation in the committees has been expanded to include official lenders and regulators in observer roles. Such participation may foster increased communication and facilitate the commitment of new money by the official lenders. Yet, central banks clearly do not want the advisory committee to become the forum for the allocation of public and private burdens and policy formation, and their representatives at the seminar articulated some discomfort with participating in what they viewed as essentially a private matter. Therefore, their informal participation may permit official lenders to benefit primarily from understanding the dynamics of the adjustment process involving commercial syndicates.

Nevertheless, the IMF is now playing a crucial role in handling the debt crisis by placing its approval on rescheduling by particular debtor countries. Recent IMF-backed reschedulings have contained three essential ingredients: (1) the commercial banks agree to reschedule their outstanding debt and to make a modest contribution of new lending; (2) their lending is supplemented by a loan from the IMF; and (3) the IMF's contribution is conditioned on the borrower undertaking an austerity program.

To date, the advisory committee system has been quite successful in

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proposing items that have been acceptable to both debtors and creditors. Creditor acceptance results from the advantage to banks of foreign debt reschedulings. Although they forgo payments of principal, they receive higher interest payments and substantial rescheduling fees. If the debtor situation worsens, however, banks will be forced to accept lower interest payments and reduced rescheduling fees as they contribute new money. Accordingly, the true test of the advisory committee system may be expected shortly.

5. The need to provide new lending and amendments to R/R/R arrangements

5.1. The need to provide new money

A successful resolution of the debt crisis requires a global economic recovery and implementation of austerity programs by the governments of debtor countries. In the view of some participants, sufficient time for a solution will be available only if commercial banks are willing to roll over and restructure existing debts and to increase their net lending to troubled borrowers. New money is essential to a non-disruptive adjustment process. The perceived impediments to the provisions of new medium-term financing by banks were explored.

A major difference between typical commercial and sovereign lending is that commercial bankers are unable to control effectively or influence sovereign borrowers. It was argued that in these circumstances, successful rescheduling is only possible when a public sector agency, particularly the IMF, is prepared to lead. Even then, its views will not carry sufficient weight unless it is able to make a financial contribution of its own. As a result, major decisions concerning new money and the distribution of public and private burdens must be made by the IMF and other official lenders. The banks have no choice but to rely on these institutions. If they are then prepared to supply new funds, they have very little choice other than to accept or reject the program established between the debtor country and the IMF.

A German banker observed that differences between individual bank positions clearly influence the ability to raise new money. A main ingredient in the success of a restructuring program is its ability to motivate a clear majority of the banks with outstanding loans to provide new money, even though they are under no legal obligation to supply new funds. The ability to do so depends on whether there is sufficient similarity in starting positions among the banks, such as each bank's ability to bear a write-off of the loan, its overall foreign loan exposures and its position in relation to its competitors. If these positions are materially different, it is difficult to achieve the widespread commitment of new money.

A bank's willingness to contribute new money depends on its regulatory and

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accounting systems, earnings performance, capital levels and reserve positions, a well as its funding risk and exposure to a given country. For example, U.S. banks rejected the rescheduling of Brazilian interest payments and extension of interest maturities in favor of committing new money because U.S. regulatory and accounting schemes generally require loans with capitalized interest to be treated as non-performing. Recognizing such non-performing loans results in immediate adverse financial reporting consequences under the U.S. regulatory system. Conversely, banks with extensive loan loss reserves or hidden reserves are more willing to write off loans because the write-off will not affect reported earnings. The German banks' willingness to capitalize interest rather than to contribute new funds may be partially explained by this analysis. Accordingly, there will be a conflict between high-exposure, low-profit banks favoring new money, and low-exposure, high-profit banks favoring write-offs.

In order to partially eliminate artificial conflicts of interests, a European banker suggested that national regulatory and accounting systems should give banks the flexibility to design effective R/R/R programs with fresh money elements, even if the different national systems are not completely harmonized. New money may reduce the long-run exposure of creditors by assisting borrowers in financing trade and providing reasonable prospects for a recovery. Of course, longer term adjustment programs and financing will be necessary.

Bank directors and management have legal and economic responsibilities to their shareholders and depositors. If new money is in the best interests of the bank, it may also be in the best interests of its shareholders and depositors, although the latter two interests are not necessarily parallel. A conclusion that new money will reduce a bank's exposure over the long run and preserve and secure future business with the restructuring debtor and its domestic import industry can justify supplying fresh money [20].

There is, however, no necessity, incentive, or legal requirement for banks to contribute new money in the same ratios as their loan participations. Competitive considerations, as well as public criticism, differ for each bank. An infusion of fresh money may become particularly unacceptable for those banks which have only limited exposures or which already have considerable loan loss reserves. The resulting uncertainty, as well as the fear that a number of banks may drop out, makes the decision for other banks to increase their commitment very difficult. A bank must also consider that every increase in exposure to a restructuring country may handicap the competitive position of the bank towards those national competitors who have less exposure or who discontinue to share the burden of fresh money.

In addition, banks are currently being criticized for their country risk exposures [21]. There is almost no public encouragement for banks to contribute new money. Some banks, particularly those in the United States, have become the target for political attacks which may result in "punitive" regu-

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latory reform [22]. Moreover, greater attention to international lending practices has heightened the perception of risk in this area, which, in turn, has led some banks to curtail such lending [23].

Consequently, there may be a decreasing number of banks willing to contribute new money and the burden for the remaining banks will increase. A European banker argued that official lenders, such as the IMF and central banks, must realize that their increased participation in sharing the burden is necessary to induce these remaining banks to provide new money. Thus far, official agencies have performed reasonably well in this area.

Such increased official participation is possible only if politicians recognize that now is not the time to blame banks for the current crisis. Participants argued that such blame is misplaced because: (1) loans to developing countries financed the exports of developed countries; (2) this loan policy recycled petro-dollars; (3) much blame lies with high interest rates and worldwide economic conditions; and (4) these loans were worthwhile because they affirmatively addressed North/South income discrepancies.

5.2. Providing for new money: technical aspects

Although specific provisions of loan agreements (including sharing, negative pledge, remedies and cross-default provisions) have had little impact in the past, certain provisions can have great significance. For example, a condition precedent in a recent Peruvian loan agreement requiring a ninety percent commitment by prior lenders before export credits are disbursed has prevented disbursement of any funds when the figure achieved was eighty-five percent.

An American lawyer suggested that these difficulties can be avoided by changing the concept of the loan agreement. The agreement should be a simple memorandum of the terms of the financial arrangement which gives the debtor country political justification for imposing sound policies and gives the banks some meaningful and enforceable substantive rights. These rights would include the right to be repaid and not to disburse additional funds if a default occurs. Short-term restructuring agreements should be simplified to reduce the time necessary to implement them. The temptation to "lawyer" particular clauses should yield to exigencies, and emphasis should be placed on financial matters rather than legal points that may be divisive and of little ultimate relevance.

5.3. Prospects of R/R/R

The basic objective of short-term R/R/R is to buy time for the worldwide economy to recover and for individual countries to implement adjustment policies. Economic improvement leading to an increase of world GNP by three percent per year should result in a gradual reduction of developing country

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debt ratios to their levels in the 1970s. Further optimism can be founded on the favorable experience with Mexico [24]. If there is cooperation between official lenders and commercial banks, there is a realistic hope of success in solving the current problems.

The remaining question is where will the sources of new long- and short-term money be found. Official lenders must provide and guide the use of long-term funds. Banks must provide short-term money because official action in this area is unlikely without a worsening of the current situation. If commercial banks must rely on themselves to raise new money, however, there may be significant regulatory implications.

6. Regulatory problems of R/R/R

Differing regulatory treatment of the alternatives available to banks in R/R/R artificially affects the choices of such banks without any economic justification [25]. All regulatory systems confront the problem of how to recognize banks' asset deterioration resulting from troubled foreign loans without significantly interfering with continuing flows of bank credit crucial in the near term to the debtor country's adjustment process and preservation of the creditor country's banking system. For the longer term, there is the problem of supervisors and bankers adapting procedures and standards in a way which promotes more cautious international lending to prevent the recurrence of a large-scale debt crisis.

6.1. The United States

6.1.1. Banking regulation

It was argued that due to its formalized bank regulatory structure, the American system of banking regulation lacks the flexibility necessary to deal with the current situation. For example, the current regulatory asset classification, examination and enforcement schemes, statutory loan limits and statutory disclosure system, and definition of bad debts all reduce flexibility.

A recent supplement to the U.S. regulatory system, the International Lending Supervision Act of 1983 [26] (the Act), is a comprehensive attempt to strengthen regulatory and market supervision of foreign loan activity while requiring banks to recognize the risks existing in their foreign loan portfolios. The Act, more fully discussed below, does not, however, expressly encourage the participation of banks in the R/R/R process and may discourage the extension of new credit to all but the most creditworthy foreign borrowers.

The American system of bank examination traditionally has required that inspectors from the bank supervisory agencies engage in on-site inspections of banks and evaluate, among other things, the quality of the bank's loan

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portfolio and other assets. In the course of this detailed investigation, loans and other assets are classified into four categories, with those that are criticized divided into three groups: substandard, doubtful and loss.

Because this traditional classification scheme was suited for commercial and not country risks, the three U.S. bank regulatory agencies in 1979 implemented a new system for country risk. (In the case of national banks, the appropriate agency is the Comptroller of the Currency; for state banks which are members of the Federal Reserve System, it is the Board of Governors of the Federal Reserve System; and for insured non-member banks, it is the Federal Deposit Insurance Corporation.) As part of this new system, responsibility for classifications of countries was transferred from the individual examiner to a central committee, the Interagency Country Exposure Review Committee, made up of experienced examiners from these three agencies.

Judgments by this committee about individual country conditions are reached after consideration of reviews of economic developments prepared within the Federal Reserve System, briefings by the Treasury Department and information obtained from commercial banks. The same nomenclature for classifications of countries was continued – namely substandard, doubtful and loss; however, new criteria were used to reflect the different characteristics of sovereign risk. "Substandard" meant that the debtor country was guilty of nonpayment of its debt or that non-payment was deemed to be a virtual certainty within six months. The "doubtful" classification was to be assigned if interest and principal had been in arrears for one year. No "loss" classification was ever encountered. The impact of the International Lending Supervision Act will likely be an increase in the number of loans considered to be of impaired quality, and thus requiring coverage by special reserves [27].

After a bank has been examined, the supervisor rates the bank on a scale of 1 through 5. Any bank with a 3, 4 or 5 rating will be subject to formal enforcement action which may result in significant management change. Because bank directors are potentially subject to civil liability for violation of enforcement agreements, banks with unsatisfactory ratings are likely to be reluctant to inject new money into foreign loans. Therefore, the examination system appears to be in conflict with the general policy of encouraging moderate increases in international credits.

Further problems result from the U.S. statutory scheme. If certain debts fall within a statute's definition of "bad debt" [28], banks may be forced to write off loans included in successful R/R/R programs. Similarly, the ability of banks to inject new money is limited by statutory lending limits which are applicable, with certain exceptions, to foreign governments. Thus, bank concerns about statutory lending limits and the asset classification and enforcement system have apparently contributed to their resistance to providing new money to Brazil.

The objective of the Act is to encourage prudent private decision-making in

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foreign lending that appropriately recognizes risks while affording lender discretion to fund creditworthy borrowers both in the United States and abroad. The program established by the Act is designed to reinforce what are perceived to be two of the basic principles of sound banking: (1) diversification of risk and (2) maintenance of adequate financial strength to deal with unexpected contingencies. However, the seminar participants acknowledged that the regulatory approach subsequently incorporated in the Act may reduce the banks' incentive to contribute new money.

The Act directs the bank regulators to require banks to establish and maintain special reserves against loans to countries that are chronically delinquent or countries with protracted payment problems [29]. These reserves must be charged against current income and not be counted as part of capital and surplus or allowances for possible loan losses.

The rules proposed by the banking agencies call for the establishment of an "Allocated Transfer Risk Reserve" separate from the allowance for possible loan losses. Banks would have the option of establishing the reserve or writing down the value on their books of all or part of the assets which would otherwise be subject to the reserve. In either case, banks would be required to charge the amounts involved against current earnings.

The federal banking agencies will jointly determine which foreign assets are subject to reserves, and banks would be notified of the amount of reserves for specific foreign assets. In the first year, the reserves normally would be ten percent of the principal amount of the foreign asset. If a foreign asset had payment problems over a number of years, the initial reserve could substantially exceed ten percent.

In subsequent years, the reserves could be increased, generally in increments of fifteen percent of principal. The specific amount and timing of the reserve would vary by country and might also vary by the type of asset. The percentage of reserves for specific foreign assets would be uniform for all banks. By imposing a uniform treatment for loans to certain countries, the regulators will compel an industry-wide recognition of the problems in these countries. Banking regulators felt that country lending limits, an alternative to reserve requirements, were too rigid and unworkable in light of current exposures.

The banking regulators have not yet determined how to treat new loans when comparable outstanding loans are subject to reserves. Consequently, the ultimate impact of reserve requirements on the availability of new money is unclear.

The Act also directs the banking agencies to cause banks to strengthen their capital bases and to establish minimum capital levels for banking institutions [30]. In 1984, under the minimum capital guidelines of the Comptroller of the Currency and the Federal Reserve Board, multinational banking institutions are required to maintain a primary capital to total assets ratio of at least five

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percent, and the Federal Reserve Board has set specific capital ratio targets for the seventeen largest bank holding companies. The Act also expressly authorizes the banking agencies to establish minimum capital levels for individual companies in light of the particular circumstances of such companies.

The Act seeks to remove distortions both to bank behavior and on financial reports of banks created by immediate recognition as current income of all fees received in connection with R/R/R. Section 906 [31] of the Act generally requires fees received by banking institutions for restructuring international loans to be amortized over the life of the loan.

Increased disclosure requirements for the international lending of individual banks also are required by the Act. Disclosure provisions require quarterly reports to the banking agencies by banking institutions with respect to their foreign country exposure. In addition, public disclosure of individual bank "material foreign country exposure in relation to assets and to capital" will also be mandated.

The Act also contemplates renewed efforts by the U.S. agencies to cooperate with foreign bank supervisors and the IMF to promote stricter global supervision of international loans and to achieve the adoption of more effective and consistent supervisory policies and practices with respect to international lending [32].

The operation of the U.S. regulatory system was illustrated by the hypothetical case of a country either temporarily suspending interest payments or paying only a below-market rate. In either case, the foreign loan would be classified as substandard and a reserve provision of approximately ten percent and disclosure of the non-performing asset would be required. Furthermore, there would be an accounting question as to whether the loan was non-accruing. If a bank were to extend the maturity of a loan and lower the interest rate to below market but increase the amount repayable at maturity to provide for a market yield to maturity, regulators might not treat the loan as a substandard asset. Consequently, no write-off would be required, although the accounting treatment might differ. Accordingly, different forms of a transaction having virtually identical economic consequences are treated differently. Participants argued that a more flexible system was necessary and that increased flexibility might be forthcoming from regulators if banks provided a larger capital cushion.

6.1.2. Disclosure

The disclosure provisions of the Securities Exchange Act of 1934 and the rules promulgated thereunder by the Securities and Exchange Commission (the SEC) apply to bank holding companies. Banks, however, are subject to the disclosure rules of the appropriate banking authority, which are generally comparable to those of the SEC.

On August 11, 1983, the SEC issued a "Revision of Industry Guide:

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Disclosure for Bank Holding Companies," which primarily relates to disclosure by bank holding companies with respect to information concerning (1) non-accrual, past due and restructured loans, (2) potential problem loans, (3) foreign outstandings, and (4) loan concentrations. These guidelines were developed in coordination with the U.S. bank regulators, and such regulators' guidelines with respect to disclosures required by the Act are expected to be similar [33].

In addition to the guidelines, banks are confronted with a number of other disclosure issues raised by the securities laws. For example, a Tennessee federal district court has held that bank officers violated the federal securities laws by failing to disclose to investors certain information contained in bank examination reports [34]. This court concluded that adverse information contained in a confidential bank examiner's report is not entitled to secrecy if the information is material under the federal securities laws [35]. It was suggested that this decision may affect information received at advisory committee meetings.

Participants also suggested that as banks broaden the range of their activities, for example into the highly SEC regulated broker–dealer industry, there will be increasing tension between SEC disclosure policies and bank regulation [36].

6.2. The United Kingdom

The Bank of England, subject only to general statutory requirements concerning soundness, has much greater flexibility than its U.S. counterpart in exercising its supervisory authority to develop specific regulatory approaches. The basic philosophy is that the banks, in the first instance, should evaluate their loan portfolio and create provisions where necessary. Viewing active intervention as inappropriate in most situations, the regulator simply reviews the bankers' judgment, pursuant to an investigation and classification system.

The British system does not require the expansive disclosure found in the American system. For example, U.K. banks are permitted to maintain undisclosed reserves, although in practice the largest banks do not do so [37]. Similarly, the confidentiality of the banker–borrower relationship, whether involving a sovereign or a business, is considered sacrosanct. The Bank of England does not set any formal rules with respect to reserves, and there is no direct relationship between the supervisor and the auditor.

6.3. Switzerland

The Swiss give their central bank policy-making authority while granting a supervisory role to a distinct entity, the Banking Commission. The Banking Commission does not have a classification system and generally relies on bank auditors who are said to be entrusted with a public mission and must report to

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the Banking Commission. In the case of loan loss reserves, the Banking Commission may decide the minimum amount of the reserve in difficult cases or cases where the auditors' views differ from those of the bank's management. Unlike its treatment in the United States, once a provision is made in Switzerland, it is no longer considered a part of capital [38].

The Swiss system requires only limited disclosure. The basic philosophy is either regulation or disclosure, but not both. Public disclosure of problem loans or provisions against principal is not required if they are charged against hidden reserves; provisions for interest should be disclosed because of their impact on current income. Undisclosed reserves are permitted and the Banking Commission has a role in monitoring their use. Country risk is not viewed differently from other high-risk areas in which disclosure is not required.

The role of the regulator is to ensure and, possibly, to guide banks in the establishment of a reasonable loan policy.

6.4. Germany

Unlike the U.S. system, the German regulatory and tax system favors a capitalization of interest rather than the injection of new money. The tax system, which permits provisions against interest to be deducted, combined with the regulators' encouragement of limiting exposure by provisioning, is responsible for this result.

The German system regards hidden reserves, which are not included in a bank's capital base for supervisory purposes, as important in enabling a bank to maintain an acceptable fixed risk asset to capital ratio after incurring losses. Hidden reserves are encouraged as part of a "prevention is better than cure" philosophy. The cushion provided by such reserves may permit banks to respond more rationally to the debt crisis and help maintain public confidence in banks experiencing losses which can be absorbed by these reserves. The German philosophy of disclosure is that it does not solve the risk problem. The supervisor annually reviews banks' loan loss reserves and requires such provisions to be in line with those of other banks in comparable circumstances.

6.5. Overview

In contrast to the regulatory systems of Europe, which were viewed as implementing similar regulatory philosophies, seminar participants claimed that the U.S. system imposes artificial constraints and conventions on banks. The U.S. system encourages banks to lend new money to be used for the payment of interest. Thus, doubtful assets are added to the balance sheet to protect the income statement. It was hoped that the scale and universality of the current problem would give rise to common action by regulators to establish a consistent approach in different countries, including consistent capital and reserve policies.

All seminar participants agreed that in the current crisis situation regulators should monitor capital adequacy and reserve levels. Moreover, the German and Swiss bankers and regulators advocated maintaining hidden reserves to prevent runs on banks by smoothing reported income. The use of hidden reserves points to a significant difference between the U.S. system of regulation and those of foreign countries. The requirements in foreign countries are primarily directed to bank regulatory goals, while U.S. securities laws are designed to protect the investor through full disclosure. Only the United States has any formal requirements for disclosure of foreign loans to investors [39].

The participants also agreed that in all countries banks make full disclosure to their supervisory authorities. Their disagreements as to the merits of disclosure, therefore, related only to public disclosure. The United States favors public disclosure, citing investor protection as well as the desirability of exposing banks to market discipline as justifications for this expansive disclosure policy. European countries, on the other hand, envision regular supervision as fulfilling the same purpose. Some might argue that public disclosure destabilizes the system because it facilitates the impact of the vagaries of public sentiment on bank management. Accordingly, the need for public disclosure must be balanced against the preservation of confidence in banks and the banking system.

7. The desirability of greater public disclosure of lending positions and other aspects of bank strengths and weaknesses

7.1. The rationale for disclosure

Disagreeing with the European view that regulation is an adequate substitute for required disclosures by banks, Professor Richard Herring argued that a voluntary system of disclosure is inadequate. Mandating disclosure would not be necessary if banks voluntarily disclosed sufficient information; however, according to Professor Herring, this is usually not the case based upon a comparison of regulatory systems with different disclosure requirements. Full disclosure of country risk arguably contributes to greater efficiency in resource allocation because decisions are based on more and better information. Market discipline based on full disclosure also improves the allocation of financial capital. Finally, by eliminating inside information, full disclosure permits equity in trading.

7.2. Costs and benefits of disclosure

Traditionally, banks have been subject to lower disclosure standards than other corporations. This lower standard resulted from the substitution of strict

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regulation for disclosure. In addition, the potential impact of the disclosure of adverse news on the soundness of banks has been recognized. (Banks are particularly prone to "runs" because of the short-term nature of their liabilities and their low capital-to-asset ratios.)

Participants suggested that the benefits of disclosure are greatest where regulation is absent and where information will eventually become known in a crisis situation. The second point implies that a disclosure policy should be continuous and anticipatory of adverse developments. Although the demand for information fluctuates with business conditions, a system of continuous disclosure adopted prior to such demand has a number of advantages. Continuous disclosure puts both good and bad information in context, enhances credibility, and should therefore moderate responses to adverse disclosures. Similarly, continuous disclosure permits monitoring of banks' exposure and thus permits market discipline. Finally, there should be a high degree of uniformity in disclosures to permit useful information analysis.

The costs of disclosure include the costs of producing the information. However, much disclosure would involve information already produced for management, albeit in different form, so that the marginal cost should be minimal. Disclosure also imposes the cost of loss of proprietary information. This problem is exacerbated if disclosure requirements in different regulatory schemes are not uniform. The confidential relationship of clients may be threatened and, depending upon required disclosures in other regulatory systems, may impose a competitive disadvantage in the international context.

7.3. Application to current issues in international banking – exposure to country risk

The arguments for disclosure of country risk are twofold: (1) the regulatory approach has not adequately controlled country risk and should be augmented by market surveillance, and (2) information about exposure to troubled debtors will ultimately become known and disclosure, therefore, should be *ex ante* in order to minimize the inevitable market reaction.

The direct costs of providing public disclosure of country risks should be low, since such information is already supplied to regulators. The indirect costs of disclosure are more difficult to evaluate. Assuming disclosure requirements are not uniform, information regarding the exposure of U.S. banks may be of competitive value to foreign banks. Additional competitive disadvantage to U.S. banks may result from the abrogation of the traditionally confidential relationship between borrower and lender [40]. Disclosure of country risk might also subject banks to political pressure about loans to countries not having favorable relations with the United States or other customers of the bank. Finally, banks' funding costs may be increased in a full disclosure regime because otherwise unknown risks become known to depositors and other sources of funds.

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Consideration of programs in the United States (or any other nation acting unilaterally) for full disclosure of country risk should include an analysis of the following questions: (1) Will disclosure adversely affect the competitive position of U.S. banks? (2) Will disclosure reduce the amount of money that will be lent to developing countries? (3) Will a system of disclosure in the United States force foreign banks or regulators to disclose country risks? (4) How will the expansion of U.S. banks be affected?

Seminar discussion focused upon the possibility of eliminating the adverse competitive effects of disclosure through a uniform disclosure policy for lenders. The prospects for a uniform disclosure policy for lenders in a system resembling the U.S. Guidelines for Country Risk Disclosure are dim, however, because of the basic European view that regulation eliminates the need for detailed disclosure. The costs for the Europeans, including the disclosure of hidden reserves, were thought to be too great [41]. Conforming disclosure philosophies (or at least enhancing the comparability of disclosures) was seen as only a small part of the larger problem of harmonizing regulatory, accounting, and tax approaches to the current debt problem [42].

Participants disagreed over whether market discipline resulting from disclosure was a desirable supplement to regulation. A German banker, expressing the general European concern about the effect of greater disclosure on public confidence in banks, argued that disclosure creating a sense of crisis might prevent banks from taking necessary and perhaps innovative actions to address their loan problems. The Europeans stressed that the assumption of most Americans that more disclosure is automatically better, is not necessarily true. For example, arguing that the market discipline resulting from full disclosure can be counterproductive, one participant noted that the early 1970s financial markets that made it favorable for banks to make loans to developing countries are now penalizing the same banks. However, an American participant suggested that the capital markets recognize debtor country problems before regulators do, and the market price movement of Mexican bonds was given as an example.

Depending upon the perceived costs of disclosure, mandatory disclosure may artificially alter a bank's lending policy. Banks may avoid loans which would trigger disclosure obligations. A participant observed that disclosure of troubled loans may perversely lead banks to make even less sound loans, provided such loans need not be disclosed.

8. Policies for dealing with the debt crisis

8.1. The problem

It was suggested that national regulators and banks focus on short-term solutions. The constant rollover of loans, however, indicates the need for a

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longer term solution: shifting the burden from individual banks, syndicates and countries to international mechanisms. Developing countries have been compelled by the unavailability of sufficient long-term financing to rely on medium- and short-term bank loans to finance long-term development projects. This mismatching is partly to blame for debt servicing problems.

The use of R/R/R programs to permit more long-term adjustment programs is threatened by three developments. First, lenders are becoming increasingly reluctant to commit new money to debtor countries. Secondly, the growing frequency and difficulty of R/R/R negotiations has made the short-term process less workable. Finally, there appears to be an emerging reluctance on the part of debtor countries to meet all their obligations, and the potential for many debtors following the lead of a single repudiating country has grown.

8.2. The role of official lenders

There are four general forms of official lenders: governments and their central banks, the Bank for International Settlements, the World Bank, and the International Monetary Fund.

8.2.1. Governments

Historically, governments have played on important role as lenders and guarantors of private lending to developing countries. Recently, private lending has surpassed government loans, but the amount owed to governments will increase as debtor countries are unable to meet their obligations and governmental guarantees become due.

Governments have developed at least one mechanism to address the problem debt of other countries. An unofficial institution where governments meet with debtor countries has come to be known as the Paris Club. The scope of competence of the Paris Club is limited since members of the Club only deal with government loans and government guaranteed loans from other creditors which are overdue. A country's application for restructuring of its debt is only considered after the debtor country has first agreed to a program for the use of conditional upper credit tranche financing from the IMF. The negotiations in the Paris Club normally result in the restructuring of the debts falling due within the next year or two. These maturities are stretched over periods between five and ten years, with up to one-half of this period granted as a grace period in which no payments of principal are required. Interest must be paid, normally at higher rates than originally contracted, to make up for the risk that has become evident through the need to restructure. Since the Paris Club confines its restructuring to the short term, some candidates for restructuring must appear regularly to ask for further assistance. Normally the governments taking part in the Paris Club negotiations do no waive any part of the debt or the interest accrued. It is exceptional for a government to relieve

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the burden of the debtor by way of partial waiver.

A European regulator suggested that the Paris Club should take the lead in formulating medium-term (5–10 year) restructuring instead of the current short-term (1–2 year) restructuring in order to grant debtors meaningful adjustment time. In addition, in light of the growing interdependence of private and public R/R/R efforts, better coordination and information sharing between banks and governments through the Paris Club or otherwise is necessary.

8.2.2. The Bank for International Settlements

The BIS [43], the "bank of central banks", has a three-pronged role: (1) a forum for discussion and exchange of information; (2) a collector and disseminator of statistics; and (3) a lender of short-term bridging credits to central banks. As banker to the central banks, the BIS is only a very short-term lender, providing liquidity in a given currency. It is not to be viewed as another source of international credit. Its role is confined to providing emergency short-term liquidity until IMF or other loans can be disbursed.

8.2.3. Central banks

The participants' view of central banks differed only in degree of emphasis rather than in philosophy. Central banks can and should help coordinate creditor bank action within their countries, particularly in the formation of national groups for rescheduling negotiations. The degree of central bank involvement varies. For example, the Deutsche Bundesbank has, at the request of some of the German lead banks, informed all German banks with loans to a particular country of the date and place of creditors' meetings. In doing so, the Bundesbank left it to the banks to decide whether to respond to the invitation issued by the lead bank. All the banks were expressly assured by the Bundesbank that the fact that they had made loans to such country would not be disclosed to any other bank, since the strict rules of confidentiality contained in the German Banking Act prevent the Bundesbank from disclosing such information [44]. Nor, it was asserted, does the Bundesbank urge banks to participate in restructuring negotiations or suggest any terms of R/R/R. The U.S. Federal Reserve Board, on the other hand, attempts to contact banks and explain the reasons for a given restructuring program and the risks of failing to adopt the program. The Bank of England sees a similar explanatory role for itself. Central banks disclaimed any attempt to force any decisions on the lending banks.

In connection with their advisory role, central banks also serve as a clearinghouse of information. They do not, however, envision for themselves the task of bailing out the commercial banks. Their "lender of last resort" function is confined to "their" banks and "their" currency and financial markets. It was thus argued that the risks and possible losses involved in

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lending, including lending to and into foreign countries, must remain with the commercial banks, just as the profits of such lending go to the commercial banks.

Guided by their desire to maintain confidence in their banking systems, central banks have endorsed the R/R/R process. They view their involvement as extraordinary and temporary, intended to provide time for IMF programs to function and for the development of other sources of long-term financing as well as economic rowth. The IMF is viewed as the primary source of assistance, the leader in the adjustment process and the catalyst for additional private lending. The central bankers' emphasis on not compromising the distinction between public and private responsibilities, however, compels them to avoid greater involvement in, and commitment to, the R/R/R process. Accordingly, there is little possibility that they will change their observer status in advisory committees.

8.3. The World Bank's role in raising capital flows

It was suggested that the World Bank's perception of the current problem is based on three premises: (1) no developing country will repay principal in the foreseeable future because of their stage of economic development, current resources and political unwillingness to be capital exporters; (2) it is desirable for the level of world debt to increase at least until the year 2000 in order to facilitate growth and a favorable political and economic environment; and (3) the current situation is the banks' problem and not the responsibility of the World Bank.

A participant stated his belief that the World Bank intends to continue its past practice of providing long-term financing to developing countries. For political and commercial reasons, however, it will not participate in the R/R/R process or assist the banks, nor does it have the authority to do so.

As a major project lender, the World Bank has extended $90 billion of credit to developing countries on a project financing basis. To date, there has not been a significant default or delinquency by any country. This preferred creditor status arises from the consequences of default: the inability to raise funds from other official lenders including the IMF and severe political ramifications. In addition, the World Bank has benefited from its thorough analysis of loan proposals, ensuring that only sound projects are supported.

Recognizing the need for providing increasing amounts of long-term capital to developing countries, the World Bank has been constrained by legal restrictions on its lending powers. The Bank is required to keep loans at or below a one-to-one ratio to capital [45]. Bank capital currently consists of $3 billion in paid-in capital, $6 billion in retained earnings and $50 billion in guarantees from countries constituting its shareholder body. Even though the World Bank finances its loans from the capital markets rather than from contributions from its member governments, an increase in the Bank's callable

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capital to provide guarantees covering all of its lending is necessary if lending is to increase substantially. Member governments are likely to be reluctant to authorize increases in their guarantees and, as a result of the one-to-one ratio, this will limit any increase in lending by the Bank. Given current economic conditions and capital markets, the Bank can lend out approximately $12 billion per year without raising new capital. One additional restriction on the Bank's ability to increase loans is the inability of capital markets to supply the Bank with more than $10 billion of fixed rate credit. Thus, the Bank is confronted with a twofold problem: (1) to increase its project lending to developing countries, and (2) to persuade commercial banks to increase their new money commitment beyond R/R/R to supplement World Bank project lending.

The question was raised whether the Bank could increase its lending capacity by establishing an affiliate, similar in structure to a commercial bank, capitalized solely by the Bank itself. In contrast to the Bank, which is not a deposit-taking entity, this affiliate would accept deposits from the interbank market and central banks and pay floating rates. The ratio of risk assets-to-capital would be approximately eight to one. Acting as lead bank, this affiliate would develop loan opportunities in the same manner as the World Bank, but would seek commercial banks to assume approximately eighty percent of its loans within two years of the first draw-down of funds.

Commercial banks' comfort in committing long-term funds to this co-financing arrangement with the World Bank would be based on the Bank's participation, research and project analysis, debtor reluctance to default to a Bank loan syndicate and a drawn out disbursement period. In essence, this plan means banks would no longer make balance-of-payment loans but would refocus on long-term project financing. It was estimated that the Bank affiliate's loans of $5 billion per year would generate as much as $25 billion per year in new bank loans.

8.4. The Guttentag / Herring proposals

Professor Jack Guttentag presented a number of proposals jointly developed with Professor Herring.

Short-term objectives must include: (1) encouraging the commitment of additional money, (2) reducing the existing debt service burdens of debtor countries, (3) political feasibility (*i.e.* no significant governmental participation), and (4) mitigating shocks to lender banks' financial and accounting reports. Existing proposals generally do not encourage the commitment of new money. Longer term objectives should focus on preventing the recurrence of the crisis. Accordingly, proposals should impose constraints on the behavior of the banks and borrowers at an earlier stage and force a reduction in the concentration of country risk exposures.

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To encourage new money, the IMF would authorize debtor countries that have negotiated stand-by agreements for upper credit tranche drawings from the IMF to issue marketable floating rate consol certificates having a prior claim over all old debt. An incentive to contribute new money would therefore be created. As an additional benefit, the IMF would become more influential without the contribution of additional money by the United States and other nations.

Old debt would be converted into similar floating rate consols (without a prior claim) and all debt denominated in a given currency would be homogenized and would carry a single interest rate. The consols could be traded on a secondary market, and the interest rate on the consols would be quite high in order to encourage debtor redemption. The absence of an obligation to repay principal under such a perpetual bond is designed to reduce liquidity problems.

The value of the consols on the books of banks would be face value unless interest payments became delinquent. In this case the value would be reduced by one percent for each month of delinquency. This would moderate shocks to banks if the financial condition of debtor countries worsened.

Longer run programs would include the creation of a secondary market in loans to debtor countries by using the IMF as a conduit for the pooling and remarketing of loans in the same manner as FNMA or GNMA participations. This should enable banks to reduce concentrations of exposure. Moreover, it would facilitate requiring banks to mark to market all foreign loans on their books. Marking to market would give banks an incentive to control their loan risks and would influence debtor countries. Finally, a system of full disclosure should be adopted to improve the efficiency of market discipline and permit accurate valuation of foreign loan assets.

The panelists agreed that a consol with a floating rate accurately reflects the current reality that principal will not be repaid in the foreseeable future. However, the acceptability of conversion of debt to consols to both banks and debtors, and the availability of new money, were both questioned. The consol appears primarily directed at an inability to repay principal, whereas the current crisis involves the inability to pay even interest. Moreover, penalty rates of interest on consols would increase liquidity demands on already overburdened countries.

Other participants questioned whether consols, even if redeemable at the option of the debtor and sold on a secondary market, would be acceptable to regulators and bankers. Their reluctance stems from the implications of permanent loans on the ability of a bank to restructure its loan portfolio in accordance with changing conditions. The revolutionary nature of the proposal also led to concerns about its implementation in time to address the current crisis.

Several other proposals have recently surfaced which also seek to provide relief to debtor countries by means of a transformation of existing debt into a

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less onerous form. For example, Peter Kenen of Princeton University has proposed the establishment of a new entity which would purchase developing country debt held by banks at a discount of ten percent, with payment in long-term, low-interest bonds. This entity, as a creditor of a developing country, could grant a slight reduction in interest rates payable by the country and extend maturities of debt because of its purchase of the debt at a discount [46]. Felix Rohatyn has proposed a similar plan [47].

These plans, however, do not address the need for new money. In fact, few banks will be prepared to lend new money if such money subsequently will be mandated into a program requiring the loss of ten cents on the dollar, or converted into a low-interest asset. This adverse impact would greatly exacerbate current problems. In addition, to the extent banks would be required to sell loans at a discount, there would be adverse effects for bank capital. Even a ten percent write-off would mean a thirty percent cut in capital for the large banks (or somewhat less, allowing for profits and tax effects).

8.5. Other approaches

The debt problem may be minimized by a number of strategies. Creditors can initiate R/R/R programs instead of waiting for debtor countries to threaten default. Loans can be transferred into currencies whose home country interest rates are lower than levels in the United States in order to reduce the effective interest rate burden on the debtor. Principal due at the end of the term of the loan can be increased while interest rates are reduced (yield to maturity would be at market rates). The burden on the debtor would effectively be moved to the maturity date of its loan so that it could take advantage of interest rate differentials reflecting exchange rate expectations at the time the loan is made. These creditor-initiated actions would reduce the incentive for debtors to repudiate their loans or interest obligations.

Some participants pointed out that the transformation of loans into other currencies was really an indirect method of capitalizing interest while avoiding accounting and other problems because of the possible devaluation of currency eroding the interest rate differential. Exchange rate fluctuations, however, will not necessarily erode all interest rate savings. Moreover, it is possible to hedge in the futures markets to preserve cash flow savings. The need to limit transformations to certain levels was also suggested because of the limited ability of each currency to absorb massive loan transformations. Finally, concern was expressed about the willingness of nations such as Japan and Germany with favorable interest rates to "internationalize" their currency for the benefit of foreign banks and debtor countries.

Much of the anxiety inherent in the current situation would also be relieved if banks recognized that principal repayment is possible only in the long run, and, therefore, their loans to developing countries are analogous to 30-year

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mortgages with floating interest rates or other long-term debt which is periodically rolled over. Such a psychological approach may reduce current tensions. Of course, a regulatory framework tolerant of such a perspective would also be necessary.

None of these approaches encourages new money. They do, however, address the current problem by providing time through the shifting of the problem to a later period and would perhaps permit banks to continue international lending on a sounder foundation. Therefore, the principal strategy, it was felt, must continue to be a case-by-case application of R/R/R while efforts are made to set the global economy on the road to recovery and to ensure that the IMF has adequate resources to continue to act as lender of last resort.

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Notes

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[2] *Credit Risk in the LDCs,* 17 Euromoney Trade Fin. Rep. 42–43 (1984); *see also International Financial Statistics,* Vol. XXXVII, No. 7, July 1984.

[3] At the end of 1983, Brazil owed foreign creditors $94 billion and Mexico had external debts of $90 billion. *International Financial Statistics,* Vol. XXXVII, No. 8, August 1984. The conference participants generally believed that U.S. financial institutions have their greatest exposure to Mexico, while German institutions have their greatest exposure to Brazil.

[4] Wall St. J., Aug. 13, 1984, at 21, col. 1; Wall St. J., Aug. 14, 1984, at 35, col. 1.

[5] *A Global Chapter 11?,* 133 Forbes, April 30, 1984.

[6] *On Third World Debt,* 25 Harv. Int'l L.J. 83 (1984).

[7] *See generally id.* at 86–98.

[8] *International Debt and Public Policy, Hearings before the Subcommittee on Financial Institutions Supervision, Regulation and Insurance of the House Comm. on Banking, Finance and Urban Affairs,* 98th Cong. 1st Sess. 235, 241–43 (1983). One study examining whether developing countries are illiquid or insolvent found that growth rates of three percent in GNP in 1984–86 combined with reasonable assumptions about interest rates, oil prices and dollar strength would result in increasingly manageable deficits and ratios of debt burden to exports for the 19 largest

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debtor countries. *See also,* Morgan Guaranty Trust Company of New York, *World Financial Markets,* Feb. 23, 1983, at 1–11.

[9] Since the seminar, the U.S. Congress passed into law the International Lending Supervision Act of 1983, 12 U.S.C. §§ 3901–3912 (West Supp. 1984), as part of the law on U.S. contributions to the International Monetary Fund. The declared purpose of the law is to protect the United States against "imprudent lending practices" and to "encourage prudent private decisionmaking." *Id.* § 3901. The law mandates, *inter alia,* that U.S. bank regulatory authorities require banking institutions to maintain special reserves of current income charged against certain international loans. Banking institutions must maintain these special reserves against all international loans considered "impaired" in the judgment of any of the federal banking regulatory agencies. Pursuant to the law, U.S. bank regulatory authorities have issued rules establishing special reserve requirements for certain international assets. *See, e.g.,* 49 Fed. Reg. 5586 (1984) (to be codified at 12 C.F.R. § 20-10).

[10] Reisner, *Default by Foreign Sovereign Debtors: An Introductory Perspective,* 1982 U. Ill. L. Rev. 1, 7; Reisenfeld, *The Powers of the Executive to Govern the Rights of Creditors in the Event of Defaults of Foreign Governments,* 1982 U. Ill. L. Rev. 319.

[11] A "negative pledge" or "pari passu" clause has become a typical feature in international loan documents and certain domestic financings. The clause provides that the borrower may not pledge or create liens or charges on its assets or revenues in favor of other creditors. If such a security interest is provided, then the lender shares equally and ratably with other creditors in the security.

[12] For example, the U.S. Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§1330, 1332 (a) (2), (3) and (4), 1391 (f), 1444 (d), 1602–1611 (1982) and the U.K. State Immunity Act of 1978, ch. 33, generally provide for sovereign immunity with respect to many governmental commercial transactions, including, under certain circumstances, its borrowings. These Acts also provide that a waiver of sovereign immunity will be recognized and upheld. Continental legal systems, such as that of Germany, generally apply a more restrictive concept of immunity, and sovereign borrowers may be sued when they act as a private person. In this case, commercial transactions, such as borrowings, do not qualify for immunity. However, to the extent sovereign assets located in Germany serve sovereign purposes (*e.g.* embassy accounts), they are immune from enforcement of judgments.

[13] A. Coppola, The Law of Business Contracts 130 (1975).

[14] Sources of emergency bridge financing attempting to give debtors breathing room to find other sources of financing and to introduce adjustment policies have three options when confronted with negative pledge covenants: (1) ignore the covenant and insist on collateral; (2) require the borrower to obtain waivers from other creditors and obtain collateral; or (3) enter into alternative arrangements technically consistent with applicable negative pledge clauses which sufficiently enhance the liquidity of the new claim. In practice, the third alternative has been followed. For example, central bank creditors have required the deposit of assets of a borrowing central bank in order to assure an effective setoff remedy.

[15] A lawsuit raising some of these issues was recently settled. *See Michigan National Settles Mexico Suit – Agrees to Loan Restructuring; Issues Still Unresolved,* American Banker, Dec. 28, 1983, at 3, col. 2. (Michigan National Bank had sued a Citibank subsidiary to recover its share in a syndicated loan to Mexico's Petroleos Mexicanos after the Citicorp subsidiary had extended the maturity of the entire loan without Michigan National's approval. Michigan National ultimately agreed to the restructuring.)

[16] 11 U.S.C. §§1101–1174 (1982).

[17] Traditionally, the IMF has lent to countries in payment difficulties that are not clearly due to a temporary cause only where the borrower has agreed to introduce measures likely to secure a payments recovery in the medium term. Thus, "traditional IMF conditionality" focuses on a realistic exchange rate, fiscal discipline and monetary restraint (as measured by the rate of

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domestic credit expansion rather than the money supply). These conditions typically relate to reductions in domestic subsidies, imports and public sector deficits, restrictions on domestic credit creation and a freeing of domestic interest rates.

[18] It was suggested that inclusion of impartial advisors, such as investment bankers, among the membership of advisory committees may produce reschedulings better suited to the needs of all lenders and the debtor rather than those of the lending bank committee members.

[19] The Institute, a private sector initiative, was recently organized to improve the process of international lending, especially sovereign risk lending. Membership is open to any institution having international exposure as a result of holding international loans in its portfolio for its own risk. The basic purposes of the Institute are to (1) collect and analyze economic, political and financial information relating to borrowing countries; (2) conduct a direct dialogue, on a voluntary basis, with borrowing countries to ascertain their borrowing needs and financial outlook; and (3) consider improvements in international lending procedures. *See generally* Encyclopedia of Associations 58 (19th ed. 1984).

[20] One commentator stated that the decision to commit new money is really based on the diagnosis of whether the current debt problem is an insolvency or an illiquidity problem. For a country, insolvency exists if the future stream of export earnings under plausible conditions is inadequate to enable the country to meet expected debt service payments, considering reasonable assumptions about new borrowing possibilities. Such an inability over the next decade or two would mean the country is insolvent and that foreign banks and governments would be wiser to try to recover a fraction of the face value of the existing debt rather than to lend more money. If the export earnings, after a limited period of two to three years, permit normal debt servicing, then the country's problem is one of illiquidity, and continued foreign lending is appropriate. If there is a liquidity problem, large write-downs and cessation of lending would be precisely the wrong things to do; they would force the country unnecessarily into insolvency. These measures would turn good debt into bad debt. *See*, International Debt and Public Policy, *supra* note 8.

[21] Walter, *Counting Risk and International Bank Lending*, 1982 U. Ill. L. Rev. 71, 83.

[22] An example of this type of political maneuvering was illustrated in the resistance to the recent legislation increasing the U.S. quota to the IMF because of the view that additional IMF money would be used only to "bail out" America's big banks. *See, e.g.*, American Banker, Nov. 9, 1983, at 2, col. 3.

[23] Walter, *supra* note 21, at 86.

[24] The Fourth Report from the Treasury and Civil Service Committee of the House of Commons (March 15, 1983) described the Mexican rescheduling:

> Short-term bridging finance was provided by the Bank for International Settlements and by the Federal Reserve to give the IMF time to take action. A 14-bank advisory committee was set up to discuss arrangements on behalf of the 1,200 or more individual bank creditors; and the IMF Managing Director, M. de Larosière, made it clear that the $3.8 billion stand-by credit which he had provisionally negotiated with Mexico would not go before the IMF Executive Board for approval unless there was a prior commercial bank agreement to contribute new money.

See also International Debt and Public Policy, supra note 8, at 119, 149.

[25] Bank regulators have made some efforts to reconcile the various systems of regulation and avoid competitive inequities. The Basle Committee on Banking Regulation and Supervisory Practices at the Bank for International Settlements (the Cooke Committee) has as its objective the establishment and maintenance of close working relationships among national bank regulators to facilitate resolution of common problems and the achievement of greater coordination of approaches to bank supervision. The committee is concerned with bank supervisory matters; it is not concerned with lender-of-last-resort responsibilities. The committee is a consultative body; it is not

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empowered to enter into agreements among its members. However, it does seek to establish general principles applicable to bank supervisors around the globe. Bank regulatory systems differ substantially from one country to another, and, therefore, the committee does not seek international uniformity, but rather a convergence of supervisory approaches.

[26] *See* 12 U.S.C. §§ 3901–3912, *supra* note 9.

[27] The increase in "impaired loan" classifications should result from the express legislative mandate compelling recognition of country risk as well as the ability to require special reserves as a remedy for high risk instead of the more onerous use (or threatened use) of enforcement action.

[28] "Bad debts" are those on which the interest is past due and unpaid for a period of six months, unless they are well secured and in the process of collection. Black's Law Dictionary 127 (5th ed. 1979).

[29] The Act provides that the banking agency require banks to establish and maintain a special reserve whenever the agency determines that the quality of international assets (including loans, debt securities and deposit arrangements) has been impaired by a protracted inability of public or private borrowers in a foreign country to make payments on their external indebtedness. Examples of factors for making this determination include:

- failure by the public or private borrower to make full interest payments on external indebtedness;
- failure to comply with the terms of any restructured indebtedness;
- failure by the foreign country to comply with any International Monetary Fund or other suitable adjustment program.

Another factor would be a determination that no definite prospects exist for the orderly restoration of debt service. 12 U.S.C. § 3904 (a) (1) (1982 & Supp. 1984).

[30] 12 U.S.C. § 3907 (1982 & Supp. 1984).

[31] 12 U.S.C. § 3905 (1982 & Supp. 1984).

[32] Not discussed at the seminar, but included in the Act, is a requirement that banking institutions prepare written loan analyses of loans exceeding $20 million (in the aggregate) to finance certain mining or metal processing projects. The reports must assess the economic feasibility of repayment solely on the merits of the project, excluding subsidies. The reports will be reviewable by the banking agencies, and, therefore, represent a philosophical departure from the previous separation of supervisory and management responsibilities. 12 U.S.C. § 3908 (1982 & Supp. 1984).

[33] The new reporting requirements to implement the provisions of the Act were proposed by the Federal Financial Institutions Examination Council, composed of the Board of Governors of the Federal Reserve System, The Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, the National Credit Union Administration, and the Office of the Comptroller of the Currency. Press Release, December 21, 1983. The proposed disclosure rules would require banking institutions to file quarterly Country Exposure Reports detailing international assets. A less detailed, two-part summary report, the Country Exposure Information Report, would be disclosed to the public on request. Part A of this report would provide certain information on foreign country exposures to any country that exceeds one percent of the reporting bank's assets. Part B would provide less detailed information on such exposures that exceed 0.75 percent, but do not exceed one percent, of the reporting bank's assets. Thus, the standard of materiality chosen for reporting foreign country exposures for public disclosure purposes is one percent of total assets. This corresponds to the standard recently adopted by the SEC for its disclosure requirements on international lending.

[34] *SEC v. Youmans*, 543 F. Supp. 1292 (E.D. Tenn. 1982).

[35] *Id.* at 1299.

[36] The SEC has proposed registering as broker–dealers those banks that engage in the securities business and already requires such registration by bank subsidiaries which act as securities brokers. 48 Fed. Reg. 51, 930 (1983) (to be codified at 17 C.F.R. Part 240).

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[37] In all foreign countries, banks make certain adjustments in their balance sheets and income statements due to the risk elements in their loan portfolios. Often the amount of these adjustments is not publicly disclosed and is highly confidential; thus, the adjustments are frequently referred to as hidden or undisclosed reserves. The exact nature of the adjustments vary from country to country.

In West Germany, banks are allowed to have hidden reserves composed of three parts. One part is a specified percentage of total loans; another part is for loss reserves related to particular loans. Both of these parts are tax deductible. The third part is for general contingencies. Total outstanding loans are shown on the balance sheet, but no loan-loss reserve is disclosed.

Hidden reserves were allowed in the United Kingdom for many years. The reserve consisted of a specific part based on a five-year moving average of a bank's loan-loss experience and a general part for general contingencies. In recent years, the large clearing banks have disclosed these reserves in their financial statements.

In Belgium, the loan-loss reserves are shown on the balance sheet although the use of general contingency reserves is encouraged. Disclosure of the amounts of the general contingency reserves is encouraged, but not required, so few banks disclose such amounts. Income statements show a single expense consisting of depreciation, write-downs of investment securities, and changes in the loan-loss reserve.

In France, losses on specific loans are disclosed but no general loan loss allowance is created. Reserves are deducted directly from assets and usually are not disclosed.

In the Netherlands, loans are shown on the balance sheet at face value net of undisclosed. specific reserves. A general contingency reserve is maintained, the amount of which is not shown, but transfers to or from the reserve to the income statement are shown.

In Switzerland, the Swiss Commercial Code stated that the use of undisclosed reserves is permitted to ensure the continued prosperity of companies or equal distribution of dividends. These reserves are combined with other liabilities on the balance sheet. *International Bank Lending, 1983: Hearings Before the Subcomm. on Financial Institutions Supervision, Regulation and Insurance of the House Comm. on Banking, Finance and Urban Affairs*, 98th Cong., 1st Sess. 366 (1983) (statement of John S.R. Shad, Chairman, SEC).

[38] In the United States, allowances for possible loan and lease losses, as well as shareholders' equity, are ordinarily considered primary components of the capital. *See* Joint Press Release of the Comptroller of the Currency and the Federal Reserve Board, June 13, 1983 – "Definition of Capital to be Used in Determining Capital Adequacy of National State Member Banks and Bank Holding Companies." However, the special reserves against certain low quality international assets required by the International Lending Supervision Act of 1983 cannot be considered as part of capital and surplus or allowances for possible loan losses for regulatory, supervisory or disclosure (including under the federal securities laws) purposes. 12 U.S.C. § 3904 (a) (2) (1982 & Supp. 1984).

[39] Shad, *supra* note 37, at 352.

[40] Indeed, philosophical purity might require the identification of all of a bank's substantial debtors, thereby further eroding confidentiality.

[41] The European Economic Community has issued a proposed directive on the annual report and financial statement disclosure of banks. 21 O.J. Eur. Comm. (No. L 222) 11 (1978) (1 Common Mkt. Rep. (CCH) ¶ 1371, at 1191). The directive concentrates on the regulatory and not the disclosure method of bank regulation. It directs Member States to permit the exchange between their competent authorities of information necessary for bank supervision on a consolidated basis. The International Accounting Standards Committee also has issued a discussion paper on bank financial statements. Neither this nor the EEC directive has been adopted and neither approaches the level of disclosure mandated by the U.S. securities laws. *See generally* Securities Act of 1933, 15 U.S.C. §§ 77a–77xxx (1982), Securities Exchange Act of 1934, 15 U.S.C. §§ 78a–78111 (1982).

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[42] The growth of multinational enterprises and the increasing internationalization of the world's capital markets emphasize the need for a greater degree of uniformity in informational requirements to improve comparability and make disclosures more useful and understandable. A number of groups, including the United Nations, the Organization of Economic Cooperation and Development, and the International Accounting Standards Committee, are working to increase comparability.

[43] The Bank of International Settlements is an organization of central banks, and its role as an international lender-of-last-resort during the past year has been an important stabilizing influence and enabled countries to "bridge" to necessary debt restructurings. While the United States is not officially a member, the Federal Reserve Board has been an active participant in its deliberations.

[44] *See* Gesetz über das Kreditwesen §§ 13, 14, 16, 24, 26, 1961 Bundesgesetzblatt [BGB1] I 881–89 (W. Ger.).

[45] B. Hürni, The Lending Policy of the World Bank in the 1970s: Analysis and Evaluation 8 (1980).

[46] N.Y. Times, March 6, 1983, §3, at 3, col. 1.

[47] *Global Economic Outlook, 1983: Hearings before the Subcomm. on International Economic Policy and the Committee on Foreign Relations*, 98th Cong., 1st Sess. 271–301 (1983) (statement of Felix Rohatyn, Sr. Partner, Lazard Frères and Co.).

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