

BIBLIOTECA DEL CONGRESO DE LA NACIÓN

CUERPO DE TRADUCTORES

TRADUCTORAS: BALBO - MENDIETA

TRADUCCIÓN N°: 7584

FECHA: 5-11-04

BILL

Be it enacted by the Honorable House of Deputies of the Argentine Nation,

Section 1. The whole foreign debt contracted by the military dictatorship during 1976, 1977, 1978, 1979, 1980, 1981, 1982 and 1983 shall be declared odious.

Section 2. Under Section 1, the debt contracted during such period shall be considered illegitimate and the Argentine Nation shall be entitled to recover damages, following an investigation to determine the implications of such debt on subsequent periods and the responsibility of public officials, individuals or legal entities under Private or International Law that acted during the aforementioned military dictatorship.

Section 3. Be it informed to the Executive Branch.

Honorable House of Deputies of the Argentine Nation

GROUNDS

Mr. President:

It is widely known that during the last military dictatorship in Argentina (1976–1983) serious and systematic human rights violations were committed.

It is also known that our foreign debt increased enormously during such short period, from approximately \$ 7,800 million to \$ 46,000 million. [This should read billion].

Both events could only occur in a historical context in which force defeated Law.

First, the *de facto* military government issued a “regulation” called “National Reorganization Rule”, to which the whole legal structure of the country became subordinated, beginning with the National Constitution.

The National Congress was dissolved and the Executive Branch took control of the Legislative, with the assistance of a Legislative Advisory Committee, made up of members of the three Armed Forces.

The possibility that citizens could exert control on the acts of government was dramatically abolished. Thus, the life and property of citizens were at the disposal of the military regime.

But this unlawful phenomenon also included the non-observance and violation of principles of International Law in force at that time, such as the American Declaration of Rights and Duties of Man (International American Conference held in Bogota in 1948) and the Universal Declaration of Human Rights (adopted and proclaimed by General Assembly Resolution 217 A (III) in 1948).

Returning to democracy after a *de facto* government has raised the question of what to do with the rules adopted during the institutional interruption. The doctrine and decisions of the Argentine Supreme Court have generally addressed the issue in a pragmatic way avoiding the

automatic nullity of *de facto* laws because it would create a sudden overwhelming state of legal insecurity.

Section 36 of the National Constitution as amended in 1994 provides that the Constitution shall remain in force although it is no longer observed due to the commission of acts of force against the institutional order and democratic system. These acts shall be declared null and void.

Although the amended Constitution came into force in 1994, its underlying principle was already in effect from the very beginning of our constitutional life. Since this fundamental law constitutes the legal and political principle on which the whole legal structure rests, it could hardly allow for any interpretation that enabled its violation by *de facto* governments.

The fact that members of the Constitutional Convention, in the light of the most bloody dictatorship of our history, highlighted the nullity of the acts of force does not distort the implicit preexistence of the Constitution. In other words, *de facto* acts shall always be presumed null and void unless they are expressly ratified by the pertinent legal body.

As regards the approval or rejection of the *de facto* military government, the National Congress, far from remaining in silence, has strongly expressed its condemnation through the enactment of Law 23854, in which the Investment Accounts opened in 1976, 1977, 1978, 1979, 1980, 1981, 1982 and 1983 were expressly rejected, an indisputable **explicit** fact that sets a precedent in determining if subsequent democratic government acts have acknowledged the legitimacy of the debt contracted by the military dictatorship.

In our view, the approval of federal budget appropriations for servicing the current foreign debt, which was directly or indirectly contracted by the military dictatorship, does not validate the debt nor distort the rejection so clearly expressed in the above-mentioned law.

Other significant precedent when discussing the legitimacy of the debt contracted during the military dictatorship is the case entitled “OLMOS, Alejandro s/ Denuncia” pending in Criminal and Correctional Court No. 2 under File No. 14467. In July, 2000, acting Judge Jorge Ballesteros concluded that at least four hundred seventy seven crimes were committed in relation with the foreign debt contracted by the military government.

This case has also evidenced the lack or disappearance of records on the foreign debt, the enactment of rules intended to submit the Argentine State to the jurisdiction of Foreign Courts (e.g. Section 1 of Civil and Commercial Procedural Code), the indebtedness of public utilities to divert funds for purposes other than the ones stated, and the nationalization of the private debt which was finally assumed by the Government (Central Bank Circulars A-31, A-137, A-251).

As regards IMF responsibility, in his decision Judge Ballesteros wrote that “it should be remembered that since 1976 our country has been subjected to the will of foreign creditors and that IMF officials took an active role in such negotiations. For this reason, a new economic assistance from the IMF would be desirable to substantially improve our country’s current economic situation and would justify the controversial existence of this institution.”

In relation to those who benefited from the debt, the judicial decision stated that the foreign debt “has dramatically increased since 1976 through the implementation of a vulgar degrading economic policy which

forced our country to kneel down by the use of the aforementioned methods, and which tried to benefit and support foreign and local private companies and businesses to the detriment of public companies, which became increasingly impoverished, as evidenced by the privatization proceeds.”

One of the conclusions we may draw from this judicial decision is the evident complicity of international lending agencies, international private banks and transnational companies which, while knowing the prevailing economic conditions of our country and due to the lack of democratic controls, decided to enter agreements with the military regime. This fact allowed them to consolidate a political and economic project without any possible opposition within the frame of a massive violation of Human Rights. Some of these agencies are expressly cited in the judicial decision.

This particular connection between crimes against humanity and the indebtedness process described herein have specific implications. In 1927, Alexander N. Sack defined an odious debt as the debt contracted by a despotic regime not to satisfy its own needs or the needs of the Nation but to strengthen itself and repress people who fight against it.

If actions against human rights violations are imprescriptible, then any action intended to determine and redress the damages caused by the indebtedness should also be declared imprescriptible. Under this view, the right to invoke the ineffectiveness of public debts so contracted by the government has not prescribed and the indebtedness is an act that merits our unreserved condemnation.

Finally, although hard and painful, as we sought to find the truth and punish those responsible for the commission of crimes against humanity, we should proceed in the same way with respect to the illegitimate foreign debt contracted by the military dictatorship, since both events were part of the same political strategy, the damages of which persist until today.

Mr. President, in view of the aforementioned grounds, we request the immediate approval of this Bill.