The African Legal Support Facility as a Tool against Vulture Funds

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Introduction

In recent years highly indebted countries, which are often equally the poorest countries in the world, have faced litigation by commercial creditors who precisely target these countries for old debts they have purchased on the secondary market at a discount. The actions of these vulture funds or distressed debt funds as they are neutrally (or euphemistically) called have met with resistant of prominent figures and NGOs alike who have decried the actions of vulture funds as immoral. In turn, vulture funds have replied that they rely on the sanctity of contracts. In addition, they defend their actions by pointing to their importance for the secondary market in sovereign debt. The problems of vulture fund litigation are complex and involve political, economic, moral and legal issues.

In this contribution we will discuss some of the legal aspects of vulture fund litigation. Considering the opposition against vulture funds, initiatives in the legal sphere have been taken to clip the wings of the vulture funds, for instance by enacting national legislation or inserting clauses in new debt agreements that would make vulture litigation less possible. This contribution will focus on one of the initiatives, the African Legal Support Facility, whose goal is to support African countries dealing with vulture funds in the legal domain. Before looking into the African Legal Support Facility, we set

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out the context in which it will operate by sketching the origins and some of the legal issues of vulture funds litigation.

Origins of vulture funds litigation

The emergence of litigation by vulture funds is a relatively recent phenomenon. The claims of commercial debt holders have in the past led to cases at the international level[1], but such claims were largely inexistent until the 1980s. Two unrelated developments explain the upsurge in claims by commercial debt holders, some of them vulture funds, against sovereign States. The first reason is the abandonment of absolute sovereign immunity before national courts, especially in the United States, which has become one of the major forums for litigation. In 1952 the United States State Department issued the "Tate Letter" that adopted the restrictive approach to State immunity which became subsequently enshrined in the Foreign Sovereign Immunities Act of 1976. The immunity of foreign States before United States' courts is limited to matters that are in the sovereign domain. States have no immunity from jurisdiction in commercial matters[2], which include the issuing of bonds[3]. Hence, from that moment on States could not invoke immunity for the inability or unwillingness to pay loans to commercial creditors. The United Kingdom followed and enshrined restricted immunity in the Sovereign Immunities Act of 1978. State immunity limited to sovereign acts is now the general norm.[4] An exception to this rule is made for interstate loans.[5] That this is not a purely legally technical issue is illustrated by the case of FG Hemisphere Associates against the Democratic Republic of Congo before the courts of Hong Kong. FG Hemisphere Associates aimed to seize funds that China Railways would invest in the Congo in order to enforce an arbitration award it had obtained from a former Yugoslav company. The People's Republic of China is one of the few countries in the world that still adheres to the absolute immunity doctrine. However, Hong Kong is a special administrative region with its own legal system. The Court of Appeal of Hong Kong ruled that Hong Kong adhered to restricted State immunity and that it could adjudicate the claim.[6] The Democratic Republic of Congo appealed and the Court of Final

1. See: *Payment of Various Serbian Loans Issued in France* (France v. Kingdom of the Serbes, Croats and Slovenes), *Judgment*, *PCIJ Publ.*, *Series A*, No. 20; *Payment, in Gold, of Federal Brazilian Loans Issued in France*, (France v. Brazil), *Judgment*, *PCIJ Publ.*, *Series A*, No. 21.

2. Section 1605 Foreign Sovereign Immunities Act (1976).

3. See: US Supeme Court, *Argentina v. Weltover, Inc.* 504 U.S. 607, 614-615 (1992).

4. Article 8 (1) UN Convention on Jurisdictional Immunities of States and Their Property (2004); Australia, Section 11(1) Foreign States Immunities Act (1985); Canada, Section 5(1) State Immunity Act (1982); South Africa, Section 4(1) Foreign States Immunies Act (1981); United Kingdom, Section 3 (1) Sovereign Immunities Act (1978); United States, § 1605(a)(2) Foreign Sovereign Immunities Act (1976); *Democratic Republic of the Congo v. Red Mountain Finance*, Court of First Instance of Brussels, 6 March 2001, in J. Wouters and M. Vidal, *Cases van internationaal recht*, Antwerp, Intersentia, 2005, 544.

5. Article 8 (2)(a) UN Convention on Jurisdictional Immunitues of States and Their Property (2004); Australia, Section 11(1) Foreign States Immunities Act (1985); South Africa, Section 4(2) Foreign States Immunies Act (1981); United Kingdom, Section 3 (2) Sovereign Immunities Act (1978); J. Goren, "State-to-State Debts: Sovereign Immunity and the 'Vulture' Hund", *George Washington International Law Review* 2010, 701 et seq.

6. *FG Hemisphere v. Democratic Republic of Congo* et al., High Court, Court of Appeal, 10 February 2010, http://legalref.judiciary.gov.hk/lrs/common/ju/ju_frame.

Appeal reversed: it adopted the absolute immunity doctrine since this was constitutionally required by the Basic Law.[1] Hence, the avenues of commercial creditors to initiate proceedings against States in Hong Kong (and Macau) and in China are effectively closed, which is of significant importance given the increasing role of China in Africa.

Yet, this legal evolution was in itself not sufficient to the emergence of the litigation by vulture funds. After World War II sovereign debt was hold by commercial banks in the form of syndicated loans. In case a State could not repay its debts, this led not to a default but to negotiation between a Bank Advisory Committee that represented the major commercial banks, the indebted country and the IMF, which were all dependent on each other. Litigation was hence not an option since it would disrupt the re-negotiation of the debt.[2] Litigations did occur but they were exceptional.[3] This changed due to the Latin American debt crisis of the 1980s. In the 1960s en 1970s Latin American countries borrowed heavily by short-term loans on the international market in US dollar in order to finance infrastructure for their booming economies. The loans were provided by commercial banks that received a huge influx of cash from the oil-exporting countries due to the high oil prices. However, in 1979 interest rates started to climb and the exchange rate of Latin American currencies to the US dollar deteriorated making it harder for those countries to pay back their loans. In addition, due to recession the prices of primary goods that were exported by those countries started to fall. When the Latin-American States could not pay back banks refused to refinance their short term debts so that those debts become due immediately. Since those countries could not pay back their loans this led in turn to a risk of insolvency of the commercial banks. The Brady Plan provided for a solution by writing down the bank debt through a conversion of illiquid loans into liquid bonds whose debt was collateralized by US Treasury debt. Those bonds were sold to commercial investors and the proceeds were used to reduce the debts of the Latin American countries.[4] The Brady Plan created an active secondary market in sovereign bonds in which quickly bonds of other countries were traded. Moreover, after the end of the cold war former communist countries in Europe sold the loans granted by the predecessor regimes to investors on the secondary market. For instance, Donegal International bought a loan of Romania to Zambia concluded in the 1980s that would become the subject of litigation.[5]

jsp?DIS=69730&currpage=T (last visited December 16, 2011).

1. *Democratic Republic of the Congo* et al. *v. FG Hemisphere Associates LLC*, Court of Final Appeal, 8 September 2011, http://legalref.judiciary.gov.hk/lrs/common/ju/ju_frame.jsp?DIS=78113&currpage=T (last visited December 16, 2011).

2. E. Broomfield, "Subduing the Vultures: Assessing Government Caps on Recovery in Sovereign Debt Litigation", *Columbia Business Law Review* 2010, 483-484; P. Wautelet, "Vulture Funds, Creditors and Sovereign Debtors: How to Find a Balance?", 2011, 3-4, www.orbi.ulg.ac.be (last visited December 16, 2011).

3. See: *Libra Bank Ltd. v. Banco Nacional de Costa Rica S.A.*, 570 F.Supp. 870 (S.D.N.Y. 1983); *Allied Bank International II v. Banco Credito Agricola de Cartago*, 757 F.2d 516 (2nd Cir. 1985).

4. E. Broomfield, "Subduing the Vultures: Assessing Government Caps on Recovery in Sovereign Debt Litigation", *Columbia Business Law Review* 2010, 484-485.

5. *Donegal International Ltd. v. Zambia*, High Court, 15 February 2007, [2007] EWHC 197 (Comm.), § 11 and §§ 317 et seq.; T. Laryea, "*Donegal v. Zambia* and the Persistent Debt Problems of Low-Income Countries", *Law and Contemporary problems* 2010, 194. A similar instance

Evidently not all commercial creditors of sovereign debt are vulture funds. What exactly is a vulture fund is hard to define and not every commercial creditor that starts a case against a Highly Indebted Poor Country will be a vulture fund. Nevertheless, vulture funds have typically certain characteristics. First, they focus only or to a very large extent on sovereign debt of countries that have or are expected to have difficulties in repaying the debt. Sometimes the loan is the only asset of the vulture fund. Second they are not primary lenders, but purchase the loans on the secondary market at a price that is significantly lower than the nominal value of the loan. Third, vulture funds demand the complete repayment of the loan and interest despite the low real market value. Fourth, it refuses to participate in debt restructuring thereby giving other creditors the incentive not to restructure the debt by starting (and sometimes winning) cases for the nominal value of the loan. In this respect vulture funds have been accused of free riding. If creditors agree to restructure or rescind the debt, the burden of repayment of the indebted country might be significantly reduced so that it has more financial means to repay the remaining debt. Vulture funds profit from these agreements by trying to seize the financial resources that have become available through debt restructuring. Finally, additional elements are that vulture funds are typically located in exotic, off-shore jurisdictions, have an intransparent company structure and start cases in courts of developed countries, especially the United Kingdom and the United States, that are deemed more creditor-friendly. [1]

is the purchase of an arbitral award by FG Hemisphere Associates from Bosnia and Herzegovina: *FG Hemisphere v. Democratic Republic of Congo* et al., High Court, Court of Appeal, 10 February 2010, §§ 4- 6.

Some of the legal issues involved in sovereign debt cases

Litigation of sovereign debt involves various legal issues that cannot all be discussed in this contribution.[2] Nevertheless, the main issue will be frequently the immunity of the debtor State. State immunity has two limbs, immunity from jurisdiction and immunity from enforcement. After the demise of absolute immunity, the immunity of jurisdiction does not present an obstacle anymore for litigation of vulture funds. Moreover, immunity of jurisdiction can be and has been waived in most loan agreements with States.[3] Thus, not surprisingly, vulture funds have been able to institute and win cases against debtor States. However, obtaining a judgment against a State is only the first step. The

1. E. Broomfield, "Subduing the Vultures: Assessing Government Caps on Recovery in Sovereign Debt Litigation", *Columbia Business Law Review* 2010, 475-476 and 485-486.

2. Such as the defence of champerty, act of State and comity. Champerty was rejected in *CIBC Bank & Trust Co. (Cayman) Ltd. v. Banco central do Brazil*, as confirmed by the vulture litigation of *Elliot Associates LP v. Peru*, 194 F.3d 63 (2nd Cir. 1998). Act of State was deemed not a bar in *Allied Bank II International v. Banco Credito Agricola de Cartago* 757 F.2d 516 (2nd Cir. 1985). Comity was set aside in the same case and confirmed by the vulture litigation of *Pravin Bankers Associates, Ltd. v. Banco Popular de Peru* 109 F.3d 850 (2nd Cir. 1997).

3. E. Broomfield, "Subduing the Vultures: Assessing Government Caps on Recovery in Sovereign Debt Litigation", *Columbia Business Law Review* 2010, 480; J.E. Fisch & C.M. Gentile, "The Role of Litigation in Sovereign Debt Restructuring", *Emory Law Journal* 2004, 1076. An example is the agreement between Donegal and Zambia, in which the latter waived its immunity: *Donegal International Ltd. v. Zambia*, High Court, 15 February 2007, [2007] EWHC 197 (Comm.), § 17.

judgment still needs to be enforced against the State and at this stage debtor States can invoke immunity of enforcement measures. Only goods that are used for commercial purposes can be attached for execution.[1] In this respect vulture funds have not been very successful in finding State property for attachment. In addition, because the traditional attempt of attaching State property has proven not to be successful, vulture funds have adopted more sophisticated, legal techniques to obtain payment.

The first alternative is the targeting of money flows from the debtor State to its creditors and was attempted by Elliott Associates against Peru. Elliot Associates had obtained a large amount of debt at a discount that was guaranteed by Peru. When Peru refused to pay, Elliott started proceedings and eventually was awarded 57 million US dollar in payment. In order to execute the judgment Elliott Associates targeted the payment of Peru to Brady Bond holders that would be credited to bondholder accounts maintained in the Euroclear System in Belgium.[2] It requested and received a restraining order against Euroclear with respect of the payment it was going to transfer to the holders of the bonds. The Brussels Court of Appeal by an erroneous reading of the pari passu clause[3] effectively halted payments from Peru to the bondholders and Peru has to settle with Elliott Associates in order to avoid a default on its Brady Bonds.[4] The success of Elliott Associates triggered further litigation against other sovereign debt holders, but was largely unsuccessful before other courts due to the unorthodox decision of the Brussels Court of Appeal.[5] In addition, Belgium adopted legislation that would make it impossible to block payments through Euroclear.[6] Hence, it seems that this avenue has been closed.

The second alternative that has been put into practice is that vulture funds try to obtain money that is owed to their sovereign debtors. Hence, vulture funds have tried to seize development aid or money that was promised as investment in that country. The abovementioned example of FG Hemisphere Associates against the Democratic Republic of Congo is a clear example of this technique. Ins-

1. Article 19 (c) UN Convention on Jurisdictional Immunities of States and Their Property (2004); Australia, Section 32 Foreign States Immunities Act (1985); Canada, Section 12(1)(b) State Immunity Act (1982); South Africa, Section 14 (3) Foreign States Immunies Act (1981); United Kingdom, Section 13 (4) Sovereign Immunities Act (1978); United States, Section 1610 Foreign Sovereign Immunities Act (1976).

2. P. Wautelet, "Vulture Funds, Creditors and Sovereign Debtors: How to Find a Balance?", 2011, 8-9, www.orbi.ulg.ac.be (last visited December 16, 2011).

3. The *pari passu* clause establishes a procedural right that a creditor will be treated at the same rank as other creditors, even if the latter have obtained a security: L.C. BUCHHEIT and J.S. Pam, "The Hunt for *Pari Passu*", *International Finance Law Review* 2004, 21; L.C. BUCHHEIT and J.S. Pam, "The *Pari Passu* Clause in Sovereign Debt Instruments", *Emory Law Journal* 2004, 876. The Court of Appeal of Brussels however held that a *pari passu* clause also entails that a debtor cannot choose to pay one creditor over another. All creditors have to be paid pro rata: *Ibid.*, 22.

4. P. Wautelet, "Vulture Funds, Creditors and Sovereign Debtors: How to Find a Balance?", 2011, 9, www.orbi.ulg.ac.be (last visited December 16, 2011).

5. *Ibid.*, 30-34.

6.Article 9 Loi visant à transposer la Directive 98/26/CE du 19 mai 1998 concernant le caractère définitif du règlement dans les systèmes de paiement et de règlement des opérations sur titres, as amended by Article 15 Loi modifiant la loi du 22 mars 1993 relative au statut et au contrôle des établissements de crédit, la loi du 9 juillet 1975 relative au contrôle des entreprises d'assurances, la loi du 2 août 2002 relative à la surveillance du secteur financier et aux services financiers et la loi du 28 avril 1999 visant à transposer la Directive 98/26/CE du 19 mai 1998 concernant le caractère définitif du règlement dans les systèmes de paiement et de règlement des opérations sur titres, *Moniteur Belge*, 28 December 2004.

tead of trying to enforce the judgment on State-owned assets, FG Hemisphere Associates tried to obtain payment from funds that were destined for the Democratic Republic of the Congo, but in the end failed because of the absolute immunity States enjoy in the People's Republic and its Special Administrative Regions. Nevertheless, FG Hemisphere was successful in another case that involved payments by a commercial entity. It brought a case against the Democratic Republic of Congo, the State owned Gécamines, and Groupement pour le Traitement du Terril de Lubumbashi, Ltd. (GTL) before the courts of Jersey. GTL was a joint venture incorporated in Jersey in which Gécamines was a partner and has as an objective the exploitation of cobalt-slag. FG Hemisphere Associates sought to enforce the arbitration awards it had obtained from Bosnia and Herzegovina by obtaining leave to enforce them as a judgment of the Jersey courts and to execute that judgment against certain assets of Gécamines, namely 23,600 shares in GTL and the right of Gécamines to receive certain payments from GTL. The Court of Appeal (Samedi Division) of Jersey ruled in favour of FG Hemisphere Associates and the judgment was confirmed by the Court of Appeal.[1] Other cases were however less successful.[2]

A third alternative strategy that has been used by vulture funds is to start proceedings against creditors of debtor States. For instance Kensington sued BNP Paribas (but also against the Congolese oil company and the President) for providing a new loan to the Republic of Congo, which it repaid at the expense of repayment of loans in which Kensington had an interest. Kensington argued that this violated the pari passu clause and tried to recover the payment owed by Congo from BNP Paribas. The case failed however on the procedural ground of *forum non conveniens*.[3]

From the foregoing overview it becomes clear that vulture fund litigation requires a superb legal expertise to defend sovereign debtors. However, poor countries may simply not have the expertise or the means to obtain this expertise to litigate on multiple occasions against vulture funds. Hence, there is the need to provide legal support during litigation. Moreover, vulture funds may start cases not for the purpose to go through all stages of the proceedings but to compel the debtor States to settle outside of court through negotiations. This happened to Peru that was forced to settle with Elliot Associates or default on its Brady Bonds. Similarly, Donegal managed to bring Zambia to the negotiating table by initiating litigation.[4] Consequently, poor and highly indebted countries will need assistance during negotiations as well.

1. *FG Hemisphere Associates LLC v. The Democratic Republic of the Congo, la Générale des carrières et des mines and Groupement pour le Traitement du Terril de Lubumbashi, Ltd.*, Royal Court (Samedi Division), 27 Octobre 2010, [2010] JRC 195, at www.jerseylaw.je (last visited December 16, 2011); *FG Hemisphere Associates LLC v. The Democratic Republic of the Congo, la Générale des carrières et des mines and Groupement pour le Traitement du Terril de Lubumbashi, Ltd.*, Royal Court, 14 July 2011, [2011] JCA 141, at www.jerseylaw.je (last visited December 16, 2011).

2. See: P. Wautelet, "Vulture Funds, Creditors and Sovereign Debtors: How to Find a Balance?", 2011, 10, www.orbi.ulg.ac.be (last visited December 16, 2011).

3. *Ibid.*, 11; L.C. BUCHHELT and J.S. Pam, "The Hunt for *Pari Passu*", *International Finance Law Review* 2004, 22.

4. T. Laryea, "*Donegal v. Zambia* and the Persistent Debt Problems of Low-Income Countries", *Law and Contemporary problems* 2010, 194.

The need to tackle the activity of vulture funds together with the past experience where developing countries had severe difficulties in defending themselves against the activity of such funds and in finding proper legal assistance suggests the need of having a preventive and concerted approach. Therefore, the African Development Bank decided to create a proper structure to help African countries in providing legal assistance for commercial contracts negotiations as well as against vulture funds claims. It is to this structure we know turn.

The African Legal Support Facility and its possible drawbacks

The African Legal Support Facility (ALSF) is an international organization[1] dedicated to providing legal and technical assistance to regional member countries in matters pertaining to complex commercial transactions and creditor litigation. The ALSF was created as a response to calls from African countries for assistance in these key areas. The goal of the ALSF is to remove asymmetric technical capacities and level the field of legal expertise among parties to negotiations and litigation.

The ALSF strives to further development in Africa by removing obstacles to realizing the benefits of debt relief through its work in vulture funds litigation. The ALSF also provides advisory services to improve the negotiating capabilities of its member countries and has a grant program to give to the member countries the possibility of hiring qualified legal assistance for high level contractual negotiations. The final aim of the ALSF is to enhance legal capacity on the continent. In particular, to serve its purposes, the ALSF shall carry a series of functions and activities: (i) identification of legal expertise on creditor litigation; debt management; as well as the case may be in extractive industries and other natural resources management and contracting; investment agreements; (ii) provision of financing to African member states of the ALSF to assist them with actual creditor litigation and negotiations of complex commercial transactions where should states shall be willing and able to reimburse the Facility for the latter services; (iii) investing in and organizing the training of legal counsel from African member states of the ALSF to equip them with legal expertise necessary to address creditor/vulture fund litigation; (iv) provision of technical legal assistance, other than actual litigation services, to African member states of the ALSF; (v) establishing and maintaining a list of specialized law firms and legal experts to represent African member states of the ALSF in creditor litigation and, as the case may be, negotiations of complex commercial transactions; (vi) developing a database and systems for making available and retrieving precedents in creditor litigation cases involving sovereign debtors; (vii) promoting an understanding, among African countries, of issues concerning identification and resolution of creditor litigation involving sovereign debtors against vulture funds, and, as the case may be, negotiations of complex commercial transactions, especially natural resource contracts; and (viii) conducting such other related functions

1. Key-note address by Mr. Kalidou Gadio, AfDB General counsel, at the Harvard African Law Development Conference, April 17, 2010.

or activities as may advance the purpose of the ALSF[1].

The Facility may conclude cooperation arrangements with other institutions. In this connection, it may receive experts and personnel of other institutions on a secondment or exchange basis[2]. Membership to the ALSF is open to all sovereign nations, the African Development Bank, and other international organizations and institutions who meet the conditions governing eligibility for membership determined by the ALSF's Governing Council[3]. Currently, 42 member countries and 3 international organizations have signed the Treaty Establishing the ALSF[4].

The ALSF operates independently from the African Development Bank[5] and is governed according to the terms of the "Agreement for the Establishment of the African Legal Support Facility"[6]. The ALSF has a Governing Council, a Management Board, a Director, and such other staff necessary to perform the functions and carry out the activities of the ALSF[7].

The Agreement came into force on December 15, 2008 when 29 member countries and one international organization signed it[8]. The Agreement shall be in force for a period of fourteen (14) years from the date of entry into force, and may be extended or reduced by a decision of the Governing Council[9].

The ALSF enjoys privileges and immunities similar to other international organizations. In particular, each member country is required to take all legislative measures in its own national law to enable the ALSF to effectively pursue its objectives[10], and in the Agreement is expressly provided that the ALSF shall enjoy immunity from every form of legal proceeding, except in cases arising out of its own borrowing powers[11]; all property and assets of the ALSF are immune from any kind of seizure, arising from executive or legislative action[12]; the archives shall be inviolable[13]; and all members of the Governing Council, Management Board, Director, Staff, consultants and experts performing missions for the ALSF shall be immune from legal proceedings[14].

The *raison d'être* of the ALSF stays therefore in the need expressed by Heavily Indebted Poor Countries (and in particular by African countries) in various fora to be assisted in managing the growing problem of vulture funds[15].

1. Article II of the Agreement for the Establishment of the African Legal Support Facility.

2. Article XV of the Agreement.

3. Article IV of the Agreement.

4. See the ALSF website www.aflsf.org.

5. On the parallelism and the differences between the AfDB and the ALSF, see: E. Kameni, *A false dawn or a new era? A critical analysis of the possible importance and effectiveness of the African Development Bank (AfDB) African Legal Support Facility (ALSF)*, Harvard Law School Working Paper, 2010, at 10.

6. The Agreement is available on the ALSF website.

7. Article VII of the Agreement.

8. Some of those members deposited their instruments of ratification/acceptance/approval/accession with the Secretary General of the African Development Bank in his capacity as the Provisional Depositary of the Agreement (Articles XXVII and XXIX of the Agreement).

9. Article XXVIII of the Agreement.

10. Article XVI of the Agreement.

11. Article XVII of the Agreement.

12. Article XVIII of the Agreement.

13. Article XX of the Agreement.

14. Article XXII of the Agreement.

15. allAfrica interview with Mr. Kalidou Gadio, General Counsel, African Development Bank, May 13, 2009,

Since it became operational, ninety per cent of the requests sent to the ALSF by States are related to assistance on contract negotiations[1].

The African Development Bank initiative of establishing the ALSF is surely praiseworthy, especially with reference to the aim of establishing a real equality between the parties in contractual negotiations which often involve strategic interests for the countries. Several issues should anyway be considered in assessing the ALSF activities. Where a reflection should be made first is exactly with reference to the indirect effects of protection from the vulture funds actions: if a proper protection is surely necessary, on the other side the risk of having countries which do not hesitate to (continue to) contract debts relying on their successive relief without properly use their own internal resources should not be underestimated.

Another issue should also be taken into consideration. It is the intention of the African Development Bank to involve multinational companies, especially in the oil and mining sectors, in the financing of the ALSF[2]. One of the aims of the ALSF is to assist African Countries to negotiate complex commercial transactions in sensitive sectors (mining and others) with multinational companies: if the same companies are also financing the ALSF there is a blatant conflict of interests. The risk is therefore that such kind of participation could determine – even if indirectly – the ALSF goals and objectives or undermine the effectiveness of its activities, as well as determine its approach towards critical legal issues.

And even more. Vulture funds are legal entities based and operating in countries which are also supportive members of the African Development Bank, like the UK and the US. It might look strange to have these countries contribute to an organization whose main objective is to fight legal entities lawfully operating within their territories[3].

As it has been already suggested[4], the ALSF should invest on transparency to cope with some of these issues: having a public record on where contributions have been received from and which percentage of the ALSF total funds they represent, how law firms and consultants are hired, the detail of the activities where the ALSF is engaged would surely increase the legitimacy of the organization and contribute to its success.

Conclusion

The vulture funds issue appeared quite recently in the world economic arena, but it showed already its importance and potentiality in affecting the choices of economic policy both by developed and developing countries. Initiatives like the ALSF or the legislation adopted in some countries to prevent such phe-

www.allafrica.com (last visited on December 12, 2011).

1. Interview to Mamoudou Deme, ALSF Acting Director, in "*Economy, Business and Finance; ALSF's Management Board and Governing Council Approve Key Resolutions in Lisbon (AfDB)*" in Africa News, June 8, 2011. For an updated list of the projects where the ALSF has been involved see the ALSF Annual Report, 2010, approved by the Governing Council during its 2011 annual meeting, on the 7th June 2001, available on the ALSF website www.aflsf.org (last visited on December 16, 2011).

2. allAfrica interview with Mr. Kalidou Gadio cit.

3. These last two issues are shared by E. Kameni, *A false dawn* cit., who also calls the attention to the issue of the transfer of legal technology to African lawyers.

4. E. Kameni, *A false dawn* cit., at 18.

nomenon clearly show the general trend to fight with it, even if – from the pure legal aspect – the activity of the vulture funds does not have any "illegality", raising concerns more from the moral point of view.

The onset of those initiatives could anyway have the consequence in the future to highly discourage vulture funds to continue to buy those unpaid credits in the secondary market, considering that the obstacles they have to cope with in order to get to the final payment will make the collection of those credits economically unattractive.

Better negotiations of the contracts from the African states side will also cause a higher difficulty in transferring credits arising from investment contracts, and this could also bring in the future to a natural extinction of the vulture funds activities. ¶