Teilprojekt D4: Sovereign Debt and Crisis Management in Areas of Limited Statehood: Bargaining vs. Creditor Litigation

Leiter:[1]

Prof. Dr. Henrik Enderlein

Hertie School of Governance
Friedrichstraße 180
10177 Berlin
Telefon: +49 30 259-219130
Telefax: +49 30 259-219222
E-Mail: enderlein@hertie-school.org

1. Abstract/Kurzfassung

This project focuses on legal conflicts between sovereign states and private creditors in the context of debt crises and debt relief initiatives in developing countries. Part one analyzes the determinants of creditor litigation, in particular whether "weak states" are more likely to be sued by foreign banks or investors. Part two then investigates the consequences of such legal action by creditors, specifically how litigation constrains governments in providing public goods in a crisis context.

Das Teilprojekt untersucht rechtliche Konflikte zwischen souveränen Staaten und privaten Gläubigern im Kontext von Schuldenkrisen bzw. Entschuldungsabkommen in Entwicklungs- und Schwellenländern. Zunächst wird gefragt, unter welchen Umständen es zu Rechtsstreitigkeiten bei Umschuldungen kommt und ob „schwache" Staaten anfälliger sind, von internationalen Banken oder Anleihefonds verklagt zu werden. Anschließend wird die Auswirkung von Klagen auf die Fähigkeit von Schuldnerregierungen untersucht, im Krisenkontext Governance-Leistungen zu erbringen und öffentliche Güter bereitzustellen.

2. Ausführliche Zusammenfassung

Das Teilprojekt stellt die Frage, ob Schuldnerregierungen im Kontext von Schuldenkrisen und Entschuldungsabkommen weiterhin Governance-Leistungen erbringen können, wenn private Gläubiger durch Klagen den finanziellen Handlungsspielraum der Regierung einzuschränken versuchen und damit eine kooperative Lösung der Schuldenkrise im Sinne des kollektiven Interesses der Bevölkerung des Staates unmöglich machen. Das Teilprojekt fragt also nach der Möglichkeit der Erbringung von Kollektivgütern durch Regierungen im Kontext eines Konflikts zwischen staatlichen und privaten Akteuren, der sich in einen weitgehend nicht-hierarchischen Rechtskontext einbettet und somit das Machtverhältnis zwischen staatlichen und privaten Akteuren in den Vordergrund rückt.

Im Mittelpunkt des Projekts steht der Modus der Handlungskoordination zwischen privaten Gläubigern und staatlichen Schuldnern (→ *SFB-Ziel 1: Modi der Handlungskoordination und Machtverhältnisse)*. Es gibt drei zentrale Modi, um Schuldenkrisen zu lösen: (i) Verhandlungen, die letztlich zu einer Restrukturierung von Schulden führen; (ii) rechtliche Konflikte, bei

1 Das Projekt ist gemeinsam mit Christoph Trebesch entwickelt worden, der wissenschaftlicher Mitarbeiter im Teilprojekt D4 ist und zu Schuldenkrisen in Entwicklungsländern promoviert.

denen Schuldenstreitigkeiten und Umschuldungsprozesse vor Gericht entschieden werden; (iii) Schuldenerlass. Die erste Phase des Projekts konzentrierte sich auf den Verhandlungsprozess, insbesondere das Verhalten der Schuldnerregierung, bei der Umstrukturierung staatlicher Schulden in Schwellenländern. Die zweite Phase konzentriert sich nun auf die Analyse von unkooperativem Gläubigerverhalten, insbesondere Anlegerklagen durch Banken und sogenannte Geierfonds („vulture funds"). Dabei wird das Untersuchungsgebiet auf „highly indebted poor countries" (HIPCs) erweitert, also auf besonders verschuldete, arme und meist afrikanische Staaten, die sich in der Regel durch einen geringen Grad an Staatlichkeit charakterisieren (→ *SFB-Ziel 2: Staatlichkeit als Kontextbedingung von Governance*).

Durch eine veränderte internationale Rechtsdoktrin sind gerade diese ärmsten Staaten zu Zielen von Klagen privater Investoren geworden. Häufig kaufen private Finanzfonds staatliche Schuldentitel zu niedrigen Preisen, etwa zu 10% des Nennwerts, mit dem expliziten Ziel die Regierung nach einer erfolgten Umschuldung auf volle Rückzahlung des Nennwerts (100%) zu verklagen. Die beklagten Summen steigen seit einigen Jahren deutlich an und belaufen sich alleine für die Gruppe der HIPCs auf mehrere Milliarden Euro. Es ist daher eine naheliegende Hypothese, dass die Bereitstellung von öffentlichen Gütern und staatlichen Leistungen in schwachen Staaten durch private Anlegerklagen maßgeblich beeinflusst wird. Das Ziel, die ärmsten Länder finanziell zu entlasten und Schuldenkrisen effektiv zu lösen, wird durch nicht-kooperative Gläubiger zunehmend untergraben (→ *SFB-Ziel 6: Materielle Ressourcen und Governance*).

Trotz der erheblichen Forschungs- und Politikrelevanz ist die Literatur zu diesem Thema stark unterentwickelt. Ein essentieller Grund hierfür ist die unzureichende Datenlage. Das Projekt zielt daher zunächst darauf ab, die erste umfassende und standardisierte Datenbank zu Anlegerklagen gegen Entwicklungs- und Schwellenländer zusammenzustellen. Aufbauend auf dieser Datenbank sollen in Schritt 1 des Projekts dann die wichtigsten Determinanten solcher Anlegerklagen untersucht werden. Die Kernhypothese ist, dass schwache Staaten mit begrenzten finanziellen Mitteln und unzureichender rechtlicher Expertise einem höheren Risiko ausgesetzt sind, rechtlich angegriffen zu werden, als weiter entwickelte Staaten (→ *SFB-Ziel 2: Staatlichkeit als Kontextbedingung von Governance*). In Schritt 2 werden dann die Auswirkungen von Anlegerklagen auf die Ressourcen der Schuldnerregierung untersucht, um festzustellen, ob in den betroffenen Staaten im Krisenkontext weiterhin Governance-Leistungen erbracht werden und öffentliche Güter bereitgestellt werden können (→ *SFB-Ziel 3: Effektivität und Legitimität von Governance bzw. SFB-Ziel 6: Materielle Ressourcen und Governance*).

3 Bericht über die bisherige Entwicklung des Teilprojekts

3.1 Bericht

The project aims at developing systematic knowledge on institutional and political determinants of private sector involvement in the management of sovereign debt problems in developing countries and on their effects. There are three main modes of governance that can contribute to solving sovereign debt disputes between sovereign debtors and private creditors: (i) bargaining on the restructuring or rescheduling of debt; (ii) litigation; (iii) debt forgiveness. In the first funding phase, the project focused exclusively on the bargaining mode and developed a conceptual framework to assess the behavior of sovereign debtors towards their international private creditors during debt crises. The sample of countries was constrained to emerging market countries and middle income developing countries. We placed

a clear focus on government behavior to understand the variation in debt restructuring processes and to categorize debt crises.

The output of the first project phase consisted of two main elements: (i) the construction of an extensive new dataset on debt crisis events, including a newly developed index of cooperative versus conflictual debt renegotiation by governments and (ii) the use of this new dataset to explain the diverging degree of government cooperation in crisis resolution across space and time.

The initial starting point of the project focused on the concept of "private sector involvement" (PSI) in debt crisis resolution. The project wanted to assess empirically whether and how PSI had taken place and what its effects were. The question was whether one could detect "co-governance" between private actors and public actors in a situation of financial distress. A first key finding from the extensive case study work and the many interviews conducted with investment bankers and policymakers was that the debtor governments were the main architects of most debt renegotiation processes. Elements of co-governance between debtor governments and private creditors are limited, with governments largely determining the institutional context and outcome of the bargaining process, and creditors playing no or a very little constructive role in resolving the crises (Enderlein et al. 2010).

Nevertheless, private actors often played an obstructive role, as holdouts or litigation can considerably delay the implementation of restructuring agreements. This is the focus of the second project phase. Private actors can use channels other than bargaining to constrain the provision of public goods by governments. In a similar vein to the analysis undertaken in the project *D7 Lütz*, they constitute a potentially conflictual element in the provision of governance services. Indeed, during the first project phase, banks and bondholders were found to merely react to government actions, rather than act constructively on their own initiative. Accounting for this key finding which evolved during 2006, the project continued to focus primarily on the patterns of government behavior in crisis resolution.

Measuring Government Behavior in Sovereign Debt Crises

The first key work package was to conceptualize and code an index for different types of debt crisis resolution, building on the original idea and time plan outlined in the project proposal. The operationalization of the index departed from previous literature to categorize debt crises (Cline 2004; Roubini 2004) and on the criteria of "fair debt restructuring" and "good faith efforts" in crisis resolution outlined in key policy reports (IIF 2006; IMF 1999, 2002). Ultimately, the project developed an Index of Government Coerciveness, consisting of 9 sub-indicators. Each of the 9 sub-indicators captures observable actions that governments impose on their international creditors (banks and bondholders). The index consists of 4 criteria of payment behavior and 5 criteria of negotiation behavior. More specifically, the 9 binary sub-indicators of the Index of Government Coerciveness are the following:

Indicators of Payment Behavior

(1) Payments missed (yes/no)
(2) Unilateral payment suspension (yes/no)
(3) Full payment suspension, including interest payments (yes/no)
(4) Freeze on assets of non-residents (penalizing capital controls) (yes/no)

Indicators of Negotiation Behavior

(5) Explicit moratorium or default declaration (yes/no)
(6) Explicit threats to repudiate on debt (yes/no)
(7) Breakdown or refusal of negotiations (yes/no)
(8) Data disclosure problems and outright data related disputes (yes/no)
(9) Forced and non-negotiated restructuring (yes/no)

A summary and explanation of the indicators and the detailed coding approach can be found in the paper by Enderlein, Müller and Trebesch (2007). During the coding process, the research assistants gathered a wide range of empirical material. The 9 criteria and the related database were coded in a systematic and replicable way and on the basis of more than 20.000 pages of case study material taken from the standardized evaluation of financial press, a wide range of policy reports and relevant academic contributions, including all standard reference books in the field.

As intended, the project provided the first systematic categorization of debt crisis going beyond the binary variable of default versus non-default. Overall, this approach yielded a large number of new insights and stylized facts (summarized in Enderlein et al. 2007). Government behavior and rhetoric show a large variability, ranging from very uncooperative to very smooth crisis resolution processes. In particular, we found serial patterns of coercive government behavior and conflict during crisis resolution. Countries with governments that adapted a conflictive stance in the 1980s debt crises also tended to show unilateral government behavior in restructurings of the 1990s and in more recent cases (e.g. Argentina or Peru). This finding confirms and extends the prominent concept of serial defaults proposed by Reinhart, Rogoff and Savastano (2003). Table 1 shows the large difference in the average degree of coerciveness that governments impose on their external private creditors in crisis situations.

Table 1: Government Behavior towards Private Creditors during Debt Crises[2]

Most Conflictive (Average for all Crisis Year since 1980)		
	Average Index Value	Years in Default (Between 1980 and 2007)
Peru	5.40	15
Argentina	5.24	17
Nigeria	4.90	10
Bolivia	4.50	14
Jordan	4.40	5
Russia	4.39	10
Most Cooperative (Average for all Crisis Years since 1980)		
	Average Index Value	Years in Default (between 1980 and 2007)
Uruguay	1.20	10
Chile	1.50	8
Morocco	1.88	8
Algeria	1.83	6
South Africa	2.00	5
Mexico	2.44	9

2 Countries with less than 4 years in default (e.g. Belize, Dominica) are excluded from this ranking (Enderlein et al. 2007).

A key aim of our measurement and coding approach was to mirror the consensus view in the discipline of how fair debt restructuring and cooperative government behavior should look like. The coding results and the feedback received indicate that the project succeeded in this endeavor. When comparing the results to insights and analyses in the existing literature, the index appears to be a valid proxy for government behavior; "tough" negotiations, "hard" restructuring cases and non-cooperative behavior as reported for specific crises by Aggarwal (1996), Andritzky (2006), Boughton (2001), Cline (2004) or Roubini and Setser (2004) have a high index value (of at least 5) according to our coding results. Additionally, our categorization of prominent cases corresponds to casuistic evidence in the press and to the judgments of a number of experienced Wall Street and policy experts in New York and Washington D.C. that were interviewed during the first project phase.

The coding results and its applications were also well accepted among the relevant research community. Besides feedback at conferences and seminars, the index is discussed and presented in detail in a forthcoming survey paper in the established Journal of Economic Literature, summarizing empirical advances on sovereign debt and default literature of the last 20 years (Panizza et al. 2009). We are thus very confident that the dataset will be of use for future research on a set of open research questions in the fields of sovereign risk and political economy.[3]

Explaining Government Behavior in Sovereign Debt Crises

As pointed out by Panizza, Sturzenegger and Zettelmeyer (2009), still little is known on how governments restructure their debt. The second part of the first project phase aimed at providing a systematic understanding for the large variety in crisis resolution processes and the related negotiation strategies of governments by using the data generated in part one. The key question posed was how the provision of governance services during a sovereign debt crisis derives from the government-imposed interaction mode between the public and the private actors (→ *SFB-Ziel 1: Modi der Handlungskoordination und Machtverhältnisse*). We asked why some governments adopt a cooperative attitude towards their international creditors, while others showed a very conflictive stance. We sought to explain the difference between a conflict riddled debt restructuring process such as Argentina 2001-2005, where the government refused to engage in negotiations, froze payments for 4 years and enforced a fully unilateral debt restructuring deal, and a cooperative crisis resolution case such as Uruguay 2003, where the government was able to restructure its debt in just 3 month, with full consent with the creditors and without missing any payments. The core contribution to overall research in the SFB context was to study the context of a more *conflictual* relationship between public and private actors on the provision of governance services, in opposition to the more *cooperative* interactions within public private partnerships, as studied mainly within the projects *D1 Beisheim/Liese, D3/T1 Fuhr/Lederer*, and *D5 Leutner*.

The project focused on political and institutional factors to explain varying government behavior in crises. In a first paper, a large set of political and institutional variables were tested as potential explanatory factors (Enderlein et al. 2008a). One key explanation that proved to

3 We already received (and replied to) several data requests, amongst other by researchers of the Bank of Spain, the International Monetary Fund, UNCTAD in Geneva, and the Inter-American Development Bank in Washington D.C. Ultimately, the project will launch a website containing all the collected data on debt crisis events (the "Sovereign Default Archive").

be empirically robust and particularly relevant was the role of regime type. Enderlein, Müller and Trebesch (2008b) analyzed how democratic governments solve debt crises towards private creditors as compared to autocratic governments. The empirical tests yield four main results on what drives variation in debtor behavior. First, we find democratic governments to act more aggressively towards their creditors on average. This result contributes to and extends a small, but growing literature on the link between sovereign debt and democracy, which - using the standard binary default variable - comes to inconclusive results so far (Alichi 2008; Saeigh 2005; Van Rijckeghem/Weder 2004). Using a more continuous categorization of default, we provide unambiguous evidence that regime type matters for the degree of coerciveness once a country has entered a phase of debt distress. The second finding is that the level of democracy is important. The degree of aggressiveness of government policies towards creditors is significantly higher at high levels of democracy as measured by the *Polity IV Index*. As a third result, we find that among democracies, experience with institutions is crucial. Established democracies, with 5 or more years of democratic rule, adopt particularly aggressive stance in debt renegotiations. Finally, we find evidence that democratic governments react to audience costs, while autocracies do not. Measures of socioeconomic pressure (unemployment, poverty, consumer confidence) appear to impact debt policies only if the government is democratic. The case study by Müller (2008a, 2008b) finds that the degree of the centralization of domestic budgetary institutions is an important facilitator in the provision of macro-economic stability. Further novel insights could be gained on the adverse consequences of conflictual debt restructurings for the domestic economy (Trebesch 2009) and on the role of political instability for the duration of debt crises (Trebesch 2008).

Outlook – Understanding the Role of Creditor Litigation

In the second funding phase, the project will move into two new directions: it will extend its focus to highly indebted poor countries (HIPCs) and include the role of conflictive creditor behavior in debt crises and debt restructurings (as opposed to government behavior). The particular focus will be on litigation by commercial creditors.

Putting creditor litigation at the center of analysis and broadening the sample to HIPCs is a logical next step in the project design and closely connected to the overall development of research in the SFB. In the course of phase 1 of the project, it became clear that legal enforcement is an increasingly important instrument used by private creditors to constrain the possibility of government action in a financial crisis and in the wake of debt relief initiatives (→ *SFB-Ziel 1: Modi der Handlungskoordination und Machtverhältnisse*). Litigation is the main fallback solution for private creditors not willing to accept a default on their claims or a restructuring package proposed by governments. Ligation is also being increasingly used as a way to extract government resources directly, thus affecting government finances and public goods provision adversely to the benefit of private commercial actors (→ *SFB-Ziel 6: Materielle Ressourcen und Governance*).

Given their notorious debt repayment difficulties and limited administrative capacities or legal expertise, it is straightforward to expect that particularly "weak" HIPC governments, often overlooking an area of limited statehood, will become prime subjects to litigation activities by "vulture funds" (→ *SFB-Ziel 2: Staatlichkeit als Kontextbedingung von Governance*). It follows that the provision of governance in areas of limited statehood will be affected by the litigation activities and outcomes of the legal procedure. Because litigation directly affects a government's possibility to provide governance services in countries or

areas of limited statehood, the project will not only contribute to the economic and political science literature on debt crises and debt relief, but also seeks to deepen the understanding of governance in areas of limited statehood.

4 Geplante Weiterführung des Teilprojekts

4.1 Forschungsziele und Leitfragen

In its second phase, the project examines litigational conflicts between sovereign states and private creditors in the context of debt crises in developing countries. The project asks whether governments in developing countries can continue to provide essential governance services in the context of a sovereign debt crisis, if private creditors seek litigation procedures that limit the government's possibility to seek a cooperative solution to the crisis. Since the litigation activity is likely to have a direct effect on government financial resources, understanding litigation is an important component in understanding governance in areas of limited statehood.

The conceptual basis of the second project-phase derives from the overall focus of the project on the interaction-modes between public and private actors (→ *SFB-Ziel 1: Modi der Handlungskoordination und Machtverhältnisse; SFB-Ziel 3: Effektivität und Legitimität von Governance; SFB-Ziel 5: Von der Produktion privater Güter zu Governance*). This interaction can take different forms, ranging from cooperative to conflictual (cf. *SFB-Rahmenantrag*, also projects *D1 Beisheim/Liese, D5 Leutner*, and *D7 Lütz*). Our project looks at a mainly *conflictual* interaction mode that uses litigation as a means that affects the provision of governance services. As sketched out above, there are three main modes of governance that can contribute to solving sovereign debt disputes between sovereign debtors and private creditors: (i) bargaining on the restructuring or rescheduling of debt; (ii) litigation; (iii) debt forgiveness. In the second project phase, we study litigation.

Why Creditor Litigation is Important

In a *typical litigation scenario*, a "vulture creditor" buys sovereign debt claims prior to a debt relief or debt restructuring agreement at a deep discount (e.g. for 10% of the nominal value) with the explicit intention to sue debtor governments for full debt repayment, i.e. for 100% of the nominal value plus accumulated interest. Most lawsuits related to international debt contracts are filed either in New York courts or London courts, although, increasingly, lawsuits are being initiated in other creditor countries such as Germany, Italy or Switzerland or even in domestic courts of debtor countries, e.g. after the Russian debt crisis of 1998 (see Sturzenegger/Zettelmeyer 2007a or Szodruch 2008 for a detailed description of the process of creditor litigation against sovereigns).

By its very nature, cross-border litigation and the related enforcement of claims towards sovereign debtors is cumbersome. The enforcement of creditor rights is limited for two main reasons. First, there is no such thing as a standardized bankruptcy regime for sovereigns, comparable to chapter 11 for US corporations or the German *Insolvenzrecht*. Sovereign debt is typically not backed by any collateral and only few attachable government assets are lo-

cated outside national borders.[4] Second, legal principles such as *sovereign immunity,* the *act of state doctrine* or the *principle of international comity* protect sovereign assets even when they are located in foreign jurisdictions. While we refer to Sturzenegger and Zettelmeyer (2006, 2007a) for details, it is important to underline that due to statutory changes and case law development, these legal principles have been weakened since the 1950s, thus strengthening creditor rights and allowing for more litigation against sovereigns (see also Fisch/Gentile 2004 or Szodruch 2008 for historical accounts). The change in legal doctrine has been an important precondition behind the increasing number of litigation cases in the last three decades and the emergence of a "vulture creditor industry", those specialized investment funds that have learned to make a profit from suing sovereigns.

With more and more cases filed against sovereigns, litigation and related holdouts by creditors are frequently blamed as an increasingly problematic obstacle for the resolution of sovereign debt crises in emerging market economies (Goldman 2000; IMF 2003; Krueger 2002; Rogoff/Zettelmeyer 2002; Shleifer 2003). Moreover, the rise of "vulture creditors" is regarded as a key concern for the various initiatives of debt relief in the poorest countries in the world. "Vulture funds", or "distressed funds" as they prefer to be called, have had increasing success in suing developing countries in courts in recent years (see table 2 for a list of recent cases).

First estimates show how serious the problem has become. The total amount of commercial debt claims under litigation against HIPCs alone (roughly USD 1.9 bn) is now estimated to be higher than the volume of debt relief that should have been provided by commercial creditors to these countries (IMF/World Bank 2006). The volume of litigated claims often makes up a considerable share of national economic output and the government's annual budget. Notable examples are the Republic of Congo or Sao Tomé and Principe, where the debt claims under litigation correspond to about 15% of GDP (IMF/World Bank 2006).

4 Creditors have in the past attempted to seize all types of assets of foreign governments, ranging from deposits of government owned companies in foreign bank accounts to non-liquid assets such as fighter planes or even art exhibits (see e.g. Pitchford/Wright 2008)

Table 2: Some Recent Litigation Cases against HIPCs[5]

HIPC Debtor	Creditor	Domicile of Creditor	Status of Legal Action	Original Claim (m USD)	Judgement for Creditor (m USD)
Cameroon	(1) Winslow Bank	Bahamas	Judgement to pay	9.9	19.9
	(2) Del Favaro Spa	Italy	Judgement to pay	2.9	4.6
	(3) Sconset	British Virgin Islands	Pending	18.2	…
	(4) GraceChurch CAPITAL	Cayman Islands	Pending	8.9	…
	(5) Antwerp Investments Limited	British Virgin Islands	In arbitration	13.3	…
Congo, D.R.	(1) ENERGOINVEST	Former SFR Yugoslavia	Judgement to pay	55.8	81.7
	(2) KHD Humboldt Wedag AG	Germany	Judgement to pay	…	80.4
	(3) GAT		In arbitration	19.0	…
Congo, Rep. of	(1) GAT	Lebanon	Judgement to pay	77.0	78.3
	(2) Citoh Middle East	Lebanon	Judgement to pay	9.8	7.2
	(3) FG Hemisphere Associates LLC	USA	Judgement to pay	35.9	151.9
	(4) AF CAP, Inc.	Bermuda	Judgement to pay	5.9	…
	(5) Berrebi	France	Judgement to pay	1.91	…
	(6) Kensington Intrenational Ltd.	Cayman Islands	Judgement to pay	30.6	118.6
	(7) Walker International Holdings	British Virgin Islands	Judgement to pay	12.9	…
	(8) CommisimPex	Rep. of Congo	In arbitration	19.7	96.6
Ethiopia	(1) Kintel	Bulgaria	Out of court settlement	8.7	8.7
Guyana	(1) Citizens Bank (government bonds)	Guyana	Pending	26.4	…
	(2) EPDS		Pending	12.7	…
	(3) Barclays Bank	United Kingdom	Pending	3.1	…
	(4) Lloyds Bank (overdraft)	United Kingdom	Pending	0.4	…
	(5) ITT World Communications Inc.	USA	Pending	0.2	…
	(6) India Tata	India	Pending	0.1	…
	(7) CDC	United Kingdom	Pending	0.6	…
Honduras	(1) Laboratories Bago	Argentina	Pending	1.45	…
Nicaragua	(1) LNC Investments	USA	Judgement to pay	26.3	87.1
	(2) GP Hemisphere Associates	USA	Judgement to pay	30.9	126.0
	(3) Greylock Global Opportunity Fund	British Virgin Islands	Judgement to pay	10.5	50.9
	(4) Hamsah Investments, Ltd.	British Virgin Islands	Judgement to pay	2.5	11.6
Sao Tome & Principe	(1) Annadale Associates	London	In arbitration	3.0	8.9
Sierra Leone	(1) J&S Franklin Ltd.	U.K.	Judgement to pay	1.1	2.4
	(2) UMARCO	France	Pending (paid US$ 0.1 million)	0.6	…
	(3) Executive Outcomes, Intern. Inc.	South Africa/Panama	Pending (paid US$1.1 million)	19.5	28.5
	(4) Chatelet Investment Ltd.	Sierra Leone	Pending	0.4	
	(5) Scancem International ANS	Norway	Settlement (paid US$2 million)	3.7	3.7
Uganda	(1) Banco Arabe Espanol	Spain	Judgement awarded and paid	1.0	2.7
	(2) Transroad Ltd	United Kingdom	Judgement awarded and paid	5.5	10.6
	(3) Industry of Construction Machinery	Former SFR Yugoslavia	Judgement awarded and paid	8.4	8.9
	(4) Sours Fab Famous Rz Promet	Former SFR Yugoslavia	Judgement awarded and paid	1.3	1.8
	(5) Arab Fund For External Development	Iraq	Judgement to pay	2.6	6.4
	(6) Shelter Afrique	Kenya	Out of court settlement and paid	0.1	0.1
Zambia	(1) Connecticut Bank of Commerce	USA	Judgement awarded and paid	0.9	0.3
	(2) Fap Famos Belgrade	Former Yugoslavia	Out of court settlement	26.0	26.0
	(3) Donegal International Limited	British Virgin Islands	Pending	15.4	…

Addressing Limitations in the Literature

Despite the key policy relevance and the ongoing debate, the existing body of research on creditor litigation against sovereigns is still very underdeveloped. One reason for this is the lack of systematic data on litigation cases. Much remains to be done to understand and analyze the phenomenon of creditor litigation against sovereigns more systematically. Why can

5 IMF/World Bank 2006

we observe litigation in some debt restructuring cases while in others not? Are some types of governments more vulnerable to being sued than others? Likewise, very little is known on the consequences of litigation to the countries that are subject to it.

In the *field of economics*, Sturzenegger and Zettelmeyer (2006, 2007a) and the survey of Panizza et al. (2009) are among the first contributions discussing the issue of litigation in depth. On the more formal side, Mark Wright and co-authors have recently developed three important theoretical models, showing how creditor coordination problems can lead to litigation and holdouts (Pitchford/Wright 2007, 2008) and which welfare implications related delays and disorderly debt renegotiations might have (Benjamin/Wright 2008). In addition, there have been a number of theoretical papers on creditor coordination problems in a broader sense (e.g. Haldane et al. 2004; Weinschelbaum/Wynne 2005; Wright 2005). However, they do not analyze the specific issue of creditor litigation and related holdouts (non-participation) of commercial creditors in detail.

While theory is scarce, empirical evidence is even scarcer. A small number of recent contributions have presented first attempts to analyze the consequences of creditor litigation with newly collected data (Alfaro et al. 2009; Singh 2003; Trebesch 2008). There are also a small number of case studies, for example the paper of Miller and Thomas (2007) analyzing the settlement of lawsuits in the aftermath of Argentina's 2001 default. But, overall, there is barely any published work and no empirical research so far has used a comprehensive sample of cases or countries.

In *political science*, work on the issue is barely existing and limited to a very small number of largely qualitative papers (e.g. Thompson/Runciman 2006). The discipline as a whole has remained notably silent on this type of conflicts between international private actors and governments. It is somewhat surprising that there are numerous political science contributions on international trade disputes (e.g. Guzman/Simmons 2002), on investment disputes and expropriation (e.g. Jensen 2003) or on economic sanctions (e.g. Martin 1992), but no work on sovereign debt litigation. A systematic analysis on this type of international legal disputes may provide important new insights to the fields of international political economy and international economic conflicts.

The related *literature in international law* is more developed but has focused on the legal doctrine (e.g. Delaume 1995; Greenwood/Mercer 1995; Szodruch 2008) and on practical aspects of creditor litigation, such as on the role of innovations in sovereign debt contracts (e.g. Buchheit/Karpinski 2006, 2007). Moreover, most legal scholars have concentrated on a small number of particularly prominent cases with no research analyzing a comprehensive set of cases.

Given the apparent literature gaps, the project aims at providing the first systematic and comprehensive empirical analysis on the causes and consequences of litigation between commercial creditors and sovereign governments of developing and emerging market economies. A cornerstone of the project will be the construction of a large novel dataset on litigation cases against governments of poor and middle income countries for the period 1980 to 2008. This will allow analyzing the issue in systematic way.

Based on our newly constructed database and the data already assembled in the "Sovereign Default Archive" between 2006 and 2009, the project will then investigate the following two *core research questions*:

(1) What are the political and institutional determinants of creditor litigation? In particular, are weak and poor states more vulnerable to legal action by "vulture creditors" as compared to stronger states? Moreover, are democratic regimes more vulnerable to litigation, since they are more inclined toward "aggressive default" (cf. the results of project phase 1)? (→ *SFB-Ziel 1: Modi der Handlungskoordination und Machtverhältnisse sowie SFB-Ziel 2: Staatlichkeit als Kontextbedingung von Governance*)

(2) What is the impact of litigation on public debt management and thus the government's ultimate capacity to provide public goods and poverty alleviation services? This involves an analysis on how large the direct and indirect effects to a government's public finances are (direct costs, scope of debt relief) and to what extent litigation delays debt restructuring and debt relief efforts. (→ *SFB Ziel 6: Materielle Ressourcen und Governance bzw. SFB-Ziel 3: Effektivität und Legitimität von Governance)*

As these two questions indicate, the research-design is based on a two-stage approach, whereby the second stage builds on the results of the first. In a first step, the project will analyze the context and determinants of litigation events, with a particular focus on the role of state capacity and country institutions (stage 1). In a second step, the project will then assess the consequences of creditor litigation for the government's fiscal situation and its capacity to solve debt crisis situations and provide public goods (stage 2). This means that the dependent variable of stage one will become the independent variable in stage two. Table 3 sketches the empirical setup.

Table 3: Overview of the Research Design

	Dependent Variable	**Key Explanatory Variable**	**Control Variables (Intervening)**
Stage 1	Litigation Events	Degree of Statehood (Strong vs. Weak)	Creditor Structure, Official Aid and Debt Relief, Legal Context
Stage 2	Government Finances/Debt Management (Capacity to Provide Public Goods)	Litigation	Degree of Statehood, Official Aid and Debt Relief, Legal Context

The project will use both qualitative and quantitative methods. Empirical investigations will be used in stages one and two. Qualitative approaches will be mainly used in stage one.

Assessing the Determinants of Creditor Litigation

As shown above, only limited research has analyzed the determinants and context of creditor litigation systematically. The following paragraphs will outline a set of main explanatory variables, whose relevance will be analyzed in part 1 of the project. Above all, debtor characteristics are likely to play a crucial role. It is notable that poor countries with weak state capacity have been subject to a particularly large number of lawsuits by creditors and "vulture funds" in recent years. The World Bank and the International Monetary Fund (2006), for example, report forty-seven court cases against a total of eleven highly indebted poor countries in the last 10 years alone. This is surprising to a degree, as the volume and relative share of debt owed to commercial creditors in restructurings with HIPCs is much smaller compared to other recent restructuring cases of middle income countries that did not feature any litigation (e.g. in Uruguay 2003 or the Dominican Republic 2005). Facing a large number of "attacks" relative to the amount of debt outstanding, HIPCs may also lack the expertise and funds to appropriately react to lawsuits by private actors in international courts. It is revealing in this regard that the World Bank and the IMF, as well as the African

Development Bank, worried by the vulnerability of these countries vis-à-vis litigious creditors, are all considering the establishment of a specialized fund to finance legal assistance to HIPCs (IMF/World Bank 2003, 2007). Similarly, the Commonwealth Secretariat has already set up a "Legal Debt Clinic" for HIPCs in order to raise awareness on the risks and implications of litigation.

As to middle income countries, some countries in default have been subject to litigation while others have not. No systematic analysis has yet explained this heterogeneity. It is noteworthy, however, that "aggressive defaulters" as classified by Enderlein et al. (2007), i.e. countries that refuse to negotiate and cooperate with their commercial creditors in default situations (see table 1 above), have been subject to a particularly large number of lawsuits in recent years. Most prominently, this is the case in Argentina, which is among the best known cases of non-cooperative default behavior (between 2001 and 2003 over one hundred lawsuits were launched against Argentina alone, see Gelpern 2005), but also for cases such as Russia (1991-1995 and 1998-2000), Peru (1985-1997) and, most recently the unilateral default of Ecuador in December of 2008, which is widely expected to trigger a "rush to the courthouse".[6] Governments, who restructured their debt quickly and in agreement with creditors, have been subject to less litigation (e.g. the restructurings in the Dominican Republic 2005, Belize 2007, Pakistan 1999 or Uruguay 2003).

Obviously, other factors may also play a decisive role for the occurrence and outcome of litigation cases and will thus have to be taken into account carefully in the quantitative and qualitative analyses. This is particular true for legal aspects such as changes in the legal doctrine and the legal characteristics of sovereign debt contracts. More specifically, the main determinants of creditor litigation to be analyzed can be structured as follows:

Characteristics of Debtor Countries

In accordance with the above arguments, and with a view to the large political economy literature on the role of institutions for economic development and international disputes, the project hypothesizes that debtor policies and institutions will be a primary factor explaining why litigation occurs:

(1) *State capacity:* The "quality of government" (La Porta et al. 1999) and of its bureaucracy is likely to be a key explanation for number of lawsuits filed and the success of these cases. Countries with large areas of limited statehood in terms of territory as well as policy sector (→ *SFB Rahmenantrag*) such as Guyana, the Republic of Congo or Sierra Leone will not have the same resources and management capacity to properly shield against lawsuits by "vulture creditors", as opposed to countries with relatively strong bureaucracies and more abundant resources like Brazil, Mexico or Uruguay.

(2) *Legal Origin and Legal Context:* The legal origin of a country will influence the decision under which governing laws (e.g. English law or New York law) governments place their international debt.[7] It is likely that countries with a common law system and with English legal roots may be more at risk of legal attacks, partly because enforcement has been easiest in

6 The newly created "Ecuador Bondholders Group" is currently appealing to all bondholders to resort to legal action against the government. http://ecuadordefault.com/home/ (14.02.2009)

7 Most international bonds of developing countries governments have been issued under New York or London law, although there have also been issuances under Luxembourg law, German law, and more recently, Japanese and Italian law (Sturzenegger/Zettelmeyer 2006).

London and New York. This hypothesis is closely connected to the large literature on legal origins and their implications for finance (La Porta et al. 1998, 2008). A further issue is the legal context of litigation, in particular whether governments claim that the debts under dispute are illegitimate ("odious"), e.g. because they were incurred by a previous regime (see Jayachandran/Kremer 2006), or whether it claims *force majeure* events (*Staatsnotstand*) as a justification for default and non-payment (Kämmerer 2005; Szodruch 2008).

(3) *Government coerciveness in crisis resolution:* More aggressive crisis resolution policies (as measured by Enderlein et al. 2007) is expected to trigger more opposition by creditors, thus invoking litigation and lawsuits. In this regard, the regime type of governments may play a key role. Enderlein et al. (2008) show that crisis resolution patterns and the degree of government cooperation with external creditors depend heavily on whether a country is democratic or not. Accordingly, it is possible that democratic governments have a significantly higher probability of being sued than autocracies.

Structure of creditors and debt markets

Besides debtor characteristics it will also be decisive how private creditors are structured.

(4) *The type of creditors involved:* It can be assumed that banks are less likely to file a claim than individual bondholders or investment funds, since they typically have a more explicit interest in good country relations and reputation (Eichengreen 2000; Goldman 2000).

(5) *Origin of creditors:* It is reasonable to assume that creditors from non-Western countries are more likely to sue developing country sovereigns. The reason is the potential for moral suasion and pressure on litigious creditors by Western country governments interested in a successful outcome of debt relief efforts. A first rough overview of litigation cases confirms that litigious creditors come surprisingly often from non-Western countries that are not involved in debt relief initiatives (e.g. from the Bahamas, Taiwan or Bahrain).

(6) *The development of secondary market:* A liquid secondary market can be expected to facilitate the enforcement of sovereign debt via legal means (Broner et al. 2006; Power 1995). More liquid debt can easier be bought (and sold) by litigious creditors, thus increasing the risk of litigation.

Further Key Control Variables

The following three control variables will also receive particular attention in the analysis, as they are expected to play a crucial role.

(7) *Legal characteristics of bond and loan contracts:* The legal characteristics of the sovereign loans and bonds will obviously be crucial for the occurrence and success of litigation. First, it will be of major importance whether bonds or loans are issued internationally, i.e. placed under foreign law in an international financial center (e.g. New York, London, Frankfurt or Tokyo), or domestically, i.e. in the debtor country under domestic legislation. Second, specific legal features of debt contract will play a decisive role. These include, amongst others, (i) bond "covenants" which commit the debtor to certain actions over the lifetime of the bond and prohibit others (e.g. pari-passu or negative pledge clauses) (ii) remedies in the event that contractual obligations are breached (e.g. acceleration clauses and cross-default clauses or collective action clauses) and (iii) procedures for modifying the contract (amendment clauses) (see also Buchheit 2000; Sturzenegger/Zettelmeyer 2006).

(8) *Role of Bilateral Donors and Multilateral Organizations:* The effect of third party involvement by donor governments or International Financial Institutions (IFIs) for litigation occurrence is not straightforward, as several channels may be at work. In principle, litigation may be less likely if debtor countries closely cooperate with multilateral organization such as the IMF and the World Bank, as these may assist in protecting against lawsuits. On the other hand, litigation risks may increase with the prospect of generous official debt relief. Simply put, countries receiving a financial aid package will have more budgetary leeway and be a more attractive target for litigious creditors seeking to extract resources. It is reasonable to expect some degree of free-riding on debt relief and aid transfers by official actors.

(9) *Role of NGOs and Public Relations:* The watchdog function of NGOs and the press are likely to lessen the risk of litigation to a certain degree. Prominent policy fora such as Jubilee, erlassjahr.de and others may prevent banks and investment funds to embark in litigation, as they may fear negative press coverage and pressure by these civil society actors. As a consequence, the field of "vulture creditors" may be dominated by entities that are little known and less dependent of reputational concerns.

Assessing the Consequences of Litigation

In part two of the project, the focus will shift on the consequences of litigation events. As a natural starting point, the project will collect all available data on the direct financial losses related to litigation and estimate the scope of its indirect financial costs. The aim is to assess - as exactly as possible - in how far the fiscal capacity of governments is constrained by litigation, thereby affecting its key governance functions and public good provision. Furthermore, the project will analyze additional negative side-effects of litigation, in particular delays in implementing debt restructurings and debt relief agreements as well as immediate side effect such as the cancelation of public investment projects.

(1) Direct Financial Costs: Litigated Claims

The direct costs of litigation to debtor governments, i.e. amounts to be paid to creditors winning a lawsuit, can be quite considerable. In a survey of 44 recent litigation cases against HIPCs, the IMF and the World Bank identified 26 commercial creditors that were able to enforce court judgments in their favor, amounting to about 1 billion USD of claims paid (IMF/World Bank 2006). In HIPCS, a further amount of 1.9 billion USD in claims is still under litigation. The amounts under litigation with middle income debtors - such as Argentina (after 2001) or Ecuador after its December 2008 default - are likely to be many times larger than that, although no reliable overall estimates are available. One key contribution of this part of the project will be a systematic evaluation of the actual costs borne by debtor governments (due to judgments to pay or out of court settlements) and of future potential costs (claims under litigation) for the full sample of sovereign debt litigation cases since 1980. This will allow assessing the degree to which debtor governments have been directly constrained in their financial capacity and thus, ultimately, in their ability to provide public goods to societal actors.

(2) Indirect Financial Costs: Less Debt Relief by Commercial Creditors

Litigation is an important fallback option for creditors and has often been used as a strategic "weapon" in debt renegotiation talks. Accordingly, restructurings involving creditor litigation may result in a less favorable negotiation outcome for the debtor government. It is thus rea-

sonable to expect that litigation can lead to a smaller scope of debt relief granted by commercial creditors or, in other words, to smaller implied losses for private creditors. To analyze this possibility in a systematic way, the project will set up a database of debt relief estimates in debt restructuring cases from 1980 to 2008. This dataset of relative "haircuts" (net present value losses for creditors) will explicitly cover restructurings with both commercial creditors (banks and bondholders) as with official creditors (Western country governments, Paris Club). The raw data necessary for these haircut computations have already been assembled in phase 1 of the project. However, estimates for a full sample of cases and with a robust methodology (see the discussion in Sturzenegger/Zettelmeyer 2007b; Chauvin/Kraay 2007) will require several months of computational work.

One particular aim in this analytical part will be a systematic comparison of the relative size of "haircuts" towards official and private creditors. Such exercise may reveal first evidence in how far the pari-passu clause of equal treatment of official vis a vis commercial creditors is violated (Buchheit 2005) and whether litigation plays a role in this regard. The hypothesis is that litigation can indeed influence the relative size of "haircuts" with commercial creditors and lead to commercial creditor free riding on negotiation effort and debt relief granted by official creditors. Note that the size of "haircuts" will be the dependent variable in this analysis, while litigation will be the key explanatory variable. As is standard practice, the estimations will also include large number of economic and political control variables.

(3) Side Effects: Delays in Implementing Debt Restructurings, Budget Cuts or the Cancelation of Investment Projects

Besides financial losses, litigation may have additional negative side effects. One side effect may be troublesome delays in the implementation of debt restructuring and debt relief agreements. The project will take this possibility into account by estimating survival models on the duration of debt restructuring and debt relief processes (similar to Arraiz 2007 and Trebesch 2008). In these models, the duration of the agreements will be the dependent variable, while litigation will again be the key explanatory variable. In addition to this quantitative approach, the qualitative case studies may reveal the specific channel in which public expenditures were affected. From which budget was the litigious creditor paid? Where did related budget cuts occur? Was a major investment project postponed due to the unexpected costs of litigation? The qualitative analysis allows to address these and related questions in depth and for specific country and case contexts.

4.2 Methoden und Operationalisierung

In its first stage, the project will use statistical analysis and qualitative process-tracing to explain the determinants and the context of litigation between private creditors and sovereign debtors, focusing on the role of state capacity. Stage two will then involve empirical analysis with the aim to quantify the costs and adverse consequences of litigation for poor and middle income countries in the developing world. Extensive qualitative process-tracing on four selected case studies will be mainly applied in stage one with the aim to understand the context and driving factors of litigation in detail. However, qualitative analysis will also be applied in stage two in order to gain some insights on the immediate consequences and side effects of litigation.

The project thus aims at providing a double perspective on the issue: On the one hand, we will employ a broad macro-approach (analyzing roughly 300 litigation events between 1980

and 2008). We look at the period 1980-2008 for three reasons. First, there were barely any sovereign defaults with private creditors during the 1950s, 1960s and 1970s and thus only little reason to litigate. Second, suing sovereigns in foreign courts became a viable legal option only in the late 1970s, when the US adopted the Sovereign Immunities Act (1976) and related reforms occurred in the UK (1978) (see the discussion above). Third, there are practical reasons for our sample choice, as data availability, particularly on debt characteristics, is highly limited before 1980.

On the other hand, we adopt a more narrow but in-depth micro-approach (based on four case studies from the 1990s and 2000s). The four case studies for the qualitative analysis should include two cases from middle income developing countries (e.g. from Latin America) as well as two cases from highly indebted poor countries (e.g. from Africa). The rationale behind this case selection is to analyze creditor litigation in two very different setups: First, litigation related to modern-type sovereign bond restructurings of middle income countries (e.g. as recently in Argentina or Ecuador), and second, litigation in the context of recent debt relief initiatives of the poorest countries (e.g. in Cameroon or Zambia). This variation in case selection will allow to better understand the role of differing political and financial factors on the incentive schemes and modes of action of litigious creditors.

In stage one, an essential project contribution will be the construction of a comprehensive dataset on litigation events. The database will collect information on (i) the date of litigation events, (ii) the debtor country, (iii) the type, origin and domicile of the creditors, (iv) the status and outcome of the legal action and (v) the debt volumes and claims involved. In constructing this dataset we will depart from a small number of books, papers, and reports that list creditor litigation events and related details (in particular Alfaro et al. 2009; IMF/World Bank 2006, 2007; Singh 2003; Sturzenegger/Zettelmeyer 2007a; Trebesch 2008). As a next and main step, we will draw on commercial research databases, in particular the Factiva database of news reports and press articles published since 1980, as well as specialized law databases such as Juris or the "Jury Verdicts, Settlements & Judgment" directory by LexisNexis. We also hope to get access to archival and non-published material on creditor litigation from the IMF and the World Bank. Finally, we will draw on the case study and data material collected in the "Sovereign Default Archive" and the qualitative studies in phase 1.

In stage two, a key aim will be the construction of a novel database of "haircuts" (debt relief estimates) implied in commercial and official debt restructuring and debt relief agreements. The raw data will be taken from standardized lists of restructuring events by the IMF, the World Bank, the IIF, and by Stamm (1987). The estimation methodology will follow earlier approaches to calculate "haircuts" in the literature of finance and economics (see, in particular, Sturzenegger/Zettelmeyer 2007b).

The key explanatory and control variable of "state capacity" will be proxied by several standard measures on the strength of the government's bureaucracy or the general "Quality of Government" (e.g. as in La Porta et al. 1999) as well as by the widely used Governance Indicators by the World Bank. Basic Financial and Economic Data will be taken from the World Bank's GDF and WDI databases, as well as from the IMF's IFS database.

The sample of cases will be based on the overall sample of developing countries in the broad definition (World Bank, Global Development Indicators), explicitly including cases of countries that would today be classified as 'Heavily Indebted Poor Countries' (HIPCs), i.e. countries that face an unsustainable debt situation and that are classified as the poorest coun-

tries. As discussed above, it is reasonable to assume a high correlation between fulfilling the HIPC criteria and fulfilling the criteria of "limited statehood". We aim to code and analyze the entire universe of litigation cases since 1980 (probably around 300 cases, or more).

We look at the period 1980-2008 for three reasons. First, there are only few sovereign defaults with private creditors during the 1950s, 1960s and 1970s, and thus only little reason to litigate. Second, suing sovereigns in foreign courts became a viable legal option only in the late 1970s, when the US adopted the Sovereign Immunities Act (1976) and related reforms occurred in the UK (1978) (see the discussion above). Third, there are practical reasons for our sample choice, as data availability, particularly on debt characteristics, is highly limited before 1980.

Regarding the four case studies for the qualitative analysis, they should include two cases from middle income developing countries (e.g. from Latin America) as well as two cases from highly indebted poor countries (e.g. from Africa). The rationale behind this, is to analyze creditor litigation in two very different setups: First, litigation related to modern-type sovereign bond restructurings of middle income countries (e.g. as recently in Argentina or Ecuador); and second, litigation in the context of recent debt relief initiatives of the poorest countries (e.g. in Cameroon or Zambia). This variation in case selection will allow to better understand the role of differing political and financial factors on the incentive schemes and modes of action of litigious creditors.

5 Stellung innerhalb des Sonderforschungsbereichs

Das Teilprojekt D4 bearbeitet die zentrale Fragestellung des SFB nach den Bedingungen des Entstehens „neuer" Formen des Regierens aus einer besonderen Perspektive. Es fragt, welchen Einfluss die hier untersuchte Interaktion zwischen staatlichen Schuldnern und privaten Gläubigern auf die Fähigkeit von Schuldnerregierungen hat, Gemeinschaftsgüter, Kollektivgüter, oder andere Governance-Leistungen in Räumen begrenzter Staatlichkeit effektiv und zu erbringen (→ *SFB-Ziel 3: Effektivität und Legitimität von Governance*).

Die Kernhypothese des ersten Teils der Arbeit des Teilprojekts untersucht, ob schwache Staaten mit begrenzten finanziellen Mitteln und unzureichender rechtlicher Expertise einem höheren Risiko ausgesetzt sind, rechtlich angegriffen zu werden, als weiter entwickelte Staaten (→ *SFB-Ziel 2: Staatlichkeit als Kontextbedingung von Governance*). Im zweiten Schritt des Teilprojekts werden dann die Auswirkungen von Anlegerklagen auf die Ressourcen der Schuldnerregierung untersucht, um festzustellen, ob in den betroffenen Staaten im Krisenkontext weiterhin Governance-Leistungen erbracht werden und öffentliche Güter bereitgestellt werden können (→ *SFB-Ziel 6: Materielle Ressourcen und Governance*).

Durch den Fokus auf die Verfügbarkeit von finanziellen Ressourcen im Staatshaushalt und deren Notwendigkeit zur Bereitstellung von Governance-Leistungen ist das Teilprojekt im Projektbereich D „Wohlfahrt und Umwelt" angesiedelt. Dieser Projektbereich fragt u.a. danach, wann und wie sich mangels staatlicher Strukturen und Kapazitäten oder aufgrund mangelnden politischen Willens neue Interaktionen nicht-staatlicher und staatlicher Akteure herausbilden, über die es – national und transnational verschränkt – gelingt, die Bereitstellung dieser Güter zu organisieren.

Wie in anderen Teilprojekte dieses Bereichs (insbesondere *D1 Beisheim/Liese, D2 Börzel, D3/T1 Fuhr/Lederer* sowie *D5 Leutner*) geht es auch im Teilprojekt D4 um Formen öffentlich-privater Interaktion. Dabei stehen in unserem Teilprojekt allerdings unkooperative Grund-

ausrichtungen der Akteure im Vordergrund, weil die privaten Gläubiger kein unmittelbares Interesse an der Erbringung von öffentlichen Gütern in den betroffenen Räumen begrenzter Staatlichkeit haben, sondern in der Regel an kurzfristiger Gewinnmaximierung interessiert sind. Unser Teilprojekt steuert zum SFB also die Perspektive bei, welche neuen Formen des Regierens sich ergeben, wenn die Bereitstellung von Governance-Leistungen vor dem Hintergrund eines inhärenten Interessenskonflikts erfolgt, der hier sogar die Form von Anlegerklagen annimmt. Was diesen Punkt betrifft, ähnelt unser Teilprojekt also der Perspektive des Teilprojekts *D7 Lütz*, das die divergierenden Interessen von privaten und staatlichen Akteuren im Bereich der Sicherung geistiger Eigentumsrechte untersucht.

Mit dem Teilprojekt *D6 Fritz* verbindet unser Projekt der Fokus auf die Bereitstellung von materiellen Ressourcen. In beiden Projekten geht es darum, Auswirkungen von Zuflüssen externen Kapitals in die betroffenen Volkswirtschaften zu untersuchen und festzustellen, wie diese Kapitalflüsse im Zusammenhang mit der Bereitstellung von Governance-Leistungen stehen. Dabei unterscheiden sich die beiden Projekte jedoch grundlegend in der Wahl der Akteurskonstellationen. Während im Teilprojekt *D6 Fritz* die oft informell erfolgenden Kapitalflüsse von privaten Akteuren an private Akteure im Kontext staatlichen Handelns untersucht werden, geht es in unserem Projekt um Kapitalflüsse von privaten Akteuren an staatliche Akteure in einem stark formalisierten Handlungsrahmen, der sogar zu direkten Rechtsstreitigkeiten zwischen den beiden Akteuren führen kann.

Auch mit dem Teilprojekt *D1 Beisheim/Liese* gibt es eine besondere Verbindung. Dort geht es u.a. um die Effektivität von Entwicklungshilfe als Ergebnis einer grundsätzlich kooperativen Interaktion öffentlicher und privater Akteure. Wir untersuchen letztlich eine sehr ähnliche abhängige Variable (Bereitstellung von Governance-Leistungen in Entwicklungsländern), konzentrieren uns aber auf die grundsätzlich konfliktuelle Interaktion von privaten und staatlichen Akteuren im Kontext eines Rechtsstreits.

Aus der inhaltlichen Zusammenarbeit mit den genannten Projekten versprechen wir uns Erkenntnisse darüber, wie sich die Varianz von Staatlichkeit auf der einen Seite und die Varianz von kooperativer vs. nicht-kooperativer Grundausrichtung des Verhaltens privater Akteure auf die Bereitstellung von Governance-Leistungen auswirkt und ob „public private partnerships“ tatsächlich einer anderen Logik folgen als Interaktionen zwischen staatlichen und nicht-staatlichen Akteuren in einem klassischen interessengeleiteten Kontext – insbesondere wenn es um die direkte Bereitstellung von materiellen Ressourcen geht.

Literatur

Alfaro, Laura/*Maurer, Noel*/*Ahmed, Faisal* 2009: Gunboats and Vultures. Market Perception to the ‘Enforcement’ of Sovereign Debt (Vortrag vor dem „American Economic Association Annual Meeting”, San Francisco, CA, 3.-5.1.2009).

Aggarwal, Vinod K. 1996: Debt Games. Strategic Interaction in International Debt Rescheduling, New York, NY.

Alichi, Ali 2008: A Model of Sovereign Debt in Democracies (IMF Working Paper 08/152), Washington, DC.

Andritzky, Jochen 2006: Sovereign Default Risk Devaluation. Implications of Debt Crises and Bond Restructurings, New York, NY.

Arraiz, Irani 2006: Default and Settlement. Payment Resumption and Disclosure, unv. Ms.

Benjamin, David/*Wright, Mark* 2008: Recovery before Redemption? A Theory of Delays in Sovereign Debt Renegotiations, unv. Ms.

Boughton, James M. 2001: Silent Revolution. The International Monetary Fund 1979-1989, Washington, DC.

Broner, Fernando/*Martin, Alberto*/*Ventura, Jaume* 2006: Sovereign Risk and Secondary Markets (NBER Working Paper W12783), Camebridge, MA.

Buchheit, Lee 2000: How to Negotiate Eurocurrency Loan Agreements, 2. Auflage, London.

Buchheit, Lee, 2005: The Role of the Official Sector in Sovereign Debt Workouts, in: Chicago Joural of International Law 6: 1, 333-343.

Buchheit, Lee/Karpinski, Elizabeth 2006: Grenada's Innovations, in: Journal of International Banking and Regulation 21: 4, 227-231.

Buchheit, Lee/Karpinski, Elizabeth 2007: Belize's Innovations, in: International Banking and Financial Law 22: 5, 278-280.

Chauvin, Nicolas D./Kraay, Aart 2007: Who Gets Debt Relief? in: Journal of the European Economic Association 5: 2/3, 333-342.

Cline, William R. 2004: Private Sector Involvement in Financial Crisis Resolution. Definition, Measurement, and Implementation, in: Haldane, Andrew G. (Hrsg.): Fixing Financial Crises in the Twenty-first Century, London, 61-94.

Delaume, Georges R. 1994: The Foreign Sovereign Immunities Act and Public Litigation. Some Fifteen Years Later, in: The American Journal of International Law 88: 2, 257-279.

Enderlein, Henrik/Müller, Laura/Trebesch, Christoph 2007: Debt Disputes. Measuring Government Coerciveness in Sovereign Debt Crises, unv. Ms.

Enderlein, Henrik/Müller, Laura/Trebesch, Christoph 2008a: Sovereign Debt Disputes. Testing the Role of Politics and Institutions in Financial Crisis Resolution (Vortrag vor dem „Political Economy of International Finance Annual Meeting", Claremont, CA, 2.5.2008).

Enderlein, Henrik/Müller, Laura/Trebesch, Christoph 2008b: Democratic Threats. Regime Type and Debt Crisis Resolution (Vortrag vor dem „American Political Science Assocoiation Annual Meeting, Boston, MA, 28.-31.8.2008).

Enderlein, Henrik/Müller, Laura/Trebesch, Christoph 2010: On the Role of the Private Sector in Sovereign Debt Crises, in: Risse, Thomas/Lehmkuhl, Ursula (Hrsg.): Governance Without a State? Policies and Politics in Areas of Limited Statehood, New York, NY, i. E.

Eichengreen, Barry 2002: Financial Crises. And What to Do About Them, New York, NY.

Fisch, Jill E./Gentile Caroline M. 2004: Vultures or Vanguards? The Role of Litigation in Sovereign Debt Restructuring, in: Emory Law Journal 53: 3, 1043-1113.

Gelpern, Anne 2005: What Iraq and Argentina Might Learn from Each Other, in: Chicago Journal of International Law 6: 1, 391-414.

Goldman, Samuel E. 2000: Mavericks in the Market. The Emerging Problem of Hold-outs in Sovereign Debt Restructuring, in: UCLA Journal of International and Foreign Affairs 5: 1, 159-198.

Greenwood, Christopher/Mercer, Hugh 1995: Considerations of International Law, in: Eichengreen, Barry/Portes, Richard (Hrsg.): Crisis? What Crisis? Orderly Workouts for Sovereign Debtors, London.

Guzman, Andrew/Simmons, Beth A. 2002: To Settle or Empanel? An Empirical Analysis of Litigation and Settlement at the World Trade Organization, in: Journal of Legal Studies, 31: 1, 205-235.

Haldane, Andrew G./Penalver, Adrian/Saporta, Victoria/Shin, Hyun-Song 2004: Analytics of Sovereign Debt Restructuring, in: Journal of International Economics 65: 2, 315–333.

Institute of International Finance 2006: Principles for Stable Capital Flows and Fair Debt Restructuring in Emerging Markets. Report on Implementation by the Principles Consultative Group, Washington, D.C.

IMF 1999: IMF Policy on Lending into Arrears to Private Creditors, in: http://www.imf.org/external/pubs/ft/privcred/index.htm; 14.02.2009.

IMF 2002: Fund Policy on Lending into Arrears to Private Creditors. Further Consideration of the Good Faith Criterion, in: http://www.imf.org/external/pubs/ft/privcred/073002.pdf; 14.02.2009.

IMF 2003: Proposals for a Sovereign Debt Restructuring Mechanism (SDRM), in: http://www.imf.org/external/np/exr/facts/sdrm.htm; 14.02.2009.

IMF/World Bank 2003: Enhanced HIPC Initiative. Creditor Participation Issues, in: http://www.imf.org/external/np/hipc/2003/creditor/040803.pdf; 14.02.2009.

IMF/World Bank 2006: Heavily Indebted Poor Countries Initiative (HIPC) and Multilateral Debt Relief Initiative (MDRI). Status of Implementation, in: http://www.imf.org/external/ np/pp/eng/2006/082106.pdf; 14.02.2009.

IMF/World Bank 2007: Heavily Indebted Poor Countries (HIPC) Initiative and Multilateral Debt Relief Initiative (MDRI). Status of Implementation, in: http://www.imf.org/external/np/ pp/2007/eng/082807.pdf; 14.02.2009.

Jayachandran, Seema/Kremer, Michael 2006: Odious Debt, in: American Economic Review 96: 1, 82-92.

Jensen, Nathan 2003: Democratic Governance and Multinational Corporations. The Political Economy of Foreign Direct Investment, in: International Organization 57: 3, 587-616.

Kämmerer, Jörn Axel 2005: Der Staatsbankrott aus völkerrechtlicher Sicht, in: Zeitschrift für ausländisches öffentliches Recht und Völkerrecht 65, 651-676.

Krueger, Anne O. 2002: A New Approach to Sovereign Debt Restructuring, in: http://www.imf.org/external/pubs/ft/exrp/sdrm/eng/sdrm.pdf; 14.02.2009.

La Porta, Rafael/Lopez-de-Silanes, Florencio/Shleifer, Andrei 2008: The Economic Consequences of Legal Origins, in: Journal of Economic Literature 46: 2, 285-332.

La Porta, Rafael/Lopez-de-Silanes, Florencio/Shleifer, Andrei/Vishny, Robert W. 1998: Law and Finance, in: Journal of Political Economy 106: 6, 1113-1155.

La Porta, Rafael/Lopez-de-Silanes, Florencio/Shleifer, Andrei/Vishny, Robert W. 1999: The Quality of Government, in: Journal of Law, Economics and Organization 15: 1, 222-279.

Martin, Lisa 1992: Coercive Cooperation. Explaining Multilateral Economic Sanctions, Princeton, NJ.

Miller, Marcus/Thomas, Dania 2007: Sovereign Debt Restructuring. The Judge, the Vultures and Creditor Rights, in: The World Economy 30: 10, 1491-1509.

Müller, Laura 2008a: Your Treasury's Rich and Your Budget's Good Looking? On the Role of Budgetary Institutions in the Resolution of Developing Country Debt Crisis (Vortrag vor den „Joint Sessions of the European Consortium of Political Research", Rennes, 12.-16.4.2008).

Müller, Laura 2008b*:* Good Institutions for Bad Times. On the Role of Fiscal Decentralization and Sovereign Default in Emerging Countries (Vortrag vor der „Graduate Student Conference of the European Consortium of Political Research", Barcelona, 25.-27.8.2008).

Panizza, Ugo/Sturzenegger, Federico/Zettelmeyer, Jeromin 2009: The Law and Economics of Sovereign Debt and Default, in: Journal of Economic Literature, i. E.

Pitchford, Rohan/Wright, Mark 2007: Restructuring the Sovereign Debt Restructuring Mechanism, unv. Ms.

Pitchford, Rohan/Wright, Mark 2008: Holdouts in Sovereign Debt Restructuring. A Theory of Negotiation in a Weak Contractual Environment, unv. Ms.

Power, Philip J. 1996: Sovereign Debt. The Rise of the Secondary Market and its Implications for Future Restructurings, in: Fordham Law Review 64: 6, 2701-2772.

Reinhart, Carmen M./Rogoff, Kenneth S./Savastano, Miguel 2003: Debt Intolerance, in: Brookings Papers on Economic Activity 1, 1-62.

Rogoff, Kenneth/Zettelmeyer, Jeromin 2002: Bankruptcy Procedures for Sovereigns. A History of Ideas, 1976–2001, in: IMF Staff Papers 49: 3, 470-507.

Roubini, Nouriel 2004: Private Sector Involvement in Crisis Resolution and Mechanisms for Dealing with Sovereign Debt Problems, in: Haldane, Andrew G. (Hrsg.): Fixing Financial Crises in the Twenty-first Century, London.

Roubini, Nouriel/Setser, Brad 2004: Bailouts or Bail-ins? Responding to Financial Crises in Emerging Economies, Washington, DC.

Saiegh, Sebastián M. 2005: Do Countries Have a Democratic Advantage? Political Institutions, Multilateral Agencies, and Sovereign Borrowing, in: Comparative Political Studies 38: 4, 366-387.

Singh, Manmohan 2003: Recovery Rates from Distressed Debt. Empirical Evidence from Chapter 11 Filings, International Litigation, and Recent Sovereign Debt Restructurings (IMF Working Paper 03/161), Washington, DC.

Shleifer, Andrei 2003: Will the Sovereign Debt Market Survive? in: American Economic Review 93: 2, 85–90.

Stamm, Hanspeter 1987: Kooperation und Konflikt im Weltfinanzsystem. Eine Analyse multilateraler Umschuldungsaktionen seit 1956 (Soziologisches Institut der Universität Zürich: Lizentiatsarbeit), Zürich.

Sturzenegger, Federico/Zettelmeyer Jeromin 2006: Has the Legal Threat to Sovereign Debt Restructuring Become Real? (Universidad Torcuato Di Tella, Business School Working Paper 04/2006), Buenos Aires.

Sturzenegger, Federico/Zettelmeyer Jeromin 2007a: Debt Defaults and Lessons from a Decade of Crises, Cambridge, MA.

Sturzenegger, Federico/Zettelmeyer Jeromin 2007b: Creditors' Losses Versus Debt Relief. Results from a Decade of Sovereign Debt Crises, in: Journal of the European Economic Association 5: 2, 343–351.

Szodruch, Alexander 2008: Staateninsolvenz und private Gläubiger. Rechtsprobleme des Private Sector Involvement bei staatlichen Finanzkrisen im 21. Jahrhundert, Berlin.

Thompson, Helen/Runciman, David 2006: Sovereign Debt and Private Creditors. New Legal Sanction or the Enduring Power of States? in: New Political Economy 11: 4, 541-555.

Trebesch, Christoph 2008: Delays in Sovereign Debt Restructuring. Should We Really Blame the Creditors? unv. Ms.

Trebesch, Christoph 2009: The Cost of Aggressive Sovereign Debt Policies. How Much is the Private Sector Affected? (IMF Working Paper WP/09/29), Washington, DC.

van Rijckeghem, Caroline/Weder, Beatrice 2004: The Politics of Debt Crises (CEPR Discussion Paper 4683), London.

Weinschelbaum, Federico/*Wynne, José* 2005: Renegotiation, Collective Action Clauses and Sovereign Debt Markets, in: Journal of International Economics 67: 1, 47-72.
Wright, Mark 2005: Coordinating Creditors, in: American Economic Review 95: 2, 388-392.