Topicality of the odious debt doctrine

by CADTM international

The odious debt doctrine is not dead and buried, whatever some would like to believe. The US stampede retreat on Iraq's odious debt in 2003, and more recently a WB report |1| that vainly attempted to question its validity both show how significant a stake it is for both debtors and creditors. The present document aims at reopening the debate on odious debts, and more generally on illegitimate debts, so that governments can use these legal arguments to stop paying undue debts.

1. The doctrine of odious debt: an international law argument at the service of peoples and states

1.1.Odious debt or the right to declare the debt void

In its report, the World Bank treats odious debt as a vague idea, a catch-all concept slovenly used by civil society organisations. However, the Bank is partly responsible for this so-called confusion, since it refuses to cite the arguments of this doctrine's supporters, beginning with its first theorist, Alexander Sack, in 1927 |2| .

Sack argues: "If a despotic regime incurs a debt, not for the needs and in the interest of the State, but to reinforce its tyranny, to repress the population that fights against it, etc., this debt is odious for the population of all the State (…) This debt is not an obligation to the nation: it is a regime's debt, a personal debt of the power that has incurred it, and consequently it falls with the fall of this power."

Furthermore, he adds: "One could also include in this category of debts the loans incurred by members of the government or by persons or groups associated with the government to serve interests manifestly

personal — interests that are unrelated to the interests of the State."

Sack also insists that the creditors of such debts, once they have loaned with full awareness of the consequences, "have committed a hostile act with regard to the people; they can't therefore expect that a nation freed from a despotic power assume the "odious" debts, which are personal debts of that power."

Thus, three conditions can be said to characterise an odious debt:

1.it has been incurred by a dictatorial and despotic regime, with a view to strengthen its rule

2.it has been incurred, not in the interests of the people, but against its interest and/or in the personal interest 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

Several authors have further sought to develop the works of Sack and to adapt this doctrine to the present context. For example, the Center for International Sustainable Development Law (CISDL) of McGill University in Canada, has proposed this general definition: "Odious debts are those that have been incurred against the interests of the population of a State, without its consent and with full awareness of the creditors." |3| Jeff King |4| based his analysis on these three criteria (absence of consent, absence of benefit, awareness of creditors), and cumulative calculation, to propose a method to categorise these odious debts.

While King's analysis is interesting in many respects, |5| we argue that it is deficient, since it does not allow for the inclusion of all debts that should be qualified as odious. In fact, according to King, the mere

establishment of a government by free elections is enough to disqualify its debts from being categorised as odious. However, history shows, through Hitler in Germany, Marcos in the Philippines or Fujimori in Peru, that democratically elected governments can be violent dictatorships and commit crimes against humanity.

It is thus necessary to analyse the democratic character of a debtor State beyond its appellation: any loan must be considered odious, if a regime, democratically elected or not, does not respect the fundamental principles of international law such as the fundamental human rights, the sovereignty of States, or the absence of the use of force. The creditors, in the case of notorious dictators, cannot plead their innocence and demand to be repaid. In this case, the use of the loans is not fundamental for the categorisation of the debt. In fact, financially supporting a criminal regime, even for hospitals and schools, is tantamount to helping the regime's consolidation and self-preservation. Firstly, some useful investments (roads, hospitals…) can later be used to odious ends, for example, to sustain war efforts. Secondly, the fungibility of funds makes it possible for a government that borrows to serve the population or the State – which, officially, is always the case – to generate other funds for less noble goals.

The nature of regimes aside, the use of funds should suffice to qualify debts as odious, that is, whenever these funds are used against the populations' major interests or when they directly enrich the regime's cohorts. In this case, the debts become personal debts, and not those of the State which is represented by its people and its representatives. Let's recall one of the conditions of debt regulation, according to Sack: "the debts of State have to be incurred and the funds that are derived must be used for the needs and in the interests of the State." Thus, multilateral debts incurred within the framework of structural adjustments fall into the category of odious debts, since the destructive character of these debts has been clearly shown, namely by UN agencies |6|

In fact, considering the development of international law since the first theorisation of odious debt in 1927, odious debts can be defined as those incurred by governments which violate the major principles of international law such as those included in the Charter of the United Nations, the Universal Declaration of Human Rights, and the two complementing covenants on civil and political rights and economic, social and cultural rights of 1966, as well the peremptory norms of international law (jus cogens). This affirmation is confirmed by the 1969 Vienna Convention on the Laws of Treaties, whose article 53 allows for the cancellation of acts which conflict with jus cogens |7| and which also accounts for the following norms: prohibition of wars of aggression, prohibition of torture, prohibition to commit crimes against humanity and the right of peoples to self-determination.

This spirit infuses the definition proposed by the Special Rapporteur Mohammed Bedjaoui in the report on the succession of State debts to the 1983 Vienna Convention: “From the point of view of the international community, odious debt is understood as any debt incurred for uses that contradict contemporary international law, particularly the principles of international law incorporated in the UN Charter.” |8|

Thus, the 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 UN had asked its specialised agencies, including the World Bank, to cease financial support of South Africa. In contempt of international law, the World Bank ignored this resolution and continued to lend to the Apartheid regime. |9|

International law also stipulates that debts resulting from colonisation are not transferable to newly independent states, in conformity with article 16 of the 1978 Vienna Convention that says 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 applicable) 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 for them to maximise the profits they derived from colonial exploitation. It must also be noted that the debts granted by the World Bank to the Belgian, French and English authorities within their colonial policies were later transferred to the newly independent states without their consent. |10|

Moreover it did not comply with a 1965 UN resolution demanding that it stopped its support to Portugal as long as this country maintained its colonial policy.

We must also define as odious all debts incurred in order to pay back odious debts. The New Economic Foundation |11| rightly considers that

loans contracted in order to pay back odious loans are similar to a laundering operation. Auditing debts will determine which loans are legitimate.

While there are dissentions on the definition of odious debts, the legal debate takes nothing away from its relevance and cogency. On the contrary, such debate reflects just what is at stake for both the creditors and the debtors and is simply the transfer of conflicting interests onto a legal level. Several cases have shown that the notion of odious debt is a legally valid argument not to pay debts.

1.2.Implementing the doctrine of odious debt and updating its practical application

There have been numerous instances when the doctrine of odious debt was implemented or called upon, and they have been reviewed in several studies. We will focus here on a few significant cases.

- The United States refusing to take on Cuba's debt in 1898. This is one of the first cases when odious debts (in this instance a debt of subservience) were indeed cancelled. In 1898 as a consequence of the war between the United States and Spain, the latter transferred Cuba's sovereignty to the United States. The US delegates to the peace conference in Paris justified their refusal to pay the odious debts that were charged on Cuba on the following accounts: 1) loans had not helped the Cuban population, some had even been used to suppress popular uprisings; 2) Cuba had never agreed to incur such debts; 3) creditors knew about the situation and had to face the risk of not getting their money back.

- Versailles Treaty and the Polish debt, 1919. Article 255 of the Versailles Treaty releases Poland of 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

colonisation of Poland. Similarly, after the Second World War the 1947 peace treaty between France and Italy states that it is unthinkable that Ethiopia should bear the burden of debts contracted by Italy in order to ensure its domination on Ethiopian territory.

– Arbitration between Britain and Costa Rica, 1923. In 1922 Costa Rica passed the Law of Nullities that cancelled all contracts signed by former dictator Federico Tinoco from 1917 to 1919 and consequently refused to pay the debt he had contracted with the Royal Bank of Canada – so this is an instance when the doctrine was applied to a commercial debt. The dispute between Britain and Costa Rica was taken to the International Court of Arbitration, chaired by Justice Taft, Chief Justice of the Supreme Court of the United States, who sanctioned the Law of Nullities and declared: The case of the Royal Bank depends not on the mere form of the transaction but upon the good faith of the bank in the payment of money for the real use of the Costa Rican Government under the Tinoco regime. It must make out its case of actual furnishing of money to the government for its legitimate use. It has not done so.

Later references to the notion of odious debt have confirmed its validity, even when they did not result in debt repudiation or cancellation.

– After the fall of the Apartheid regime in South Africa several voices demanded that odious debts should be cancelled. Pressures on the government finally resulted in its acknowledging Apartheid debts.
– In 1998 the British House of Commons' International Development Committee explicitly referred to the odious nature of Rwanda's debt to request its cancellation by bilateral creditors.
– In 2003, after the US invaded Iraq, the US administration called upon the odious debt argument for Iraq's bilateral debt to be cancelled.. |12| Yet when realising the precedent it would thus establish the Bush administration finally dropped the odious debt argument and debt relief was granted to Iraq on grounds of sustainability. It should be stressed

that the argument was not dropped because it would have been inconsistent but on the contrary because its legal cogency entailed the risk that in many other cases the same argument could be used against the interests of the US and their allies.

So, while it has not always resulted in a cancellation of debts, the doctrine of odious debt has never been challenged.. |13| It is the pressures from creditors and strategic considerations which led governments to acknowledge these debts and it can be seen that international usage and States' decisions reflect a power relationship that is not favourable to debtor countries. Governments should use this argument. Legal tergiversations developed by institutions such as the World Bank, the IMF or other creditors cannot withstand the facts and the strength of a doctrine as powerful as that of the odious debt. Although creditors attempt to do away with it, this doctrine regularly surfaces in an updated form.

The unilateral decision taken by Paraguay in 2005 (see 3. 2 below) when the government cancelled the debt contracted with European banks because of its fraudulent nature ought to inspire other governments. Even though the Paraguayan act does not explicitly refer to an odious debt, it is indeed an invalid debt per se and consequently an odious debt. Here is one more proof of the doctrine's validity, based on States' decisions.

Is not the World Bank's responsibility for many countries' odious debts the reason why it is so quick in trying to disqualify the notion? We have a right to question its past and present lending policies, its support to dictatorships and regimes that severely violate human rights, its support to colonial powers and to corrupt regimes through loans that were privately used by rulers… The World Bank can obviously not have the last word in the debate.

2.There is no absolute obligation for a country to repay sovereign debts

The concept of odious debt is only one of the elements which call for the cancelling or repudiation of a sovereign debt. As Robert Howse |14| reminds us, “The international law obligation to repay debt has never been accepted as absolute.”

2.1.Other reasons for cancelling a debt

As we have seen, obligations arising from a contract or a treaty are not absolute but are subject to laws. Contracts signed by a regime whose acts violate jus cogens are null and void. Thus, jus cogens implies that not only the initial debt but also the subsequent loans incurred to reimburse should be cancelled. A complete audit of the debt would make it possible to identify which debts have been contracted to repay debts which were originally illegal. In order to repudiate a debt on the basis of jus cogens norms, it would be sufficient for the present government to prove that, when the loan was granted, the creditors were aware that the state or the government of the time was violating jus cogens. It would not be necessary to prove that it was actually the intention of the creditors to violate this peremptory norm of international law.

As well a the violation of jus cogens, the 1969 Vienna Convention on the Law of Treaties, which is one of the reference texts in international law (article 38 of the Statute of the ICJ), contains several measures which could be called upon to prove that some debts, agreed between States, were in fact illegal. Thus Article 46 concerns the “competence to conclude treaties”, Article 49 concerns fraud, Article 51 the coercion of a representative of a State, and Article 52 the coercion of a State by the threat or use of force. If the public authorities can prove, by carrying out an audit of the debt, that such measures were violated at the time the debt was contracted, then they would be legally justified in repudiating or cancelling debts tainted with illegality. Furthermore, the principle of pacta sunt servanda which requires the concerned parties to respect the pact is

moderated by other principles such as rebus sic stantibus i.e. a fundamental change of circumstances could cause the agreement to be suspended. Similarly, if a State declares a force majeure or a state of necessity, it cannot be prosecuted for not having fulfilled its obligations. For Robert Howse, the principle of the continuity of the State is limited by considerations of equity, which is frequently evoked in courts of justice and of arbitration. These considerations of equity are illegality, fraud, fundamental change in circumstances, bad faith, the competence of the signatory, etc. However, equity is a "general principle of law" (GPL) and, by virtue of Article 38 of the ICJ, a source of international law. It has to be said that it is imperative that all the donors (States, private banks, IMF, the World bank) respect GPLs .

Obviously, national courts have the right to judge the legality and the constitutionality of debts, as the Argentine Federal Court did in the Olmos v/s the Federal Government and Others case in the year 2000, which declared illegal the debt contracted by the military dictatorship. This clearly was a considerable contribution to national and international case-law. The silence of the international financial institutions, the media and the western countries about this delicate case was so deafening it amounted to an avowal of guilt. The case brought to the fore a direct link between the donors and the Argentine dictatorship which, it should not be forgotten, committed crimes against humanity including genocide, as was proved in the Etchecolatz case.

The campaigns to cancel the debt and the social movements' call on some of these arguments to have debts cancelled whose illegitimacy, which needs to be determined by audits, might be due to the conditions of the loan (usurious rates, tied reforms which are against the general interest), the use which was made of the loan, and their consequences (projects which were not completed, white elephants, projects which were prejudicial to the citizens or to the environment) or the conditions under which they were incurred (asymmetry between the parties concerned, corruption). Debt repayment can also become illegitimate when it

prevents a State – and thus the public authorities and the various organisations – from fulfilling its obligations concerning human rights. Several reports written by independent experts and adopted by the UN Commission on Human Rights highlight the fact that due to the debt mechanism, public authorities not only find themselves unable to fulfil their international obligations, but are practically obliged to apply policies which effectively violate human rights.

2.2.Rights and Duties of States

Although the pacta sunt servanda obligation for states to pay existing debts is not absolute, there is a hierarchy of norms which impose constraints on State actions. Thus human rights, as universally accepted in international conventions, rank above the rights guaranteed by a loan contract. Fundamental human rights have been defined in documents such as the Universal Declaration of Human Rights (UDHR). This Declaration, which formalises individual right such as medical care, education, housing, social services, work and leisure, also says in Article 28 that "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized." This implies, as Tamara Kunanayakam says that "the elimination of unjust systems is a condition for human rights and fundamental liberties to be realized" |15| The debt mechanism is without doubt one of the unjust – or even illicit – conditions which must be eliminated. There are also the duties contained in the International Covenant on Economic, Social and Cultural Rights (ICESCR), which has been ratified by more than 150 States and whose article 2, paragraph 1 declares that each State "undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures." The Declaration on the Right to Development, adopted by an

overwhelming majority |16| of UN member countries establishes the right to development as a fundamental human right and in article 2 paragraph 3 we read “States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting there from.” These duties are universal, both from a moral and legal point of view, and cannot be subordinated to loan contract which are more often than not illegitimate.

3.CADTM’s legal strategy: unilateral action of governments of both the South and the North based on national and international law

3.1.Turning down solutions set forward by the World Bank

The last section in the World Bank’s report sets out alternatives to countries of the South repudiating odious debts. But let’s not be deluded: these World Bank proposals to improve good governance in developing countries essentially aim at restructuring, i.e. laundering odious and illegitimate debts into barely sustainable debts according to the World Bank and IMF criteria.. |17| The World Bank suggests that countries of the South negotiate with their creditors, for instance agreeing to HIPC (Highly Indebted Poor Countries) status so as to benefit from debt relief measures (page 33 in the report).

The argument called upon by the World Bank in favour of negotiating is that a unilateral repudiation of odious and illegitimate debts would have as a consequence that the country would be cut off from access to the capital market. Now, the case of South Africa, which is constantly put forward in the report, shows that Mandela’s post-apartheid government should have repudiated debts contracted by the criminal apartheid government instead of negotiating with creditors as it did under the pressure of external creditors. Indeed the UNCTAD report on the odious

debt doctrine states that if South Africa had simply set up a ten year moratorium on the payment of debt accumulated by the apartheid regime, the government would have 'saved' USD 10 billion. Instead, it yielded to its creditors and paid the criminal debt of apartheid. As a counterpart it received a meagre USD 1.1 billion as foreign aid over the ten years that followed Mandela's election.

The threat of closing access to capital does not balance the financial interest developing countries would have in repudiating their illegal and illegitimate debts.

If the World Bank insists that governments must pay their debts, it is of course because it wants to get back borrowed money. But it is also in order to keep a hold on them, and to have them comply with its and the IMF's conditions. "Structural adjustment goes beyond the simple imposition of a set of macroeconomic policies at the domestic level. It represents a political project, a conscious strategy of social transformation at the global level, primarily to make the world safe for transnational corporations. In short, structural adjustment programmes (SAPs) serve as "a transmission-belt" to facilitate the process of globalization, through liberalization, deregulation, and reducing the role of the State in national development." |18| CADTM has published a manual on how to organise audits of Third World debts |19| in order to encourage Third World governments to carry out audits of their debts so that they then have a legal basis to repudiate illegal and illegitimate debts. Indeed, an audit is an invaluable tool which can not only highlight irregularities in loan contracts but also the complicity of international donors in the illegal and illegitimate debts of developing countries. This manual develops a methodology which can be used by the populations and governments of the South to carry out audits of their debts.
It should be noted that public authorities have the right to look into public spending and to give their legal opinion about the illicit nature of a debt in accordance with international and national law. The most recent

example is that of the Paraguayan government who, in a decree of 26 August 2005, repudiated an illegal debt of USD 85 million owed to the Overland Trust Bank, based in Geneva. |20| This political action is significant for two main reasons. First, it shows that public authorities have the right to determine a debt's illicit nature once the debt has been audited. And secondly, the decree demonstrates that a government's repudiation of a debt is a unilateral sovereign decision which must be accepted by the government's creditors if the repudiation has a legal basis.

It is important that civil society should be involved in auditing the debt, as is currently the case in Ecuador. Indeed, people have the right to be associated to the auditing process according to article 21 in the Universal Declaration of Human Rights and to articles 19 and 25 of the International Covenant on Civil and Political Rights of 1966. |21| Thus, the Commission for the complete audit of domestic and external debt (CAIC) established by President Rafael Correa brings together delegates of State authorities as well as representatives of social and civic organisations in Ecuador and also delegates from North/South solidarity organisations who have demonstrated their expertise in issues concerning debt. |22| Having carried out the debt audit, public authorities will be able to use both domestic and international law to repudiate all illegal and illegitimate debts. Norway is a good example for States and social movements to follow. In October 2006, after a civil society campaign organised in particular by SLUG |23| and by citizens' rights movements in Ecuador, Norway accepted its responsibility in the illegitimate debts of 5 countries – Ecuador, Egypt, Jamaica, Peru and Sierra Leone – and decided unilaterally to cancel part of the debt due by these countries – to the tune of 62 million euros.

CADTM considers that a democratic government is totally within its rights in unilaterally repudiating or cancelling debts if an audit has identified all illegal and illegitimate debts. States are sovereign and can use numerous legal arguments, for example the doctrine of odious debt, to declare their

debts null and to put an end to their repayment. If need be, they can also ask their creditors, whose international responsibility is binding, to account for their illicit actions and demand reparations for the damage caused.

The imperatives of justice and democracy demand that governments take such decisions. It is vital that the same imperatives guide those governments freed from the weight of an illegitimate and illegal debt so that they fulfil their obligations to their citizens: thanks to the funds thus recovered, they should make every effort to improve the well-being of their citizens and thus respect their commitment to human rights as laid down in international Pacts concerning economic, social and cultural rights and also civil and political rights.

The fact that the World Bank has published for the first time a report on odious debt demonstrates that it can no longer ignore the legal argument put forward by numerous civil society organisations. The smokescreen thrown up by the World Bank and the IMF will not succeed in preventing legitimate governments who wish to make their policies comply with international pacts to which they are party, from applying this doctrine. It is up to us now to urge our governments to implement these legal arguments!

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End notes:

|1| In September 2007 the World Bank published a report on odious debt entitled “Odious Debt: Some Considerations” ((http://siteresources.worldbank.org/INTDEBTDEPT/Resources/468980-1184253591417/OdiousDebtPaper.pdf). A botched job on the whole, this report, partial and condescending as it was towards organisations that work for fair solutions to the debt issue, prompted angry responses.

The World Bank then agreed to open a debate: a first roundtable was held in Washington on April 14, 2008; the meeting brought together representatives of the World Bank, the IMF, the African Development Bank, governments of the North and South, civil society organisations and some academics. Although the World Bank has accepted to continue its discussions on odious debt next October, it is very unlikely that it will change its position and consider the question in more reasonable fashion since it refuses to address the issue of past debts.

|2| Alexander Sack, 1927: “Les Effets des Transformations des Etats sur leurs dettes publiques et autres obligations financières”

|3| Khalfan et al. “Advancing the Odious Debt Doctrine”, 2002, quoted in Global Economic Justice Report, Toronto, July 2003

|4| Jeff King, “Odious Debt: The Terms of Debate”

|5| Namely, King proposes the undertaking of audits to determine the absence or not of benefits.

|6| See Eric Toussaint, Your Money or Your Life. The Tyranny of Global Finance, Haymarket in Chicago (2005), VAK in Mumbai (2006). .

|7| Article 53 states: “A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.”

|8| Mohammed Bedjaoui, “Ninth report on succession on States on matters other than treaties” A/CN.4/301et Add.l, p. 73.

|9| See Eric Toussaint, The World Bank: A Critical Primer. London: Pluto Press 2007.

|10| See Eric Toussaint, op. cit.

|11| See the report by the New Economics Foundation, “Odious Lending : Debt Relief as if Moral Mattered”, p. 2: “The result is a vicious circle of debt in which new loans have to be taken out by successive governments to service the odious ones, effectively ’laundering‘ the original loans. This defensive lending can give a legitimate cloak to debts that were originally the result of odious lending”. Available at www.jubileeresearch.org/news/Odiouslendingfinal.pdf

|12| See the paper ’Odious Debt of Iraq’, by Eric Toussaint. Available on line at http://www.cadtm.org/spip.php?article259

|13| See Robert Howse’s UNCTEAD document “The concept of odious debt in public international law”, p. 1: “The paper also looks at some situations where other States’ tribunals have rejected or questioned claims of a transitional regime to adjust or sever debt obligations based on considerations of “odiousness”.(…) In none of these situations was a claim of odious debt rejected on grounds that international law simply does not countenance alteration in state-to-state debt obligations based on any equitable considerations whatsoever.”

|14| See «The concept of odious debt in public international law”, p. 1: “The international law obligation to repay debt has never been accepted as absolute, and has been frequently limited or qualified by a range of equitable considerations, some of which may be regrouped under the concept of “odiousness””; p.5: “Equity and justice have been brought into the disposition of debt in the case of succession because, both within the main private law systems of the world and in public international law, they

have been long recognized as limits or qualifications to legal obligation…" ; p. 6: "While general principles to be discerned from the limits of contractual obligation in domestic legal systems are one source of equity or justice, it would be odd if the evolving normative content of international law itself were not also to be such a source. In the case of those international agreements that are treaties, the Vienna Convention on the Law of Treaties requires that the obligations in any one agreement be read in light of other binding agreements as well "as any relevant rules of international law applicable between the parties." This certainly includes elements of human rights law that have become custom (or even peremptory norms)»; p. 21: "This is consistent with the accepted view that equity constitutes part of the content of "the general principles of law of civilized nations," one of the fundamental sources of international law stipulated in the Statute of the International Court of Justice."

|15| Tamara Kunanayakam, 'La Déclaration des Nations Unies sur le droit au développement : pour un nouvel ordre international', p. 40 in Quel développement ? Quelle coopération internationale ? Geneva, CETIM, 2007.

|16| 146 votes for, 1 vote against, 8 abstentions and 4 non-voting members.

|17| The criteria to assess whether a debt is sustainable is that ratio between its current value and the annual export revenue. If it is higher than 150 percent, the debt is deemed unsustainable.

|18| UN-Commission on Human Rights, Report of the Independent Expert on the effects of structural adjustment policies on the full enjoyment of human rights, E/CN.4/1999/50. See http://ap.ohchr.org/documents/alldocs.aspx?doc_id=1480 We cannot trust the judgement of a Bank that is so closely involved in the case, of a Bank that condemns the allegedly partial doctrine of odious debt to better

counterfeit a neutrality that does not stand the test of facts.

3.2.Repudiation and cancellation of illegitimate and illegal debts by public authorities after an audit has been carried out

Together with CETIM (Centre Europe – Tiers Monde) and the support of other movements and international networks,[[AAJ, ATTAC (Uruguay), COTMEC, Auditoria Cidadã Da Dívida (Brésil), Emmaüs Internacional, Eurodad, Jubilee South, South Centre

|19| http://www.cadtm.org/texte.php3?id_article=2296

|20| The reasons for repudiating debts are explained in particular in the speech by the President of Paraguay to the UN General Assembly on 3 October 2005. This fraudulent act was committed by officials under a corrupt dictatorship which, in collusion with a group of international banks, are looking to take resources from us that our country urgently needs.

|21| Article 21 of UDHR unanimously adopted by the UN in 1948, states that “Everyone has the right to take part in the government of his country, directly or indirectly through freely chosen representatives”. Article 19 of the International Covenant on Civil and Political Rights evokes the freedom of expression (“freedom to seek, receive and impart information and ideas of all kinds”) and article 25 states that all citizens have the right to participate in public affairs. (Virtually all States have ratified this Covenant apart from the USA who have signed the Covenant but who for 30 years have refused to ratify it). The audit thus corresponds to a democratic requirement and to the need for transparency (the right to know and the right to seek reparations).

|22| See the presidential decree which set up the Audit Commission : http://mef.gov.ec/pls/portal/docs/PAGE/MINISTERIO_ECONOMIA_FINAN

ZAS_ECUADOR/SUBSECRETARIAS/SUBSECRETARIA_GENERAL_DE_COORDINACION/COORDINACION_DE_COMUNICACION_SOCIAL/PRODUCTOS_COMUNICACION_PRENSA/ARCHIVOS_2007/DECRETO.PDF

|23| SLUG is a Norwegian umbrella organisation for cancelling debt and includes more than 50 Norwegian civil society organisations.