

## **An Institutional Coup**

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From December 19th through 30th, 2001, Argentina suffered an institutional coup that resulted in the subsequent resignations of President Fernando De la Rúa and Provisional President Adolfo Rodríguez Saá. The aims behind the institutional coup were Argentina defaulting on its debts and abandoning “convertibility”, the monetary system that allowed the use of the dollar and the peso as legal tenders and established a 1 to 1 parity between the two currencies.

Those who pressed for this institutional breakdown thought that by defaulting on the debts and moving away from convertibility, the heavily indebted private sector would eventually have its financial problems solved: if Argentina “pesified” its economy -that is, forcing the conversion of all dollar contracts into peso contracts and then devaluing the peso – a huge amount of resources would be automatically transferred from creditors to debtors. This presumption may have been the main source of financial and media backing for the coup.

The agents behind the institutional breakdown were the leaders of the Radical Party, mainly National Deputy Leopoldo Moreau, the ringleader that devised the plan, as well as Governor Ángel Rozas (Head of the Radical Party). Of course, they could not have followed this course of action without the approval of former President Raul Alfonsín.

To trigger the institutional breakdown several instruments were used in steps: First, the Radical Party decided to boycott the 2002 National Budget Bill –it was not discussed on Wednesday, December 19, 2001, as initially scheduled. Second, on that same day they demanded the resignation of the full National Cabinet. Third, on Tuesday, December 20, 2001 they demanded the resignation of President De la Rúa. Fourth, they did not allow Congress to call for elections within 90 days. Last, but not least, they set the condition that the Convertibility Law should be repealed and the country’s economy pesified in order to lend parliamentary support to President Eduardo Duhalde.

All of these instruments were made to work amidst riots to which the Province of Buenos Aires’ Police Force turned a blind eye in the sense that they took no measures to control the street turmoil stirred up by the Government of the Province of Buenos Aires in the form of confrontation tactics, pressures and deals with potential rioters and local political leaders.

Since at least March 2001, Mr. Moreau and the leaders of the Radical Party had known that President De la Rúa would not agree to default on the country’s debts or abandon

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\* English translation of the presentation made by the author to Judge Norberto Oyarbide in charge of the investigation of the events of last December in Argentina.

convertibility. The evening when I consented to become Economy Minister, Deputy Moreau stated in front of the Radical Party National Committee that I could join the National Cabinet only if I accepted to declare default on the Public Debt and abandoned the convertibility system. I strongly disagreed with this position and made it clear that I would by no means join the Government to do that because I considered that such measures would create chaos, not help to finance the National Budget and the Provincial Budgets and would not solve Argentina's competitiveness problem.

Defaulting on the Public Debt would temporarily ease the burden of public debt interests on budgets; however, it would automatically bring about the collapse of the Financial System, cause the destruction of pension funds, and adversely affect savers and workers, because over 50 per cent of the bonds issued by the National State and the Provincial Governments represented the assets of those institutions. If such assets lost their value, banks and pension funds would be unable to meet their obligations: to return deposits to savers, and to pay future pensions. Also, the US\$ 5.543bn bank run of March 2001, the most critical in all Argentine history, indicated default and devaluation fears on the part of Argentines, which needed to be dispelled.

Abandoning convertibility would inevitably trigger an inflationary process, and all prospects of growth would be inhibited –the country would get no more funding, there would be a shortage of imported staple affecting competitiveness, and the domestic market would inevitably shrink, as is usually the case after devaluation

On that occasion in March 2001, I explained that instead of defaulting on the debt and abandoning convertibility, the National Government and the provinces should adjust their fiscal expenditure, just as Mr. Ricardo López Murphy had suggested and Mr. José Luis Machinea had attempted to do in their respective tenures as Economy Minister. Also, I recommended adopting measures concerning tariffs, taxes and the introduction of the euro in the system of convertibility so that the economy could regain competitiveness. Besides, it was necessary to create a public credit fund with the money raised from the tax on financial transactions to be used as collateral for the restructured debt. In this way, interest would be largely reduced and payment-terms extended.

During that meeting in March 2001 I managed to persuade the Radical Party National Committee. It seemed that Mr. Moreau had lost the policy argument and had been forced to refrain from his objections. It was precisely under those circumstances that led me to accept the Economy Ministry portfolio that I had been offered. Regardless of what the Radical Party leaders thought, it was perfectly clear that President De la Rúa intended to appoint me as his Economy Minister in order to avert a default on the debt and to preserve the convertibility regime. In this way, he would be implementing the policies that he had promised during his election campaign and which were the exact opposite of Mr. Eduardo Duhalde's misguided proposals during the 1999 campaign on the same issues.

Following my entrance into the Government, in the March 2001 congressional debates concerning issues as the Legislature granting special powers to the Executive and the

creation of a Public Credit Fund were voted upon. But, at that point, Mr. Moreau's position – also supported by Deputy Elisa Carrió- was to persuade the Radical Party that no special faculty should be delegated to the Executive for allowing the use of taxes as collaterals for the restructured debt. This irresponsible legislative stance, led by Moreau and Carrió, delayed by seven months the possibility of cutting interest payments on the public debt. Mr. Moreau's legislative record went even further in favor of Argentina's default on its debt and the destruction of convertibility, as seen in the transcripts of his speeches in the Lower House whenever an economic issue was debated.

Although the Radical Party in March 2001 initially supported the Competitiveness Plan that was put into operation when I joined the National Cabinet, Mr. Moreau's ideas gradually forced the Executive to make the wrong decisions. For example, in May 2001, before the debt swap scheme was launched, I persuaded the Peronist governors of the convenience of passing the Public Credit Bill, which would provide for the use of taxes as collaterals for debt bonds. Thus, the swap would have extended to include all provincial loans and would have allowed for a significant interest reduction as early as June 2001. However, it was not until December 2001, after the first stage of the Debt Restructuring Plan could be implemented, that a significant reduction in interest rate was achieved. When all the Peronist governors had agreed to support the Public Credit Bill, the Governor of the Province of Córdoba, Mr. José Manuel De La Sota, phoned President De la Rúa to confirm their support. Sadly, by the time we had secured Peronist backing, the President had to explain to Governor De La Sota that he could not back the project because he lacked the support of the Radical caucus in the legislature, the President's own party. Mr. Moreau's views had obviously aborted the early plan to guarantee restructured public debt with tax revenues.

In July 2001, after the Provinces and the National Government had subsequently ceased to get any more loans from the capital markets, fears of a default on the debt and of an end to convertibility triggered another significant bank run. In order to avoid these two adverse conditions, President De la Rúa's Government decided to negotiate new financial aid from the IMF, this time with the aim of restructuring the debt and slashing interest payments. Backed by the US and the G7, Argentina got a US\$ 5bn disbursement to bring some liquidity to the Financial System, and also the promise of a US\$ 3bn provision to support a Debt Restructuring Plan. This international support was based upon the maintenance of the Zero Deficit policy announced in July 2001 by the National Government. Although the Zero Deficit Bill was eventually passed at the National Congress, the strong opposition speeches against it suggested a lack of political cohesion in the country, and IMF Managing Director, Mr. Horst Köhler, made it clear that Argentina would eventually get the additional US\$ 3bn only if Argentina could show sufficient "political unity".

In view of the claims put forward by the IMF and the public speeches delivered by the Radical Party candidates as they campaigned for the upcoming legislative elections in October 2001, it became evident that President De la Rúa's policies were losing support. For that reason, the Government decided to postpone the Debt Restructuring Plan until November 1, 2001. That plan was finally implemented by means of a Decree-Law issued

by the Executive, which made it possible to back the new debt with taxes; Thanks to this collateral the old debt would be swapped at a lower interest rate. In late November 2001, when the IMF delegation arrived in Buenos Aires, it was made clear to Argentina that only after the first phase –which grossed US\$ 55bn- had been concluded would the pending provision of US\$ 3bn be freed up to support the second stage of the Debt Restructuring Plan. And then, only if the 2002 National Budget Bill was passed by Congress with the zero deficit policy in place.

During December 7-8 2001, I met IMF Managing Director, Dr Horst Köhler, and IMF First Deputy Managing Director, Dr. Anne Krueger, in Washington, to discuss the exact terms of the disbursements that were due to Argentina. On my return from the US, I spoke with every provincial governor and particularly with the Radical Party leaders to stress the importance of having the 2002 National Budget Bill passed before the second week of January 2002, at the latest. If we met that deadline, we would be able to complete the second phase of the Debt Restructuring Plan -which would total US\$ 45bn- before January 15, 2002. This would avert default, sustain convertibility, and stabilize the Financial System within 90 days, just as it had been scheduled on December 1, 2001, when restrictions had to be implemented to curb cash withdrawals and stem capital flight.

Throughout the week starting December 10, 2001, I called Senator Eduardo Duhalde for support. Duhalde (a former governor of the Province of Buenos Aires) had been insistently requesting my help for Governor Carlos Ruckauf, who needed to raise funds to pay at least a part of the month of November's salaries in pesos rather than in provincial bonds (the infamous "Patacones") to the province's thousands of government employees. Mr. Duhalde promised that he would get the Budget Committee to meet on December 19th, 2001 so that the 2002 budget could be discussed on December 20th. On Friday December 14th, 2001, I thoroughly explained to National Deputy Jorge Remes Lenicov why we needed to have the 2002 budget urgently passed at Congress. Mr. Remes Lenicov agreed with me on the importance of averting default and preserving the convertibility system.

From December 10th through 15th, 2001, the Head of the Radical Party and some Radical governors called President De La Rúa to complain that I was favoring the Province of Buenos Aires; meanwhile, the newspapers reported that Governor Ruckauf and several Radical leaders from the Province of Buenos Aires were holding meetings to sponsor National Coalition Government. I asked Mr. Ruckauf about these rumors but he said that the aim of the meetings was to ensure that the legislature of the Province of Buenos Aires would pass bills meant to cut expenses by more that \$1bn throughout 2002. In the light of the events of December 19th-20th, and the role played by the Secretary of Security of the Province of Buenos Aires, who was later appointed as National Secretary of Security, an investigation should be conducted to determine whether there is any connection between such meetings and the egregious dereliction of duty shown by the Police of the Province of Buenos Aires, who, in the face of the widespread looting of stores and shops, during those two days, reportedly stood by and watched.

On Monday December 17th, 2001, I had invited Dr Jacob Frenkel to come to Buenos Aires. He had been advising us as a consultant on the second phase of the debt swap and the negotiations with the IMF. I worked to set up the exact schedule for those two issues. Given the importance of getting the Lower House Budget Committee to meet on December 19th, on December 18th I had lunch with Senator Oscar Lamberto, Deputy Jorge Matzkin, Deputy Jorge Remes Lenicov, Secretary of Finance Jorge Baldrich and Dr Jacob Frenkel. The Justicialist legislators understood the relevance of proceeding with the discussions about the 2002 National Budget, and promised to collaborate.

However, no Radical legislators attended that lunch. I insisted that we must meet on Wednesday December 19th, 2001, but only Senator Raúl Baglini and Deputy Jesús Rodríguez came to the meeting. I explained to them the same issues that I had discussed with the Peronist legislators the day before, but Mr. Rodríguez was quite clear: President De la Rúa's government could not continue because it lacked what, in Mr Rodríguez' opinion, were the most important sources of political support to govern- the support of a party with enough parliamentary power, the support of the people, or the support of the Armed Forces.

At 3:00 pm, on Wednesday December 19th 2001, I was informed that Mr. Jorge Matzkin had managed to gather the Lower House Budget Committee –but the only legislators present were those coming from the provincial parties, from the Peronist Party and from Acción por la República Party. All Radical legislators were missing. Peronist representatives had kept their word but the Radicals were already implementing one of their instruments to trigger the institutional breakdown –they were boycotting the 2002 National Budget by not attending the Congress session.

Immediately after lunchtime, I learned that on that very morning, a group of leaders from the Argentine Industrial Union (UIA) had been boasting that they had managed to persuade Governor Ángel Rozas, Head of the Radical Party, to abandon the convertibility and to transform all dollar contracts into peso contracts.

Around 4:00 pm, while I was explaining to President De la Rúa what Deputy Jesús Rodríguez had told me earlier that day, what I had heard about Governor Rozas and what had just happened in the Lower House Budget Committee meeting, the President was told that Senator Raúl Alfonsín, Deputy Horacio Pernesetti and Senator Carlos Maestro had arrived and wished to see him. President De la Rúa asked me to join the visitors. The President's Chief of Cabinet was also present. The legislators immediately demanded that the entire National Cabinet resign. This was the Radical Party's second instrument towards the institutional coup.

These facts together with the conversations I had with Senator Eduardo Duhalde and several governors over the following days -when Mr. Adolfo Rodríguez Saá had already been appointed as a Provisional President- plus all the news reports and the remarks of the influential journalist Marcello Bonelli –who had strongly supported the UIA's views for a long time- eventually persuaded me that the fall of the De la Rúa and Rodríguez Saá governments had been part of a plot meant to subvert Argentina's economic organization.

It was not only the question of defaulting on the debt, which in fact President Rodríguez Saá announced. The other two objectives were to put an end to convertibility and to pesify the economy, and as the newly appointed President Rodríguez Saá could not be persuaded to carry out those two goals, social unrest was encouraged and continued to such an extent that it forced Rodríguez Saá's resignation on Sunday, December 30, 2001.

The Radical party opposed the intention of calling for elections within 90 days, as President Rodríguez Saá stated when he came into office. Instead, the Radicals encouraged the creation of a new parliamentary alliance, one that would support President Duhalde until December 10, 2003 on condition that he moved away from the convertibility currency system and pesified the economy. In a letter that I sent President Duhalde early in January 2002 I warned him of the consequences entailed in devaluing the Argentine currency and pesifying the economy. During a telephone call with Mr Remes Lenicov, now the new Economy Minister for Duhalde, I understood why Remes had changed his mind so drastically ever since our last conversations, on December 14th and 18th, 2001. Duhalde's Presidency was predicated on Remes carrying out devaluation and pesification.

After this conversation with Remes, I became aware that from December 19th through 30th, Argentina suffered an institutional coup, instigated by the Radical Party amidst the circumstances I put forward above. Such circumstances made it possible for the National Congress and the new Executive to act as follows:

- January 6, 2002- Partially enacted Law 25.561 which:
  - a) Repealed the fundamental provisions of Convertibility Law 23.928, and thus abolished the US\$1-\$1 parity for transactions and the requirements that the Argentine currency be 100% backed by foreign currency reserves.
  - b) Suspended Law 25.466 which provided for the intangibility of bank deposits by establishing that the currency in which they had originally been made was to be respected upon withdrawal.
  - c) Delegated to the Executive the power to determine the Argentine peso parity to the United States dollar, and to regulate currency exchange schemes.
  
- January 9, 2002 – Issued Decree-Law 71/2002 which:
  - a) Created two parallel currency markets –an official market which established the US\$1-\$1.40 parity, and a free market where the peso was left to float.

b) Delegated to the Central Bank of the Argentine Republic (BCRA) the power to regulate the currency market.

c) Determined a rescheduling plan for bank deposit withdrawals.

· February 3, 2002 – Issued Decree-Law 214/2002 which:

a) Compulsorily “pesified” loans and debts at a US\$1-\$1 conversion rate.

b) Compulsorily “pesified” bank deposits at a US\$1 –\$1.40 rate.

c) Designed the C.E.R., namely Stabilization Referential Coefficient, to index 1-1 pesified debts to inflation, thus contradicting Law 25.561.

d) Nationalized part of the banks’ private debts with depositor’s -the State would contract debt to compensate for the \$0.40 difference between \$1-US\$1 originally named deposits and the \$1.40 rate at which deposits were pesified and will have to be returned.

e) Established that no lawsuits or precautionary measures could be filed for 180 days in order to stave off cash withdrawals.

· February 15, 2002 – Issued Decree-Law 320/2002 which:

a) Clarified some issues regarding Decree-Law 214/2002

b) Modified the issue mentioned in (e) above and established that judgments and the execution of precautionary measures were suspended.

· March 1, 2002 - Issued Decree-Law 410/2002 which:

a) Excluded some transactions from the “pesification scheme” established under Decree Law 214/2002.

b) Modified Decree-Law 214/2002

· March 6, 2002 - Issued Decree-Law 469/2002 which:

a) Modified “pesification” provisions for cases in which public bonds are used to pay off bank debts (Decree 1387/2001 and 1570/2001).

· March 13, 2002 - Issued Decree-Law 417/2002 which:

a) “Pesified” at a US\$1-\$1.40 rate all the public debt –national, provincial and municipal- contracted under the provisions of the Argentine Legislation.

The aforementioned policies represent a vicious assault on the constitutional guarantees which safeguard Argentine and foreign individuals because they 1) curtail the freedom to own and to use property, and to enjoy all other rights based upon property guarantees for realization (Argentine National Constitution, Art. 14 and Art 14’), 2) confiscate the private property of bank depositors, private creditors, and public debt bond holders (Argentine National Constitution, Art. 17), 3) deny the right of individuals to defend themselves in a court of justice (Argentine National Constitution, Art. 18), 4) impair the principle of lawfulness (Argentine National Constitution, Art. 19), 5) trespass on the limit of the State’s ruling power on citizens’ rights and guarantees (Argentine National Constitution, Art. 28); and 6) transgress against the limit which restrains the concentration of public power by the Executive (Argentine National Constitution, Art. 29).

The current national authorities are in office as a result of the incidents triggered on December 19-20, 2001, and concluded on December 29-30, 2001, and after two Legislative Assemblies gathered within a week. By virtue of their own decisions and the decisions this government has made on behalf of the powers delegated upon them by the National Congress, it has overtly violated people’s rights and guarantees, causing an institutional breakdown that overlooks the constitutional rules established precisely to prevent such occurrences. The subsequent resignations of President De la Rúa and Provisional President Rodríguez Saá, as well as the move to prevent citizens from exercising their right to elect a President and Vice President, made it possible for those who seized power and are presently ruling the country to disregard the provisions of the Argentine National Constitution. Legislators granted the Executive special powers to set a currency rate and establish currency regulations. This action should be investigated in the light of the provisions set forth under Art. 29 of the Argentine National Constitution, since the destiny of all Argentine citizens has been recklessly usurped and is in the hands of only one person.

Some of the events that have occurred since December 19<sup>th</sup>, 2001, can be typified accordingly under the provisions of Arts 209, 211, 212, 213, 213’, 227, 237-241 or 248 of the Argentine Penal Code.