

Greek debt: ‘illegal, illegitimate, odious and unsustainable’

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It was in [April when we got a stark](#) reminder of a post we first penned in April of 2011, [describing Odious Debt](#), and why we thought sooner or later this legal term would become applicable for Greece, because two months ago Greek [Zoi Konstantopoulou](#), speaker of the Greek parliament and a SYRIZA member, [said she had established](#) a new "Truth Committee on Public Debt" whose purposes was to "investigate how much of the debt is “illegal” with a view to writing it off."

Moments ago, this committee released its preliminary findings, and here is the conclusion from the full report presented below:

All the evidence we present in this report shows that Greece not only does not have the ability to pay this debt, but also should not pay this debt first and foremost because the debt emerging from the [Troika](#)'s arrangements is a direct infringement on the fundamental human rights of the residents of Greece. Hence, we came to the conclusion that Greece should not pay this debt because it is illegal, illegitimate, and odious.

As we predicted over four years ago, Greece has effectively just declared that it will no longer have to default on its IMF (or any other debt - note that the dreaded "Troika" word finally makes an appearance after it was officially banned) **simply because that debt was not legal to begin with, i.e. it was "odious."**

A very unique wrench in the spokes

If so, this has just thrown a very unique wrench in the spokes of not only the Greek debt negotiations, but all other peripheral European nations' Greek negotiations, who will promptly demand that their debt be, likewise, declared odious, and made null and void, thus washing their hands of servicing it again.

And another question: when Greece says the debt was illegal and it no longer has to make the June 30 payment, what will be the Troika's response: confiscate Greek assets a la Argentina, declare involuntary default, sue it in the Hague?

Good luck.

From the full [just released report by the Hellenic Parliament commission](#):

Hellenic Parliament's Debt Truth Committee Preliminary Findings - Executive Summary of the report

In June 2015 Greece stands at a crossroad of choosing between furthering the failed macroeconomic adjustment programmes imposed by the creditors or making a real change to

break the chains of debt. Five years since the economic adjustment programmes began, the country remains deeply cemented in an economic, social, democratic and ecological crisis. The black box of debt has remained closed, and until now no authority, Greek or international, has sought to bring to light the truth about how and why Greece was subjected to the *Troika* regime. The debt, in whose name nothing has been spared, remains the rule through which neoliberal adjustment is imposed, and the deepest and longest recession experienced in Europe during peacetime.

Demand proper consideration

There is an immediate need and social responsibility to address a range of legal, social and economic issues that demand proper consideration. **In response, the Hellenic Parliament established the *Truth Committee on Public Debt* in April 2015, mandating the investigation into the creation and growth of public debt, the way and reasons for which debt was contracted, and the impact that the conditionalities attached to the loans have had on the economy and the population.** The Truth Committee has a mandate to raise awareness of issues pertaining to the Greek debt, both domestically and internationally, and to formulate arguments and options concerning the cancellation of the debt.

The research of the Committee presented in this preliminary report sheds light on the fact that the entire adjustment programme, to which Greece has been subjugated, was and remains a politically orientated programme. The technical exercise surrounding macroeconomic variables and debt projections, figures directly relating to people's lives and livelihoods, has enabled discussions around the debt to remain at a technical level mainly revolving around the argument that the policies imposed on Greece will improve its capacity to pay the debt back. **The facts presented in this report challenge this argument.**

But also should not pay this debt

All the evidence we present in this report shows that Greece not only does not have the ability to pay this debt, but also should not pay this debt first and foremost because the debt emerging from the *Troika*'s arrangements is a direct infringement on the fundamental human rights of the residents of Greece. Hence, we came to the conclusion that Greece should not pay this debt because it is illegal, illegitimate, and odious.

It has also come to the understanding of the Committee that the unsustainability of the Greek public debt was evident from the outset to the international creditors, the Greek authorities, and the corporate media. Yet, the Greek authorities, together with some other governments in the EU, conspired against the restructuring of public debt in 2010 in order to protect financial institutions. **The corporate media hid the truth from the public by depicting a situation in which the bailout was argued to benefit Greece, whilst spinning a narrative intended to portray the population as deservers of their own wrongdoings.**

Bailout funds provided in both programmes of 2010 and 2012 have been externally managed through complicated schemes, preventing any fiscal autonomy. The use of the bailout money

is strictly dictated by the creditors, and so, it is revealing that less than 10% of these funds have been destined to the government's current expenditure.

This preliminary report presents a primary mapping out of the key problems and issues associated with the public debt, and notes key legal violations associated with the contracting of the debt; it also traces out the legal foundations, on which unilateral suspension of the debt payments can be based. The findings are presented in nine chapters structured as follows:

Chapter 1, Debt before the Troika

Analyses the growth of the Greek public debt since the 1980s. It concludes that the increase in debt was not due to excessive public spending, which in fact remained lower than the public spending of other Eurozone countries, but rather due to the payment of extremely high rates of *interest* to creditors, excessive and unjustified military spending, loss of tax revenues due to illicit capital outflows, state *recapitalization* of private banks, and the international imbalances created via the flaws in the design of the Monetary Union itself.

Adopting the euro led to a drastic increase of private debt in Greece to which major European private banks as well as the Greek banks were exposed. A growing banking crisis contributed to the Greek *sovereign debt* crisis. George Papandreou's government helped to present the elements of a banking crisis as a sovereign debt crisis in 2009 by emphasizing and boosting the public deficit and debt.

Chapter 2, Evolution of Greek public debt during 2010-2015

Concludes that the first loan agreement of 2010, aimed primarily to rescue the Greek and other European private banks, and to allow the banks to reduce their exposure to Greek government bonds.

Chapter 3, Greek public debt by creditor in 2015

Presents the contentious nature of Greece's current debt, delineating the loans' key characteristics, which are further analysed in Chapter 8.

Chapter 4, Debt System Mechanism in Greece

Reveals the mechanisms devised by the agreements that were implemented since May 2010. They created a substantial amount of new debt to bilateral creditors and the European Financial Stability Fund (EFSF), whilst generating abusive costs thus deepening the crisis further. The mechanisms disclose how the majority of borrowed funds were transferred directly to financial institutions. Rather than benefitting Greece, they have accelerated the privatization process, through the use of *financial instruments*.

Chapter 5, Conditionalities against sustainability

Presents how the creditors imposed intrusive conditionalities attached to the loan agreements, which led directly to the economic unviability and unsustainability of debt. These conditionalities, on which the creditors still insist, have not only contributed to lower *GDP* as well as higher public borrowing, hence a higher public debt/GDP making Greece's debt more unsustainable, but also engineered dramatic changes in the society, and caused a humanitarian crisis. The Greek public debt can be considered as totally unsustainable at present.

Chapter 6, Impact of the “bailout programmes” on human rights

Concludes that the measures implemented under the “bailout programmes” have directly affected living conditions of the people and violated human rights, which Greece and its partners are obliged to respect, protect and promote under domestic, regional and international law. The drastic adjustments, imposed on the Greek economy and society as a whole, have brought about a rapid deterioration of living standards, and remain incompatible with social justice, social cohesion, democracy and human rights.

Chapter 7, Legal issues surrounding the MOU and Loan Agreements

Argues there has been a breach of human rights obligations on the part of Greece itself and the lenders, that is the Euro Area (Lender) Member States, the European Commission, the European *Central Bank*, and the *International Monetary Fund*, who imposed these measures on Greece. All these actors failed to assess the human rights violations as an outcome of the policies they obliged Greece to pursue, and also directly violated the Greek constitution by effectively stripping Greece of most of its sovereign rights. The agreements contain abusive clauses, effectively coercing Greece to surrender significant aspects of its sovereignty. This is imprinted in the choice of the English law as governing law for those agreements, which facilitated the circumvention of the Greek Constitution and international human rights obligations. Conflicts with human rights and customary obligations, several indications of contracting parties acting in bad faith, which together with the unconscionable character of the agreements, render these agreements invalid.

Chapter 8, Assessment of the Debts as regards illegitimacy, odiousness, illegality, and unsustainability

Provides an assessment of the Greek public debt according to the definitions regarding illegitimate, odious, illegal, and unsustainable debt adopted by the Committee.

Chapter 8 concludes that the Greek public debt as of June 2015 is unsustainable, since Greece is currently unable to service its debt without seriously impairing its capacity to fulfill its basic human rights obligations. Furthermore, for each creditor, the report provides evidence of indicative cases of illegal, illegitimate and odious debts.

Debt to the IMF

Should be considered illegal since its concession breached the IMF's own statutes, and its conditions breached the Greek Constitution, international customary law, and treaties to which Greece is a party. It is also illegitimate, since conditions included policy prescriptions that infringed human rights obligations. Finally, it is odious since the IMF knew that the imposed measures were undemocratic, ineffective, and would lead to serious violations of socio-economic rights.

Debts to the *ECB* should be considered illegal since the ECB over-stepped its mandate by imposing the application of macroeconomic adjustment programs (e.g. labour market deregulation) via its participation in the Troika. Debts to the ECB are also illegitimate and odious, since the principal *raison d'être* of the Securities Market Programme (SMP) was to serve the interests of the financial institutions, allowing the major European and Greek private banks to dispose of their Greek bonds.

The EFSF engages in cash-less loans which should be considered illegal

... because Article 122(2) of the Treaty on the Functioning of the European Union (TFEU) was violated, and further they breach several socio-economic rights and civil liberties. Moreover, the EFSF Framework Agreement 2010 and the Master Financial Assistance Agreement of 2012 contain several abusive clauses revealing clear misconduct on the part of the lender. The EFSF also acts against democratic principles, rendering these particular debts illegitimate and odious.

The bilateral loans

... should be considered illegal since they violate the procedure provided by the Greek constitution. The loans involved clear misconduct by the lenders, and had conditions that contravened law or public policy. Both EU law and international law were breached in order to sideline human rights in the design of the macroeconomic programmes. The bilateral loans are furthermore illegitimate, since they were not used for the benefit of the population, but merely enabled the private creditors of Greece to be bailed out. Finally, the bilateral loans are odious since the lender states and the European Commission knew of potential violations, but in 2010 and 2012 avoided to assess the human rights impacts of the macroeconomic adjustment and fiscal consolidation that were the conditions for the loans.

The debt to private creditors

... should be considered illegal because private banks conducted themselves irresponsibly before the Troika came into being, failing to observe due diligence, while some private creditors such as *hedge funds* also acted in bad faith. Parts of the debts to private banks and hedge funds are illegitimate for the same reasons that they are illegal; furthermore, Greek banks were illegitimately recapitalized by tax-payers. Debts to private banks and hedge funds are odious, since major private creditors were aware that these debts were not incurred in the best interests of the population but rather for their own benefit.

The report comes to a close with some practical considerations. **Chapter 9, Legal foundations for repudiation and suspension of the Greek sovereign debt**, presents the options concerning the cancellation of debt, and especially the conditions under which a sovereign state can exercise the right to unilateral act of repudiation or suspension of the payment of debt under international law.

Several legal arguments permit a State to unilaterally repudiate its illegal, odious, and illegitimate debt. In the Greek case, such a unilateral act may be based on the following arguments: the bad faith of the creditors that pushed Greece to violate national law and international obligations related to human rights; preeminence of human rights over agreements such as those signed by previous governments with creditors or the Troika; coercion; unfair terms flagrantly violating Greek sovereignty and violating the Constitution; and finally, the right recognized in international law for a State to take countermeasures against illegal acts by its creditors, which purposefully damage its fiscal sovereignty, oblige it to assume odious, illegal and illegitimate debt, violate economic self-determination and fundamental human rights. As far as unsustainable debt is concerned, every state is legally entitled to invoke necessity in exceptional situations in order to safeguard those essential interests threatened by a grave and imminent peril. In such a situation, the State may be dispensed from the fulfilment of those international obligations that augment the peril, as is the case with outstanding loan contracts. **Finally, states have the right to declare themselves unilaterally insolvent where the servicing of their debt is unsustainable, in which case they commit no wrongful act and hence bear no liability.**

People's dignity is worth more than illegal, illegitimate, odious and unsustainable debt

Having concluded a preliminary investigation, the Committee considers that Greece has been and still is the victim of an attack premeditated and organized by the International Monetary Fund, the European Central Bank, and the European Commission. This violent, illegal, and immoral mission aimed exclusively at shifting private debt onto the public sector. Making this preliminary report available to the Greek authorities and the Greek people, the Committee considers to have fulfilled the first part of its mission as defined in the decision of the President of Parliament of 4 April 2015. The Committee hopes that the report will be a useful tool for those who want to exit the destructive logic of austerity and stand up for what is endangered today: human rights, democracy, peoples' dignity, and the future of generations to come.

In response to those who impose unjust measures, the Greek people might invoke what Thucydides mentioned about the constitution of the Athenian people: "*As for the name, it is called a democracy, for the administration is run with a view to the interests of the many, not of the few*" (Pericles' Funeral Oration, in the speech from Thucydides' History of the Peloponnesian War).