Demystifying Alexander Nahum Sack and the doctrine of odious debt (complete version)

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We here publish, in its entirety, Eric Tousaint's study of the odious debt doctrine. Only extracts have previously been published.

Rarely do people, whether detractors or defenders of the doctrine elaborated by Alexander Sack, take the time to understand the international lawyer's framework of analysis or his political leanings. Alexander Sack was not a humanist seeking to preserve peoples or nations from the nefarious actions of heads of State or creditors ready, through fraudulent or even criminal means, to plunge the collectivity into what was in fact odious debt. His principal aim was not to bring ethics or morality to international finance. Sack merely wanted to protect creditors' rights, but he had to mention the important exception to the sacrosanct rule that debt repayment must continue at all costs, i.e. that in certain circumstances creditors have to accept the cancellation of debt owed them, if that debt can be shown to be odious. Though disparaged by powerful detractors and despite its author's obvious political limitations, the doctrine of odious debt inspired a series of movements looking to Sack's work for a means of combating illegitimate, illegal, odious or unsustainable debt. The two criteria that Sack picked to determine the existence of odious debt that a nation may refuse to repay are both functional and justified. They are: absence of benefit for the population and the complicity of the creditors. Our aim is to go beyond Sack's doctrine, retaining what is functional, eliminating what is unacceptable from the outset, while integrating elements devolving from social and democratic victories which have found their way into international law since the Second World War. The rule whereby States remain under obligation to repay debts after a change of regime

favours creditors and reinforces the dominant international order by trying to prevent States (and peoples) from shaking off the burden of debt. This rule has often been questioned, both in theory, by numerous 19th-century jurists and in practice, by States resorting to unilateral debt repudiation.

The most frequently-quoted part of Sack's book, the section on odious debt, is sometimes misinterpreted. It runs as follows: *"If a despotic regime incurs a debt, not for the needs and in the interests of the State, but to reinforce its tyranny and to put down any resistance on the part of the people, then this debt is deemed odious for the population of the entire State. It is not an obligation of the nation: it is the debt of a regime, a personal debt of the power that incurred it. Consequently, it falls when the power falls." (p. 157) "The reason why such 'odious' debts cannot be considered as incumbent on the State is that they do not fulfil one of the prerequisites of State debts, namely that State debts must be contracted, and the funds that they provide utilised, for the needs and in the interests of the State. The State is not liable for 'odious' debts incurred and utilised, with the knowledge of the creditors, for ends which are contrary to the nation's interests, should that State succeed in ridding itself of the government that had incurred them." (…) "The creditors have committed a hostile act with regard to the people; they cannot therefore expect a nation freed from a despotic power to take on the 'odious' debts, which are personal debts of that power."* (p. 158).

The present study aims to clarify Sack's position, place the doctrine of odious debt in its original context and see how that doctrine should be developed. As we shall see, the despotic nature of the regime is not a *sine qua non* condition to determine the odious nature of a debt, that would justify its repudiation. There are two criteria to be met: a debt is odious if it has been incurred against the interests of the population and the creditors were aware of this at the time.

Alexander Nahum Sack (Moscow 1890 – New York 1955), a Russian lawyer who taught in Saint Petersburg then in Paris, is considered to be one of the founders of the doctrine of odious debt. The doctrine, based on a series of precedents in jurisprudence, has come in for a lot of debate. Often disparaged and widely avoided or ignored in university courses, the doctrine of odious debt has nevertheless been the topic of hundreds of articles and dozens of specialized books. The United Nations International Law Commission [1], the IMF [2], the World Bank [3], the UN Conference on Trade and Development [4], the UN independent expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights [5], Ecuador's Commission for the full audit of public debt set up in 2007 by President Rafael Correa [6], the Committee for the Abolition of Third World Debt, now known as the Committee for the Abolition of Illegitimate Debt (CADTM) [7] and the Greek Debt Truth Commission set up by the president of the Hellenic Parliament in 2015 [8] have published documents, taken a stand and organized seminars on the topic, as debts whose legitimacy and validity may be questioned are constantly under discussion in the field of international relations. There are also recent academic publications on the subject: Jeff King, *The Doctrine of Odious Debt in International Law. A Restatement*, University College London, 2016; Stephania Bonilla, *Odious Debt: Law-and-Economics Perspectives*, Gabler publishers, Wiesbaden, 2011; Michael Waibel, *Sovereign Defaults before International Courts and Tribunals*, University of Cambridge, 2013; Michael Waibel, *Sovereign Defaults before International Courts and Tribunals*, University of Cambridge, 2013. Odette Lienau, *Rethinking Sovereign Debt: Politics, Reputation, and Legitimacy in Modern Finance*, Harvard, 2014; Juan Pablo Bohoslavsky, Sabine Michalowski, "Ius Cogens, Transitional Justice and Other Trends of the Debate on Odious Debts: A Response to the World Bank Discussion Paper on Odious Debts" (2009-2010), *Columbia Journal of Transnational Law*, Vol. 48.

It has now been 30 years since I began studying the question, publishing research and taking part in commissions to identify illegitimate, illegal, unsustainable or odious debt. I realized that the arguments developed by Alexander Nahum Sack are little known. Whether among his detractors or those who base their actions on the doctrine elaborated by Sack, people often have inadequate or

biased knowledge of the international jurist's analytical framework or his political leanings. It is very useful to delve further, beyond a few quotes and an over-simplified presentation of his work, as the struggle to combat odious debt may well gain in finesse and strength from such study.

Alexander Sack was not a humanist interested in protecting peoples or nations from the nefarious actions of Heads of State or creditors prepared to plunge the community into debt using fraudulent or even criminal means. His main aim was not to bring ethics or morality to the world of international finance. His aim was to reinforce the international order in place, by ensuring the continuity of debt repayments so that creditors could recover the money they had lent.

Sack began by asking himself what would become of debts a State had contracted in the case of a revolution, resulting in a change of regime

Sack touches on the question of odious debt in a work published in Paris in French in 1927. [9] His choice of title is significant: it translates as *The Effects of the Transformation of States on their Public Debt and other Financial Obligations: a Legal and Financial Treatise*. Sack began by asking himself what would become of debts a State had contracted in the case of a revolution, resulting in a change of regime. Sack states clearly in the first paragraph of the preface, "the Russian revolution of March 1917 incited me to examine the effects of the political transformation of a State on its public debt". Among the main events that affected him and led him to conduct a close study, figure writ large October 1917 (which he calls a "Bolshevik coup d'état") and the repudiation of the Tsarist debts by the Bolshevik government in January 1918. [10] He then gradually widened the field of his research to examine various cases of State succession and how obligations which tied the new State or new regime to creditors were affected.

Nicolas Politis [11], a Greek lawyer and statesman who wrote the introduction to Sack's work, stresses the breadth of the research undertaken: *"It is no exaggeration to say that Mr. Sack has completed the task he set himself with full honours. He has brought together a collection of documents of rare value. (…) He has closely tracked the long list of annexation treaties and debt regulation agreements ratified over the last 150 years and analysed their clauses one by one; he has investigated the legislative, administrative and judicial measures taken to implement them; he has looked up and classified the opinions of all authors to have written on the subject. Finally, he demonstrates, through the use he makes of all this material, an extraordinary grasp of the practical necessities of the law. Thus he explains, down to the last detail, the juridical nature of the succession of debts, borrowers' obligations and lenders' rights, the relations between successor States, how they divided debts between them and how they established their shares."* (trans. CADTM)

Not until the end of the published book do we find about fifteen pages, in chapter 4, on odious debt. The preceding 157 pages deal with the transfer of public debt in different situations: conquest (or annexation) of one State by another; the separation of one State from another; the effects of a change of regime resulting from a revolution, etc. I will deal with Sack's position regarding odious debt later in this article.

Whether a regime was despotic or democratic was of little concern to Sack

As far as the jurist was concerned, when there is a change of regime caused by annexation, division or revolution, the new regime **must honour** debts accumulated by the previous regime. There would, then, be continuity on State obligations towards creditors even after a radical regime change. This was the conservative and reactionary position that held sway over international relations at the time. [12]

Moreover, the democratic or despotic **nature** of the former regime or the new one did not influence this general rule. In Sack's view, what counted was the existence of a regular government exercising power within the State's territory: *"By a regular government is to be understood the supreme power that effectively exists within the limits of a given territory. Whether that government be monarchical (absolute or limited) or republican; whether it functions by "the grace of God" or "the will of the people"; whether it express "the will of the people" or not, of all the people or only of some; whether it be legally established or not, etc.,* ***none of that is relevant to the problem we are concerned with****."* (p. 6). (trans. CADTM)

According to Sack, the new regime may question the validity of the debts it inherits, should those debts prove to be odious. In such a case, the new regime must obtain an international authorization to waive the rule of continuity of obligations regarding debt repayment. The conditions he proposed are to be found at the end of this study. In a nutshell, we shall see that Sack makes a distinction between the nature of the debt bond and the nature of the government: an odious government may underwrite non-odious loan bonds, and a government not characterized as odious, that is nevertheless legitimate and democratic, may underwrite odious debts.

In Sack's view, the rights of private creditors should override those of the nation

Nicolas Politis pointed out in his introduction that *"former doctrines had lost sight of the fact that the obligation of successor States, as well as that of the original borrower,* ***belongs to the creditors and not to their nation****."* [13]

In the 21st century, private creditors regularly succeed in getting the courts to convict States on matters pertaining to debt, whereas in the 19th and early 20th centuries, such cases were often dismissed.

Thus Sack considered private creditors' interests to take precedence over those of the nation. The work Sack devoted himself to, aimed to convince the international community that there was a need for a code and international legal structures enabling a better guarantee of private creditors' rights before the State. (p. XIV) [14]

On this crucial matter, Sack's orientation contrasts with that of other jurists, both in the 19th century and in his own era. [15] For Luis Drago (Argentina), Carlos Calvo (Uruguay) [16], and Gustave Rolin (Belgium), the idea is to protect debtor States against abuse from private creditors, often backed by their own States (see the citations in the Box). At the time, private creditors were mainly banks and other institutions or private individuals residing in Great Britain, France, the USA or even Germany, enjoying the support of their governments, which did not hesitate to use gunboat diplomacy to recover debt.

Very different arguments put forward by jurists defending indebted States against private creditors [17]

Luis Maria Drago [18] declared at the Hague Peace Conference in 1907: *"There can be not the slightest doubt but that State loans are legal acts, but of a very special nature as cannot be confused with any other kind. The common civil law does not apply to them. Emitted by an act of sovereignty such as no private individual can exercise, they represent in no case an engagement between definite persons. For they stipulate in general terms that certain payments shall be made, at a certain date, to the bearer who is always an indeterminate person. The lender on his part does not advance his money as he does in loan contracts; he confines himself to buying a bond on the open market; there is no certified individual act, nor any relation with the debtor government. In ordinary contracts the government proceeds in virtue of rights which are inherent in the juridical person or the administrative corporation, by exercising that which is called* jus gestionis *or the right with which the representative or administrator of any joint-stock company whatever is invested.*

"In the second case the government proceeds jure imperii, *in its quality as sovereign, by effecting acts which only the public person of the State as such could accomplish. In the first case we understand that the government may be summoned before the tribunals or courts of claims, as happens day by day, so that it may make answer with regard to its engagements in private law; we could not conceive in the second case that the exercise of sovereignty might be questioned before an ordinary tribunal. It would at least be necessary to establish this distinction of a practical nature, to which I permitted myself to refer in the plenary Commission; for ordinary contracts, courts are available; there are no courts available for public loans.*
If, on the other hand, it were said that national loans really imply a contract, as is entered into with regard to ordinary loans, in the sense that they create exact obligations on the part of the borrowing State, it might be answered generally that it is not contracts alone that give rise to obligations; but that, even if it were so, it would be necessary to admit that they are a very special class of contracts with well-marked differential signs, which, by that very fact, deserve to be put in a class by themselves." [19]

The jurist **Gustave Hugo**, [20] often called the father of the historical school of jurists, says: *"A national bankruptcy is by no means illegal, and whether it is immoral or unwise depends altogether on circumstances. One can hardly ask of the present generation that it alone shall suffer from the folly and waste of its predecessors, for otherwise in the end a country could hardly be inhabited because of the mass of its public debts."* [21]

Karl Salomo Zachariae von Lingenthal, [22] writes : *"The State is entitled to reduce its debts, indeed to repudiate them entirely, in so far as it is no longer in a condition to raise the funds, aside from current expenses, to pay the interest and principal of the public debt."* According to Edwin Borchard, Zachariae maintains that a government has a higher duty than the payment of its debts, which is to keep its citizens alive, and that creditors must be disregarded when there is no alternative. He does make a distinction between those who have voluntarily lent their money and who have thus concluded an aleatory contract and those who were the victims of a forced loan. Only under *force majeure* would he consider the state entitled to disregard those involuntary creditors.

Friedrich Carl von Savigny [23], doubtless influenced by a Prussian law of 1823 which provided that the State could not be sued on its public debts, concluded that public debts are not *"under the private-law protection of a judge"*.

G. Rolin-Jaequemyns, [24] a Belgian jurist, in *Revue de droit international* 1869, p. 146, took the position that the making of a loan was an act of sovereignty, as was its repayment. He added that any interference of another state was out of the question.

Numerous French jurists take the same view. We may cite **Louis Berr**, *Étude sur les obligations* (Paris, 1880), p. 236, who says: *"The Frenchman who concludes a contract with a foreign government subjects himself in advance to the laws of that government concerning the jurisdiction and law of its courts; he renounces voluntarily the protection of his own national laws. In consequence, questions concerning the performance and liquidation of obligations directed against a foreign state can only be brought before its own courts in accordance with the rules of public law there in force."* [25]

Sir Robert Phillimore, in *Commentaries upon International Law*, [26] writes: *"The English courts have decided that bonds payable to bearer by the government of a state only create a debt in the nature of a debt of honour, which cannot be enforced by any foreign tribunal nor by the tribunal of the borrowing state itself, unless with the consent of its government"*. [27]

Carl Ludwig von Bar [28] K. von Bar, a well-known authority, *Theorie und Praxis des internationalen Privatrechts* (Hannover, Hahn, 1889), II 663, says: *"If all the creditors could actually levy execution upon the State property, they could bring the State machinery to a standstill. Public debts, therefore, issued under a special law, contracted with a certain number of creditors, rest upon the condition that the State is in a position – of which the State by legislation is the judge – to perform its obligations. The State has so to speak a beneficium competentia in the widest sense; it must first preserve itself, and the payment of its debts is a secondary consideration."* [29]

A. Wuarin: *"It is by a law (or decree) that the loan is authorised; it will be through the promulgation of another law (or another decree) that the State, with no need to explain, may declare itself free of any commitment or may decree the suspension of the amortization of the payment of interest, annul all guarantees…"* (cited by Sack, p. 37).

A. de La Pradelle [30] and N. Politis: *"The debt resulting from a loan is as binding in law as is any other debt. It is nevertheless true that, having been contracted in the public interest, the debt is subject for its execution to the conditions imposed by the financial and administrative necessities of the debtor State: as it was created by virtue of legislative measures, so may it be modified by virtue of further legislative measures."* [31]

A. de La Pradelle and N. Politis: *"Subscribers, like subsequent purchasers of the debt paper, are ignorant neither of the nature of the operation nor of the risk involved; they accept this in advance. They know that although the debtor government is under obligation to pay, if forced by circumstances it is free to defer the due date of the debt, to modify its terms, or even to reduce the amount to be repaid. In the absence of any international regulation of State bankruptcy, liquidation is dealt with by the debtor. However if the State cares about its reputation and creditworthiness, it will prefer to proceed with the approval of its creditors rather than by use of authority."* [32]

Gregoire Dimitresco: *"The State has the right to retract on total or partial execution of the contract it has entered into with its creditors, or to modify the clauses of that same contract, if deemed appropriate and if the circumstances demand it. The State derives this right from the nature of the contract. To enter an engagement under any other conditions would indeed be incompatible with the role and functions of the State."* [33]

Evgeny Korovin, of the Institute of Soviet Law, considers that there is no succession of debt in the case of political transformation. What were personal debts for the former government are *"res inter alios acta"* [34] for the new one, and as such, do not concern it.

Sack turned a blind eye to bankers' malpractice regarding bond issue and rate-fixing

Sack was fully aware of the circumstances under which bankers in London, France, Germany and other major Western centres of finance issued public treasury bonds, imposing draconian conditions on the States asking for loans and manipulating the rates of those bonds. Bankers' abuse has been well documented. The conclusions of parliamentary enquiries, whether in Great Britain, France or the United States, were damning. Arbitration had proved necessary. Sack also knew all about speculative stock-market dabbling of private institutions holding public-debt bonds. There were numerous public debates on all these topics throughout the 19th century, until the time when Sack wrote his book. In the run-up to the Hague Peace Conference of 1907 (see section on US policy, below), several participants, including the Argentine jurist and minister Luis M. Drago, denounced creditors' behaviour. Yet nowhere in his work does Sack mention the possibility of nullifying a debt contract, declaring the bonds invalid, in the case of proven abusive or fraudulent behaviour on the part of creditors, usually banks. This is evidence of Sack's bias.

When I discuss the criteria established by Sack to determine the odious nature of certain debts and creditors' responsibility, we shall see that he envisaged creditors' responsibility from the point of view of their complicity with odious acts perpetrated by the regimes they granted credit to. This is perfectly correct, but quite inadequate, as Sack completely ignores creditors' responsibility at the point in time when they issue bonds on the financial markets – selling bonds at a price far below their nominal value, exorbitant commissions, very high real interest rates [35] – and in the way they "manage" bonds once issued, that is, speculating and manipulating prices. [36] The fraudulent, extortionate and dishonest practices of bankers when they issue bonds should be firmly condemned and opposed, as should the manipulations they resort to afterwards. Sack deliberately decided to leave creditors a free hand in these matters.

This point clearly indicates that Sack was not on the side of those defending debtor States; his priority lay with the rights of private creditors. Sack's refusal to take into account cases where lenders generated odious debts by imposing excessive demands on the borrowers testifies to his political and ideological orientation in favour of money-lenders.

It is all the more significant that the proposal to write off odious debts should be made by someone like Sack who was not predisposed to favouring debtors

When there is a presumption of odious debt, it is incumbent upon the creditors to prove their good faith

Despite his clear bias in favour of creditors, Sack considered that in exceptional cases debts may be written off. Sack believed that creditors should accept the cancellation of certain debts if it can be shown the government which contracted them intended to use them against the interests of the nation. The Russian jurist could not avoid pointing out that there is an important exception to the sacrosanct rule of continuity in debt repayment and a limit to private creditors' rights: in certain circumstances, creditors must agree to the cancellation of their debt if it can be demonstrated that the debt is odious. He also accepts two fundamental points to which I shall return further on. Namely, that when there is a presumption of odious debt, it is incumbent upon the creditors to prove their good faith; and should they fail to do so, their acts may be considered as hostile to the nation.

However before we look at Sack's definition of odious debt, there are other aspects of his position that I wish to touch upon, regarding the rights of creditors and of States in situations such as war.

The trivialization of wars of conquest

Sack considered perfectly normal that States should wage wars of conquest and make the conquered pay a tribute. He deemed that in the case of war, creditors' rights were secondary to those of the State. *"The government may wage a war that incurs considerable expense, material losses, losses in terms of human lives, etc. The war may even result in extremely burdensome peace conditions for the State which will have to pay out war indemnities in cash and in kind (railway rolling-stock, ships, artillery, etc.). Such actions on the part of a government, and their consequences, may have a negative impact on the debtor State's finances and ability to pay. These are all risks to be borne by creditors who have no power to bind the government either in its right to dispose freely of private estate and State finances, or in its right to wage war."* (p. 58)

In the hierarchy of the values that Sack adopts, there is manifestly no place for peoples' rights to self-determination and peace. Furthermore, as indicated above, in face of States' inalienable right to wage war with all that entails, he considers that creditors have no other choice than to bow before the *raison d'Etat*.

He cites uncritically a decision of the French Conseil d'Etat which clearly indicates that the right to wage war includes the right to plunder: *"Does the fact that the French army helped itself to the public funds of an occupied country (Venice) mean that the French State owes the said funds to the creditors of the occupied State? — Nay. — Here we have an act of war which does not permit of any claim."* (p. 58)

This sentence rather undermines Sack's affirmation that there is continuity of the obligations of public borrowers towards their creditors (see the next point).

It is worth remembering that at the time when Sack was working on his book, peoples' right to self-determination had become an element of official doctrine, both in the USA and in the Soviet Union. [37] This right is inconsistent with colonialism and the annexation of territories of nations dominated by the major powers. Yet as will be shown further on, Sack is plainly convinced of the "benefits" of imperialist politics as implemented by the former Tsarist empire, for example, over the non Russian peoples under its yoke, or the German empire in its African colonies.

Sack and the continuity of States' obligations concerning debt despite a change of regime

Sack devotes a significant part of his book to the transfer of debt in the case of a change of regime, after a revolution, a *coup d'Etat* or a civil war. He manifests his approval of what happened in France between 1789 and the time when he was developing his doctrine. He is pleased that, despite all the regime changes, each successive government assumed responsibility for the public debt.

This is what he wrote: "Once the *ancien régime* had been overthrown during the French Revolution of 1789, the new government did not renege on the former financial obligations of the State. A decree dated 17 June 1789, the day that the Third Estate transformed the Estates-General into a National Assembly or Parliament, *placed "the State's creditors under the protection of the honour and loyalty of the French nation"*; in its session of 13 July 1789, the Constituent Assembly formulated its point of view regarding the State debt as follows: *"This Assembly, acting for the nation, declares that (…) the public debt having been placed under the protection of French honour and loyalty, and the nation not declining to pay the interest owed, no power has the right to pronounce the infamous word, bankruptcy, no power has the right to break the public faith in any possible form or denomination."* [38]
The Constitution of 3-4 September 1791 (Title V, Art. 2) contains the following article: *"Under no pretext may the funds necessary for the payment of the national debt and the civil list be refused or suspended"*.

The Constitution of 24 June 1793, Art. 122 *"is guarantor to all Frenchmen of … the public debt"*. The financial obligations of the ancien régime were inscribed in the *Grand Livre de la dette publique*, (the Great Book of the Public Debt) in accordance with the decrees of 15, 16, 17, 24 August and 13 September 1793, as former contracts with creditors had to be annulled (§34). An account was opened for the nation in the Great Book (§ 1, Art. 5). There were also political considerations that were brought to bear: *"Let the debt contracted by tyranny be indistinguishable from that contracted since the Revolution,"* wrote Cambon in his report of 15 August 1793 on the Great Book of the Public Debt. He went on, *"You will observe how the capitalist who wanted a king because the king was his debtor, and he was afraid to lose the money he was owed, will desire the Republic, who will have become his new debtor if his former debtor is not reinstated, for he will fear losing his capital should it fail."*(p. 48-49). [39]

In France, there was no shortage of regime changes: The Monarchy fell in 1789, the First Republic ended in 1804, the First Empire in 1814, the Monarchy fell again in 1848, the Second Republic ended in 1852, the Second Empire in 1870, and so on – not to mention changes of dynasty. In 1830, the House of Orléans succeeded the Bourbons who had regained the throne in 1815. Despite this political instability and repeated eruptions of revolution, Sack claims that the rule of transference of public debt from one regime to the next never failed (p. 49-50).

Sack cites numerous examples of debt transfers which took place in spite of significant regime changes or even conquest or independence. In the 18th century, the United States of America honoured its debts towards Great Britain, even as it declared independence which had been won by warfare (p. 48). When Belgium seceded from Holland in 1830, it took on part of the debt of the United Kingdom of the Netherlands of which it had been part, and paid indemnities (p. 80 and 83-84). Most of Spain's former colonies agreed to pay off the debts that had been incurred under Spanish rule (p. 52). In 1825, Brazil paid an indemnity to Portugal in order to obtain its independence (p. 82).

However, this continuity in the transfer of debt from one regime to the next has not been universal, far from it. Several new regimes have repudiated the debt contracted by the governments who preceded them, including Russia in 1918, Mexico, on five occasions (between 1861 and 1922) and Costa Rica (in 1919-1922). In addition, there are the three debt repudiations that took place in the United States during the 19th century, and the repudiation of the debt Spain was claiming from Cuba. These examples are highly interesting.

Debt repudiation between 1830 and the 1920s

The repudiation of the Tsarist debt in 1918

According to Sack, the Tsarist State, regardless of its legitimacy or its antidemocratic nature, was a regular government. The debts it had contracted needed to be honoured despite the change of regime. In February-March 1917 a revolution took place and brought a provisional government to power. This provisional government fully recognized all the debts accumulated by the Tsarist regime (p. 52), which Sack finds perfectly normal. In October 1917 a second revolution took place and the provisional government was overthrown and replaced by a government led by the Bolshevik Party, which was backed by the soviets (councils of soldiers, workers and peasants). According to Sack, the

Bolsheviks taking power constitutes a coup, but he does not question the fact that theirs constituted a new regular government which gradually extended its control to the entire territory during the Civil War, which lasted until 1920. Sack feels that the Bolsheviks themselves should have recognized the Tsarist debts. But in January 1918, the revolutionary government repudiated these debts, denouncing them as odious. [40] Sack also considered that the Soviet government should have demanded of Poland, freed from the Tsarist and German yoke after the First World War, part of the debts of the Russian Empire it had belonged to. Sack writes: *"Under the terms of the final treaty signed by Poland and the Soviets on 18 March 1921, not only did Poland not assume a part of the debts of the Russian Empire nor pay for the assets it had acquired, but on the contrary it was stipulated: Art. 13: 'Russia and Ukraine agree to pay to Poland within one year after ratification of the present treaty the sum of 30 million gold roubles in specie and in bars, based on the active participation of the territory of Poland in the economic life of the former Russian state'"*. [41] To Sack, this "gift" to Poland goes against the rules in force in international relations. [42]

Calling the legitimacy of debt into question and denouncing it as odious have been regular practices of government leaders who resorted to debt repudiation during the 19th and early 20th centuries. These concrete exceptions to the rule of continuity of contracts between a State and its creditors led Sack to define the conditions for calling a debt odious.
From Sack's point of view, the goal was to see to it that some order reigned with regard to acts of repudiation and to warn creditors of the risks they took in granting credits that might fall under the criteria for odious debt. Here is a concise list of the debt repudiations that took place during the period covered by Sack's book:

Three waves of public-debt repudiations in the USA during the 19th century

In the 1830s, four of the United States repudiated their debts – Mississippi, Arkansas, Florida and Michigan. The creditors were mainly British. Sack writes in this regard: *"One of the main reasons justifying these repudiations was the squandering of the sums borrowed: they were usually borrowed to establish banks or build railways; but the banks failed and the railway lines were never built. These questionable operations were often the result of agreements between crooked members of the government and dishonest creditors."* (p. 158). Creditors who attempted to prosecute the States that had repudiated their debts in a US federal court had their suits thrown out. To justify its rejection of the actions, the Federal justice system used the Eleventh Amendment to the Constitution of the USA, which stipulates that *"The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state."* [43] Consequently this unilateral act of repudiation was a success. Sack does not mention this decision of the Federal courts, probably because it would have weakened his argument that private creditors should be able to win litigation against a State which does not repay its debts. The justifications for the repudiation were improper use of the borrowed funds and the dishonesty of both the borrowers and the lenders, and Sack correctly sums up this point. There is no mention of any despotic regime.

The Federal government required the Confederate States to repudiate the debts they had contracted in order to carry on the war

Following the American Civil War (1861-1865), the Federal government required the Confederate States to repudiate the debts they had contracted in order to carry on the war. That is one purpose of the Fourteenth Amendment to the US Constitution, which stipulates that *"[…] neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States"*. [44] The creditors had purchased securities issued by European bankers on behalf of the Confederate States, mainly in London and Paris. [45] The justification for

the repudiation was that the loans had served to finance the rebellion of the Southern States, united against the USA in the Confederacy. The issue was not whether the Confederate regime was or was not despotic in nature. It was the purpose of the loans, and above all the fact that they had been contracted by rebel forces, that was cited as justification.

A third wave of repudiations took place in the USA after 1877. Eight Southern States [46] repudiated their debts on the grounds that the bonds issued during the period between the end of the American Civil War and 1877 had been used for illicit loans to corrupt politicians (including former slaves) who were supported by the Northern States. This repudiation was thus decided upon by racist government officials (generally members of the Democrat party) who had returned to power in the South after the withdrawal of the federal troops who occupied the South until 1877. Sack does not mention this repudiation.

Mexico's victorious unilateral debt repudiation in the 1860s

During the American Civil War, in 1861, Mexico had repudiated the odious debt whose repayment was demanded by French and British creditors. In retaliation France, supported by Britain and Spain, sent an expeditionary force which eventually amounted to 35,000 soldiers. Finally, Louis-Napoléon Bonaparte was forced to withdraw the French troops from Mexican territory in 1866 after the victorious counteroffensive by the Mexican progressive forces, and then faced another repudiation of debt in 1867 by the government of President Benito Juárez. [47] On 18 June 1883, the Mexican legislature adopted a law on debt repayment whose Article I, Section 5 states: *"We cannot recognize, and consequently will not allow to be converted, the debts issued by the government which pretends to have existed in Mexico between 17 December 1857 and 24 December 1860* [the government of General Zuloaga] *and from 1 June 1863 to 21 June 1867*. [48] We should point out that Mexico decided not to resort to international arbitration.

Peru loses its case after repudiating an illegal and odious debt

Conversely, Peru agreed to bring its case – in which its adversary was France, which had given its support to its dishonest bankers – before the Court of Arbitration at The Hague. Peru was sentenced to repay the debt despite the fact that it met the criteria, as we shall see, that determine whether a debt is odious (absence of benefit for the population and knowledge of the creditors).

According to the Constitution of Peru of November 1860 (as well as the Constitution of 1839), Art. 10: *"The acts of those who have usurped public functions and employment entrusted to them under the conditions set forth in the Constitution and the Laws shall be null and void."* [49]

In December 1879 the government of Peru was overthrown by Nicolás de Piérola, who took power and proclaimed himself Supreme Commander in Chief of the Republic. His government was recognized by England, France, Germany and Belgium.

Nicolás de Piérola was corrupted by French bankers, in particular the Dreyfus bank, to which Piérola, while Finance Minister (1868-1871), had granted a monopoly on the exportation of guano, a natural fertiliser which was highly valued in Europe at the time. [50] The banker Dreyfus agreed to pay 365 million francs in exchange for two million tons of guano having a resale value of 625 million francs. [51] The Dreyfus bank was also entrusted with managing Peru's external debt! In other words, Dreyfus agreed to advance funds to the government in an amount of 75 million francs the first year and 67 million during the following years and to handle debt service for Peru. Under Article 32 of the contract the government provided all the nation's revenues as collateral should

guano not suffice to cover these advances. The agreement was ratified in Peru on 17 August 1869. The Dreyfus bank decided to suspend repayment of Peru's external debt in early 1876 on the grounds that the revenue it derived from guano was insufficient to continue repayment. [52] It turned out that Piérola was in the pay of French and British bankers and of a part of the local oligarchy.

After the fall of the dictator and the return to constitutional order, Peru's Law of 25 October 1886 declared all prior acts of his government null and void.

The case was brought before an international arbitral tribunal. This demonstrates the weakness of Sack's contention that private creditors' relations with States are governed by private law and not by public law. Since private creditors could not (yet) prosecute a State before a tribunal for breach of contract, they relied on "their" State (in this case France) to defend their interests against the debtor State. In the case in question, the French State took up the defence of French bankers before an international arbitral tribunal in order to obtain redress against the debtor State, Peru.

During arbitration between France and Chile, [53] the arbitral tribunal, in its ruling of 5 July 1901, gave the following opinion regarding the government of Nicolás de Piérola: *"The ability of a government to represent the State in its international relations in no wise depends on the legitimacy of its origin... The usurper who in fact holds power with the express or tacit assent of the nation acts and negotiates treaties legitimately in the name of the State, which the legitimate government, once restored, is bound to honour..."* [54]

It is clear from this ruling that the Court was defending the interests of the French and British bankers

The Permanent Court of Arbitration at The Hague, during arbitration between France and Peru, ruled on 11 October 1921 that the law adopted by Peru on 25 October 1886 was of little import since it cannot be deemed to apply to foreign nationals who had negotiated in good faith. It is clear from this ruling that the Court was defending the interests of the French and British bankers.

Conclusions related to the examples of Mexico and Peru

The examples of Mexico and Peru demonstrate an important point: it is preferable for a new government facing litigation with creditors demanding repayment of an odious debt to unilaterally repudiate on the grounds of arguments of internal and international law rather than to seek international arbitration. That is because only in quite exceptional circumstances – if a superpower (from the North) defends the cause of the weak party out of personal interest – can the weaker party (a debtor country of the South) win against the powerful one (from the North) through arbitration. We will see that that is what happened with the arbitration in the conflict between Costa Rica and Britain in the 1920s. The number of arbitrations that have led to the indebted country losing against the creditor powers is much larger than those that have led to a favourable solution for the debtor country.

But first, in order to follow the chronology, let us deal with the USA's repudiation of the debts claimed by Spain against Cuba following the Spanish-American War of 1898.

The USA's repudiation of the debt demanded by Spain from Cuba in 1898

The USA declared war on Spain in the middle of 1898, and sent their navy and troops to liberate Cuba from the Spanish yoke. Spain was defeated and negotiations between the two countries began in Paris in order to reach a peace agreement, finally signed in December 1898. [55]

During these negotiations, the Spanish authorities defended the following position: since the United States had taken their colony, they were obliged to honour Cuba's debts to Spain. Such were the rules of the game. And indeed the rules cited by Spain did constitute common practice in the 19th century. A State which annexed another state must assume its debts. Sack gives several examples of this.

The United States refused, saying it was not their intention to annex Cuba. In substance, they declared: "We liberated Cuba and gave assistance to independentists who had been fighting you for several years."

The Spanish answered that if Cuba became independent, it must repay the debt, as had all the other Spanish colonies that had become independent during the 19th century.

The United States categorically rejected Spain's demand of payment from Cuba. Finally, Spain signed the peace treaty with the United States and gave up on recovering the debt.

The most common version of the narrative of what took place tends to suggest that the United States rejected Spain's debt claims against Cuba because that debt had served to maintain Cuba and the Cuban people under the Spanish yoke. But when we analyse the content of the negotiations, the explanation is very different. Admittedly, the United States advanced this argument, but it was only one among many others they used to justify their position.

What were the arguments advanced by the United States?

1) Spain had issued Spanish securities in Europe with French and British bankers in the name of Cuba. Spain was guarantor of the issuance of these securities and they were backed by revenue from the Cuban customs and other taxes. The majority, if not all, of the bonds issued by Spain in Cuba's name and the wealth they generated remained in Spain.

Strictly speaking, there was no such thing as a Cuban debt because Cuba

2) Strictly speaking, there was no such thing as a Cuban debt because Cuba, as a colony, did not have the right to issue securities on its own initiative or in its own name. The island's finances were controlled exclusively by the Spanish government.

3) There was no proof that the Spanish bonds secured by Cuba's revenues were actually used for projects that were beneficial to Cuba. Quite to the contrary, the history of Cuba's finances as a colony showed that revenue from the island was absorbed by Spain's national budget. In fact, until 1861, Cuba produced revenues well above the expenditures made by the Cuban government put in place by Spain. The revenue in excess of those expenditures was transferred in large part to Spain. Then, when Spain mounted costly military expeditions in Mexico, in Santo Domingo and against the independentists in Cuba, Cuba's finances began to go into the red. In other words, Cuba had begun

to run a budget deficit because Spain was using Cuba's revenues to finance colonial wars both outside Cuba and within Cuba itself. The Spanish military expeditions into Mexico and Santo Domingo used Cuba as their base.

4) Based on arguments 1 and 3, the United States' position was that Cuba's debtor status was a fiction since the so-called Cuban debts were in reality Spain's. The United States argued that Spain's budget absorbed the surplus produced by the island while saddling it with loans which in fact served its own interests and not Cuba's.

Only after having used the preceding arguments did the United States add the well-known moral argument: *"From the moral point of view, the proposal to impose these debts upon Cuba is equally untenable. If, as is sometimes asserted, the struggles for Cuban independence have been carried on and supported by a minority of the people of the island, to impose upon the inhabitants as a whole the cost of suppressing the insurrections would be to punish the many for the deeds of the few. If, on the other hand, those struggles have, as the American Commissioners maintain, represented the hopes and aspirations of the body of the Cuban people, to crush the inhabitants by a burden created by Spain in the effort to oppose their independence would be even more unjust.[…] [The instances of state practice adduced by Spain] are conceived to be inapplicable, legally and morally, to the so called 'Cuban debt', the burden of which, imposed upon the people of Cuba without their consent and by force of arms, was one of the principal wrongs for the termination of which the struggles for Cuban independence were undertaken."* [56]

In light of these arguments by the United States, Spain changed its tactics in the negotiations. It proposed that the Cuban debts be submitted for international arbitration in order to determine what share had actually been used in Cuba's interest. Spain offered to bear the burden of that share of the debts which had not served Cuba and asked the United States to take responsibility for the other part or transfer it to the new independent Cuban State. The American negotiators telegraphed President McKinley to ask his opinion. He responded by making it clear that the United States would not agree to take on any Cuban debt and would not encourage Cuba to agree to do so.

In conclusion, the United States purely and simply repudiated the debt claimed by Spain from Cuba.

In 1909, after the United States had withdrawn its troops from Cuba, Spain demanded that the "independent" government of Cuba repay a portion of the debt. Unsurprisingly, Cuba refused, arguing that the Treaty of Paris of December 1898, which ended the conflict between Spain and the United States, had cancelled all debts. From that point, Spain was forced to negotiate with her French and British creditors.

Further, it needs to be stressed, on the one hand, that at no time did the United States invite the Cubans to send delegates to participate in the negotiations held in Paris; and on the other hand that the United States made use of the argument relating to the despotic nature of the colonial regime only secondarily. They concentrated on the use that Spain had made of the so-called Cuban loans to demonstrate that it was Spain first and foremost that benefited from them. They also showed that Spain, and not Cuba, was the actual borrower.

Why the US repudiation of the debt claimed from Cuba in 1898 is relevant to Greece today

I can't resist drawing a parallel with the current situation in Europe. The comparison with the Washington-Madrid-Havana conflict in 1898 is of capital importance if we study the situation of Greece and other countries such as Cyprus or Portugal in the 2010s.

After 2010, many recent studies demonstrate that the amounts Greece is being held responsible for were never transferred to the Greek authorities. They served mainly to repay private foreign banks, in particular French and German ones. Since 2010, credits have been granted to Greece by 14 States of the Eurozone, by the IMF and by the European Stability Mechanism (ESM), which took over from the European Financial Stability Facility (EFSF), because Greece no longer has access to the financial markets (in another context, like Cuba under Spanish domination). Thus the loans are in fact borrowed by third parties and then imposed on Greece under extremely harsh conditions. Less than 10% of the debt amounts imposed on Greece since 2010 have actually transited via Greece's budget, and those sums have been used to finance counter-reforms and privatisations. The borrowers mentioned above get financing from private European banks and then use their credit to repay them without the borrowed amounts ever actually going to the Greek treasury. It can be demonstrated that these loans have been of no benefit to the Greek people. They have not improved the country's economic and financial situation. Quite to the contrary.

It should be added that, initially, the 14 countries of the Eurozone who granted credits to Greece made profits at the country's expense by practising abusive interest rates (between 4 and 5.5%) between 2010 and 2012. The IMF also profited at Greece's expense, as did the ECB. [57]

That Greece is a borrower nation has been a fiction since 2010. That fiction serves the interests of the principal powers of the Eurozone, beginning with Germany and France. These major powers themselves defend the interests their major corporations, be they banking, industrial (and in particular arms makers) or commercial firms. The major powers have convinced 12 other Eurozone member countries and the IMF to maintain the fiction, with the complicity of the Greek authorities. The European Stability Mechanism (ESM) and the ECB participate in furthering the narrative. Big capital in Greece (banking, commercial – e.g. shipping – etc.) itself profits from the situation.

Unilateral debt repudiation by Costa Rica with Washington's support

In January 1917, the government of Costa Rica, under President Alfredo González, was overthrown by his Secretary of the Army and Navy, Federico Tinoco, who called new elections and established a new constitution in June 1917. The Tinoco putsch was supported by the oligarchy, who rejected the policies of the previous government. For good reason – it had decided to levy a tax on property and a progressive income tax. [58] Tinoco also had the support of the director of the infamous North American transnational United Fruit Company (known since 1989 as Chiquita Brands International), known to have contributed to the overthrow of several governments in Latin America in order to maximise its profits. [59]

The Tinoco government was then recognized by several South American States, as well as by Germany, Austria, Spain and Denmark. The United States, Britain, France and Italy refused to recognize it.

In August 1919, Tinoco left the country, taking with him a large sum of money which he had just borrowed in his country's name from a British bank, the Royal Bank of Canada. [60] His government fell in September 1919. A provisional government then restored the former constitution and called new elections. Law No. 41 of 22 August 1922 declared null and void all contracts entered into between the executive power and private individuals, with or without the approval of the legislature, between 27 January 1917 and 2 September 1919; it also annulled Law No. 12 of 28 June 1919, which had authorized the government to issue sixteen million *colones* (the Costa Rican currency) in paper money. It is worth pointing out that the new president, Julio Acosta, at first vetoed the debt repudiation law, arguing that it went against tradition, which was to honour international obligations contracted towards creditors. But the Constitutional Congress, under popular pressure, maintained its position and the President finally rescinded his veto. The law repudiating debts and all contracts entered into by the previous regime constitutes a clear break with the tradition of continuity of obligations of States despite a change of regime. The unilateral sovereign decision by Costa Rica clearly resembles the decisions made in 1861 and 1867 par by President Benito Juárez, supported by the Congress and the people of Mexico, to repudiate the debts claimed by France. [61] It is also in line with the Bolshevik decree repudiating Tsarist debts adopted in 1918.

Great Britain threatened Costa Rica with military intervention if it did not compensate the British companies affected by the repudiation of the debts and contracts. These companies were the Royal Bank of Canada and an oil company. London sent a warship into Costa Rica's territorial waters. [62]

Costa Rica held to its position of refusing compensation by loudly and clearly proclaiming that: *"The nullity of all the acts of the Tinoco regime was definitively settled by a decree of the Constitutional Congress of Costa Rica, which was the highest and ultimate authority having jurisdiction upon that subject, and its decision on that question, made in the exercise of the sovereign rights of the people of Costa Rica,* ***is not open for review by any outside authority****."* [63]

In order to find a solution, Costa Rica agreed to call in an international arbitrator in the person of William Howard Taft, Chief Justice of the US Supreme Court, to express his opinion on the two main disputes with Great Britain – the Royal Bank of Canada question and that of an oil concession that had been granted by the dictator Tinoco to British Controlled Oilfields Ltd.

By involving Taft, who had been president of the United States from 1909 to 1913, Costa Rica hoped to win its case by taking advantage of Washington's interest in marginalising Britain in the region.

And that is indeed what happened.

Taft's decision was to reject London's demands for compensation.

It is important to look closely at Taft's arguments. Firstly, he clearly establishes the principle that the despotic nature of the Tinoco regime was of no importance.

In his opinion, William H. Taft says: *"To hold that a government which establishes itself and maintains a peaceful administration, with the acquiescence of the people for a substantial period of time, does not become a de facto government unless it conforms to a previous constitution would be to hold that within the rules of international law a revolution contrary to the fundamental law of the existing government cannot establish a new government."* Which means that Taft rejects Costa Rica's argument involving the nature of the Tinoco regime. According to Taft, Tinoco, who *de facto* exercised control over the State even if he did not respect the constitution, had the right to contract debts in the name of that State. He even adds that Tinoco had the assent of the population.

Taft's argument, cited above, opens the way to the recognition of revolutionary governments who come to power without respecting the constitution. Taft declares that if we exclude the possibility of an unconstitutional government becoming a regular government, it implies that international law would prevent a people who have carried out a revolution from setting up a new legitimate government – which according to Taft is inconceivable. Of course, in practice, what has happened most often over the last two centuries is recognition (and support by the government in Washington, in particular) of dictatorial regimes who have overthrown democratic regimes, support for these dictatorial regimes in getting financing abroad, and pressure being put on democratic regimes which succeed them to shoulder the debts contracted by the dictatorship. This underscores the difference between the theory, based on the history of the birth of the United States out of rebellion against a constitutional British regime in 1776, and the actual practice and policies of the United States.

Taft's opinion contains a passage which affirms that the rule of continuity of obligations of States must be respected despite a change in regime: *"Changes in the government or the internal policy of a state do not as a rule affect its position in international law. (…) though the government changes, the nation remains, with rights and obligations unimpaired (…). The principle of the continuity of the states has important results. The state is bound by engagements entered into by governments that have ceased to exist; the restored government is generally liable for the acts of the usurper (…)"* [64] This clearly shows the conservative nature of Taft's position.

On the other hand, Taft supports Costa Rica against Britain on the basis of other important arguments. Taft says that the transactions between the British bank and Tinoco are full of irregularities and that the bank is liable for them. He adds that *"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 régime. It must make out of its case of actual furnishing of money to the government for its legitimate use. It has not done so."* [65] Let's follow Taft's reasoning: Tinoco could contract loans even though he took power in violation of the country's constitution, but he needed to do so in the interest of the State. Taft says that Tinoco contracted the loans from the Royal Bank of Canada for his personal benefit. [66] Taft adds that the bank was fully cognisant of the fact and was therefore a direct accomplice. According to Taft's reasoning, had Tinoco borrowed money to develop the railway network, the regime that succeeded him would have been under obligation to repay the debt.

The USA's motivations regarding the two repudiations (Cuba and Costa Rica)

The United States' motivation in the two repudiations that have just been analysed (Cuba in 1898 and Costa Rica in the 1920s) is clear: to increase their influence and power in the region. Cuba was in a strategic location for Washington; the rich island was just a stone's throw from the coast of the United States. With Puerto Rico, which the United States had also taken from Spain in 1898, Cuba was the last Spanish colony in the Americas. As for Costa Rica, it is part of Central America, which the United States considers its own "back yard". Until then, Britain had been the dominant financial power in the entire region. The United States was very pleased to oust a large British bank from the country and send a warning to everyone else: other repudiations could take place, since the British banks, like the French banks, had dirtied their hands in highly irregular affairs that kept Latin American countries in debt. And the US banks were chomping at the bit to take over that action themselves.

In 1912, Taft, then president of the United States, had said in a speech: *"The day is not far distant when three Stars and Stripes at three equidistant points will mark our territory: one at the North Pole, another at the Panama Canal, and the third at the South Pole. The whole hemisphere will be ours in fact as, by virtue of our superiority of race, it already is ours morally."* [67] President Taft actively backed the extension of North American banks into Latin America in general and Central America in particular. [68] In December 1912, he declared before Congress: *"[…] the Monroe doctrine is more vital in the neighborhood of the Panama Canal and the zone of the Caribbean than anywhere else. There, too, the maintenance of that doctrine falls most heavily upon the United States. It is therefore essential that the countries within that sphere shall be removed from the jeopardy involved by heavy foreign debt and chaotic national finances and from the ever-present danger of international complications due to disorder at home. Hence the United States has been glad to encourage and support American bankers who were willing to lend a helping hand to the financial rehabilitation of such countries […]"* [69]

Thus Taft's ruling in favour of Costa Rica was highly calculated. He refused to support Costa Rica's argument concerning the despotic and unconstitutional nature of the Tinoco regime, [70] whereas it would have been easy to put that argument forward, since Washington and London had both refused to recognize that regime. He chose other arguments. He wanted to avoid establishing a precedent based on the democratic or non-democratic nature of a regime. He knew perfectly well that Washington and US corporations were supporting dictators, and would continue to support dictators in the future – not to mention actively contributing to putting them in power.

Arguments used by Taft which could inspire Greece, Argentina, Tunisia, etc.

Certain arguments used by Taft are useful to the cause of the Greeks and other peoples groaning under the weight of debt.

Taft asserts that the debts and other obligations contracted by Tinoco are null and void because he did not adhere to the constitution he himself had had adopted after his coup. That constitution stipulated that the type of obligations Tinoco had contracted required a joint vote of the Senate and the Chamber of Deputies. However, only the Chamber of Deputies had voted in favour of granting the oil concession and the tax exemptions to the British company. Consequently, according to Taft, the contract was not valid. [71]

As many Greek jurists and the Greek Debt Truth Commission have pointed out, Articles 28 and 36 of the Greek constitution were violated at the time of the adoption of the Memorandum of Understanding of 2010, which resulted in the accumulation of a new debt of 120 billion euros. [72] Regardless of the democratic or non-democratic nature of the regime in place in Greece, the fact that it contracted obligations toward creditors in violation of the Greek constitution, is in itself an argument for nullity. Obviously numerous other arguments can be added to that one in establishing the legality of repudiating the debts whose repayment is being demanded by Greece's current creditors.

If we move to another spot on the planet, that argument could also be used in Argentina to justify repudiation of the obligations contracted with foreign creditors by the various democratic regimes that have succeeded one another since the fall of the dictatorship in 1983. Argentina's constitution does not allow the courts of another State to be given jurisdiction when the nation contracts debts or other types of obligations.

Another argument in the opinion handed down by Taft is useful. Recall that Taft declared that the Bank *"[…] must make out its case of actual furnishing of money to the government for its legitimate use."* It is clear that the creditors who have granted loans to Greece, Portugal, Cyprus, Ireland and Spain since 2010 are incapable of demonstrating *"furnishing of money to the government for its legitimate use"*, since that money has served mainly to repay foreign banks in the major lender countries and the loans were granted on condition that policies contrary to the interests of the country be conducted.

This argument also applies to the debts contracted by Tunisia and Egypt after the fall of those dictatorships in 2011. The debts were not contracted in the interests of the people and of the nation. They were not contracted for legitimate purposes.

In conclusion, the interest of Taft's ruling is that it does not base the nullity of the debts claimed against Costa Rica on the despotic nature of the regime that contracted them. Taft's ruling is founded on the use that was made of the loans and on adherence to the country's internal legal standards. Taft's ruling affirms that while in principle there is a continuity of obligations of States even in the case of a change of regime, those obligations may be repudiated if the funds borrowed were not used for legitimate purposes. He adds that if the contracts resulted in violation of the internal rules in force in the country (for example its constitution) or contain irregularities, that country has the legal right to repudiate those contracts.

We have no sympathy for Taft and it is obvious that his motives were anything but disinterested. But whether we like it or not, Taft's arbitration constitutes an international reference for application of the law with respect to debts and other obligations. It is fundamental for States to avail themselves of their right to repudiate illegitimate debts.

A short refresher course on the United States' policy toward its neighbours in the Americas

In 1823, the government of the United States adopted the Monroe Doctrine. Named after a Republican president of the USA, James Monroe, it condemns any European intervention in the affairs of "the Americas." In reality, the Monroe Doctrine served as cover for a policy of more and more aggressive conquests on the part of the USA to the detriment of the new independent Latin American States, beginning with the annexing of a large part of Mexico in 1840s (Texas, New Mexico, Arizona, California, Colorado, Nevada and Utah). North American troops occupied Mexico's capital city in September 1847. It should also be pointed out that the government of the USA attempted to exterminate all native peoples, the "redskins," who refused to submit. And those who did submit were still subjected to atrocities, and ended up on reservations.

The government of the USA attempted to exterminate all native peoples, the "redskins," who refused to submit

In 1898, as we have seen, the United States declared war on Spain and took control of Cuba and Puerto Rico.

In 1902, in contradiction of the Monroe Doctrine, Washington did not come to the defence of Venezuela when it was the victim of armed aggression by Germany, Britain, Italy and Holland with the goal of forcing the country to repay debt. Then the United States intervened diplomatically to see to it that Caracas resumed debt repayment. This attitude on the part of Washington gave rise to a major controversy with Latin American governments, and in particular with the Argentine Minister of Foreign Affairs, Luis M. Drago, who declared: *"The principle I would like see recognized is that] a public debt cannot give rise to the right of armed intervention, and much less to the occupation of the soil of any American nation by any European power."* This principle was to become known as the Drago doctrine. The debate among governments ended in an international conference at The Hague which led to the adoption of the Drago-Porter Convention (from the name of Horace Porter, a United States soldier and diplomat) in 1907. It called for arbitration to be the first means of solving conflicts: any State signing the Convention must agree to submit to an arbitration procedure and participate in it in good faith, failing which the State demanding repayment of its debt would have the right to use armed force.

In 1903, President Theodore Roosevelt organised the creation of Panama, which was separated from Colombia against the country's will. This was done to allow the Panama Canal to be built under Washington's control.

In 1904, the same president announced that the United States considered itself to be the policeman of the Americas. He pronounced what is known as the "Roosevelt Corollary to the Monroe Doctrine": *"Chronic wrongdoing, or an impotence which results in a general loosening of the ties of civilized society, may in America, as elsewhere, ultimately require intervention by some civilized nation, and in the Western Hemisphere the adherence of the United States to the Monroe Doctrine may force the United States, however reluctantly, in flagrant cases of such wrongdoing or impotence, to the exercise of an international police power."* [73]

In 1915 the United States invaded Haiti under the pretext of recovering debts and occupied the country until 1934. Eduardo Galeano writes: *"the United States occupied Haiti for twenty years and, in that black country that had been the scene of the first victorious slave revolt, introduced racial segregation and forced labor, killed 1,500 workers in one of its repressive operations (according to a U.S. Senate investigation in 1922), and when the local government refused to turn the Banco Nacional into a branch of New York's National City Bank, suspended the salaries of the president and his ministers so that they might think again."* [74] Other armed interventions by the United States took place during the same period, but an exhaustive list would be too long.

This brief summary of the intervention and policies of the United States in the Americas in the 19th and early 20th centuries gives us an understanding of Washington's true motives in the debt repudiations in Cuba in 1898 and Costa Rica in the 1920s.

Major General Smedley D. Butler: I was a racketeer, a gangster for capitalism

In 1935, Major General Smedley D. Butler, who took part in many US expeditions in the Americas, writing during his retirement, describes Washington's policies as follows: *"I spent 33 years and four months in active military service and during that period I spent most of my time as a high class muscle man for Big Business, for Wall Street and the bankers. In short, I was a racketeer, a gangster for capitalism. I helped make Mexico and especially Tampico safe for American oil interests in 1914. I helped make Haiti and Cuba a decent place for the National City Bank boys to collect revenues in. I helped in the raping of half a dozen Central American republics for the benefit of Wall Street. I helped purify Nicaragua for the International Banking House of Brown Brothers in 1902-1912. I brought light to the Dominican Republic for the American sugar interests in 1916. I helped make Honduras right for the American fruit companies in 1903."* [75]

Sack's conception of odious debt

Now we can look at the conditions for what Sack would call odious debt.
The excerpt from Sack's book on the subject that is the most referred to can be confusing. *"If a despotic power contracts debt, not for the needs and interest of the State, but to strengthen its despotic regime, to oppress the population that combats it, that debt is odious for the whole State. The debt need not be recognised by the Nation: it is a debt of the regime, a personal debt of the power that contracted it and consequently falls along with the power that contracted it."* (p. 157)
"These 'odious' debts cannot be considered to be a liability of the State's territory because one of the necessary conditions that determine the regularity of State debt is missing; a State's debts must be incurred and the funds thus made available used for the needs and in the interests of the State (see above, § 6). 'Odious' debts incurred and used, with creditors' foreknowledge, for purposes that are not in the interests of the Nation do not engage the Nation, should the Nation rid itself of the government that incurred them (…). The creditors have committed a hostile act towards the people; they cannot therefore hold the people responsible for the debts that a despotic power incurred against the people's interest and are the personal debts of the despotic regime." (p. 158)
Many of the remarks on this excerpt conclude that Sack pretends that for a debt to be "odious" it has to be contracted by a despotic regime. [76] **This is not Sack's position**. In fact, as a lawyer he considered that several circumstances could give rise to debt of an odious character. The above quote mentions only one possible circumstance.

Sack does not mention despotic regimes

There are others. Five pages further on Sack gives more general criteria for defining an odious debt. In this wider definition, he does not mention despotic regimes: *"Consequently, for a debt, regularly*

incurred by a regular government (see above, §§ 1 and 5) to be considered incontestably odious with all the consequences that follow, the following conditions must be fulfilled (see also above, § 6 in fine*)*:
1. — The new government must prove and an international tribunal recognise that the following is established:
a) that the purpose which the former government wanted to cover by the debt in question was odious and clearly against the interests of the population of the whole or part of the territory, and
b) that the creditors, at the moment of the issuance of the loan, were aware of its odious purpose.
2. — once these two points are established, the burden of proof that the funds were used for the general or special needs of the State and were not of an odious character, would be upon the creditors (see also p. 170).”

Here, Sack very clearly says that a regular government’s debts may also be odious: *“for a debt, regularly incurred by a* ***regular government*** *to be considered incontestably odious with all the consequences that follow,…”*

Sack very clearly says that a regular government’s debts may also be odious

Sack defines a regular government as follows: *“By a regular government is to be understood the supreme power that effectively exists within the limits of a given territory. Whether that government be monarchical (absolute or limited) or republican; whether it functions by “the grace of God” or “the will of the people”; whether it express “the will of the people” or not, of all the people or only of some; whether it be legally established or not, etc.,* ***none of that is relevant to the problem we are concerned with****.”* (p. 6)

So, in fact, there is no doubt about Sack’s position: that a regime be despotic is not a *sine qua non* condition that makes debts odious and susceptible to repudiation. [77] According to Sack, all regular governments, whether despotic or democratic of some kind, may be accused of having agreed to odious debts. [78]

What are the two criteria that establish a debt as odious? Looking again at Sack’s remarks we see: — *The new government must prove and an international tribunal recognise that the following is established:*
a) that the purpose which the former government wanted to cover by the debt in question was odious and clearly against the interests of the population of the whole or part of the territory, and
b) that the creditors, at the moment of the issuance of the loan, were aware of its odious purpose.

We can summarise as: a debt is odious if it has been incurred against the interests of the population and the creditors were aware of this at the time.
In an opinion published in 2002 by the IMF review *Finance & Development* Michael Kremer and Seema Jayachandran define the odious debt doctrine as: *“The legal doctrine of odious debt makes an analogous argument that sovereign debt incurred without the consent of the people and not benefiting the people is odious and should not be transferable to a successor government, especially if creditors are aware of these facts in advance.”* [79]

This summary is at first sight convincing and does not mention, as an obligatory condition, the despotic nature of a regime. However, closer scrutiny shows that one of the conditions mentioned by the authors is not mentioned by Sack. [80] Namely: *“it is incurred without the consent of the people.”* The fact that Sack does not mention this condition is quite coherent with his position that the nature of the government is of no importance in this matter.

If some readers still have doubts about Sack’s position concerning despotic regimes, here is another

quote: *"Even when a despotic power is overthrown by another despotic power that is no less despotic and no more reflective of the will of the people, the odious debts of the fallen power remain the personal debts of the regime and the new power is not liable for them"* (p. 158). For Sack only the purpose of the funds and the creditors' knowledge of that purpose are the important elements.

Sack's comments on several debt repudiations and abolitions

As examples of odious debts, Sack cites debts that have personally enriched government representatives, and creditors' dishonest machinations: *"We can also put into this category of debt, loans clearly incurred in the personal interest of government members or persons and groups related to government for purposes that are not related to the government."* (p. 159) Sack says immediately after this that debts of this kind were repudiated in the US in the 1830s, as we have seen. *"Cf. the case of the repudiation of certain debts by several North American States. One of the main reasons justifying these repudiations was the squandering of the sums borrowed: they were usually borrowed to establish banks or build railways; but the banks failed and the railway lines were never built. These questionable operations were often the result of agreements between crooked members of the government and dishonest creditors."* (p. 159) Note that in this particular case that involved four different States, these debts were not incurred by despotic governments.

Sack cites debts that have personally enriched government representatives, and creditors' dishonest machinations

Sack gives another example *"When a government incurs debt for the purpose of subjugating the population of a part of its territory or to colonise the same by its own colonists. These debts are odious for the indigenous population of that part of the territory."* (p. 159)

Sack mentions and comments on several cases. He starts by highlighting the fact that among the reasons the US repudiated the debts that Spain claimed on Cuba was that they had been used to maintain their colonial domination over the Cuban people.

Then Sack looks at two debt abolitions that were decided in application of the Versailles treaty signed on 28 June 1919. The first concerned German and Prussian debts incurred in order to colonise Poland and to install Germans on land purchased from Poles. Following the defeat of Germany an independent Poland was restored. The Versailles treaty decreed that newly freed and independent Poland should not be held liable for debt that had been used to impose its own colonisation and subjugation. Sack had reservations about this proviso; he considered that a part of the debt should not have been abolished because it was not odious: *"The borrowing of the Prussian government over the thirty years of its colonial occupation was for the purpose of the general budget or, at least, was not for odious purposes. These debts cannot be considered as 'odious'."* (p. 164)

Sack then comments on a second debt abolition in the Versailles treaty. The German empire was relieved of its African colonies and their debts were abolished. However, the colonies were not emancipated – they came under the control of the victorious powers. About this, Sack cites an extract of the reply that the Allies made to Germany, which was not inclined to accept forgiveness of the debt of its ex-colonies, because Germany would have to continue the repayments itself. The Allies replied: *"The colonies should not bear any portion of the German debt, nor remain under any obligation to refund to Germany the expenses incurred by the Imperial administration of the protectorate. In fact, it would be unjust to burden the natives with expenditure which appears to have been incurred in Germany's own interest, and that it would be no less unjust to make this responsibility rest upon the Mandatory Powers which, in so far as they may be appointed trustees by the League of Nations, will derive no benefit from such trusteeship."* [81]

Here are two more comments by Sack: *"These considerations do not seem to be totally founded. Even if the spending was done in German interests it does not necessarily follow that it was odious for the colonies (…)"* (p. 162). He adds: *"We can question whether it is just, (…) that the colonial debt not be put to the charge of the respective colonies, seeing that much of the funds were used on productive spending in the colonies."* (p. 161).

What really highlights Sack's conservative, Eurocentric and colonialist attitude is that he makes no reaction to the Allies' affirmation that they gain nothing from exercising their new protectorates over Germany's ex-colonies. What's more, the Allies consider that expenditures for the colonies were productive. Whereas, in fact, they were used to rule over the peoples and to draw maximum profits towards the colonial powers.

Can we really talk of "Sack's odious debt doctrine"?

If we consider that a "doctrine" designates the totality of the opinions expressed by legal experts as the result of their reflection on a given rule or situation; if elaborating a doctrine means "A legal framework, defining it, placing it within the context of the law, defining its limits, its practical application, the social effects and at the same time making a systematic, analytical, critical and comparative examination", [82] it is justified to consider that Sack has elaborated an odious debt doctrine.

To elaborate his doctrine he referred to an ample quantity of international treaties pertaining to arbitrations on questions of debt repayments concluded between the end of the 18th century and the 1920s; he analysed the way disputes over debt had been treated and the legal, administrative and judicial measures taken; he collected and classified the opinions of numerous authors (in fact, only Europeans and Americans) who had studied the question. He presented his vision of the nature of debts, the obligations of the debtors and the rights of the creditors, the relations between successor States, the way debts and the effects of regime changes were shared, and defined the criteria for odious debts.

The doctrine is open to criticism, has weaknesses, gives priority to creditors and does not consider human rights, but it does have a certain coherence. It must also be said that, although disparaged by influential detractors (the mainstream media, the World Bank and numerous governments), it inspires numerous movements who look to Sack's work for solutions to debt problems. Sack's two criteria for determining that a debt is odious and a nation may decide not to pay, are applicable and justified.

Henceforth, we must now go beyond Sack's doctrine using that which is applicable and rejecting that which is unacceptable and adding elements related to the social and democratic advances that have been made in international law since the Second World War.

What must also be added straight to the odious debt doctrine is the liability of the creditors; they regularly violate the established treaties and other international instruments for the protection of rights. The IMF and the World Bank have continually and deliberately imposed policies on debtor counties that violate many fundamental human rights. The Troika that was established in 2010 to impose brutal austerity policies on Greece dictated laws that contravene several National and International conventions on rights. The creditors are more than just accomplices to illegal and sometimes frankly criminal acts committed by governments. They are in some cases the instigators of the acts.

The experience that has been accumulated since Sack made his studies indicates that several of

Sack's positions may now be updated. A fundamental point that must now be rejected is the continuity of a State's liabilities, even in the case of a change in the regime. Of course Sack is in favour of recognising an exception – odious debt. But that is insufficient. Another point to reject is Sack's support for the current international financial system. Finally, Sack considers that a sovereign State may not unilaterally repudiate debts it has identified as odious without a ruling by a competent international court (See above passage: *"The new government must prove and* ***an international tribunal recognise that the following is established****:*
a) that the purpose which the former government wanted to cover by the debt in question was odious and clearly against the interests of the population of the whole or part of the territory, and
b) that the creditors, at the moment of the issuance of the loan, were aware of its odious purpose.")
Since Sack made this proposal, no international court of the sort has been created. Numerous proposals have been made, but none have been brought to fruition. Experience shows that another way must be chosen: a sovereign State that discovers that it has an odious debt can and should repudiate it unilaterally. The first steps towards this goal would be to suspend payments and to conduct an audit with the participation of the citizens.

A new doctrine of illegitimate, illegal, odious and unsustainable debt needs to be elaborated. Movements such as the CADTM have taken on the task in collaboration with many other associations, and in bringing together a wide variety of competences. The following is a large extract of the position adopted by CADTM in 2008 [83] and which still remains pertinent:

"Several authors have further sought to develop the works of Sack and to adapt this doctrine to the present context. For example, the Centre 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." [84] Jeff King [85] 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, [86] 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 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 purpose 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 purpose 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. [87]

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 [88] *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 purposes that contradict contemporary international law, particularly the principles of international law incorporated in the UN Charter.” [89]

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. [90]

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. [91]

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

We must also define as odious all debts incurred in order to pay back odious debts. The New Economic Foundation [92] 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 dissensions 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."

A long list of debt cancellations or repudiations

The list of debt abolitions or repudiations that evoke, in one way or another, the argument of their illegal, illegitimate or odious character is long. Without claiming to be exhaustive we may nevertheless mention : [93] the three waves of debt repudiations by the United States in the 1830s, 1860s and 1870s; the Mexican debt repudiations in 1861,1867,1883 and in the 1910s; the repudiation by Peru of the debt reclaimed by the Parisian bankers 'Dreyfus'; the 1898 repudiation by Cuba of the debt reclaimed by Spain; the repudiation by the British of the debt reclaimed on the Boers after the conquest of the Boer Republics in 1899-1900; the repudiation by the Bolsheviks in 1918 of the debt left by the Tsars; the repudiation of Germany's debts on Poland and its African colonies in 1919; the abolition of the debt of the part of Poland that was colonised by the Tsarist Empire; the abolition, by the Bolsheviks in 1920, of the debt of the three Baltic States and of Persia; the repudiation by Costa Rica in 1922-23 of the debt reclaimed by The Royal Bank of Canada; the large debt repudiations made by Brazil and Mexico in 1942-43; the Chinese debt repudiations in 1949-52; the repudiation by Indonesia of the debt reclaimed by the Netherlands in 1956; the repudiations by Cuba in 1959-60; the repudiation of the colonial debt by Algeria in 1962; the three Baltic Republics' repudiation of the debts reclaimed, this time by the other former members of the USSR, in 1991; the abolition of Namibia's debt, by Nelson Mandela's South African government in 1994; the abolition of Timor-Leste's colonial debt in 1999-2000; the abolition of 80% of Iraq's debt in 2004; Paraguay's repudiation of debts reclaimed by Swiss banks in 2005; [94] Norway relaxing its claims on five countries (Ecuador, Peru, Sierra Leone, Egypt and Jamaica) calling for repayment of debts concerning the production and delivery of fishing boats in 2006; [95] the abolition, in 2009, of the part of the Ecuadorian debt that had been identified as non-legitimate by the 2007-2008 debt audit Commission.

Bibliography of other important works of Alexander Nahum Sack as published by himself in 1927:
[or - Alexander Nahum Sack's own list, published in 1927, of his other important works]
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– *Notions on Financial Law and the Science of Finance*, Yaroslavl, 1913, 42 p. (in Russian).
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– *The Germans and German Capital in Russian Industry*, St Petersburg, 1913, 67 p. (in Russian).
– *The Central Lending Banks and Banking Associations*, St Petersburg, 1914, 171 p. (in Russian).
– *Financing Agricultural Reform, Petrograd*, 1917, 57 p. (in Russian).
Russian and Foreign Railway Bond Issue Rights Petrograd, 1917, 47 p. (in Russian).

– *The Circulation of Money in Russia*, Petrograd, 1918, 123 p. (in Russian).
– *The Bankrupt State*, Petrograd, 1918, 128 p. (in Russian).
– *The Issue of Public Debt in the Case of State Dislocation*, Berlin, 1923 (The works of Russian researchers abroad, t. III), 158 p. (in Russian).
– *The Problem of Money Reform in the Baltic States*, Kiel, 1924,13 p.(In German)
– *Fixing the Value of Money*, Riga, 1925, 50 p.
– *The Debt Engagement of the Austro-Hungarian Monarchy*, Kiel, 1926, 22 p."(In German)

All Russian titles translated from French form by CADTM

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P.S.

* http://www.cadtm.org/Demystifying-Alexander-Nahum-Sack

* Translated by Snake Arbusto, Vicki Briault Manus and Mike Krolikowski.

Footnotes

[1] Yearbook of the International Law Commission 1977 Volume II Part One - ilc_1977_v2_p1.pdf, http://legal.un.org/ilc/publications/yearbooks/english/ilc_1977_v2_p1.pdf , see also the report for 1979
http://legal.un.org/ilc/publications/yearbooks/english/ilc_1979_v2_p2.pdf

[2] IMF, Michael Kremer and Seema Jayachandran, "Odious Debt", *Finance & Development*, June 2002, Vol. 39 no. 2. http://www.imf.org/external/pubs/ft/fandd/2002/06/kremer.htm See also in English: Michael Kremer and Seema Jayachandran, "Odious Debt", Presented at the Conference on Macroeconomic Policies and Poverty Reduction, April 2002,
https://www.imf.org/external/np/res/seminars/2002/poverty/mksj.pdf
IMF, Raghuram Rajan, "Straight talk: odious or just malodorous?", *Finance & Development*, December 2004 https://www.imf.org/external/pubs/ft/fandd/2004/12/pdf/straight.pdf

[3] Vikram Nehru and Mark Thomas, 2008, "Odious Debt: Some Considerations" at: http://siteresources.worldbank.org/INTDEBTDEPT/Resources/468980-1184253591417/OdiousDebtPaper.pdf, World Bank, Odious Debt Roundtable, Washington D.C., 14 April 2008, http://siteresources.worldbank.org/CSO/Resources/Odious_Debt_Roundtable_Report_FINAL_July_17_08.pdf
See the CADTM's reaction to the round table organized by the World Bank: CADTM Belgium's position on the doctrine of odious debt and its legal strategy for debt cancellation http://www.cadtm.org/Topicality-of-the-odious-debt,3515, published 4 July 2008.

[4] Robert Howse, *The Concept of Odious Debt in Public International Law*, UNCTAD, 2007 http://unctad.org/en/Docs/osgdp20074_en.pdf

[5] UN, Cephas Lumina, Report of the independent expert on the effects of foreign debt and other

related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, 2009
http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.10_en.pdf

[6] See the final report on the findings of the commission, in which I took part representing the CADTM. The report, in English and Spanish, can be downloaded here :
http://www.auditoriadeuda.org.ec/index.php?option=com_content&view=article&id=89

[7] See "CADTM – Topicality of the odious debt doctrine". Position of the CADTM, published 8 August 2008, http://www.cadtm.org/Topicality-of-the-odious-debt

[8] Greek Debt Truth Commission, *Preliminary Report of the Greek Debt Truth Commission*, especially chapters 8 and 9, http://www.cadtm.org/Preliminary-Report-of-the-Truth, published 18 June 2015.
See also Greek Debt Truth Commission, "Illegitimacy, Illegality, Odiousness and Unsustainability of the August 2015 MoU and Loan Agreements" published 25 September 2015, http://www.cadtm.org/Illegitimacy-Illegality-Odiousness

[9] *Les effets des transformations des Etats sur leurs dettes publiques et autres obligations financières : traité juridique et financier*, (The Effects of the Transformation of States on their Public Debt and other Financial Obligations: a Legal and Financial Treatise.) Recueil Sirey, Paris, 1927. The almost complete document can be downloaded free on the CADTM Web site: http://cadtm.org/IMG/pdf/Alexander_Sack_DETTE_ODIEUSE.pdf (in French)

[10] Perusal of his bibliography reveals that Sack did not take a serious interest in the question of public debt until after the Russian revolution (see the bibliography at the end of this article).

[11] Nicolas Politis (Corfu 1872, Paris 1942), jurist, specialist in international law, diplomat and politician. Doctor of Law and of Political Science (in 1894); associate professor of international public law at the Law faculties of the universities of Aix-en-Provence (from 1898 to 1903), Poitiers (from 1903 to 1910), and Paris (from 1910 to 1914). Member of the Institute of France ; founding member of the Academy of Athens (in 1926). Greek Minister of Foreign Affairs several times (from 1916 to 1920, in 1922 and in 1936); delegate for Greece at the Peace Conference in 1919; Greek ambassador to France (from 1924 to 1925 and from 1927 to 1940). Member and vice-president of the Institute of International Law, vice-president of the Academy of International Law at the Hague, member of the Permanent Court of Arbitration at the Hague, representing Greece. Delegate at the Society of Nations (in 1923), then president of the assembly of the same (in 1932). Variations of his name: Nikólaos Polítīs (1872-1942), Νικόλαος Πολίτης (1872-1942).
Source : http://data.bnf.fr/13092602/nicolas_politis/ (trans CADTM)
One is struck by the fact that Nicolas Politis, despite three terms of office as Greek Minister of Foreign Affairs, should make no mention in his introduction to Sack's book of Greece as an emblematic example of odious debt. He says not a word on the topic of odious debt in his introduction. Clearly, he did not consider it as a central element of Sack's book.
On odious debt in Greece from its origins in 1829-1830, see Eric Toussaint, "Newly Independent Greece had an Odious Debt round her Neck", http://www.cadtm.org/Newly-Independent-Greece-had-an and Eric Toussaint, "Greece: Continued debt slavery from the late 19th century to the Second World War" http://www.cadtm.org/Greece-Continued-debt-slavery-from

[12] This rule, that favours creditors and enhances the dominant international order by trying to prevent States (and peoples) from freeing themselves of the burden of debt, has often been

questioned, both in theory, (as can be seen in the Box containing a series of quotes from 19th-century jurists) and in practice (see the examples of States resorting to unilateral debt repudiation given in this article). More recently, new research questions this rule; see for example: Odette Lienau, *Rethinking Sovereign Debt: Politics, Reputation, and Legitimacy in Modern Finance*, 2014, abstract accessible at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2583591 and http://www.hup.harvard.edu/catalog.php?isbn=9780674725065. In 2015, the Greek Debt Truth Commission, whose work I coordinated, also challenged the obligation of debt repayment.

[13] Paradoxically, this emphatic statement seems to flagrantly contradict the position adopted by Politis in a work co-authored with A. de La Pradelle: A. de La Pradelle and N. Politis, Recueil des arbitrages internationaux, (Compendium of International Arbitrations) Paris, 1924. I mention this paradox since Sack, on more than one occasion, in the book introduced by N. Politis, cites A. de La Pradelle and N. Politis only to express his disagreement with them. Several of those quotes are cited in this article. For more on A. de La Pradelle's and N. Politis's positions, read pages 545 to 552 especially, by A. de La Pradelle and N. Politis, *Recueil des arbitrages internationaux*, t. II: 1856-1872, Paris, 1924. These pages can be accessed using the following link : https://archive.org/stream/recueildesarbitr02lapruoft#page/xxxviii/mode/2up

[14] This is one of Sack's most successful proposals. In the 21st century, private creditors regularly succeed in getting the courts to convict States on matters pertaining to debt, whereas in the 19th and early 20th centuries, such cases were often dismissed. The most emblematic example recently has been the conviction of Argentina by a New York court to which a vulture fund had referred its case. On the subject of Argentina and vulture funds, see Renaud Vivien, "Un vautour peut en cacher d'autres" (One vulture may conceal others) in Le Soir (Belgian daily), 23 June 2014, http://www.cadtm.org/Argentine-un-vautour-peut-en (in French); Eric Toussaint, "How to resist vulture funds and financial imperialism?", http://www.cadtm.org/How-to-resist-vulture-funds-and ; Julia Goldenberg, Eric Toussaint, "Vulture funds are the vanguard" http://www.cadtm.org/Vulture-funds-are-the-vanguard. The International Centre for the Settlement of Investment Disputes (ICSID), part of the World Bank group charged with settling disputes between a State and an investor from a different State, is increasingly solicited by creditors bringing legal action against States. See Stéphanie Jacquemont, "The vultures that want to bring Argentina to its knees" http://www.cadtm.org/The-vultures-that-want-to-bring. However Sack's proposal to create an international mechanism to handle litigation on odious debt came to nothing.

[15] Sack further claims that *whether State loans, like other public loans, are based on a loan contract or on a contract for buying and selling a bond (or the credit represented by that bond), in all cases State debt, in its material content, reposes entirely on the rules of private law. The elements of public law do not figure in these contracts, and the supreme power of the State is not apparent. — By entering into a loan or selling its bonds, a government receives money from its creditors or the buyers of the bonds, by virtue of a free arrangement with them as with any legal or physical private individual*. (p. 30-31, trans. CADTM.) Other eminent jurists disagree with this interpretation. According to Albert Wuarin in "L'emprunt d'Etat — un acte souverain de l'Etat" (A State loan is a sovereign act of the State), a State loan is a contract which falls under certain particular rules of public law. Luis M. Drago holds that *State loans are (…) legal acts (…) of a very special nature and must not be confused with any other kind. (…) Issued by an act of sovereignty that no individual could exercise, in no case do they represent an engagement regarding specific individuals*. (trans. CADTM). A. de La Pradelle and N. Politis write that *the public loan occupies a special place among the mass of State contracts. It is a credit operation, carried out by virtue of sovereign acts, to make provision for the country's well-being and ensure*

the good running of its public services (quoted by Sack, p. 33, trans. CADTM). Sack is critical of the three preceding opinions, writing: *"this is clearly wrong."* (Sack, p. 33). For a more in-depth view of the jurists who did not share Sack's opinions, see the Box entitled "Very different arguments put forward by jurists defending indebted States against private creditors".

[16] Carlos Calvo (1824-1906) elaborated a doctrine in international law known as the Calvo doctrine, which stipulates that individuals residing in a foreign country must make their requests, complaints and grievances within the existing local legal framework, without recourse to diplomatic pressure or military intervention. All local legal possibilities must be exhausted before a case is referred to international diplomatic channels. This doctrine has been integrated into several constitutions of Latin American countries. See https://en.wikipedia.org/wiki/Carlos_Calvo

[17] Most of the citations figuring in this Box are taken from Edwin Borchard, *State Insolvency and Foreign Bondholders, Vol. I. General Principles*. Yale University Press, New Haven, 1951.

[18] https://en.wikipedia.org/wiki/Luis_Mar%C3%ADa_Drago

[19] L.M. Drago, in James Brown Scott, *The Proceedings the Hague Peace Conferences. The Conference of 1907*, Oxford University Press, 1921, II, p. 557.

[20] https://en.wikipedia.org/wiki/Gustave_Hugo

[21] *Lehrbuch des Naturrechts*, 2e edition, Berlin, 1819.

[22] 'über das Schuldenwesen der Staaten' *Jahrbücher der Geschichte* (Leipzig, 1830) p. 291. See his biography: https://en.wikipedia.org/wiki/Karl_Salomo_Zachariae_von_Lingenthal

[23] Obligationenrecht II, Berlin, 1852, p. 110. See also https://en.wikipedia.org/wiki/Friedrich_Carl_von_Savigny

[24] https://en.wikipedia.org/wiki/Gustave_Rolin-Jaequemyns

[25] *Etude sur les obligations*, (Study of obligations), Paris, 1880, p. 236.

[26] 3rd edition, London, Butterworth's, 1882, II, p. 18. See also https://en.wikipedia.org/wiki/Robert_Phillimore

[27] Citing *Crouch vs Credit foncier of England* L. R. 8 Q. B. 374 (1873); Twycross vs Dreyfus 5 Ch. D. 605 (1877).

[28] https://en.wikipedia.org/wiki/Carl_Ludwig_von_Bar

[29] *Theorie und Praxis des internationalen Privatrechts, (Theory and Practice of Private International Law)*, Hanover, Hahn, 1889, II p. 663.

[30] https://en.wikipedia.org/wiki/Albert_de_Geouffre_de_La_Pradelle

[31] Cited and emphasized by Sack, p. 37; original: *Recueil des arbitrages internationaux*, (Compendium of International Arbitrations) T2,1856-1872, Paris, Pedone, 1923, p. 547.

[32] Cited by Sack, p. 39; original *op. cit.*, p. 547.

[33] Cited by Sack, p. 39.

[34] Cited by Sack, p. 68 on the basis of *Le droit international de l'époque transitoire*, (International Law during the Transition), Moscow, 1924 (in Russian), p. 30, cited in B. Mirkin-Getzevich, R. G. D. I. P., 1925, p. 320.

[35] I have provided concrete examples of the extortionate or fraudulent actions of bankers in several cases of bond issues of public debt in the 19th century concerning, in particular, Greece (http://www.cadtm.org/Newly-Independent-Greece-had-an and http://www.cadtm.org/Greece-Continued-debt-slavery-from), Mexico and other Latin American countries (http://www.cadtm.org/How-Debt-and-Free-Trade), Egypt (http://www.cadtm.org/Debt-as-an-instrument-of-the), and Tunisia (http://www.cadtm.org/Debt-how-France-appropriated).

[36] Note that two articles of the French Penal Code prohibited speculation until 1885, when they were abrogated under pressure from the business milieu of the time. Article 421 stipulated that *"gambling on the rise or fall in value of public debt bonds would be punished by a prison sentence of at least one month and no more than one year."* Article 422 stipulated: *"by such 'gambling' shall be understood any agreement to buy or deliver public bonds that the vendor shall be unable to prove to have been at his disposal at the time of the agreement, or that cannot have been at his disposal at the time of delivery."* See Paul Jorion, in *Financité*, November 2013. (in French)

[37] The Democrat president Woodrow Wilson made this a central tenet of Washington's foreign policy and the new universal principle pervades the Treaty of Versailles in several places, viz the right of Poland to retrieve her sovereignty in the face of the former Russian and German empires; the right of African peoples who had been subject to German rule not to repay colonial debts. For his part, Vladimir Lenin made it a fundamental principle of socialist policy. He declared: "Victorious socialism must of necessity establish full democracy and consequently, not only institute total equality in the rights of nations but also implement the right of oppressed nations to self-determination, that is, the right to free political separation." See Lenin, *The Socialist Revolution and the Right of Nations to Self-Determination*, 1916, https://www.marxists.org/archive/lenin/works/1916/jan/x01.htm
For the positions of W. Wilson and V. Lenin, see Odette Lienau, *Rethinking Sovereign Debt: Politics, Reputation, and Legitimacy in Modern Finance*, 2014, p. 60-63.

[38] *Journal de Versailles ou affiches, annonces et avis, n° 12, Supplément*, 15 July 1789, p. 89 https://play.google.com/books/reader?id=AOFCAAAAcAAJ&printsec=frontcover&output=reader&hl=en_GB&pg=GBS.RA1-PA89

[39] See Cambon's speech: http://gallica.bnf.fr/ark:/12148/bpt6k56840w/f13.image (in French)

[40] In their note of 28 March 1918 regarding the repudiation of Russia's debt by the Soviets, France and England made the following declaration: *"No principle is better established than that by which a nation is responsible for the acts of its government, and no change in the government can affect the obligations previously incurred. [... obligations may not be repudiated by any authority whatsoever without undermining the very foundation of international law. Otherwise there would be no security in relations between States; it would become impossible to enter into a long-term contract if there was the risk that said contract might be disavowed; it would be the ruin of the credit of States from a political as well as a financial point of view.]"* (Sack, p. 47 –

[trans. CADTM]). We would like to point out that the main creditors of the Tsarist debts were French and British bankers and rentiers. In 1997, an agreement was reached between Russia and France. See, on the Web site of the French Senate, “Accords relatifs au règlement définitif des créances entre la France et la Russie antérieures au 9 mai 1945”, http://www.senat.fr/seances/s199712/s19971210/sc19971210010.html (in French).

[41] League of Nations, t. V-VI, p. 51 *et seq., in* Sack p. 82.

[42] Later, when we sum up Sack’s reaction to the provisions of the Treaty of Versailles by virtue of which the former German colonies in Africa did not bear the burden of the debt, we will see that the Russian jurist feels that colonisation was beneficial to Africa’s populations.

[43] On the 11th Amendment, see: https://en.wikipedia.org/wiki/Eleventh_Amendment_to_the_United_States_Constitution

[44] It is also very important to stress that the 14th Amendment also excludes paying any compensation to slave owners. Four million slaves were emancipated without the slightest compensation being received by their former masters. Source: Sarah Ludington, G. Mitu Gulati, Alfred L. Brophy, “Applied Legal History: Demystifying the Doctrine of Odious Debts,” 2009, http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=5511&context=faculty_scholarship

[45] Among the creditors was the Banque Erlanger of Paris and its London subsidiary. In 1865, during the Civil War, it organized the issue of the “Erlanger Loans,” which guaranteed holders repayment in cotton from the Southern States provided that the Confederate States won the war. The risk was remunerated by an interest rate of 7% per annum, relatively high for the period. The bonds were also traded in London. During the Civil War, the Confederate States had stockpiled cotton, which drove prices to a historic level of $1.89 per pound, a record still unequalled two centuries later. Prices increased twentyfold within a few months, but British manufacturers had had enough time to build up their own stocks. In 1870, five years after the end of the war, American cotton had almost returned to its pre-war level of production, and the USA remained world leader in cotton until 1931, as it had been since 1803. But the bondholders were never repaid due to the repudiation decreed by the Federal government and the application of Section 4 of the 14th Amendment to the Constitution.

[46] Alabama, Arkansas, Florida, Georgia, Louisiana, North Carolina, South Carolina and Tennessee. For further details see Sarah Ludington, G. Mitu Gulati, Alfred L. Brophy, *op. cit.*

[47] See https://www.herodote.net/Guerre_du_Mexique-synthese-521.php (in French). I will return to this subject in the near future in an article devoted to Mexico.

[48] J. B. Moore, *Digest of International Arbitrations*, v. III, p. 2873 *et seq.*, 2902 *et seq.*, 2917 *et seq.*; see also Gloner, *Les finances des États-Unis mexicains d’après les documents officiels*, 1896, p. 106 et seq. (in French). See also Jeff King, *The Doctrine of Odious Debt in International Law. A Restatement*, University College London, 2016, pp. 72-73

[49] Sack notes that similar provisions existed in the constitutions of El Salvador (Art. 69), Honduras (Art. 99), Venezuela (Art. 104) and Chile (Art. 151).

[50] https://en.wikipedia.org/wiki/Nicol%C3%A1s_de_Pi%C3%A9rola

[51] https://en.wikipedia.org/wiki/Auguste_Dreyfus

[52] See Carlos Marichal, 1989. *A Century of Debt Crises in Latin America*, Princeton, University Press, Princeton, p. 130.

[53] Chile, which was involved in a dispute with France, had been at war with Peru and thus also became enmeshed in the dispute between France and Peru. It is not of interest here to discuss the specific dispute between France and Chile. What is important is that a part of the ruling concerns the government of Peru.

[54] Cited by Sack, p. 11.

[55] The account which follows is based in part on the study by Sarah Ludington, G. Mitu Gulati, and Alfred L. Brophy, op. cit. Their explanation differs from the one given by Sack.

[56] Source of citation: J. B. Moore, *Digest of International Law*, vol. I, pp. 358-359.

[57] See details in Chapter 3 of the Preliminary Report of the Greek Debt Truth Commission, http://www.cadtm.org/Preliminary-Report-of-the-Truth. The IMF demanded an interest rate of around 5% of Greece. The ECB had Greece repay it in securities at 100% of their face value when it had purchased them at 60 or 70% of their value on the secondary market. And it demanded a rate of over 6% on those securities while at the same time it was lending to the private banks of the Euro Zone at 0%!

[58] See Odette Lienau, *Rethinking Sovereign Debt: Politics, Reputation, and Legitimacy in Modern Finance*, Harvard, 2014, p. 101

[59] For information on United Fruit Company: https://en.wikipedia.org/wiki/United_Fruit_Company

[60] See Sarah Ludington, G. Mitu Gulati, Alfred L. Brophy, “Applied Legal History: Demystifying the Doctrine of Odious Debts”, 2009

[61] This unilateral sovereign decision is also not unrelated to the decision made by the Congress of the United States to repudiate the debts contracted by the Confederate States (see above) with both foreign and domestic creditors, despite the fact that in that case there was no change of regime.

[62] Odette Lienau, *op. cit.* p. 108.

[63] Cited by Odette Lienau, *op. cit.* p. 105

[64] Odette Lienau, *op. cit.* p. 110

[65] Justice Taft, cited in Patricia Adams, *Odious Debt*, 1991, p. 168.

[66] Tinoco arbitration, 1. R.I.A.A. P. 394. See Sarah Ludington, G. Mitu Gulati, Alfred L. Brophy, *op. cit*, p. 267.

[67] Quotation taken from Gregorio Selser, *Diplomacia, garrote y dolares en América Latina*, Buenos Aires, 1962 and used by Eduardo Galeano, *Open Veins of Latin America: Five Centuries of the Pillage of a Continent*, Monthly Review Press, 1973, translated by Cedric Belfrage, online edition, p. 106.

[68] See Sarah Ludington, G. Mitu Gulati, Alfred L. Brophy, *op. cit*, p. 266.

[69] William H. Taft, Message of the President of the United States on our foreign relations, communicated to the two Houses of Congress, December 3, 1912 (http://www.presidency.ucsb.edu/ws/?pid=29553). Cited by Yves L. Auguste, "La doctrine de Monroe, couverture de l'impérialisme", in *Revue de la Société haïtienne d'histoire et de géographie*. Sept.-Dec. 1996 (in French).

[70] As we have seen, he even defended the Tinoco regime on the grounds that a people needs to be able to overthrow an existing regime via revolution in order to establish a new one, without being held to the previous constitution.

[71] Odette Lienau, *op. cit.* p. 113.

[72] See the preliminary report (June 2015) *op. cit.* at http://www.cadtm.org/Preliminary-Report-of-the-Truth and the second report (September 2015) at http://www.cadtm.org/Greece-Assessment-of-the-debt-as

[73] https://en.wikipedia.org/wiki/Roosevelt_Corollary

[74] Eduardo Galeano writes: *"the United States occupied Haiti for twenty years and, in that black country that had been the scene of the first victorious slave revolt, introduced racial segregation and forced labor, killed 1,500 workers in one of its repressive operations (according to a U.S. Senate investigation in 1922), and when the local government refused to turn the Banco Nacional into a branch of New York's National City Bank, suspended the salaries of the president and his ministers so that they might think again."* Eduardo Galeano, op. cit., p. 108.

[75] Published in *Common Sense*, November 1935. See Leo Huberman, *Man's Worldly Goods. The Story of the Wealth of Nations*, New York, 1936. Note that an American military base in Okinawa bears the name of Smedley D. Butler. His confession cannot help but remind one of John Perkins's *Confessions of an Economic Hit Man. The shocking story of how America really took over the world*, Ebury Press, 2005.

[76] The CADTM and myself have committed the error of thinking that Sack considered a despotic regime to be a *sine qua non* condition of odious debt. We disagreed with Sack on this point and have often expressed our disagreement. It is a possible and aggravating condition. This misunderstanding came about because of the most widespread of the interpretations of Sack's doctrine (see on that matter Jeff King, *The Doctrine of Odious Debt in International Law. A Restatement*, University College London, 2016, p. 55). Other authors, such as Sarah Ludington, G. Mitu Gulati and Alfred L. Brophy noticed this error even if they themselves do seem to think that Sack included the despotic nature of a regime as a necessary condition of odious debt in error. See their interesting article, already cited. They are convinced that the despotic nature of a regime must not be included in the conditions that define an odious debt. They go on to say, as we have already said, that ex-president Taft when judging on the Tinoco affair did not put the despotic nature of the Tinoco regime into the considerations.
In her article "The Doctrine of Odious Debts in International Law", the jurist Sabine Michalowski correctly summarises Sack's criteria. She does not include among them the despotic nature of the regime. Her text is a part of an interesting collective work entitled *How to Challenge Illegitimate Debt Theory and Legal Case Studies* edited by Max Mader and André Rothenbühler for Aktion Finanzplatz Schweiz (AFP). It is available here:
https://asso-sherpa.org/sherpa-content/docs/programmes/FFID/GT/Debt.pdf

[77] Another quote from Sack clearly confirms that he was opposed to the despotic nature of a regime being a condition *sine qua non* to identify an odious debt: *"Applying other conditions than those we have established (p. 6-7) would, through arbitrary, differing and contradictory judgements, bring about the paralysis of the whole international public credit system and so (if such judgements were to have real weight on questions of recognising or of not recognising debts as State debts) would deprive the World of the advantages of public credits."* (p. 11).

[78] What does Sack mean by "a non-regular government"? Answer: A government that does not exercise control over the whole territory, such as a rebel coalition that attempts to overthrow the existing regular government. The emblematic example are the Southern US States (the Confederate States) that rebelled against the United States, which was a regular government. It therefore follows that the debts incurred by the Southern States were personal debts of the Southern insurgents, not debts that the United States should assume. If the Confederates had won the 1861-1865 Civil War they would have become the new regular government in place of the United States.

[79] IMF, Michael Kremer and Seema Jayachandran, "Odious Debt" *Finance & Development*, June 2002, Washington DC, www.imf.org/external/np/res/seminars/2002/poverty/mksj.pdf

[80] Of course, it is perfectly legitimate that Michael Kremer and Seema Jayachandran add any new conditions that they may consider necessary. We regularly see consent obtained by the manipulation of public opinion or by the fanaticism of a majority of the population.

[81] Source: *Treaty Series*, no. 4, 1919, p. 26. quoted by Sack, p. 162.

[82] Serge Braudo, *Dictionnaire du droit privé*, http://www.dictionnaire-juridique.com/definition/doctrine.php (in French)

[83] This CADTM has been translated by Judith Abdel Gadir, Elisabeth Anne, Christine Pagnoulle and Diren Valayden.

[84] Khalfan et al. "Advancing the Odious Debt Doctrine", 2002, quoted in Global Economic Justice Report, Toronto, July 2003

[85] Jeff King, *"Odious Debt: The Terms of Debate"*

[86] Namely, King proposes the undertaking of audits to determine the absence or not of benefits.

[87] See Eric Toussaint, *Your Money or Your Life. The Tyranny of Global Finance*, Haymarket in Chicago (2005), VAK in Mumbai (2006).

[88] 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."

[89] Mohammed Bedjaoui, "Ninth report on succession on States on matters other than treaties" A/CN.4/301et Add.l, p. 73.

[90] See Eric Toussaint, *The World Bank: A Critical Primer*. London: Pluto Press 2007.

[91] See Eric Toussaint, *op. cit.*

[92] 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 incurred 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

[93] Some of these examples are listed by Jeff King in *The Doctrine of Odious Debt in International Law. A Restatement*, Cambridge University Press, 2016.

[94] Hugo Ruiz Diaz Balbuena, "La décision souveraine de déclarer la nullité de la dette ou la décision de non paiement de la dette : un droit de l'État (The decision to declare a debt null and void or default on its payment is a State's sovereign right)", 7 July 2008, http://www.cadtm.org/La-decision-souveraine-de-declarer (in French)

[95] CADTM - "CADTM applauds Norway's initiative concerning the cancellation of odious debt and calls on all creditor countries to go even further", published on 10 October 2006, http://www.cadtm.org/CADTM-applauds-Norway-s-initiative