

QUESTION 38

Is it impossible to cancel debt?

There have already been debt cancellations in the past, some unilateral, some as a decision of justice, some conceded by the dominant powers. We will present here a few significant cases.

DEBT REPUDIATIONS

United States

In 1776 the thirteen British colonies of North America decided to form the United States, and to end their dependence on the British Crown. The new state freed itself from the burden of its debt by declaring null and void all debts due to London.

In the nineteenth century, after the election of Abraham Lincoln as president, the Southern states seceded and formed the Confederation of American States.¹⁶⁹ The War of Secession that followed (1861-65) saw the victory of the Northern states, which were opposed to slavery and in the process of industrialization. At this point, a further debt repudiation took place, this time to the detriment of the wealthy population of the Southern states. Loans had been contracted in the 1830s, mainly for the creation of banks (Planters' Bank in Mississippi and the Union Bank in North Carolina, in particular) or to underwrite the construction of the railways.

In Mississippi, for example, the initial repayments were made, but then in 1852 a law was passed that allowed for a referendum, giving the inhabitants the chance to vote for or against the repayment of the bonds of Planters' Bank. They voted against. After the War of Secession, in 1876, the Constitution was amended by a clause specifically forbidding the repayment of Planters' Bank bonds. The new regime thus legalized the decision to stop repayments. The amount in the eight states concerned came to \$75 million.

USSR

In January 1918, the brand-new Communist government formed after the 1917 Revolution, refused to take responsibility for the loans made by Tsarist Russia and unconditionally canceled all such debts. The new state, fruit of a revolution whose aim was to end the war and give the land to the peasants, refused to honor loans that had been contracted mainly to pay for the carnage of the First World War. These notorious "Russian bonds" then became virtually worthless and the remaining beautifully engraved certificates were sold off in flea markets for years.

Mexico and Other Latin American Countries

As long ago as 1867, Benito Juárez¹⁷⁰ refused to take on the loans that the preceding regime of Emperor Maximilian had contracted two years earlier with the French bank, the Société Générale de Paris, to finance the occupation of Mexico by the French army.

In 1914, in the middle of the revolution, when Emiliano Zapata¹⁷¹ and Pancho Villa¹⁷² were on the offensive, Mexico completely suspended its external debt payments. Thus, between 1914 and 1942, the most heavily indebted country on the continent reimbursed only symbolic amounts, to play for time. Between 1922 and 1942 (20 years!), lengthy negotiations took place with a consortium of creditors led by one of the directors of the JPMorgan Bank of the United States. Between 1934 and 1940, President Lázaro Cárdenas¹⁷³ nationalized without compensation the petroleum industry and the railways, which were in the hands of British and North-American companies. He also expropriated more than 18 million hectares of the great landed estates (*latifundias*) belonging to

national and foreign owners and distributed them in the form of "communal property" (*ejido*). He also completely overhauled the public education system.

Naturally, the creditors (mostly from the United Kingdom and the United States) howled in protest at these radical, anti-imperialist, popular policies. But Mexico's tenacity paid off. In 1942 creditors renounced about 80 percent of the value of the debts (they also renounced the interest arrears) and made do with small compensation deals for the companies that had been expropriated. Other countries, like Brazil, Bolivia, and Ecuador, also suspended part or all of their repayments from 1931. In the case of Brazil, the selective suspension of repayments went on until 1943, when an agreement reduced the debt by 30 percent. Ecuador, too, stopped paying from 1931 until the 1950s.

In the 1930s, a total of fourteen countries suspended payments over a prolonged period. Only Argentina, one of the biggest debtors, maintained its payments without interruption. But it was also the Latin American country which had the worst economic results afterwards.

DEBT CANCELLATIONS THROUGH FAVORABLE ARBITRATION

Cuba

Cuba was one of the first countries to successfully repudiate odious debt (in this case, a "subjugation" debt). In 1898, the United States had won the war against Spain and gained control of Cuba (until then, a Spanish colony). Cuba was separated from the Spanish Crown, as were Puerto Rico and the Philippines, and became a U.S. protectorate. After the war, Spain demanded that Cuba repay its debt but the United States rejected this demand.

The same year, a conference was held in Paris to deal with the problem; the United States contended that the debt was odious, since it had been imposed by Spain in its own interests, without the consent of the Cuban people. The conference agreed with the United States. Spain accepted the argument and Cuba did not have to pay.

Turkey

Between 1889 and 1902, Turkey experienced a serious financial crisis that made it incapable of honoring its debts to Tsarist Russia. In 1912 the International Court of Arbitration at The Hague agreed that the Turkish government's plea of force majeure was justified.

Costa Rica

In September 1919 the government of Frederico Tinoco in Costa Rica, considered illegitimate by the United States but recognized by other states including Great Britain, was overthrown. In August 1922 the new government terminated all contracts signed by its predecessor, especially those with its main creditor, the Royal Bank of Canada. Judge Taft, chief justice of the Supreme Court of the United States, which arbitrated in 1923, ruled in favor of annulment.

The transaction in question was concluded at a time when the popularity of the Tinoco regime had disappeared, and the political and military movement to end that regime was gaining strength. The Royal Bank affair does not hinge on the form of transaction, but rather concerns the Bank's good faith. It lies with the Bank to prove that it provided the government with money for a truly legitimate purpose. This it has failed to do. We cannot consider that the Royal Bank of Canada has proved that the money paid was indeed destined for legitimate use by the government. Consequently, its claim must be rejected.

—CHIEF JUSTICE, U.S. SUPREME COURT
WILLIAM HOWARD TAFT, 1923

CANCELLATIONS CONCEDED
BY THE DOMINANT POWERS

Poland

In 1919, the Treaty of Versailles at the end of the First World War considered that the debt contracted by Germany to colonize Poland could not be imputed to the newly constituted Polish state.¹⁷⁴ Article 255 of the

Treaty exonerated Poland from paying "that portion of the debt which, in the opinion of the Reparation Commission, is attributable to the measures taken by the German and Prussian Governments for the German colonization of Poland." A similar stand was taken in the peace treaty between Italy and France, which declared that it was "inconceivable that Ethiopia should take on the burden of debts contracted by Italy in order to dominate Ethiopia."

Germany

In 1953, the London Agreement canceled 51 percent of Germany's war debt. The idea was that the debt service should not exceed 3.5 percent of its export revenues, a percentage that is far exceeded nowadays by developing countries. In 2006 the average was more than 12 percent! And yet Germany did not fulfill any of the criteria required at present to qualify for a reduction and its dictatorship during the preceding decade had sown death and destruction in a large part of the world. The cancellation was very beneficial for Germany, which later became the leading economy in Europe and the driving force behind European reconstruction.¹⁷⁵

Namibia and Mozambique

South Africa was acutely aware of the consequences that the long regime of apartheid had inflicted on southern Africa and in 1995 unilaterally and unconditionally canceled all its debt claims on Namibia and again in 1999 with Mozambique.

PROCEDURES UNDERTAKEN
BY THE DEVELOPING COUNTRIES SINCE 1985

Peru

In July 1985, the new president of Peru, Alan Garcia, decided to limit debt repayments to 10 percent of export revenues. This led to Peru's banishment from the international community by the IMF and the World Bank, under the impetus of the United States, causing isolation and destabilization. The experiment lasted only a few months and the arrears on the interest, estimated at some \$5 billion (\$1.27 billion of

which was owed to France) were directly added to the debt stock (capitalization of interest).

Cuba (again!)

Also in July 1985, during a conference in Havana, Fidel Castro launched an appeal for non-payment of the debt and for Latin American and Caribbean countries to stand together and refuse to pay. This stance was under discussion but the governments of Mexico, Brazil, and Colombia, pressured by the United States behind the scenes, managed to put a stop to it.

From 1986, Cuba decided to suspend its debt repayments to the Paris Club. At this time, the amount concerned was more or less \$2.5 billion. Twelve years later, in 1998, non-official contact was made between the Cuban government and the Club's representatives. Negotiations took place in Havana and ended in failure. Three factors prevented an agreement: the U.S. government was against any agreement being reached as long as Fidel Castro remained in power; Cuba was not a member of the IMF, which made it impossible to reach the kind of agreement the Club is used to; and the Russian government was opposed to concluding a deal, demanding that Cuba repay its debt to the former USSR. Cuba had refused to pay this debt because of a fundamental change in circumstances: the currency in which the debt was contracted (convertible roubles) no longer existed and the state that provided the loans no longer exists. Other non-official negotiations discreetly took place in 1999 in Paris: they remain fruitless.

Burkina Faso

In July 1987, during a speech given to the Organization for African Unity (OAU), Thomas Sankara, the young president of Burkina Faso, announced that he too was in favor of unilaterally canceling debt and creating an African movement of repudiation.

The debt cannot be repaid, firstly because if we do not pay, the moneylenders will certainly not die of it; on the other hand, if we pay, we shall, with equal certainty, die. . . . Those who have led us into debt have gambled as though in a casino. When they were winning, there

was no debate. Now that they have lost through gambling, they demand that we repay them. And there is talk of a crisis. They have gambled, they have lost, those are the rules of the game. Life goes on. . . . If Burkina Faso is alone in refusing to repay the debt, I will not be present at the next conference.

—THOMAS SANKARA, speech to the OAU,
Addis-Ababa, Ethiopia, 1987

On October 15, 1987, Thomas Sankara was assassinated. Since then, no African head of state has taken a stand to repudiate debt.

Argentina

Since December 2001, as far as debt is concerned, Argentina has been in the headlines. After three years of economic recession, at the brink of disaster, Argentina was refused a loan which had been agreed to by the IMF. And this despite the fact that Argentina's leaders had always implemented the unpopular directives demanded by the IMF. This brought things to a head and the country went into a serious economic crisis. President Fernando de la Rúa reacted by freezing savings accounts. It was thus impossible for the holders of these accounts who had been patiently saving for many years, sometimes all their lives, to access their money. Spontaneously, the middle class took to the streets, joined by the "have-nots" (the unemployed, the slum dwellers, and a majority of the poor).¹⁷⁶ During the night of December 19–20, 2001, the people protested against the neoliberal policies of Fernando de la Rúa's government and his sinister Minister of the Economy, Domingo Cavallo. This popular action succeeded in altering the course of history.

Three presidents followed in quick succession. De la Rúa fled on December 21, 2001, and his successor, Adolfo Rodríguez Saa, was replaced by Eduardo Duhalde on January 2, 2002. Duhalde announced the biggest suspension of foreign debt in history, a total of more than \$80 billion owed to private creditors and the countries of the Paris Club.

Hundreds of factories that had been abandoned by their owners were occupied and production restarted under workers' control. The unemployed renewed their action in the "piqueteros" movement; the peso, which had been linked to the dollar, was devalued; the people created

local currencies and shouted as one to the abhorred politicians, "Que se vayan todos!" (Down with the lot of you!).

After twenty-five years of uninterrupted agreement between the IMF and the Argentinean authorities (from the military dictatorship between 1976 and 1983 to the De la Rúa government, including the corrupt regime of Carlos Menem), Argentina demonstrated that a country could stop debt repayments for a lengthy period of time and that its creditors would not be capable of organizing reprisals. The IMF, the World Bank, the governments of highly industrialized countries, the major media all had announced that chaos would ensue. But what happened? Instead of going under Argentina began to recover. The rate of growth over the next years was between 8 and 9 percent per year.

Nestor Kirchner, who was elected president in May 2003, challenged the private creditors by offering to exchange their bonds for new ones of a lower value. After lengthy negotiations which came to an end in February 2005, 76 percent of them agreed to waive more than 60 percent of the value of their securities. Once again, standing firm had paid off.

Unfortunately, the rest of the story is more disappointing. This agreement marked the resumption of repayments to private creditors. By the end of 2005 the government had paid back, in advance, the whole of its debt to the IMF: a total of \$9.8 billion. It was possible to save \$900 million on the interest, but the origin of the debt was never put on the table.

The dictatorship of General Videla, backed by the IMF and the superpowers, had used the debt to reinforce its hold on the country, to enrich its leaders and to firmly lock the economy into the dominant model. In order to repay this debt, subsequent governments sold off a large part of their national heritage and contracted new debts which are thus also odious. Furthermore, these new loans were subject to the implementation of massive liberalization, systematic privatization, and a decrease in social spending.

Consequently, Kirchner would have the right to end the agreements with the IMF and the World Bank, calling on the Olmos verdict (the name of the journalist who had filed a lawsuit against the dictatorship of Jorge Videla) of the Federal Court of Justice. This judgment gave solid legal reasons for pronouncing the debt odious and that it therefore did not have to be repaid.

Unfortunately, the agreement put to the private creditors in 2005 was more a Pyrrhic victory because to persuade the creditors to sign, the government offered to issue them new bonds with very favorable clauses involving a sort of automatic adjustment of the debt.

According to Eduardo Lucita, "These clauses are to a great extent responsible for the country's new debt. First of all, more than 40 percent of the debt is made up of bonds issued in pesos whose interest rate is fixed at 2 percent per year. But the capital is linked to the CER (a coefficient calculated with the rate of inflation). This adjustment means that for each point of inflation, the debt increases by about \$600 million. Also, many bonds issued in foreign currency are linked to the growth of GDP. This is a very important element in the calculation of interest because Argentina is experiencing a growth rate of more than 8 percent per year. It is estimated that each clause involves additional interest payments of about \$1.2 billion. Finally, because 20 percent of the debt is issued in euros and in yen—currencies which are appreciating against the dollar—and because the Argentinean peso is fixed to the dollar and is losing value, there is a technical adjustment due to the difference of exchange which makes itself felt also on the increase of the debt."¹⁷⁷

Argentina is back once again in a worrying situation with its debt. Its international funding is not good, but Venezuela is helping to refinance its debt. Future repayments are clearly on the increase. This is why the government of Cristina Fernandez de Kirchner, wife of Nestor Kirchner and elected president in October 2007, decided in March 2008 to increase export taxes on soya bean and other cereals. This gave rise to protest from farmers and a widespread political crisis. In July 2008, the president had to withdraw her proposal.

Even though renegotiating the debt is impressive, it can never solve the problems of debt once and for all. Debt leads to political crises and slows down national development. There are no possible alternatives. The only efficient solution is for our countries not to pay back these debts.

—EDUARDO LUCITA

Even though Fernando Solanas's film *The Dignity of the Nobodies* shows the situations of extreme poverty that Argentina is faced with, one event clearly symbolized that the time of standing firm to creditors is over: in September 2006 President Nestor Kirchner went to the New York Stock Exchange to ring the opening bell. There's no double about it—Argentina was back in line. And in 2008, Cristina Kirchner announced that she would pay back in advance the Paris Club—to whom Argentina owes \$6.3 billion.

Paraguay

In 1986-87, Gustavo Gramont Berres, Paraguay consul in Geneva, contracted a debt of \$85 million toward a bank in Geneva, the Overland Trust Bank, in the name of the Paraguayan State even though he did not have the authority to represent Paraguay.¹⁷⁸

In the 1990s, Overland Trust Bank sold these debt bonds to nine other private banks that, in 1995, demanded that the loan and its interests be repaid. Paraguay refused and the banks went to the Swiss courts to have Paraguay convicted.

In May 2005, the Swiss Federal High Court ruled in their favor, but in the following August, the Paraguayan government decreed (Decree 6295) that it was making the repudiation of this contentious debt official and giving its reasons for doing so. Paraguay also officially communicated its decision through diplomatic channels to the Swiss government. In October 2005, at the General Assembly of the UN, the president of the Republic of Paraguay confirmed his country's unilateral action and their refusal to pay, stating: "This illegal action was carried out by the government employee of a corrupt dictatorship, who, in collusion with a group of international banks, wanted to rob our country of its desperately needed resources." Furthermore, Paraguay filed an action against Switzerland before the International Court of Justice at The Hague and demanded reparations. For thirteen years Paraguay has refused to pay but no sanction has been applied.

All these examples show that the rare cases of firmness have had very positive results for the indebted countries. What might happen if various democratically elected governments supported by citizens' movements together decreed a freeze on repayments? The Ecuadorian government

could perhaps set the example. There is an urgent need for citizens to take in hand the problem of the debt everywhere they can, and to urge their governments to act accordingly.

Several "People's Tribunals Against the Debt" have been held in recent years. In December 2000 in Dakar, during the meeting "Africa: From Resistance to Alternatives," a group of women from the suburbs of Dakar wrote and performed *Le Procès de la dette* (The Debt on Trial) with the IMF, the World Bank, the G7, and the governments of the South standing accused. Women—victims in their daily life of structural adjustment policies—were questioned as witnesses. The involvement of the entire population—young people, women, athletes, trade unionists—was remarkable throughout the conference, and gave this particular event an impressive resonance. In February 2002, at the World Social Forum at Porto Alegre, the International People's Tribunal on Debt was held, at the initiative of the international network, Jubilee South, in collaboration with the CADTM. Various other tribunals were organized afterward. These examples show the need felt by the populations of the South, who endure the hardships caused by the debt, to see judged and condemned (symbolically for the moment) those responsible for the iniquitous system.

Furthermore, several attempts to allow the population to express their opinion democratically on the debt mechanism have been made. In Spain, during the general elections in March 2000, a "social consultation" was held calling for a vote on the abolition of the external debts owed by developing countries to the Spanish state. Despite the enormous difficulties made by the public authorities, who declared the consultation illegal, the referendum enabled over a million people to vote, of whom over 95 percent were in favor of abolition.

Then in Brazil, in September 2000, during the National Week which ends with National Independence Day and the "Grito de los excluidos" (Shouts of the Forsaken) with the march of the landless and the unemployed, six million people also took part, all over the country, in a similar kind of consultation, and 95 percent voted to stop the repayment of the Brazilian debt.

These initiatives are invaluable in popularizing the struggle against the debt and enabling the populations to express their anger and frustration.

QUESTION 39

Why do the governments of the South continue to repay the debt?

Since the debt crisis of the early eighties, the developing countries have become dependent on loans from the international financial institutions. The financial institutions thus have an efficient means of putting pressure on them to endlessly continue their repayments. This is why the Southern governments who try to oppose the Washington consensus are few and far between. For example, when East Timor became independent in May 2002, its leaders were immediately encouraged to take out debts but luckily, they refused to do so.

This pressure, as we have seen, is facilitated by a system of case-by-case negotiations which keeps the indebted state in a constant position of weakness—unlike the IMF, the World Bank, the Paris Club, and the London Club, which are extremely well organized. It is far more difficult for the government of a developing country to say no to all that than to simply accept the loans from these international institutions.

However, do the leaders of the developing countries really want to oppose the dominant model?

During the last twenty-five years, with a few rare exceptions, most governments have not been willing to act counter to neoliberal policy. The links between the leaders of these countries and the hub of decision making in most industrial countries are multifarious. Some of the ruling presidents, in particular in Africa, were brought to power during the Cold War, or owe their positions to it. Some are in power because they helped the elimination of or allowed the overthrow of heads of state who, like Thomas Sankara, the president of Burkina Faso and assassinated in 1987, wanted to commit their country to alternative, locally generated development and social justice. Others simply prefer to follow the neoliberal current for fear of being destabilized or overthrown.

Even among those who harshly criticize the domination of the G7 countries and who try to implement alternative policies, a large majority still believe that they have to remain credible to international finance, and that it is necessary for the development of their country to have recourse to large-scale debt, both internal and external debt.¹⁷⁹ Of

course, there are external pressures from the capitals of the most industrialized countries, from international financial institutions and from private creditors of the North.

But there is another factor of conservatism that works in favor of large debt and should not be underestimated. Most governments, both left and right wing, try to gain the goodwill of the local capitalists who have every interest in seeing the debt mechanism continue. This mechanism assures them (as it does for capitalists in the North) a juicy profit because they lend money to the state which then pays them back at very advantageous rates of interest. It is extremely rare to find a recent case in which a state has repudiated its public debt to local bankers. So most bankers prefer to lend to the state and to other public institutions where their loans are guaranteed by the government, rather than to local producers—especially if they are small or medium-sized producers. Lending to the government is far less risky and far more profitable. Several presidents in power today have been elected promising to reduce social inequality. They promised to put an end to the parasitic rent-collecting bankers and to free the country from the yoke of the international creditors. Brazil's experience is a case in point. Today, bankers and the rest of the local capitalist class are rubbing their hands in glee under the friendly governance of the party in power—the Workers' Party!—and President Inacio Lula Da Silva.

If an older adult considers himself belonging to the left, it's because he has problems. If a young person is right-wing, it's because he has problems too. . . . I've shifted toward social democracy. When you're 61 you reach some kind of balance. . . . It's part of the human species' evolution. Someone who was left-wing becomes more centrist, more social-democratic and less left-wing. It depends on how much gray hair you have. . . . For many years I criticized the former minister, Delfim Neto [in charge of the economy during the military dictatorship, 1964–85], and now he's my best friend.

—LULA, president of Brazil, December 2006

To complete the picture, many of the top leaders in the countries of the South are graduates of the top business schools or universities of the North (Harvard, Columbia, Princeton, Yale, Stanford, Oxford,

Cambridge, HEC Business School in Paris) and have been educated in the liberal mold.

Before becoming governor of the Central Bank of Brazil, Arminio Fraga Neto managed an investment fund for the speculator George Soros. The Ivorian Alassane Dramane Ouattara was director of the Africa Department of the IMF from 1984 to 1988 before becoming prime minister of Côte d'Ivoire from 1990 to 1993 and then assistant director-general of the IMF from 1994 to 1999. At the time of the crisis in Turkey in February 2001, the most symbolic gesture of the international financial institutions was to lend Turkey (along with money) Kemal Dervis, then vice president of the World Bank, who became Minister of Finance in his country (before managing UNDP). Vicente Fox, the Mexican president elected in 2000, was also manager of the Mexican subsidiary of Coca-Cola. Alejandro Toledo was a consultant employed by the World Bank before becoming president of Peru in 2001. Ellen Sirleaf-Johnson worked for the World Bank before becoming president of Liberia in January 2006. Is it any wonder that the policies followed conform perfectly to the wishes of Washington?

The populations in the South are never seriously consulted and are kept carefully out of the picture. However, it is perfectly possible for a democratic government to break the chain of debt. This can be done by repudiating illegitimate debt using the basis of a debt audit. International law provides efficient means for a Southern government to repudiate proceedings for odious or other illegitimate debt. However, Southern governments need to be ready to use these means.

QUESTION 40

What are vulture funds?

Emerging countries that contract debts may change the institution(s) they are dealing with, without having any say in the matter, because of the secondary debt market. This is a sort of secondhand market where debt bonds are bought and sold. A creditor can resell some of his bonds to an investor or an organization which then becomes the creditor. The value at which these debt bonds are sold varies from day to day, and the daily mar-

ket rate depends only on the confidence—or lack of it—that the financial milieu has in the emerging country in question.

The phenomenon is growing: private institutions buy, at a low price, the debts of struggling countries from creditors who want to get rid of them in order to get back at least part of their money. Motivated solely by profit, these new unscrupulous creditors wait until the economic situation of their debtor country improves slightly (for example, when they reach the completion point of the HIPC initiative or renegotiate their Paris Club debt, or their exports benefit from a rise in the export price index); as soon as there is hope of a light on the horizon, the creditor brings a lawsuit against the indebted country, demanding total and immediate payment. The creditor thus makes an enormous profit, having bought the debt bonds at a ridiculously reduced price with no thought for the social and human consequences. This is the sinister activity of “vulture funds,” which are well adapted to unstable situations where corruption is rife. The developing country sometimes has to pay a price higher than the small reductions they have struggled to obtain.

Let us see in detail how Peru was condemned to pay \$58 million for debts that had been bought for \$11 million.¹⁸⁰ In 1996 the American vulture fund Elliott Associates paid \$11.4 million to buy Peruvian foreign debt bonds (bonds issued by the treasury of Peru). They had a face value of \$20.7 million. Some time later, under the aegis of the Paris Club and the London Club and with the participation of the IMF and the U.S. government, a plan to reduce and to restructure the Peruvian debt was adopted.

Elliott Associates refused to take part. They did not want to concede any debt reduction. On the contrary, shortly afterward they sued Lima for full repayment (face value) plus capitalized interest—in all, a total of \$35 million. Peru refused and Elliott Associates took the case to a New York court, which ruled against them. However, the Court of Appeals overturned this ruling in 2000 and Elliott Associates achieved “preferred creditor” status (that is, they were to be repaid first!). Peru was then ordered to pay the total amount of \$58 million, since unpaid interest had continued to accumulate during the four years of the court case! Elliott had made a tidy profit of \$38 million, with its lawyers sharing between them the modest sum of \$9 million. Apparently Elliott Associates were

old hands at the game, as they had already pulled off the same trick in Panama, Ecuador, and Paraguay, picking up \$130 million in the process.

Let us look at another example. In 1979 Romania lent \$15 million to Zambia to buy Romanian tractors. But because the price of copper (Zambia's principal export) fell, Zambia was accumulating delays in payment. In 1999 the value of the debt remaining was estimated at \$30 million. At that moment, Donegal International, a vulture fund belonging to the Debt Advisory International group and registered in the British Virgin Islands—a notorious tax haven—came on the scene and offered to buy up Romania's debt for \$3.3 million.

When Zambia reached the point when some of its debt was canceled as part of the HIPC initiative and then the MDRI (see chapter 7), Donegal International then sued Zambia for repayment of the total amount plus late interest payments—in all \$55 million. This was seventeen times its initial investment and more than the reduction of debt received that year by Zambia (\$40 million). To achieve its ends, Donegal International also demanded the freezing of Zambian assets in the United Kingdom.¹⁸¹

In April 2007 the High Court in London awarded a reluctant victory to Donegal International, ruling that Zambia was to pay them \$15.4 million plus part of the legal costs—a total of about \$17 million, which is a considerable amount in view of the initial \$3.3 million paid out by Donegal. Even though the High Court criticized Donegal and its boss Michael Sheehan for their “dishonest” actions and even though it considered the amount to be exorbitant, nevertheless, the court ruled that the agreement was legal. Economics correspondent Ashley Seager, in an editorial in *The Guardian*, pointed out that the same Sheehan is also director of Walker International, a company that sued Congo-Brazzaville for \$13 million.¹⁸² It is actually impossible to establish how many vulture funds are currently active since they are often created on a one-off basis to prey on a specific indebted country.

Banks need to consider carefully the ethical implications of their decisions rather than simply clearing the debts off their balance sheets for the vultures to pick over. . . . Funds are incorporated in jurisdictions that preserve shareholder anonymity, which means it is impossible to access their backers. It is impossible to lobby share-

holders about the funds' policies in respect of poor country debt.

—RONNIE KING, Advocates for International Development, 2007

This brings us to a basic point: vulture funds are not simply a foreign body, totally alien to the system, resulting from the greed of a few unscrupulous speculators. Instead, they all too often do the dirty work of other creditors, for example the big banks, who cannot operate openly for fear of bad publicity.

The example of Congo-Brazzaville—another country under attack by vulture funds—is enlightening. Led by the dictator Denis Sassou Nguesso, dutifully subservient to the oil interest of the French oil company Elf (now part of Total), Congo reached the decision point of the HIPC in March 2006—which made it eligible to be considered for the relief of part of its debt (one of the biggest in the world per inhabitant; see Q 27). Even though international financial institutions were hesitating because they suspected embezzlement and concealment of funds, France applied pressure for the debt relief to go through. Vulture funds had been harassing the Congo for several years. Kensington International, which had paid \$1.7 million to buy four debts (dating back to the 1980s) with a total face value of \$32.6 million, won their lawsuit in a British court and Congo was ordered to pay them more than \$121 million.

The story gets really juicy when the Congolese authorities clothe themselves in nationalistic righteousness and admit that although the SNPC—the Congolese National Oil Company—had to set up dummy corporations based in tax havens to conceal part of their oil revenue, it was not so that the ruling clique could embezzle the funds. Rather, it was to protect the revenue from vulture funds that were attempting to freeze Congolese assets abroad so that they would be available to be seized following legal decisions.

In January 2006, Isidore Mvouba, Congolese prime minister, even dared to say: “Our country is being harassed by vulture funds that are doing everything they can to prevent Congo from reaching decision point. They don't balk at organizing misinformation campaigns in the United States concerning the Congo. . . . We have had to protect the money of the Congolese people so that it does not fall into the greedy hands of these predators. . . . Nevertheless, the lawsuit which ruled

Lawsuits Filed by Private Creditors against

HIPC	CREDITOR	LOCATION OF CREDITOR
Cameroon	Winslow Bank	Bahamas
	Del Favaro	Italy
	Sconset	Virgin Isl. (UK)
	GraceChurch (Paris)	Cayman Isl.
	Antwerp	Virgin Isl. (UK)
Congo-B	GAT	Lebanon
	NUFI-AIG	United States
	FG Hemisphere	United States
	AF CAP Inc	Bermuda
	Berrebi	France
	Kensington Int	Cayman Isl.
	Walker International	Virgin Isl. (UK)
	Commissimpex	Congo-B
Congo-K (DRC)	FG Hemisphere	United States
	KHD Humboldt Wedag AG Koln	
Ethiopia	Kintel	Bulgaria
	Yugoimport	Serbia
Guyana	Citizens Bank	Guyana
	Booker	UK
	Export Services	United States
Honduras	Laboratoires Bago	Argentina
Nicaragua	LNC Investments	United States
	Hemisphere	United States
	Greylock Global Opp	Virgin Isl. (UK)
	Hamsah Investments	Virgin Isl. (UK)
	Inex, 14 Oct Krusevac, IMT AD, DP FAP, MFK Corp	Serbia
Uganda	Banco Arabe Espanol	Spain
	Transroad Ltd	UK
	Industry Machinery 14 Oktober	Ex-Yugoslavia
	Sour Fap Famous	Ex-Yugoslavia
	Iraq Fund for Int Development	Iraq
	Shelter Afrique	Kenya
Sao Tomé & Prin.	Annadale Associates	UK
Sierra Leone	J&S Franklin Ltd	UK
	Umarco	France
	Executive Outcomes	Sierra Leone
	Chatelet Investment	Sierra Leone
	Scancem Int	Norway
Zambia	Connecticut Bank of Commerce	United States
	Donegal	Virgin Isl. (UK)
	TOTAL	

HIPC in August 2008 (in \$ million)

LEGAL DECISION	INITIAL AMT. DEMANDED (w/o arrears)	TOTAL DEMANDED	FINAL DECISION
Adjudicated	9.0	46.3	46.3
Adjudicated	0.8	4.6	4.6
Arbitrage	18.2	53.9	
Pending	9.5	39.7	
Arbitrage	15.2	196.0	
Adjudicated	126.0	88.6	92.1
Adjudicated	11.2	24.3	8.3
Adjudicated	35.9	152.0	151.9
Adjudicated	9.6	20.8	10.9
Adjudicated	2.1	13.7	13.7
Adjudicated	29.6	118.6	118.6
Adjudicated	2038	47.8	47.8
Amicable agrmt.	292		
Adjudicated	55.8	81.7	81.7
Adjudicated		67.1	67.1
Arbitrage	8.7	8.7	
Arbitrage	122.8	178.0	
Amicable agrmt.	24.3	24.7	
Abandoned	4.1	7.5	
Adjudicated	14.1	14.1	5.3
Pending	1.5	1.5	
Adjudicated	26.3	87.1	87.1
Adjudicated	30.9	126.0	126.0
Adjudicated	10.5	50.9	50.9
Adjudicated	2.5	11.6	11.6
Pending	9.6	9.6	
Adjudicated	1.0	2.7	2.7
Adjudicated	4.0	16.7	16.7
Adjudicated	7.0	8.9	8.9
Adjudicated	0.3	1.4	1.4
Pending	6.0	6.4	
Amicable agrmt.	0.1	0.1	
Arbitrage	3.0	8.9	
Adjudicated	1.1	3.4	3.4
Pending	0.6	0.6	
Adjudicated	19.5	23.0	23.0
Pending	0.4	0.4	
Amicable agrmt.	3.7	3.7	
Adjudicated	0.9	0.3	0.3
Pending	15.4	55.0	15.4
	954.0	1606.3	995.7

against the Congo has at least resulted in attracting attention to the international financial predators who are ruining with impunity the developing countries.²¹⁸³

The Congolese people are thus powerlessly attending to the ferocious struggle for oil revenue fought between those close to power and the vulture funds. Whoever wins, the people know that unfortunately they will not benefit from the wealth that belongs to them. Asking the IMF not to grant debt relief would not be a step toward a just and lasting solution. Vulture funds are a catalyst, bringing to light that the economic model promoted by the IMF in the name of the principal creditors since the 1980s is structurally a creator of debt, of corruption, and of poverty.

The only way toward a solution inevitably calls for a fundamental change in the economic model itself and the refusal, firstly, of the domination imposed by the IMF and the World Bank through debt on the Congolese people to the benefit of rich creditors and multinationals; secondly, refusal of the HIPC initiative that propagates this model and aims at quelling all forms of opposition to the present economic model imposed from outside; and thirdly, the refusal that dictators (in this case Sassou and his entourage supported by France and Total—inheritors of the corrupt empire of Elf) can monopolize wealth. In the struggle between the Sassou clan, the vulture funds, and the Bretton Woods institutions it is not acceptable to criticize one in order to then defend the interests of the other. That would be a false opposition as they all contribute to the same logic. Vulture funds are visible evidence that the economic model based on debt is a runaway train.

More than forty legal proceedings have taken place or are still under way, and this only in the poorest and most heavily indebted countries. Court rulings have already granted nearly a billion dollars to vulture funds. This turns debt into a most profitable market.

In short, a country that “benefits” from an agreement with its creditors to reduce its debt may see its debt increase because, as its financial situation improves, its solvency increases and the commercial value of its remaining stock increases. On the other hand, if a country is late in paying back its debt, then its commercial value decreases. If we can draw a conclusion it should be this: in a market economy, it is better to cancel or repudiate the whole debt.

CHAPTER TEN

The Case for Canceling the Debt of Developing Countries

QUESTION 41

What are the moral arguments in favor of canceling the debt of developing countries ?

Though countries of the South are often generously provided with human and natural resources, the burden of the debt has led to general impoverishment, made much worse by organized plunder.

Repaying the debt is an essential obstacle to satisfying basic human needs, such as access to clean water, decent food, basic health care, primary education, decent accommodation, and satisfactory infrastructures. Without any doubt, the satisfaction of basic human needs must take priority over all other considerations, be they geopolitical or financial. From a moral point of view, the rights of creditors, shareholders, or speculators are insignificant in comparison with the fundamental rights of five billion citizens.

It is immoral to demand that the developing countries devote what available resources they have to repaying well-heeled creditors (whether in the North or the South) rather than to satisfying fundamental needs.

The issue of the moral responsibility of the creditors was particularly apparent in the case of Cold War loans. When the IMF and the World Bank lent money to the Democratic Republic of the Congo's notorious ruler Mobutu, they knew (or should have known) that most of the money would not go to help that country's poor people, but rather would be used to enrich Mobutu. It was money paid to ensure

that this corrupt leader would keep his country aligned with the West. To many, it doesn't seem fair for ordinary taxpayers in countries with corrupt governments to have to repay loans that were made to leaders who did not represent them.

—JOSEPH STIGLITZ, *Globalization and Its Discontents*, 2002

Debt is one of the main mechanisms through which a new form of economic colonization operates to the detriment of the developing countries. It is one more brick in the edifice of historic abuses, also carried out by the rich countries: slavery, pillage of raw materials and cultural goods, extermination of indigenous populations, and colonial servitude. The time is overdue to replace the logic of domination by the logic of redistribution of wealth in the name of justice.

The G8, the IMF, the World Bank, and the Paris Club impose their own truth, their own justice, where they call the tune. The time has come to put an end to this phony justice of conquerors and oppressors.

The immorality of the debt is also a consequence of the fact that it was frequently contracted by undemocratic regimes that did not use the money received in the interests of their populations, and often organized embezzlement on a massive scale, with the tacit or active agreement of the states of the North, the World Bank, and the IMF. Creditors of the industrialized countries, who took advantage of the high interest rates in 1979 and the low prices of raw materials on the international market, knowingly lent money to often corrupt regimes. They have no right to demand that the people repay such loans. Let them address the fallen dictators, or those still in place, and their accomplices.

Let us risk a comparison. The activists who fought against slavery were moved by an ideal of justice and were fiercely opposed to this abominable practice. The time came when the balance of power shifted and the abolition of slavery became unavoidable, despite the forecasts of economic disaster made by those who defended slavery. In the case of the external public debt of the developing countries and the turn of events since 1980, the situation is comparable (though not identical). The debt has become a mighty mechanism of domination. The struggle of citizens revolted by domination and its human ravages must be waged even more intensely if this diktat is to be broken.

Demanding the total cancellation of the public external debt for all developing countries is central to today's abolitionist movement. Just as was the case for slavery, cancellation must be complete, for slavery cannot be amended, nor can it be reduced: it has to be abolished.

The countries in the South must stop repaying their debt. That debt is illegitimate, since in most cases it was contracted by totalitarian and corrupt governments who embezzled the money for their own profit. It is also the result of the pillage of our wealth by the North during centuries of exploitation. The populations of the South no longer have to bear such a burden, which remains an instrument of domination and control by the rich countries over the poorest.

—LIDY NAPCIL, international coordinator of Jubilee South, in *Le Monde*, "Jubilé Sud: les tribunaux de la dette" (Jubilee South: Debt on Trial), January 26, 2002

QUESTION 42

What are the political arguments in favor of canceling the debt of developing countries?

The mechanisms of the debt cycle have subjected the developing countries to the demands of Washington (where the IMF, the World Bank, and the U.S. Treasury all have their headquarters). For the countries concerned, the fundamentals of their economic policy are decided outside their territory. This means that the IMF and the World Bank have a hand in each economic decision a developing country makes. The debt enables creditors to exercise exorbitant power over the indebted countries.

The developing countries that have been subjected to the stranglehold of the creditors represented by the IMF and the World Bank have gradually been forced to abandon all sovereignty. Governments no longer have the power to implement the policies for which they were elected. In Guyana, for example, the government decided, in early 2000, to increase the salaries of the civil servants by 3.5 percent, after a fall in purchasing power of 30 percent in the previous five years. The IMF immediately

threatened to remove it from the list of HIPCs. After a few months, the government had to backpedal.

In the summer of 2002 Brazil was shaken by particularly severe financial turbulence, due to the combined effects of the Argentinean crisis and the economic slowdown in the United States and the European Union. President Cardoso's government negotiated an agreement with the IMF that granted the country a loan on a scale never seen before: \$30.4 billion by the end of 2003. Naturally, there was a catch: the IMF demanded that a strict austerity budget be adhered to until 2005. This loan, which was meant to calm the markets, was also a means of exerting control over Lula, who was subsequently elected head of state in October 2002. The IMF exacted an agreement in principle on this plan from the main presidential candidates before granting the loan. Magnanimously, it relented on its initial insistence on a written agreement. The IMF director at the time, the German Horst Köhler, was unequivocal: "By reducing vulnerability and incertitude, the new program . . . provides the new government with a bridge for after 2003." Conclusion: the IMF directly interfered in the internal politics of a country just months before a general election with a view to influencing the choice of its citizens. This is unacceptable because it flouts democracy.

We have a flag, a national anthem, but everything else is decided upon by the West. It's all wrapped up in nice words, under cover of aid extended by such bodies as the WB and the IMF, that are nothing more than instruments of torture invented by the West to continue its domination.

—AHMED BEN BELLA, president of the Algerian Republic,
1963 to 1965¹⁸⁴

The citizens of the South know the IMF and the World Bank: they experience the destructive effects of Structural Adjustment Programs every day of their lives. Very often decisions are made in Washington or other capitals of the North, and leaders in the South are simply expected to implement them in their respective countries. However, people of the South are right to demonstrate in front of the presidential palace or the ministry of finance in their countries since popular pres-

sure may prompt their leaders to shoulder their responsibilities and restore a little dignity. Protests in Bolivia in April 2000 and December 2004–January 2005 against water privatization ended in victory, like those against the privatization of natural gas in September–October 2003. In 2006, Evo Morales's new democratically elected government nationalized hydrocarbons. Popular mobilization in Niger in 2005 caused the government to repeal a budget law imposed by the IMF and the World Bank. Similarly successful were the large demonstrations in Conakry (Guinea) in December 2005–January 2006. Mobilization against the food crisis organized all over the globe in March–April 2008 also caused governments to distance themselves from neoliberal dogmas and resulted in a new global awareness, thus proving that united struggle can have positive results.

True sovereignty will remain an impossible dream for the developing countries as long as they remain under the yoke of the IMF/World Bank/WTO trio, and more generally of all the creditors of the North. Caught in the vise of debt repayment, most developing countries have been forced to sacrifice their financial, economic and political sovereignty.

Globalization, as it has been advocated, often seems to replace the old dictatorships of national elites with new dictatorships of international finance. Countries are effectively told that if they don't follow certain conditions, the capital markets or the IMF will refuse to lend them money. They are basically forced to give up part of their sovereignty, to let capricious capital markets, including the speculators whose only concerns are short-term rather than the long-term growth of the country and the improvement of living standards, "discipline" them, telling them what they should and should not do.

—JOSEPH STIGLITZ, *Globalization and Its Discontents*, 2002

After five centuries of pillage, slavery, and colonization, and after twenty-five years of structural adjustment policies, the populations of the South have a right to demand reparation for all the ills they have suffered, caused by an invisible mechanism set up by the creditors of the North with the support of the ruling classes of the South. Total cancellation of the debt should be the first act of reparation.

Too many inhabitants of the rich countries are unaware of the perverse mechanisms that drive inhabitants of developing countries to leave their land and their loved ones to try to survive in the North. Aid sent by the rich countries is far too meager and self-serving to even begin to compensate for this drain of natural and financial wealth from the South. The intolerable rise of self-interest, which can be commonly observed in Europe, in the United States and even in South Africa,¹⁸⁵ with its attendant racism and xenophobia, is a consequence of the ignorance of some and the bad faith of others. There is a pressing need to lift the veil and explain that it is in the common interest of the populations of North and South alike to unite in demanding total cancellation of the external public debt on the one hand, and an end to Structural Adjustment Programs on the other.

I must say yet again what I have not ceased to repeat since 1985. The debt has already been amply repaid, given the terms under which it was contracted, the arbitrary and vertiginous growth of interest rates on the dollar during the preceding decade and the fall in prices of the basic products which are the fundamental source of revenue for countries still needing to develop. The debt has become a self-perpetuating vicious circle where new debts are taken out to pay off the interest on standing ones.

It is clearer than ever that the debt is not an economic problem, but a political one, and it is as such that it must be resolved. The solution has to come mainly from those who have the resources and the power to do it: the rich countries. This can no longer be ignored.

—FIDEL CASTRO, Cuban head of state,
in a speech in Havana, April 12, 2000

QUESTION 43

What are the economic arguments in favor of canceling the debt of developing countries?

On the one hand, the figures given (see chapter 6) prove that the debt has already been repaid several times over: to date, the public authorities of

developing countries have repaid their 1970 debt ninety-four times over, while at the same time the debt has multiplied by twenty-nine. Debt is no longer the reason for fair repayment of a loan obtained under regular conditions; instead it is a very clever instrument of domination behind which racketeering and pillage go unpunished.

On the other hand, the net transfers on the debt are strongly negative for the South. Between 1985 and 2007, public authorities of the various developing countries “gave” a total contribution of approximately \$750 billion to capital holders in the North, derived from the work of local wage earners and producers. This financial hemorrhage that is bleeding dry the countries of the South and the East has to be stopped.

Instead, a cycle of ecologically sustainable and socially just development must be promoted. The iniquitous debt must be abolished, and mechanisms must be established for alternative funding of this development, together with effective restraints on the tendency to borrow.

The economies of the South have everything to gain from the cancellation of their public external and internal debt. Examples of actual cancellations carried out in the past have proved particularly beneficial for the economies of the countries concerned (see Q38).

The economies of the South would not be forced, as they are today, to export at all costs to repay their debt, leaving them dependent on external demand and on world market fluctuations.

The developing countries could also give priority to South-South relations instead of always seeking markets in the North in order to earn strong currencies, and set up a graduated form of protectionism. Since the San Jose agreements, this has been the case for petroleum products, which Venezuela provides to more than fifteen Latin American countries at preferential rates, through the Petrocaribe oil alliance.

Cartels could be created among countries that produce certain kinds of commodities so as to influence prices and world trade, rather like OPEC for petroleum. Developing countries would then be better able to preserve their nonrenewable resources (mines, oil, gas, fish stocks, and the like).

Furthermore, infrastructures and essential public services are powerful factors of endogenous growth. Private investment loses its efficacy when there is no appropriate public investment. Growth is an indispen-

sable premise for attracting private capital. Yet any substantial public investment is made impossible by the weight of the debt and the obligatory budget austerity that goes with it. Canceling the debt, therefore, can play a powerful role in restarting the world economy.

Following a rise in the price of oil decided by OPEC: A top Western official telephoned me from far away to say that he was concerned by the price of oil. I replied, "So am I!" But why don't we discuss the debt of the poor countries, too, and the unfairness of the terms of the exchange?

—HUGO CHÁVEZ, president of Venezuela, in *Libération*,
September 29, 2000

QUESTION 44

What are the legal arguments in favor of canceling the debt of developing countries?

Several arguments in international law can be invoked as legal justification for unilateral cancellation of the external debt. Three are outlined below, and a fourth one, which has no precise legal definition, is also discussed.:

- *Force majeure and a fundamental change in circumstances*

Force majeure can be invoked when a government or public body finds itself, due to external circumstances beyond its control, unable to fulfill its international obligations, including repayment of a debt. This is the legal translation of the fact that no one can be held to do the impossible—which is clear both in international law and from the point of view of common sense. These external and involuntary circumstances could, for example, be a fall in the prices of raw materials or an action on the part of the creditors—who are legally held co-responsible in the mechanism of indebtedness—or again the rise in interest rates in 1979. The developing countries contracted loans at reasonable rates in the 1970s, but the actions of the rich countries aimed at greatly increasing interest rates and

maneuvering to lower the prices of raw materials on the world market radically changed the nature of the deal. This is indeed a case of *force majeure* and a radical change in circumstances brought about by the unilateral behavior of the industrialized countries.

- *The state of necessity*

The state of necessity is characterized by a situation that jeopardizes the existence of the state or its economic or political survival—such as severe social upheaval or the impossibility of fulfilling the needs of the population (health and education, for example). It is not a case of being absolutely prevented from fulfilling international obligations but of recognizing that to do so would necessitate sacrifices on the part of the population that go beyond what is reasonable. The *state of necessity* may justify repudiating the debt, since it implies establishing priorities among the different obligations of the state.

The United Nations Human Rights Commission has adopted numerous resolutions on the issue of the debt and structural adjustment. One such resolution, adopted in 1999, asserts: "The exercise of the basic rights of the people of debtor countries to food, housing, clothing, employment, education, health services and a healthy environment cannot be subordinated to the implementation of structural adjustment policies, growth programs and economic reforms arising from the debt."

The developing countries are no longer able to fulfill the fundamental human needs of their populations. This inability jeopardizes the very existence of all these states, which must invoke the state of necessity for the unilateral cessation of their repayments.

A state cannot be expected to close its schools, its universities, its courts of law, and to abandon its public services to the point of chaos and anarchy in the community, simply to have the money to repay its foreign or national creditors.

—DIRECTORY OF THE UN COMMISSION
ON INTERNATIONAL LAW, 1980, vol. 1

• *Odious debt*

International law recognizes the need to take into account the nature of the regime that contracted the debts and the use to which the funds raised were put. This implies the direct responsibility of creditors, whether private bodies or IFIs. If a dictatorial regime is replaced by a legitimate regime, the latter can demonstrate that the debts were not contracted in the interests of the nation or were contracted for odious ends. In this case, they are declared null and void, and the new government does not have to repay them. The creditors should pursue their case with the leaders of the dictatorship, on a personal basis. The IMF, the World Bank, or any other creditor is legally obligated to check that the loans they grant are put to legitimate use, especially when they cannot help but know that they are dealing with an illegitimate regime.

After the dictatorship that ended in 1984, Argentina had a perfect right to take this course. The Olmos verdict of July 13, 2000, pronounced before the Criminal and Correctional Court n°2, recognized that the policies carried out over seven years could be defined as legally organized pillage, with the active participation of the IMF and the World Bank.¹⁸⁶ But all this was to no avail. Enormous pressure was put on the Argentinean government until it finally agreed to take on the debt to the very last peso, until 2001 when, after more than three years of recession, it was completely unable to pay, following the refusal of the IMF to grant a further loan.

This doctrine could also have been used by many other governments that succeeded illegitimate regimes: in Latin America after the fall of the military dictatorships (Uruguay, Brazil, Chile), in the Philippines after the departure of Marcos in 1986, in Rwanda after the 1994 genocide, in South Africa at the end of the Apartheid regime, in Zaire after the overthrow of Mobutu in 1997, or in Indonesia after the fall of Suharto in 1998. It is a great pity that the governments that replaced the dictatorships capitulated before the creditors in taking on previous debts, however odious, and found themselves prisoners of repayments they could have avoided. In doing this, they have unduly burdened their people with the weight of odious debts. Their decision has had a negative impact on the daily lives of the generations that followed.

Yet the notion of odious debt has been invoked on occasion, as in Cuba in 1898, Costa Rica in 1922, Namibia in 1995, and Mozambique in 1999 (see Q38).

If a despotic power incurs a debt, not for the needs or in the interest of the state, but to strengthen its despotic regime, to repress its population that fights against it, and so forth, this debt is odious for the population of the state. This debt is not an obligation for the nation; it is a regime's debt, a personal debt of the power that incurred it; consequently it falls with the fall of this power.

—ALEXANDER NAHUM SACK, "Les effets des transformations des états sur leurs dettes publiques et autres obligations financières" (*The effects of the transformations of states on their public debts and other financial obligations*), Recueil Sirey, 1927

A debt can be defined as odious if it meets one of the three following conditions:

1. It has been incurred by a dictatorial and despotic regime, with a view to strengthening its rule.
2. It has been incurred not in the interests of the people but against its interests and/or in the personal interests of the rulers or persons close to the regime.
3. The creditors knew (or were in a position to know) the odious use of the loans.

These three conditions—absence of consent, absence of benefits, creditors' knowledge—need to be further developed.

The democratic (or non-democratic) nature of a regime is not only determined by the way the government is appointed. A loan granted to an elected government that does not abide by the principles of international law must be considered odious. In the case of well-known dictatorships, creditors cannot plead ignorance and cannot claim payment. In this case, the use a loan is put to is not fundamental for characterizing the debt as odious. Financial support for a criminal regime, even if it happens to build a school or a hospital, amounts to consolidating the said regime.

The nature of regimes aside, the use of funds should suffice to qualify debts as odious whenever these funds are used against the population's major interests or when they directly enrich the regime's inner circle. Thus, debts incurred within the framework of structural adjustments (see Q17 and Q18) fall into the category of odious debts, since the destructive character of the SAP has been clearly shown, including by UN agencies.¹⁸⁷

Consequently, all debts incurred by the Apartheid regime in South Africa are odious, since this regime violated the UN Charter, which defines the legal framework of international relations. In a resolution adopted in 1964, the United Nations asked its specialized agencies, including the World Bank, to discontinue their financial support of South Africa. In contempt of international law, the World Bank ignored this resolution and continued to lend to the Apartheid regime.¹⁸⁸

International law also stipulates that debts resulting from colonization are not transferable to newly independent states, in conformity with article 16 of the 1978 Vienna Convention, which stipulates: "A newly independent state is not bound to maintain in force, or to become a party to, any treaty by reason only of the fact that at the date of the succession of states the treaty was in force in respect of the territory to which the succession of states relates." Article 38 of the 1983 Vienna Convention on the succession of states in respect of states' property, archives, and debts (not yet in force) is quite explicit in this respect: "1. When the successor state is a newly independent state, no state debt of the predecessor state shall pass to the newly independent state, unless an agreement between them provides otherwise in view of the link between the state debt of the predecessor state connected with its activity in the territory to which the succession of states relates and the property, rights and interests which pass to the newly independent state. 2. The agreement referred to in paragraph 1 shall not infringe the principle of the permanent sovereignty of every people over its wealth and natural resources, nor shall its implementation endanger the fundamental economic equilibrium of the newly independent state."

It should be kept in mind that the World Bank is directly involved in some colonial debts, since in the 1950s and 1960s it generously loaned money to colonial countries to maximize the profits derived from colonial exploitation. It must also be noted that the debts granted by the World

Bank to the Belgian, French, and English authorities to serve their colonial policies were later transferred to the newly independent states without their consent.¹⁸⁹ Moreover, the World Bank refused to implement a 1965 UN resolution ordering it to stop giving financial support to Portugal as long as that country pursued its colonial policy.

We must also define as odious all debts incurred in order to pay back odious debts, which can rightly be considered a laundering operation.

The definition of odious debts is still debated; it still has to be modeled and placed at the service of international justice. But creditors are already rushing to defuse the potential bomb it represents. The World Bank, for instance, attempted a sort of counterattack with its September 2007 report titled "Odious Debt: Some Considerations." A biased and botched document at best, it clearly has no other purpose but to get rid of this sensitive issue. This is evidenced by the last part of the WB's report, which consists of proposals for alternatives to repudiation of odious debts by the countries of the South. Yet these alternatives include no convincing means of breaking the current spiral: improving good governance, negotiating with creditors and possibly joining the HIPC initiative (see Q31) so as to benefit from debt relief aimed at making the debt sustainable.

The World Bank claims that unilateral repudiation of odious debts would make it impossible for the countries concerned to access capital markets. But we have already shown (see Q38) that Paraguay's unilateral decision to repudiate debts claimed by a Swiss bank consortium in 2005 did not lead to the country's isolation. In any case, if a coalition of developing countries against the repayment of odious debts should emerge, it could only have beneficial effects, since globally the developing countries are exporters of capital (the net transfer on the debt being negative; see chapter 6). An end to repayments, even if it meant an end to loans, would be globally positive for the developing countries. If the World Bank incites governments to repay rather than to repudiate odious debts, it is to preserve its domination. But despite all the World Bank's insistence in this regard, the notion of odious debt is unlikely to go away.

Recall that George W. Bush ventured into odious debt territory in 2003, just after the military aggression he launched against Iraq. Once he had gained control of the country, he was unwilling to take over the debts contracted by Saddam Hussein and pronounced them odious, in which

regard he was not wrong. But the creditors stopped him short, afraid that this argument would be taken up elsewhere with equal justification. The United States then pulled strings in the Paris Club to obtain an exceptional cancellation of Iraq's debt. And Bush never mentioned the subject of odious debt again.

To conclude, international law abounds in doctrines and jurisprudence that could provide grounds, and indeed have already provided grounds, for the cancellation or repudiation of debts. Social movements as well as democratic and progressive governments must insist that international law, and especially the Universal Declaration of Human Rights and the Covenant on Economic, Social, and Cultural Rights, take precedence over the rights of creditors and usurers. These fundamental texts can in no way be compatible with the repayment of an immoral, and often odious, debt.¹⁹⁰

• *Illegitimate debt*

An "illegitimate debt" has, strictly speaking, no definition in law, yet a definition emerges from various cases encountered in the history of indebtedness.¹⁹¹ It is reasonable to classify as illegitimate a debt that goes counter to law or public policy; a debt that is unjust, inappropriate, or abusive; a debt that an indebted country should not be forced to repay because the loan or the conditions attached to the loan violate a country's sovereignty and infringe human rights. The debts of the countries of the South frequently come under this definition. The loans granted by the IMF and the World Bank, conditioned by the enforcement of structural adjustment policies, can thus be considered illegitimate.

Joseph Hanlon sets out four criteria for classifying a loan as illegitimate: a loan granted for the purpose of reinforcing a dictatorial regime (unacceptable loan); a loan contracted at excessive interest rates (unacceptable conditions); a loan granted to a country while being aware of its incapacity to repay (inappropriate loan); a loan dependent on IMF-imposed conditions, creating an economic situation that makes repayment more difficult still (inappropriate conditions).

It is clear, therefore, that the notion of illegitimate debt is based first and foremost on a moral judgment. The concept of "illegitimate debt" was first mentioned in an official verdict in 2000, the Olmos verdict¹⁹²

(see Q38), which served to reveal the illegitimate nature of the external debt contracted during the Argentinean dictatorship (1976-83) and the liability of the creditors and debtors.

Norway first invoked this concept at the end of 2006 to allow a number of its debtor countries to forgo repayment of certain debts. At the end of the 1970s, the Norwegian shipbuilding industry was ailing, with shipyards standing idle for want of clients. To remedy the situation, the government decided in 1976 to launch a Ship Export Campaign which granted cheap credit to countries of the South in exchange for the purchase of Norwegian ships. In all, thirty-six such projects were agreed with twenty-one countries, but in 1987 only three had been successfully completed and only two countries managed to honor their debt.

One of the countries that failed to honor its debt was Ecuador. The state-owned Flota Bananera Ecuatoriana (FBE) bought four ships from Norway between 1978 and 1981 for a sum of \$56.9 million. In 1985, the FBE went bankrupt, and another state-owned company, Transnave, took over the ships. The debt was then divided into two parts: one part, worth \$17.5 million, remained the responsibility of Transnave and the state of Ecuador, and the other part, worth \$13.6 million, was renegotiated within the Paris Club. The first part was fully repaid, but the second increased substantially in the years that followed. In March 2001, it stood at \$49.6 million, and the total payments made by FBE, Transnave and the government already amounted to \$51.9 million.

Due to international pressure, the Norwegian parliament and government eventually recognized that this situation was inadmissible. In October 2006, the Norwegian Minister of International Development, Erik Solheim, admitted his country's shared responsibility in the failure of development assistance projects organized in the framework of the Ship Export Campaign. He announced the cancellation of the resulting debt for countries that remained debtors, such as Ecuador, whose campaign-related debt amounted to \$36 million.

Norway led the way. Not only did it do partial justice to the injured countries, but it also started a major international debate on the responsibility of creditors with regard to borrowers. This cancellation is entirely unilateral and is not the result of a negotiation with other Paris Club creditors. It proves, therefore, that it is possible for a creditor to break with the

creditor bloc if there is the desire and determination to do so. Moreover, Norway made a commitment not to include this cancellation in its official development assistance account, as opposed to what so many other countries have done.

Norway took care to announce that its decision in no way involved the Paris Club and that it would take no further initiatives of this kind on a unilateral basis. Only a strong popular movement can ensure that other initiatives will follow.

People are like underground rivers which, at a given moment, rise to the surface. People are ceasing to be spectators and are ready to be the protagonists of their own lives and their own history. That's what's wonderful about life.

—ADOLFO PEREZ ESQUIVEL,
Nobel Peace Prize Laureate, 1980

QUESTION 45

What are the environmental arguments in favor of canceling the debt of developing countries?

The two basic causes of the destruction of our environment are well known: at one extreme is the accumulation of wealth, which leads to the exhaustion of natural resources with total disregard for ecosystems, and at the other is the poverty that forces populations to sell off their resources to the highest bidder.

Overproduction and overconsumption prevail in rich countries. Natural resources are overexploited beyond their capacity for renewal. And so mankind in general consumes more than can be produced on a sustainable basis.

The side effects of this overconsumption are also well known: air and water pollution, accumulation of toxic waste, and the disappearance of green spaces. The governments and multinationals of the North, which are responsible for the destruction in the first place, try to offload the consequences onto developing countries whenever they can. For example, the United States sends industrial waste containing heavy metals to India

to be reprocessed, and the stranglehold of the debt forces developing countries to accept highly polluting industries from the North. While the pollution-friendly global economic model creates pollution in the South, the spiraling debt has created a subservience such that the South has also been turned into the dustbin for the North.

Let us look at a concrete example. On August 19, 2006, the chemical tanker *Probo Koala* docked in Abidjan (Côte d'Ivoire). More than five hundred tons of toxic products (basically sludge from oil refineries) were unloaded and then dumped at at least fourteen sites without the slightest precaution. Very serious consequences ensued. Thousands of inhabitants of the Ivorian capital complained of nausea, vomiting, and respiratory problems. More than ten people died and thousands went to authorized health centers. The flora and fauna of the surrounding area were seriously affected. Fish were found dead in fish farms, and market gardens had to be closed. The government was forced to resign, but then the same prime minister, Charles Konan Banny, was asked to form a new one. In so doing, Côte d'Ivoire recognized that it was incapable of preventing such a tragic situation or of providing a satisfactory solution.

This was not merely an unfortunate accident. In the wake of various restructuring plans, the means that states had for regulating their economy had been dismantled. Structures of prevention, control, and emergency action were either abandoned or rendered incapable of functioning efficiently, particularly in Sub-Saharan Africa.

Deprived of the wealth it produces—because it has to repay debt and because of the misappropriation of funds carried out with the complicity of the superpowers—black Africa has become the favorite dumping ground for toxic waste. And when a catastrophe happens, the damage is even worse. This is what happened at Abidjan. Far from being unpredictable, what happened was the culmination of the logical process of financial globalization, and the instigators of financial globalization were well aware of its consequences.

The underpopulated countries of Africa are in general underpolluted. The quality of the air is unnecessarily good compared with Los Angeles or Mexico. Polluting industries should be encouraged to move to the less-developed countries. A certain amount of pollution

should exist in countries where salaries are low. I think that the economic logic whereby tons of toxic waste can be dumped in places where salaries are low is irrefutable. . . . Any concern [about toxic products] will anyway be much greater in a country where people live long enough to develop cancer than in a country where the infant mortality rate is 200 in 1,000 by the age of five.

—LAWRENCE SUMMERS, internal memo of the World Bank,
December 13, 1991¹⁹³

Let us look at another example. The tidal wave caused by the tsunami in December 2004 off the coast of Indonesia caused a lot of damage to some containers of hazardous waste (uranium, lead, cadmium, mercury) stored on the coast of Somalia, a very poor country that has lost any structure since the beginning of the 1990s. According to the United Nations Environment Program, "Containers of hazardous radioactive waste, of chemical and other waste which had been dumped along the Somali coastline, were damaged by the tsunami. . . . Many people have complained of numerous health problems, for example bleeding from the mouth, abdominal haemorrhages and unusual skin and respiratory problems."¹⁹⁴ Like in Côte d'Ivoire, and no doubt elsewhere.

To sum up, "the economic logic whereby tons of toxic waste can be dumped in places where salaries are low," so dear to Lawrence Summers, is at work. The example of the waste in Abidjan is a compendium worthy of caricature: the *Probo Koala* is registered in Panama, has a Russian crew, is run by a Greek company, Prime Marine, and is chartered by a company registered in the Netherlands.

In order to get the currency necessary to repay their debt or to stay in power, governments are prepared to overexploit and sell off their natural resources (minerals, oil, fishing), endanger their biodiversity (numerous animal and plant species are becoming extinct), and encourage deforestation, soil erosion, and desertification. In Africa 65 percent of agricultural land has been damaged in the last fifty years—five hundred million hectares.

The lack of health infrastructures, drinking water, and fuel is a serious hazard. Rubbish is often dumped into the sea or rivers without any treat-

ment. Hazardous products such as mercury or cyanide used, for example, when processing minerals in gold mines, are thrown away without any caution, poisoning water supplies and groundwater.

It is sometimes said: "Emerging countries will soon emit more CO₂ than industrialized countries and responsibility will change radically." This analysis is false because CO₂ remains in the atmosphere for hundreds of years. Much of the CO₂ emitted since the industrial revolution, that is to say, for about 200 years, is still there. About 80 percent of the accumulated total, the additional CO₂ in the atmosphere today, comes from industrialized countries. Even if tomorrow emerging countries should emit the same amount, the ratio 80/20 (which is an indication of the historical responsibility of developed countries) will vary only slightly over the next 40 years. Which is why the climate debt subsists.

—JEAN-PASCAL VAN YPERSELE,
Belgian climatologist, 2008¹⁹⁵

Because of this irreversible damage caused to the environment, the question of ecological debt (which includes climate debt) can no longer be evaded. Only when creditors of the present financial debt recognize this ecological debt and make reparation, when there is massive investment in energy efficiency and in new technologies and an unconditional transfer of these technologies to emerging countries, will it be possible to integrate the ecological issue.

QUESTION 46

What are the religious arguments in favor of canceling the debt of developing countries?

The various religions have all addressed the problem of debt in their teachings.