

## **Should Argentina Accept an IMF-Revision – or Rather Turn to an Independent Rating Agency Instead?**

After nearly a decade the Paris Club has eventually agreed to negotiate bilateral debts and arrears with Argentina, accepting the one critical Argentine condition: no IMF. As no IMF-claims are involved - in fact, Argentina has no outstanding obligations to the Fund - this may seem extremely plausible. Not so to the Paris Club trying over years to make involvement of this third party, allegedly biased in favour of its big shareholders, the Paris Club countries, a necessary condition for any negotiation. Whatever the reasons or hidden agenda for this insistence, efficiency and success in estimating necessary debt relief cannot be the reason, as the record of IMF forecasting proves beyond doubt. Overoptimistic projections have rendered insufficient debt relief for many countries, prolonging debt troubles over decades as the IMF itself admits, speaking on one occasion of a “bias in projecting GDP growth in U.S. dollar terms .... at almost percentage points a year.” (IMF & IDA 2004, p.13; cf also Raffer 2010, pp.204ff).

Argentina’s demand that the IMF must not be involved is understandable and reasonable. Relations between the country and the Fund have been extremely strained and tense over years since the Kirchner government settled Argentina’s debts with the IMF in advance and Argentina has refused reviews by the IMF since 2006. In addition Argentina and Brazil spearheaded the wave of early repayments to the IMF that brought the Fund right to the edge of bankruptcy. The neoliberal US crisis starting from subprime mortgages and Iceland pursuing the very policies the IMF advocates and enforces, have again saved the IMF as the Southern debt crisis did after the demise of Bretton Woods. The total impartiality of the IMF seems thus not beyond any reasonable doubt.

Negotiating with the Paris Club without IMF involvement is a victory for Argentina and for the Rule of Law. When Nigeria received (in the words of the Paris Club) an “exceptional treatment” in October 2005, a 67% debt reduction in two phases, the Fund’s role had already been restricted. Nigeria had chosen not to have a programme with the IMF, following her own economic reforms called NEEDS (National Economic Empowerment and Development Strategy) instead, thus challenging the IMF’s rule over debtors. Argentina is the first emerging market economy keeping the IMF out of debt relations to which it is not a party.

However, problems are likely to continue. The IMF has requested Argentina to open her books and to review Argentina’s economic policies, which the country has refused. Argentina has pointed out that she has no debts with the IMF. Furthermore, it has repeatedly been asserted that members of the G20 would have an obligation to allow the IMF to audit their economies. While the matter at the Paris Club is now settled, pressure on the country is likely to continue. Therefore it is indicated to examine the question whether Argentina is legally or logically obliged to open her books to the IMF in a dispassionate and objective way.

---

\* Associate Professor of Economics, University de Vienna and Honorary Professor of the Universidad Nacional de Rio Negro (Argentina).

There exists no doubt that any member of the IMF has the obligation to allow the IMF to audit its economy pursuant to article IV(3) of the Fund's Articles of Agreement. This section 3 stipulates the right and the obligation of the Fund to surveillance. It also contains the obligation of members to provide economic data: "Each member shall provide the Fund with the information necessary for such surveillance, and, when requested by the Fund, shall consult with it on the member's exchange rate policies." Whether the country is currently a debtor of the Fund or not is absolutely irrelevant.

"In legal terms", however, there exists no "implicit obligation" of a member country of the G20 to open its books to the Fund, as even Mr Lipsky, First Deputy Managing Director of the IMF, had to admit when admonishing Argentina because she does not allow the Fund to review her economy. It must be a highly implicit obligation indeed because neither the member country nor even the G20 themselves are aware of it. The website of the G20 informs that there are no formal criteria for G20 membership.

As regards the obligation of IMF member countries one has to recall that any legal system knows the fundamental right of anyone not to comply with a legal obligation under exceptional and closely circumscribed circumstances, especially so if that cannot be done without simultaneously violating cornerstone principles of the Rule of Law. Absolute impartiality and objectivity beyond the slightest doubt of any judge or forensic expert is one such cornerstone. Civilised legal systems require judges to declare a conflict and withdraw from a case where personal involvement or bias may exist or plausibly be seen to exist. No one is obliged to be judged or evaluated by someone whose impartiality and objectivity is not totally beyond any doubt. Clearly, this is not the case if the IMF reviewed Argentina. Argentina openly opposed the IMF, even threatening not to pay the Fund as due. On several occasions Argentina prevailed against the IMF. Seeing President Kirchner, President Bush reportedly "joked to a group of other foreign leaders: 'here comes the conqueror of the IMF'." (Helleiner 2005, p.955). While this seems exaggerated, Argentina certainly stood her ground against the IMF in an unprecedented way. Both her pre-payment triggering other countries' prepayments and putting the very existence of the Fund at risk, and the ongoing conflict with the Fund over years cannot but raise reasonable doubts regarding the Fund's impartiality. Some actions of the Fund when actively implementing programmes in the country some years ago cannot be described but by wilfully inflicting damages on Argentina or "dolus" as lawyers would say.

May it suffice it to mention that the IMF's own in-house Independent Evaluation Office (IEO) documented many cases of grave negligence, if not worse ( cf. IMF 2004). In addition to applying policies fully aware that these were counterproductive, Argentina's programme did not "address the now clear overvaluation of the exchange rate". The Board supported "a program that Directors viewed as deeply flawed" (*ibid.*, p.50). The "September 2001 augmentation suffered from a number of weaknesses in program design, which were evident at the time. If the debt were indeed unsustainable, as by then well recognized by IMF staff, the program offered no solution to that problem" (*ibid.*, pp54f). According to this view, the IMF aggravated the problem, knowingly damaging the client's economy. In a footnote the IEO corroborates this last point by quoting a "memorandum to management dated July 26th, 2001", stating that IMF "staff estimates that a haircut of between 15 and 40 percent is required". Lending more money to Argentina, while and in spite of already considering debt reductions of 15 to 40% necessary, the IMF wilfully (dolus malus) caused damages to the country.

If the IMF had waived its total immunity – an option granted by art. IX, sec. 3 of its Articles of Agreement, apparently tailor made for cases such as Argentina – the country and the IMF would be in litigation in front of a court or an arbitration panel, trying to determine how much the IMF must pay to Argentina in damages. This country could and probably should ask the IMF to waive its immunity as provided by its statutes so that this conflict could be solved in a legally proper and civilised way.

Under these circumstances, the refusal to be audited by the IMF, which the Argentine government has continuously upheld since 2006 is both justified and rational. There is sufficient concern that the Fund may use any monitoring of this particular members' economy as an opportunity to take revenge or to take advantage in its conflict with the country, even though and if nothing could in fact be further from the Fund's intentions. From a legally correct point of view one must therefore strongly advise the IMF not to insist on its statutory right to review Argentina in order to avoid any suspicion – even if totally unjustified - that this might have been a possibility seized to settle old scores. In addition, the Fund's record of its relations with Argentina justifies doubts whether it could realise this auditing as stipulated by its own Articles of Agreement in a purely technical way better than its analysis of Argentine debts problems in the past.

On the other hand, it is understandable and obvious that other members of the G20 prefer a confirmation that its members' economies are in good shape and that no member tries to hide any skeletons in whichever cupboard.

There exists a solution to this problem, a compromise: the review must be done by a totally neutral institution, technically able to do it, and enjoying a good reputation: a rating agency. Evidently, a rating agency substituting the IMF must fulfil very rigorous standards: good international reputation, activities on a global scale, and a record of rating sovereign debtors. This excludes many small rating agencies of rather regional or national importance. It eliminates all but four rating agencies. It is also indispensable that this agency be not involved in any way in causing the present crisis, which was triggered by unjustified and ill-founded ratings of toxic assets. This obviously excludes the three big US agencies that rated securitised subprime, liar and ninja (no income, no job, no assets) loans as perfectly safe investments, as well as their affiliates.

Thus we are left with only one rating agency: Dagong Global Credit Rating Co. Ltd., a young, Chinese firm that already has rated more than 40 countries, including the US. The country where this agency is based, China, does not owe the IMF any money, which excludes even the suspicion of IMF leverage on the country and thus indirectly on the firm. Furthermore, China clearly does not have similar interests as Wall Street, Argentine hold-outs or other creditors.

Only a rating agency without any self-interest is able to evaluate and check the Argentine economy without any doubts regarding its objectivity and neutrality, and to dissipate and disprove any allegations that Argentina might not be economically fit to be – with absolute justification - a member of the G20.

- Helleiner** (2005) 'The Strange Story of Bush and the Argentine Debt Crisis', *Third World Quarterly* 26(6), p.951ff
- IMF, IEO** (2004) *Report on the Evaluation of the Role of the IMF in Argentina, 1991–2001*, at <http://www.imf.org/external/np/ieo/2004/arg/eng/pdf/report.pdf> (accessed 20 November 2010)
- IMF & IDA** (2004) “Debt Sustainability in Low-Income Countries—Proposal for an Operational Framework and Policy Implications”, 3 February, <http://www.imf.org/external/np/pdr/sustain/2004/020304.pdf> (accessed 20 November 2010)
- Raffer, Kunibert** (2010) *Debt Management for Development - Protection of the Poor and the Millennium Development Goals*, Elgar, Cheltenham (UK)/ Northampton (US) [Paperback planned for May 2011]