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Greece, Ireland, Portugal

Why agreements with the Troika are odious

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Greece, Ireland and Portugal are the first three countries in the eurozone to agree to "bailout" plans with the so-called Troika consisting of the European Commission, the European Central Bank (ECB) and the International Monetary Fund (IMF) which place them under the direct tutelage of their creditors. Yet these agreements, which generate new debts and force unprecedented austerity measures on the population, can be challenged under international law. [1] They are in fact "odious" and therefore illegitimate. As the odious debt doctrine clearly affirms, the debts of the State must be incurred and the funds from it employed for the needs and in the interest of the State. However, the Troika loans are conditioned by austerity measures that flout international law and make it impossible for these countries to get out of the crisis.

Any loan granted on the condition that policies violating human rights be implemented is odious

As claimed by special rapporteur Mohammed Bedjaoui in his draft article on succession in respect of State debts for the 1983 Vienna Convention: "From the standpoint of the international community, an odious debt could be taken to mean any debt contracted for purposes that are not in conformity with contemporary international law and, in particular, the principles of international law embodied in the Charter of the United Nations." [2]

It is obvious that the conditionalities imposed by the Troika (massive layoffs in the civil service, the dismantling of social protection and social services, reduction of social budgets, increase in indirect taxes such as VAT, the lowering of the minimum wage, etc.) violate the UN Charter. Indeed, among the obligations contained in this Charter, we note, in article 55, "higher standards of living, full employment, and conditions of economic and social progress and development [!], universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." Consequently, austerity measures and debts contracted in the context of these Troika agreements are void since anything that is contrary to the UN Charter is deemed nugatory. [3]

Beyond the violation of economic, social and cultural rights resulting from the implementation of such anti-social measures, what is flouted by the Troika is people's right to self-determination as covered in article 1-2 of the UN Charter and in the two 1966 Conventions on human rights. According to article 1 of both conventions: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence."

The Troika's interference in debtor States' internal affairs, with a complete disregard for democracy, is blatantly obvious. Troika creditors sent a clear warning that elections in Ireland and Portugal were not to challenge these agreements. See, for example, an article in the French daily *Le Figaro* on 9 April 2011 that recalls the demands made on Portugal by the EU and eurozone finance ministers at a meeting in Budapest before the general elections in Portugal: Preparations (for the austerity measures) must start at once with a view to an agreement between parties in mid-May, and allow for an immediate implementation of the adjustment programme as soon as the new government is formed (...) ministers have clearly explained that they do not wish to have to reconsider the commitments attached to this aid, whatever the election results. [4] In the case of Greece, the austerity programme agreed on with the Troika was imposed in 2010 without even being ratified by Parliament whereas it is an obligation under the Greek Constitution (article 36 paragraph 2). [5]

Why agreements with the Troika are odious

The Troika's contempt for the sovereignty of Greece, Ireland and Portugal was made possible by the financial plight of these three countries (the first eurozone victims of the debt crisis, though undoubtedly not the last). In this respect the validity of the agreements can hardly be argued on the grounds of free consent. In law, when one party in a contract is not in a position to exert its freedom of choice the contract is void. How does this principle apply in the present case? As they cannot reasonably contract long term loans on the financial markets, since interest rates are between 12 and 17%, these countries' governments had to turn to the Troika as lender of last resort. Taking advantage of the plight of the Greek, Irish and Portuguese authorities, the Troika managed to enforce policies that can only have negative consequences on the countries' economic recovery, given the procyclical nature of the measures adopted (that is to say, they reinforce factors that lead to lower economic activity).

The massive privatizations in key sectors of the economy (transport, energy, postal services, etc.) that the Troika have imposed make it possible for private foreign companies to take control and consequently limit the sovereignty of these States and the right of their people to dispose freely of their wealth and natural resources. Although a State does have the right, by agreement, to alienate part of its sovereignty to a foreign entity, such transfer may not, under pain of violating international law, jeopardize its economic independence, which is a key component of its political independence. [6]

Through its conditionalities the Troika not only violated international law. It also abetted in the violation of these countries' national laws. In Greece, in particular, what is happening is truly a legal coup. For instance several provisions of the 3845/2010 law drawn up to implement the austerity measures violate the Constitution, in particular the provision suppressing the legal minimum wage. The abandonment of Greece's sovereignty is further aggravated by the clause in the Troika agreement that provides for the application of Anglo-Saxon law and the jurisdiction of the EU court of Justice in case of disputes. The State thus relinquishes a fundamental prerogative in its sovereignty, namely the territorial competence of its national courts. At the same time, the Greek law implementing the austerity measures stipulates that arbitral sentences (that have constitutional value) granting wage increases in 2010 and 2011 be declared void and unenforceable. In short, as jurists Katrougalos and Pavlidis have written, State sovereignty is limited in a way very similar to the international financial control enforced on Greece in 1897 as a consequence of its bankruptcy in 1893 and of Greece being defeated in its war against Turkey.

Any loan based on an illicit and immoral cause is odious

The legal foundation of the illicit and immoral cause to challenge the validity of agreements can be found in several civil and commercial national legislations. It takes us back to a question raised by the doctrine of odious debt: who benefits from the loans? In the case of agreements signed with Greece, Ireland and Portugal, it is obvious that the European private banks that granted totally irresponsible loans to these countries are on the winning side, even though they have a large share of responsibility in the debt crisis. Indeed the bailing out of private banks by public authorities after the financial crisis burst in 2007 led to the steep rise in the public debt of these States. In this respect we can at least describe the cause of the agreements with the Troika as being "immoral" and claim unjust enrichment of private banks (a general principle in international law according to article 38 of the Statute of the International Court of Justice). [7]

The unjustified enrichment of private banks is even more blatant when we consider that they derive huge benefits from public authorities, given the discrepancy between the interest rates of approximately 4% they demand from the borrowing States to buy 3 or 6 month securities, and the 1% interest rate at which they were able to borrow from the ECB up to April 2011, before it was raised to 1.25 and then 1.5%. [8] We can also speak of unjustified (and illegal and abusive) enrichment for countries such as Germany, France and Austria, which borrowed at 2% on the markets and then loaned at 5 or 5.5% to Greece and 6% to Ireland. The same can be said of the IMF, which borrows at a low interest from its members and makes loans at much higher rates to Greece, Ireland and Portugal.

Why agreements with the Troika are odious

The measures announced by EU leaders on 21 July 2011 were a clear admission of the unjust enrichment they are responsible for, and of the fraudulent nature of their policies. They eventually announced that the interest rates asked of Greece, Ireland and Portugal would be reduced by 2 or 3%. This reduction in interest rates to approximately 3.5% for loans over 15 or even 30 years is a clear acknowledgement that the rates demanded were unaffordable. If they are reducing them now, it is because of the enormity of the disaster they have helped to create, and the fear of contagion.

What gain is there for Ireland, Greece and Portugal in making such agreements with the Troika? None at all, except a little financial breathing space... to be used to pay back their creditors. In the mid and long term, such austerity policies will make the economic situation worse since they are part of a snowball effect. In fact the burden of interests on these new debts increases while the measures dictated by the Troika result in reduced economic activity since there will be less demand as living conditions deteriorate. It can thus be said that the IMF behaves in a wilfully harmful way, given the massive gap between its discourse and reality.

Indeed in Article 1 of its statutes, the IMF defines one of its main purposes as *to facilitate the expansion and balanced growth of international trade, and to contribute thereby to the promotion and maintenance of high levels of employment and real income and to the development of the productive resources of all members as primary objectives of economic policy* [9] and also, *to give confidence to members by making the general resources of the Fund temporarily available to them under adequate safeguards, thus providing them with opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international prosperity.* [10] Similarly we can assert that the action of the European Commission and of the ECB wilfully harms the countries concerned.

The measures imposed by the IMF, the ECB and the EC also cause these countries to be trapped in the vicious logic of indebtedness since they will have to keep borrowing to be able to repay. They are consequently looking at a period of ten, fifteen or twenty years of austerity and increasing debt. [11] The OECD survey on the Greek debt [12] published on 2 August 2011 reckons that the public debt which amounted to 140% of GDP in 2010 should be back to 100% in 2035.

Faced with such a predicament, if they wish to serve the interests of the population, these governments should repeal the agreements with the Troika, suspend repayment of their debts at once (with a freeze on interest) and organize audits of their debts with citizen participation. These audits will determine which portion of the debts is illegitimate and must therefore be unconditionally cancelled. The remaining part of the public debt must be reduced through measures aimed at those who benefited from it. Lawsuits must be brought against those responsible for the damage. Obviously, complementary measures will have to be taken, such as the transfer of banks to the public sector, radical tax reform, and the socialization of those sectors that have been privatized in the neo-liberal process. [13] These are vital measures, because the cancellation of illegitimate debts, though necessary, will not be enough if the logic of the system remains in place.

Translated by Christine Pagnouille in collaboration with Judith Harris

[1] Alexander Nahum Sack, *Les Effets des Transformations des États sur leurs dettes publiques et autres obligations financières*, Recueil Sirey, 1927.

[2] Mohammed Bedjaoui, Ninth report on succession in matters other than treaties, Definition of an odious debt, 129, http://untreaty.un.org/ilc/documentation/english/a_cn4_301.pdf.

Why agreements with the Troika are odious

[3] Monique and Roland Weyl, Sortir le droit international du placard, PubliCETIM n°32, CETIM, November 2008.

[4] La pr paration (du plan d'aust rit ) devra commencer imm diatement, en vue d'un accord entre les partis   la mi-mai, et permettre la mise en  uvre sans d lai du programme d'ajustement d'  la formation du nouveau gouvernement   (...)   les ministres ont clairement fait comprendre au Portugal qu'ils ne veulent pas avoir   revenir sur les contreparties   l'aide, quel que soit le r sultat des  lections <http://www.lefigaro.fr/conjoncture/2011/04/08/04016-20110408ARTFIG00645-le-portugal-au-regime-sec.php>
See also Virginie de Romanet,  Le Portugal: derni re victime en date du mod le n oib ral   2011
<http://www.cadtm.org/Le-Portugal-derniere-victime-en>

[5] Georgios Katrougalos and Georgios Pavlidis,   La Constitution nationale face   une situation de d tresse financi re : le son tir es de la crise grecque (2009-2011)  

[6] <http://unesdoc.unesco.org/images/0003/000331/033110fb.pdf>

[7] It is also mentioned in several national civil codes, for instance in Spain (articles 1895ff) and in France (articles 1376ff).

[8] We should recall that the Maastricht treaty forbids direct loans from the ECB to States.

[9] See <http://www.imf.org/external/pubs/ft/aa/aa01.htm>

[10] Authors' emphasis.

[11] We should recall that the Maastricht treaty forbids direct loans from the ECB to States.

[12] http://www.oecd.org/document/62/0,3746,fr_21571361_44315115_48475902_1_1_1_1,00.html

[13] See Eight key proposals for another Europe <http://www.cadtm.org/Eight-key-proposals-for-another>