Talk at CADTM Belgian parliament event, 29 October 2014

Tim Jones, Jubilee Debt Campaign, UK

In 1978 the US Chemical Bank lent Liberia $6.5 million. At the time, US banks had large amounts of money they needed to try to lend because high oil prices meant oil exporters such as Saudi Arabia were saving lots of dollars in the banks.

In 1989, the Liberian government defaulted on many of its debt payments when its civil war began. The civil war lasted until 2003. In 2008 the West African country entered the Heavily Indebted Poor Countries initiative, and in 2010 qualified to have some debt cancelled by multilateral institutions and governments.

All the time that Liberia was unable to pay its debts, the ownership of the debt arising from the Chemical Bank loan was being traded amongst a variety of companies, presumably for a small amount on the size of the original loan. In 2002, the then owners of the debt, FH International Financial Services Inc. and Sifida Investment Company won a judgement against Liberia in New York that Liberia now owed $18.4 million. Liberia was unable to defend itself in the case because of the civil war. Liberia continued not to pay.

The debt was subsequently sold to Hamsah Investments and Wall Capital, who brought a case against Liberia for English courts to recognise that the debt was owed. They were now claiming $20 million. Winning the case would allow Hamsah and Wall Capital to subsequently claim Liberian assets held in Britain. Once again, the court found in favour of the vulture funds, saying that Liberia should “do the best they can” to pay Hamsah and Wall Capital.

Whilst there are no doubt many complications on this, there are two main types of court cases brought by vulture funds:

1) To prove that they own a debt claim and how much it is for

2) To seize a government’s assets as part of getting the debt paid

Where vulture funds bring their cases depends on both where the law is which governs the debt, and where the government concerned may hold assets. For government bonds owed under foreign law, 84% are New York or English law. And as major financial centres, New York and London are also likely places where assets will be held, which is why New York and London are two of the key jurisdictions cases can be brought in.

But not all debts are owed as bonds. And anywhere assets are held could be a place for vulture funds to start a case. Tax havens and other financial centres are likely targets. But we have even seen bizarre cases such as the one two years ago where a vulture fund managed to seize an Argentine Navy ship in Ghana (which was later released under the UN Law of the Sea).

In 2010 the British parliament passed a law to limit some of the activities of vulture funds. Known as the *Debt Relief (Developing Countries) Act* the law seeks to force private creditors to take part in the debt relief agreed under the Heavily Indebted Poor Countries (HIPC) initiative.

HIPC was a scheme created by the IMF and World Bank to cancel some of the debts owed to them, the African Development Bank and other governments. It agrees a percentage by which the debt of a country should be reduced. All creditors are requested to take part in this reduction, but it is voluntary.

What the UK law says is that a creditor can only sue a HIPC country in British courts for the amount of debt they would have got if they had taken part in the HIPC debt reduction. This severely limits how much a vulture fund can claim from a HIPC.

The law applies whether the case a vulture fund is bringing is to:

1) prove that they are owed a debt, or:

2) seize an asset held in the UK

The law applies to any debts which originated from loans given before 2004 – the cut-off date for HIPC dates. So crucially it is therefore fully retroactive. It applies to debt contracts which date from *before* the law existed.

Limitations

The clear limitations of the UK vulture fund law are that:

- It only applies to the 40 countries eligible for the HIPC initiative
- It only applies to the debts of those countries dating from before 2004

Positives

The positives are that:

- It sets a precedent that debt reductions can be enforced on all creditors
- It has protected HIPC countries from being sued over the last few years. The UK government estimates it has saved HIPC countries $250 million

Returning to the Liberia case, whilst Hamsah Investments and Wall Capital had won the judgement in 2009 that Liberia should pay them $20 million, they had not yet managed to win judgement over some particular Liberian assets in the UK. Once the law was passed in 2010, the maximum they could now claim from Liberia in British courts was $2 million. In late 2010, they reached an out of court settlement with Liberia for around $1 million. Even this amount way well have still represented a profit for the vultures on what they paid for the debt – though not after all their expensive legal fees ☺

I'd now like to talk about one more case before concluding.

The government of Yugoslavia lent then Zaire – the regime of the kleptocratic General Mobutu - money in the 1980s to build electric power lines, sourced from a Yugoslav company. By the 1990s, Mobutu had been toppled from power and the Democratic Republic of Congo was in civil war. The Congo defaulted on its debts when the civil war began.

In 2003, a vulture fund FG Hemisphere bought the debt which had arisen from the loans, which was now owned by a Bosnian company. The amount they paid for the debt was $3 million. In 2009, FG Hemisphere brought a case in the tax haven of Jersey claiming Congolese assets held there, and claiming over $100 million on the debt.

Jersey is legally a Crown Dependency of the UK. So whilst the British government has various controls over it, it is legally independent, and so the vulture fund law passed in the UK does not apply there.

Over the next three years FG Hemisphere won a succession of cases, though the Congo's final appeal was successful and FG Hemisphere did not get the money. In the meantime, the campaigning and publicity Jubilee Debt Campaign generated led to Jersey, along with Guernsey and the Isle of Man, passing the same vulture fund law as the UK.

Early in my conversations with the Jersey government, they were concerned that the Jersey legal system was based on French law, which apparently is very different from English law, and so it would be difficult to pass a similar law to in the UK. But this turned out not to be any problem at all.

So what does the British experience tell us about options for legislating against vulture funds:

1) Laws to enforce particular debt restructurings can be passed and work, and apply retroactively. But they are very limited because they only apply to debt reductions to particular countries at a particular point in time. But until we have other approaches this should be done. The US and UK should pass such laws to enforce the Argentine debt restructuring. The EU should have passed such a law to prevent vulture funds avoiding the Greek debt restructuring (which they did by buying up debt owed under English law).

2) An alternative approach would be to limit a vulture fund claim to a certain amount of how much they bought for the debt. For, example, a vulture fund could only sue for double what they paid for the debt – which in the FG Hemisphere case would have limited them to claiming $6 million rather than $100 million. Whilst such a law could apply to all vulture fund cases, it could be imagined that vulture funds could trade debt amongst their own subsidiaries at different prices to evade the impact of the law

3) A third option is some form of debt arbitration which has the power to enforce an agreed debt restructuring on all creditors. At the start of September, the United Nations passed a resolution to begin negotiating on such a resolution. Whilst this was supported by developing countries, the EU abstained whilst a small group of countries – including the UK, Germany and the US – voted against. But the creation of such mechanisms are needed to put an end to vulture fund activities for good.