ARGENTINA'S 2001 DEFAULT

myths & realities

Embassy of the Argentine Republic

WASHINGTON, D.C.
APRIL 2012

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A WORD FROM THE ARGENTINE AMBASSADOR,
H.E. JORGE ARGÜELLO V

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A Word from the Argentine Ambassador, H.E. Jorge Argüello

In December 2001, following an extended period of economic and political instability that led to its worst socio-economic crisis in history, Argentina was forced to default on its sovereign debt. The questionable lending and policies inspired by the International Monetary Fund (IMF) during the 1990s and successive external shocks had been key contributor factors to this unfortunate outcome.

Since then, Argentina has come a long way in an impressive process of economic recovery with broad social inclusion. Though there is still more work to be done, Argentina made strenuous efforts to leave behind the default and the socio-economic and institutional crisis it experienced in 2001-2002.

As part of this process of recovery, Argentina has settled about 92% of its defaulted debt with private creditors under difficult conditions and without any support from the international community.

At the same time, our country abided by its international obligations and resolved many other problems, including most of the investment-related disputes that resulted from the crisis, particularly within the purview of the World Bank's International Centre for Settlement of Investment Disputes (ICSID).

Argentina has always been fully committed to finding a solution to the debt issue where all parties involved are treated equally. However, either vested interests or simply misinformed stakeholders continue to portray a false image of our country, promoting misleading or

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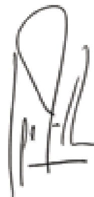
inaccurate ideas about the current status of the Argentine debt with complete disregard of Argentina's efforts to that respect.

"Argentina's 2001 Default: Myths & Realities" was conceived as an effort from the Embassy of Argentina in Washington D.C. aimed at elucidating many of the pre- and misconceptions presented by the above-mentioned interests. Hence, we provide our version of the history of the crisis and describe the efforts made by Argentina in the last decade to normalize this unprecedented situation. Its overarching goal is to provide a response to the questions raised about the Argentine debt in the most systematic manner possible.

I firmly believe we have long owed this clarification to the United States public and, no less, to our own people, the millions of argentines that bore painful sacrifices during this last decade.

Sincerely,



Jorge Argüello
Embajador

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Acknowledgements

"Argentina's 2001 Default: Myths and Realities" would not have been possible without the support of many people. I would like to specially thank both the Embassy team that worked on this project under the guidance of Minister Gustavo Lunazzi and the Office of Financial Representative of Argentina to the United States, coordinated by Pablo Pereira.

Prologue

A number of “myths” have inhibited a clear and accurate representation of Argentina’s economic context and efforts to overcome one of the saddest chapters of its recent history. Special interests and misinformed stakeholders have often misrepresented reality. In particular, false allegations such as an unwillingness to pay by Argentina and breach of international obligations have often been adduced lightheartedly. These “myths” have had far more influence than they should. It is time to set the facts straight.

This document will try to answer any lingering questions about this issue in a consistent, brief, and systematic manner. Following a Q&A format, the goal is to provide a clearer picture of Argentina’s past and current debt situation by explaining the causes of the debt crisis, the reasons why Argentina chose to defy the prevailing free market doctrines in order to protect its economic growth, social cohesion, and political stability, and the significant progress made so far.

There are three main fallacies about Argentina that must be tackled: 1) that Argentina is unwilling to pay its debts; 2) that Argentina made an unfair offer to its creditors; and 3) that Argentina has disregarded its international treaty obligations and U.S. court proceedings.

We take issue with those three fallacies.

First, **Argentina has never repudiated its debt**. Many actions were explored and pursued (most of them under the purview of the International Monetary Fund -IMF) before Argentina was forced to suspend debt payments. This document will review most of them, albeit, to make a long story short, all the actions failed. Between 1998 and 2000, Argentina’s GDP declined by more than 20 percent, unemployment skyrocketed to more than 25 percent, half of Argentines fell under the poverty line, banks failed, and depositors lost their savings.

At the onset of the crisis, there was unprecedented social unrest, with dozens of deaths and hundreds injured as a consequence of street riots. Political instability prevailed, to the extent that Argentina had five presidents in a matter of weeks. The economic conditions were dire and the political situation unmanageable. The mere existence of the

State itself was put into question.

At that critical juncture, it was clear that Argentina needed to guarantee the minimum social cohesion required under any democratic regime. Argentina's inability to pay its sovereign debt was indisputable and it had no other option but to suspend payments. However, Argentina has never questioned its debt obligations.

Second, **Argentina made a fair and equitable economic proposal to its bondholders and it is committed to share with creditors the benefits of future growth**. After years of economic hardships, only a major debt restructuring could bring about the necessary fiscal breathing room. Without pro-growth policies, neither economic health nor debt repayment capacity could have been restored. Thus, Argentina needed to ensure a debt write-down of sufficient magnitude to put the debt on a sustainable path.

Given the magnitude of the crisis, the lack of international financial support (in spite of the unique complexity of the case and the fact that Argentina even made unprecedented annual payments to the International Financial Institutions[1]), and the imperative of ensuring adequate policy space for future growth, Argentina made the best economic proposal possible. The terms were not unfavorable to creditors as typically advocated. For instance, the Congressional Research Service estimated the value of the 2005 debt swap at 60 cents on the dollar, taking into account the performance of the GDP-linked coupons. In other words, a 40 percent haircut, well below the 75 percent figure voiced by vested interests. Indeed, Argentina proposed a sound way to address uncertainties by offering GDP-linked bonds as part of the debt restructuring, giving creditors a share in Argentina's economic growth. Recent debt restructurings seem to vindicate

1 - Indeed, between 2002 and 2005, Argentina even made payments to International Financial Institutions (IFIs) of about 1 percent of its GDP. Actually, Argentina never defaulted on its debt obligations to multilateral financial institutions

Argentina's experience.[2]

Third, **Argentina has fulfilled its international treaty obligations and has subjected itself to U.S. court proceedings.** It is particularly important to stress that Argentina has always abided by its ICSID obligations. Likewise, it considers ICSID awards as final and binding. There have been 42 cases initiated against Argentina in the two years following default. Argentina won, settled, or obtained an annulment in 21 cases and in only 4 cases did ICSID render final awards against our country. In these cases, and pursuant to Article 54 of the ICSID convention[3], Argentina's law establishes that a specific administrative procedure needs to be followed to proceed with the payment - as is the case with any final decision of a local court against the Argentine State. However, the beneficiaries of these rulings have not done so and have instead blamed Argentina for disobeying ICSID rulings. Argentina is confident that this issue will soon come to a closure.

Regarding the claims before U.S. courts, Argentina has not ignored any lawsuit against it. Quite to the contrary, Argentina is currently contesting and asserting its right in all the cases brought against it before U.S. courts. It is important to bear in mind that the overwhelmingly majority of those claims belong to the so-called "vulture funds," which bought distressed debt for mere pennies and then refused to participate in the two debt swaps, hoping to sue Argentina for the face value of their

II - Today, Greece's debt swap is the largest debt restructuring ever (a debt of €206 billion has been restructured) and constitutes the first "default" among Western European countries in the last 50 years. Greece managed .to cut 53.5 percent from the face value of its debt, with the new bonds worth 31.5 percent of their old bonds sweetened by cash payments (15 percent of the original holding) and GDP-linked securities. The high participation rate (estimated at 97 percent) is explained by a singular fact: 86 percent of the debt to be exchanged was governed by Greek Law, allowing the authorities to invoke Collective Action Clauses once the level of acceptance surpassed the threshold of 66 percent. Observers indicate that creditors holding bondsworth around €9 billion will challenge the exchange through the courts (holdouts).

III - Article 54 (1) of the ICSID Convention establishes that "Each Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgement of a court in that State."

bonds, plus interests. Most of these entities, some of which belong to individuals who have renounced their U.S. citizenship to avoid paying taxes, are domiciled in tax havens. In any case, the impact of the unresolved Argentine debt on U.S. citizens is marginal.

Last but not least, we believe that the current global financial crisis brings to the fore problems similar to those that Argentina faced back in 2001. The global financial architecture is still incomplete and incapable of integrating liquidity provision with potential adjustment and debt restructuring. Our 2001 crisis has been an example of an inadequate integration into this "financially driven globalization," from which no country is exempt, no matter its size or level of development, given the current financial crisis. Now that problems are global and advanced economies are at the very center of the crisis, renewed international cooperation must be put in place to regulate sovereign debt restructurings without resorting to measures detrimental to national or international prosperity.

In this regard, Argentina's experience and policy responses to its debt burden offer a critical perspective for the resolution of sovereign debt crisis. We have shown that economic growth is the key determinant of a country's ability to repay its debt obligations. We also proved that a fair distribution of the costs of the crisis among debtor and creditors is deemed necessary to ensure economic growth, social cohesion and political stability. Finally, our experience evidences that the global financial system lacks a mandatory multilateral framework that regulates sovereign debt restructurings. A statutory sovereign debt restructuring mechanism with a clear set of international rules and procedures to force holdout creditors to accept the terms of a debt restructuring is needed to fill a fundamental gap in the governance of international finance.

President Cristina Fernandez de Kirchner rightly said at the G-20 Summit held in France "*… it is time to save this anarcho-capitalism from itself*". Indeed, the lack of rules governing modern capitalism under the free market paradigm has resulted in systemic instability and rising social inequality. The current arrangements only benefit creditors' interests. Yet the world is not static; reforms that were unthinkable in the past must now enter the realm of the politically doable.

All in all, it is pertinent to shed new light on the myths and realities of Argentina's debt restructuring process.

I. Brief History of Argentina's Default

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Why did Argentina default on its sovereign debt obligations in late 2001?

Argentina's default was an unavoidable part of its economic collapse. The roots of the 2001 crisis have been linked to a multiplicity of factors. The Convertibility Plan[1] adopted during the early 1990s was indeed one of them. That macroeconomic framework, coupled with orthodox structural reforms such as deregulation, trade liberalization, and privatizations, made Argentina extremely vulnerable to external shocks, prompting an overvalued exchange rate, generating jobless growth, and raising external and fiscal deficits that, at the end of the day, led the debt towards unprecedented levels.

External factors played a key role. In the second half of the 1990s, vulnerabilities to external shocks mounted. The 1998 Russian default and the 1999 steep devaluation of the Brazilian real put intense pressure on Argentina's exchange rate, while increased sovereign spreads and financing costs put into question the sustainability of Argentina's policy mix. Meanwhile, the recession dragged down the economy and led to a slowdown in investments, worsening the overall fiscal position precisely when the low interest restructured debt issued in the early 1990s was coming due and had to be refinanced at much higher financial costs.

All successive fiscal adjustment packages aimed at improving the overall deficit situation were called to fail, as they barely managed to keep up with the increase in the interest bill. Argentine authorities applied successive pro-cyclical fiscal adjustment policies supported by the IMF that amplified the negative impact on the economy and on its population. Slashing wages, jobs, and public spending across the board only deepened the economic recession. All in all, high real interest rates and negative growth raised the debt-to-GDP ratio by about 10 points between 1997 and 2000. By 1999 Argentina had embarked on an unsustainable debt path

1. This exchange rate-based stabilization program was aimed at containing chronic inflation. Under this regime, the Argentine peso was pegged to the U. S. dollar at 1:1 while the Central Bank was required to back at least two-thirds of its monetary base with hard currency reserves.

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After four years of deepening recession and mounting social unrest, the government collapsed in December of 2001 and so did the fixed exchange rate regime established a decade before (Convertibility Plan). Argentina's GDP declined by more than 20 percent between 1998 and 2002; unemployment reached more than 25 percent, poverty soared to 50 percent, banks failed, and depositors lost their savings. As a result, unprecedented social unrest shook the country, with dozens dead and hundreds injured in street riots as the country went through five presidents in a matter of weeks. The devaluation of the peso pushed Argentina's total public debt to record-breaking and unsustainable levels (from 63 percent of GDP in late 2001 to 166.3 percent in early 2002). Thereafter, the need for a comprehensive debt restructuring was incontestable. Capital flight and the large devaluation of the peso evaporated Argentina´s wealth nearly overnight.

The scale and magnitude of Argentina's problems made it impossible to fulfill its debt obligations. Argentina faced a true inability to pay. Its intention was never to "export" our crisis elsewhere. As a matter of fact, 60 percent of the defaulted debt was held by Argentines themselves.

Thus, Argentina's default was neither a discretionary nor an easy-to-make decision aimed at repudiating its debt obligations. In light of the most unprecedented social and economic crisis ever experienced in our recent history, our country had no other option and was forced to cease all its debt payments in order to guarantee minimum social and economic cohesion. Against this background, there was no other feasible choice at hand.

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Was the default Argentina's first option?

Argentina tried every feasible option before suspending debt services. First, in late 1999, the government made fiscal responsibility its main priority and launched a program with the aim of covering Argentina's financing needs for the period 2001-2002 (known in Spanish as "Blindaje"), by securing a substantial line of credit from the IFIs (around $20 billion). Yet IMF policy conditionality imposed quantitative targets for the budget that, given the recession, could not be met in spite of significant tax increases and spending cuts. The IMF-backed program was then off-track, fueling negative expectations about the exchange rate regime. The government managed to cover immediate financing needs at that time (April-May 2001) through a bond issuance aimed at local institutions.

Second, in mid-2001 Argentina offered the so-called "Mega Swap" to extend the majority of its debt, which involved a very large range of bonds (around $65 billion) that were structured in groups according to maturity. As short-term debt could only be converted into relatively short instruments in order to avoid an extension of maturity that could turn out to be too expensive, the very high risk spreads prevailing precluded a significant restructuring of its debt. Around $29 billion of debt was exchanged, reducing debt service obligations in the short run at the expense of higher costs in the medium run. However, given that Argentine provinces experienced significant refinancing difficulties soon thereafter, the debt exchange only generated a short-lived reduction in the secondary market spreads. In this context, a zero deficit fiscal rule was approved in July 2001, and if revenues were insufficient to balance the budget, cuts in wages and pensions would have to be included. Nevertheless, the market immediately reacted negatively given that such a radical pro-cyclical fiscal adjustment could prove very difficult to sustain. In addition, concerns about the health of the domestic financial system grew as a result of the unprecedented financial gap and the difficulties faced in placing new debt in international markets. Deposit outflows and loss of reserves were unstoppable and the stage was set for an economic implosion.

Third, in September 2001 the authorities announced that they would

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seek debt relief through a new voluntary debt exchange that would take place in two phases.

The first phase was confined to local bondholders, in which “guaranteed loans” - governed by Argentine Law - were offered in exchange for their bonds. In fact, investors were given the option of recovering the original bonds if any terms or conditions of the guaranteed loans changed in the future. A menu of three financial options was offered and several incentives were put on the table (i.e. the new instrument could be valued at par rather than on a market-to-market basis). Almost all the debt held by the banks, local pension funds, and local residents was tendered, allowing short-term improvements in the government’s cash flows.

The second phase would have involved foreign creditors, but was never launched. The recession deepened and, by September 2001, Argentina had once again missed the fiscal targets agreed to with the IMF. Isolated from international credit markets, the IMF disbursement was the only financing source available to avoid default. Expectations that the new IMF disbursement would be delayed resulted in a deposit run and the need to impose an exchange market holiday and a deposit freeze in order to prevent the collapse of the two largest public banks. A popular uprising ended with the toppling of the government and alarming social unrest.

All in all, it is clear that Argentina did everything it could to honor its debt obligations, even at the expense of economic and social implosion. After four years of deepening recession and mounting social unrest, there was nothing else to be done except a massive debt restructuring, in which the burden of adjustment was also shared by lenders.

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What was the role of the IMF between 1991 and 2001?

Few can deny the role of the IMF in Argentina's crisis. The IMF was utterly convinced that Argentina's currency board was a wonderful idea and ensured its success. From 1991 to 2001, the IMF granted five successive financial arrangements, including two extended arrangements under the Extended Fund Facility (EFF) approved in 1992 and 1998, and three Stand-By Arrangement (SBA) approved in 1991, 1996, and 2000. Moreover, during this period the IMF provided extensive technical assistance in the fiscal and banking areas, dispatching more than 50 missions to the country.

During that time, Argentina was continuously alluded to by the IMF as an example of a credible and viable fixed exchange rate regime to be followed by other countries in their road to price stability. Indeed, its ideology played a key role in explaining Argentina's collapse, as the IMF was of the view that by limiting any discretionary monetary policy the goal of price stability could be achieved. Since the economy had been previously deregulated and deprived of any government intervention, the ever-perfect market forces would be able to work appropriately. Yet, the system was unviable. It was, indeed, a recipe for disaster in a world of free capital flows, precluding crucial flexibility for Argentina in the face of declining capital inflows, the appreciation of the dollar between 1999 and 2001, and Brazil's devaluation. The so-called periphery in the Eurozone now faces similar problems and they are forced to accept "internal devaluation" and austerity policies. We know from our own experience that policies that do not foster growth are called to fail.

The role of the IMF at the onset of the crisis deserves particular attention. Eager to prevent the collapse of the convertibility regime, in March 2000 the IMF approved a three-year Stand-by Arrangement for $7.2 billion, imposing an unprecedented fiscal adjustment program that exacerbated the economic recession. Even today, the IMF believes that fiscal austerity leads to improved access to international financial markets. In Argentina's case, this strategy proved to be fundamentally flawed as the recession was the key driver of the debt explosion. Despite the clear shortcomings of its strategy, in January 2001 the IMF approved an increase of $13.7 billion in the SBA and, in September of that year, this was further increased to $22 billion, with up to $3

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billion set apart for a possible debt-restructuring operation. However, in December 2001, IMF support was cut off due to slippages in the fiscal program. Argentina was then forced to suspend all service payments.

To sum up, the IMF supported the continuation of the exchange rate regime with a substantial commitment of resources. Argentina was not facing a liquidity but a solvency crisis, in which interest payments on the public debt averaged 4 percent of its GDP in 2001 and export growth was insufficient to improve the country's ability to meet its debt obligations and lower its debt to GDP ratio (due to overvaluation of the exchange rate on top of the appreciation of the U.S. dollar).

We certainly contend the IMF view that public spending was the main cause of debt accumulation, paving the way for its austerity programs. Fiscal starvation was mistaken: the fiscal deficit increased despite a significant rise in the primary balance surplus. The cumulative effects of the rise in interest rates and the recession were critical explanatory factors to understand the spiraling debt path. Indeed, setting the exchange rate encouraged capital inflows, prompting the exchange rate appreciation that worsened the current account balance. It was a recipe for disaster exacerbated by external shocks. Under that economic framework, external needs rose and debt accumulated, making the economy vulnerable to shocks. Therefore, Argentina ended up engulfed in a debt trap of high interest rates, low growth and high vulnerabilities against a backdrop of contagion effects and capital flow volatility. The IMF policy recommendation actually reinforced the recessionary trend and the economy was trapped in a vicious circle. It was Argentina's longest recession since the First World War.

In short, the IMF played a significant role in Argentina's economic implosion. The Fund's seal of approval allowed the continuation of the Convertibility regime, further dollarization of the economy and unsustainable levels of foreign currency-denominated debt, making the cost of exiting even higher. Not surprisingly, policy recommendations of internal devaluation through lower growth, higher unemployment, and wage restraint resulted in an economic disaster. The social and economic costs for Argentina were unprecedented. Strict policy conditionality imposed a huge brunt over the Argentine society. The IMF partially recognized its responsibility in its "*Report on the Evaluation of*

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the Role of the IMF in Argentina, 1991-2001"[2].

Looking forward, it is crystal clear that fiscal austerity is not the answer to the problem of external debt. In case of insolvency, the debt burden can only be solved if lenders bear some responsibility. History now seems to repeat itself (different countries, same problems), but few countries have suffered the devastating consequences of these economic doctrines and IMF policy conditionality like Argentina.

2 "The IMF and Argentina, 1991–2001." International Monetary Fund, 2004. Web. 12 Feb 2012. <http://www.imf.org/External/NP/ieo/2004/arg/eng/pdf/report.pdf>.

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Is Argentina a “serial defaulter”?

Much has been said about Argentina’s allegedly repetitive behavior of not fulfilling its external obligations. However, in spite of these allegations, a brief historical review proves that defaults have been typical in both advanced and developing countries alike.

Indeed, default does not seem to be confined to a bunch of “irresponsible” developing countries. A number of today’s wealthy countries went through similar crises when they were emerging market economies. This is a common denominator throughout different regions of the world (including Asia and Europe). In their recent book “This time is different,” Carmen Reinhart and Kenneth Rogoff assert that “...*virtually all countries have defaulted on external debt at least once and many have done so several times during their emerging market-economy phase, a period that typically lasts at least one or two centuries”*.[3]

Hence, the reality and track record of all countries is worth exploring before rushing to any conclusion about the true willingness of countries to fulfill their obligations.

For instance, according to Reinhart and Rogoff, France defaulted on its external debt no fewer than eight times in its early years as a nation-state; Spain accrued the record of thirteen episodes of default (record that as yet remains unbroken); Greece found itself in almost continual default and even Austria’s records are stunning (five times in the 19th century). In other words, when current European countries were going through the emerging market phase, they also confronted recurrent external debt problems and default, as many emerging market countries do today.

More tellingly, the idea that nations in Latin America and low-income countries in Europe were the only ones to default does not match reality either. In fact, serial default is the norm throughout every region in the world. Pre-communist China repeatedly defaulted on international

3 Reinhart & Rogoff, *This time is different: eight centuries of financial folly*. Princeton University Press. 2009

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debts, while India and Indonesia also suspended debt payments in the 1960s. The same has happened in African countries. As explained by Reinhart and Rogoff, the near universality of default debunks the notion that most countries have avoided the perils of sovereign default.

Also, data consistently suggests that the transmission channels that result in defaults followed similar patterns. Historically, defaults often follow in the wake of large spikes in capital inflows or global banking crises. The pro-cyclicality of financial markets determined emerging market borrowing trends, and banking crises in global financial centers abruptly stemmed lending to countries in the periphery. Therefore, global economic factors, including commodity prices and interest rate hikes in countries that are financial centers, have played a major role in generating waves of defaults elsewhere.

Argentina can hardly be singled out as a country that has experienced continuous defaults.

In the following table, we summarize the number of countries that have defaulted or restructured their debt, together with the share of years in default since their independence or 1800 throughout 2008.

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Country	Share of years in default or restructuring since independence or 1800	Total number of defaults and/or rescheduling
Europe		
Greece	50.6	5
Russia	39.1	5
Hungary	37.1	7
Poland	32.2	3
Spain	23.7	13
Austria	17.4	7
Turkey	15.5	6
Portugal	10.6	6
Latin America		
Honduras	64.0	3
Ecuador	58.2	9
Nicaragua	45.2	6
Mexico	44.6	8
Peru	40.3	8
Venezuela	38.4	10
Costa Rica	38.2	9
Colombia	36.2	7
Guatemala	34.4	7
Argentina	32.5	7
Chile	27.5	9
Brazil	25.4	9

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The table shows that many countries spent a significant number of years in default.[4] As a matter of fact, Argentina holds the record for the largest default in recent history (or, maybe, “held” the record, since the case of Greece could be considered an orderly default), but history proves again and again that sovereign defaults on external debt have been an almost universal rite of passage for every country as it matures from an emerging market economy to an advanced developing country. Unfortunately, in a world of unregulated global financial markets and free capital flows, other countries will probably follow.

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4 Reinhart & Rogoff, *This time is different: eight centuries of financial folly*. Princeton University Press. Page 99. 2009

Did Argentina benefit from the default?

Argentina's default brought about the most unprecedented political, economic and social debacle ever experienced by a developing country as a result of a debt crisis. After four years of recession, the crisis had a devastating impact. In 2002 alone, the economy contracted by 11 percent of GDP, resulting in a cumulative output decline of nearly 20 percent since 1998. Unemployment rose well above 20 percent and more than half of the population fell under the poverty line. As we pointed out above, an estimated 60 percent of the defaulted debt was held by Argentine citizens, a larger fraction than in any other default in recent history (Russia, Ukraine, etc). Argentina faced currency, debt, and banking crises simultaneously, dragging the economy into a huge dislocation along with high social costs.

Yet, figures showed that the abrupt contraction in economic activity and employment levels rose considerably before the default. The end of the convertibility regime (not the default) allowed the recovery to take place soon after. In fact, contrary to most predictions, a V-shaped recovery started only three months after the devaluation of the peso, triggered by the change in the relative prices in the tradable goods sector. Indeed, the recovery was led by the local production of previously imported goods (import substitution), particularly in the manufacturing sector. After a short initial stage, the recovery was spearheaded by an increase in domestic demand, especially by the investment demand that grew at an annualized rate close to 40 percent between 2002 and 2004, and then by private consumption. Despite initial economic instability, political uncertainty, and credit rationing, the economic recovery was driven by internal demand sources, supported by a set of policies aimed at recovering the macroeconomic equilibrium.

Critically, investment demand was financed by the higher profits earned by firms, while a positive wealth-effect resulting from the significant external asset holdings of the private sector fed the recovery of consumption expenditures. Meanwhile, a significant improvement in the fiscal front took place between 2001 and 2004 (a swing from a global deficit of 5.6 percent of GDP to a 3.5 percent surplus), explained by three factors: 1) improvements in the provinces' balances derived from the increase in tax collections and the rise in nominal prices,

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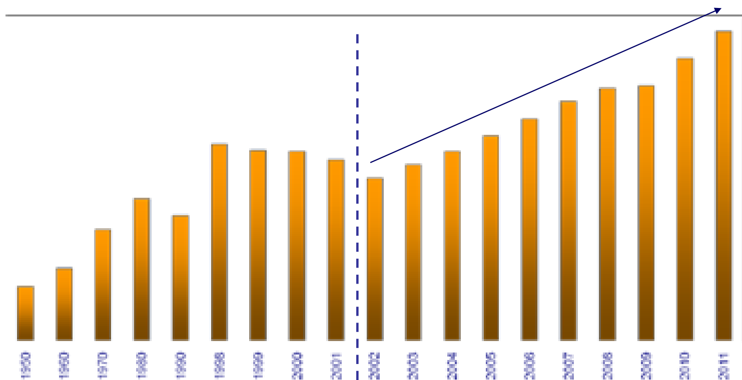
coupled with expenditure restraints; 2) improvements in the primary results of the public sector, mainly driven by rising tax collections (almost 4.9 percent of GDP). Indeed, export taxes played a critical role, absorbing part of the devaluation's favorable effect on the exporters' income, while easing the impact on domestic prices and real wages; 3) the contraction of interest payments resulting from the default.

That said, the following fact should be stressed: if Argentina had not partially suspended its debt services payments, the country would have suffered an even deeper economic and social crisis. As we explained, there was no other feasible option at hand after four years of successive fiscal adjustment programs and recession. The amount of interests on the public debt would have merely represented between 9 and 11 points of GDP; that is to say, one half of the total tax collection in one year. It goes without saying that Argentina could not fulfill its obligations due to its fiscal-financial vulnerabilities derived from its massive debt burden denominated in foreign currency. An overall debt restructuring was therefore unavoidable.

Graph 1: Argentina's GDP 1950-2011



Source: Central Bank of the Argentine Republic

What was the role of the IMF after Argentina's devaluation and default?

Despite the fact that it bears responsibility in the unfolding of this crisis, the IMF was not perceived as playing a positive role in Argentina's efforts to stabilize its economy. At the onset of the crisis, there were significant differences regarding the appropriate set of policies which should be put in place to achieve a macro equilibrium.

First and foremost, the IMF demanded the free flotation of the peso and exerted huge pressure to do away with all exchange controls. Indeed, the reestablishment of any negotiation was precluded by Argentina's imposition of exchange controls. These controls compelled exporters to liquidate a considerable amount of the foreign currency obtained from their exports and restricted capital outflows in the local market. Without a doubt, exchange controls were a critical pillar in the authorities' efforts to stabilize the exchange rate, preventing an overshooting that could have resulted in a hyperinflationary process and re-establishing some degree of financial intermediation in domestic currencies. Despite the opposition of the IMF, Argentine authorities were proved right and the stabilization of the exchange rate was achieved by mid-2002 (around 1 dollar = 3.5 pesos). By the second half of 2002, it was also clear that a hyperinflation had been avoided.

Second, the handling of the bank crisis was also the subject of significant controversies with the IMF. In its view, there was a need for radical solutions that would have involved the restructuring of public banks and banks' liquidations. In contrast, the authorities view was tilted towards a gradual exit from the crisis, favoring the generation of voluntary options for the savers in order to avoid renewed shocks to the system. In doing so, the government also exercised regulatory forbearance to allow banks to continue operating, such as special valuation rules for the debt under default, coupled with renewed liquidity assistance. This issue derived in an open conflict with the IMF, which demanded the creation of an arbitration commission in order to come to a closure. Argentina nevertheless persisted with its approach and the banking crisis was handled without ulterior disruptions in a context of a gradual growth in bank deposits.

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Other areas were also the subject of significant discrepancies, such as the introduction of export taxes (to which the IMF objected, despite their critical role in boosting public revenues, stabilizing the exchange rate, and ensuring sound redistributive effects among the population), or an exchange rate policy aimed at preventing an excessive appreciation of the Argentine peso. Moreover, the IMF adopted a confrontational attitude towards Argentina, making public its disbelief about the sustainability of the stabilization process and the economic recovery[5]. Once again, the Fund erred in its diagnosis, as Argentina managed to recover from the crisis while persisting on a more balanced policy mix.

In early 2003, a temporary lending package was agreed by the IMF, ahead of a longer arrangement to be concluded after the May 2003 election. Thus, in September 2003 a three-year arrangement was agreed on, aimed at refinancing the amortization of debt with the Fund. In a nutshell, new funds were credited under the arrangement for the equivalent amount of the capital amortizations with the institution, although subject to typical IMF policy conditionality. The conflictive relationship between Argentina and the Fund precluded a comprehensive agreement and conditionalities were only established for the first year. Both fiscal and monetary targets were agreed on (i.e., a 3 percent of GDP fiscal primary surplus), but structural conditionality was also imposed, giving the IMF a great margin of discretion in its evaluation. This structural conditionality involved changes in concession contracts for public utilities, a new regulatory framework for privatized public utilities, etc. A year later, Argentina not only met quantitative benchmarks, but also showed progress on the structural front, particularly in terms of the renegotiation of the contracts for privatized public utilities, as well as its new regulatory framework.

Yet, at the time Argentina was finalizing its debt restructuring proposal and debt swap without consulting the IMF. Indeed, perhaps the most unusual feature of this debt restructuring process was the fact that the

5 For example, Anne Krueger, former IMF First Deputy Managing Director made a public statement indicating that Argentina's recovery showed by the data was "the bounce of a dead cat"

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IMF did not participate in the design nor the management of Argentina's debt restructuring. Never in recent history had a developing country managed to handle a debt restructuring without the interference of the IMF. At the end of the day, that was supposed to be one of the raison d'être of this institution, but under Kirchner's Presidency, Argentina proved the viability of an independent and successful debt restructuring.

Of course, this situation created a significant impasse in the IMF-Argentina relationship that was only overcome by the suspension of the 2003 Program. The high acceptance of the proposed swap made it clear to the IMF that markets had accepted Argentina's independent debt refinancing, weakening any possibility to terminate the agreement with our country on the basis of not fulfilling the "good faith" clause[6]. Actually, many bondholders at that time were interested in a more cooperative attitude by the IMF, eager to achieve a better valuation of the new bonds by the market.

This issue was only solved in 2005 when Argentina decided to terminate the agreement and pay all its outstanding obligations with the Fund in advance. In doing so, Argentina declared itself free from the IMF policy conditionality after sixteen years of successive financial assistance.

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6 The IMF has a special internal policy for lending money to a country in arrears of its debt obligations. In 1999, the Fund broadened the scope of its policy, encompassing arrears on bonds and other non-bank forms of financing from private creditors (before it was confined to arrears to commercial banks). At that time, it was decided that the Fund would consider lending to countries in arrears on a case-by-case basis and only when the following two conditions were met: 1) that the Fund support is considered essential for the successful implementation of the country's adjustment program; 2) that the country in arrears is pursuing appropriate policies and is making a "good faith" effort to reach a collaborative agreement with its creditors. The Fund revised the meaning of "good faith" efforts in mid-2002 by defining some basic principles, but it also agreed to adapt this concept to changes in circumstances.

II. Efforts by the Argentine Government to normalize its debt obligations

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Did Argentina delay its debt restructuring offer?

Argentina moved as fast as it could to regularize its debt obligations in the context of the most unprecedented economic, social, and political crisis ever. But the lack of an orderly multilateral mechanism for facilitating debt restructuring made the resolution of the crisis a messy and time-consuming affair. Below, we summarize the sequence and actions taken by the Argentine Government to come to a closure on the debt restructuring issue.

First of all, Argentina's political and economic transition did not end until May 2003, when President Néstor Kirchner was elected. The previous 17 months were characterized by significant economic and financial breakdown, coupled with continuous social unrest. In early February 2002, the government announced a compulsory "pesification" - a conversion into local currency at non-market exchange rates - of dollar-denominated assets and liabilities in the financial sector. It was carried out in an asymmetric fashion: dollar deposits and loans to the public sector were pesified at a rate of 1:1.4, while loans to the private sector were pesified at 1:1. It therefore involved a transfer from banks to both public and private debtors. Although controversial, these actions were aimed at managing the distribution of losses in a more equitable manner, reducing the wealth transfers from debtors to creditors and avoiding a collapse of the economy due to the fulfillment of foreign currency-denominated contracts.

Depositors were also hurt and bank withdrawal restrictions remained in place, but since they were "pesified" at a more appreciated rate than bank loans to private creditors, the banking system became insolvent. It required a government bailout and the issuance of compensation bonds (known as "Bodens") amounting to about $9 billion. Yet bank depositors demanded the value of their deposits in their original currency denomination and their free availability. Basically, all time deposits above a small threshold were restructured into a long ten-year inflation-indexed peso or dollar-denominated bonds. However, depositors obtained court orders requiring the banks to pay out U.S.-dollar denominated deposits at the prevailing market exchange rate. Therefore, Argentina's Central Bank was forced to inject liquidity into an increasing number of banks, fueling a run on the currency and a

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subsequent sharp interest rate increase on peso-denominated deposits to almost 100 percent in April 2002. In order to address this situation, the government launched three different offers for a voluntary swap of reprogrammed deposits for new public bonds[7]. By March 2003, a broad acceptance level among depositors was reached, and with it the liquidity pressure on the banking system eased (deposit outflows abated).

Meanwhile, the government debt was also pesified at 1.4 pesos per dollar and then indexed to local inflation. Bonds kept their payment schedule and original maturity, but interest rates were capped at 2 to 5 percent. This measure affected a dollar-denominated debt of around $57.5 billion, mostly "guaranteed loans" issued after the November 2001 debt swap. But since those loans were issued with a clause that allowed the holder to turn assets into the original bond, most private pension funds (*Administradoras de Fondos de Jubilaciones y Pensiones - AFJP*) and private insurance companies decided to reconvert their holdings (around $17.8 billion). Yet, the reduction of the debt value in dollars was significant (around $22.1 billion), although indexation reduced part of those savings.

In summary, the collapse of the Convertibility regime created an unprecedented disarray in the Argentine economy. Adequately managing the "distribution of losses" was of the essence and it required the government absorb part of the losses via new debt issuances. It is estimated that between December 2001 and December 2003 the gross public debt stock increased about $28.2 billion. Only after all its debt claims were determined was Argentina in a position to launch its debt restructuring strategy.

Second, soon after President Kirchner was elected, the government initiated the debt restructuring process (September 2003). After reaching an agreement with the IMF, the authorities made public the

7 The first two offers involved the swap of savers' bank deposits for public debt. The third one intended to release all reprogrammed funds, with the government issuing debt papers for the difference between the deposits' value in its original currency and the amount effectively disbursed by the bank.

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main guidelines and the agenda of a restructuring proposal in the context of the Annual Meeting of the IMF and World Bank Group in Dubai (the so-called Dubai Guidelines). An offer would be made to every holder of bonds issued until December 2001 providing for a uniform treatment, and recognizing as eligible a debt stock of $87 billion. The guidelines set a maximum amount of $21.8 billion of new debt, which resulted in a haircut of 75 percent and left aside past due interest from December 2001 onwards. The issuance of three bonds called par, quasi-par and discount was announced. The par bonds preserved the nominal value of the original debt but with longer maturity and lower interest rates than the other two bonds, which encompassed nominal haircuts. Interestingly, Argentina made clear that the proposal was fully consistent with a federal government primary surplus of 2.4 percent of GDP agreed with the IMF, proving the sustainability of the offer and the government's commitment to maintain that fiscal target in the long-run. The authorities also made clear from the outset that all new bonds would include a detachable GDP warrant with payments tied to GDP growth. This innovative GDP kicker was a clear-cut sign of Argentina's "good-faith" in this process built on the firm understanding that debt sustainability was indisputably linked to a country's continued economic growth.

Third, the dispersion and lack of organization among multiple creditors and the absence of an orderly and binding multilateral mechanism for facilitating debt restructuring also created significant delays. On the one hand, it was only in early 2004 that regional creditor groups began to organize among themselves. Later, a Global Committee of Argentine Bondholders (GCAB) was established, claiming to represent about 45 percent of the nominal debt stock to be restructured. On the other hand, the absence of collective action clauses (CACs) and aggregation provisions made the process all too complex. Neither altering the repayment terms by a super majority of bondholders, nor extending the terms of the debt restructuring across all categories of bonds was possible. The debt swap comprised 152 different bonds, issued in 7 currencies under several jurisdictions.

Fourth, Argentina committed to initiate a dialogue with a long list of external creditor groups and subsequently adapted its debt swap proposal in light of this dialogue. Right after launching its debt structuring

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strategy, the Argentine Government held a series of meetings with consultative groups to facilitate contact with creditors. In March 2004, in a letter of intent to the IMF, the government made a commitment to continue further negotiations and in April a meeting took place with a large number of creditor groups. In June 2004, the government presented a tentative restructuring plan (the so-called "Buenos Aires Proposal") based on the Dubai Guidelines, maintaining the proposal of three instruments announced therein (par, quasi-par, and discount - see Annex for details) and establishing the issue date on December 31, 2003 (accruing interest since then). The offer included a coupon tied to GDP growth. Overall, it involved a future fiscal effort greater than the one originally put forward. Fiscal efforts necessary to finance the interest payment would demand a primary surplus target of 2.7 percent of GDP during the first 5 years and then the stabilization of the primary surplus to around 2.3 percent of GDP from 2014 onwards. Even in this base case scenario, the government was committing to obtain annual funding of about 4 percent of GDP to face capital payments maturing in the first 10 years after the swap. Under the proposal, the debt still represented a heavy burden for Argentina even after the debt restructuring. On November 1, 2004, after completing all filings with the U.S. Securities and Exchange Commission (SEC), the final offer was published. Moreover, it had to face various - though unsuccessful - legal attempts to block the exchange. However, the offer was finally opened on January 12 and closed on February 25, 2005. On February 9, 2005, the Argentine Congress passed a law prohibiting the government not only from making future exchange offers to holdouts but also from entering into any type of settlement with them (the so-called "Padlock Law").[8]

All in all, it took the newly-elected government fifteen months to put forward a debt restructuring proposal that tried to balance the legitimate interest of both debtors and creditors. Looking across all countries that defaulted on debts owed to private sector creditors included in the

8 Law 26,017 (Articles 2 and 3) expressly forbade the Executive to reopen the debt swap or enter into any sort of transaction regarding bonds tendered pursuant to the debt exchange established by Decree Nº 1735/04.

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World Bank's Global Development Finance report[9], it can be observed that delays in restructuring averaged 7.4 years, with the median default taking about six years to be resolved. Moreover, differences can be seen by regions: delays were longer in Sub-Saharan Africa (8.5 years) than in Latin America and the Caribbean (7.5 years) or Europe and Central Asia (7.5 years). Thus, there is no basis for singling out Argentina as a country that has deliberately delayed its debt restructuring process. That accusation is unfounded and biased, aimed at discrediting the efforts made by Argentina to come to a closure on this issue.

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9 The Global Development Finance Data of the World Bank covers 90 defaults and renegotiations by 73 separate countries between 1989 and 2004.

Wright, Mark. *Restructuring Sovereign Debt with Private Creditors: Theory and Practice*. Chapter 12

Braga & Vincellette, *The Financial Crisis by the World Bank*. 2010.

Did Argentina really make the best possible offer? Was Argentina too harsh with foreign creditors?

Vested interests have repeatedly stated that Argentina was in a position to make a better offer to foreign creditors in the 2005 debt swap process. Against this background, Argentina made the best offer possible consistent with the much needed economic recovery and certainly acted in good faith throughout this process. Indeed, a couple of points warrant special attention.

First, markets spoke for themselves and a substantial majority of creditors accepted the 2005 debt swap. Final participation reached 76.1 percent, reflecting a participation of about two-thirds outside Argentina and 98 percent participation among domestic bondholders. This meant that $62.3 billion of original bonds would be exchanged for new instruments worth about $35.3 billion plus the GDP-linked coupons.

Second, markets considered the debt swap proposal reasonable because the value of the offered bonds involved a haircut that was similar to the market price of the defaulted bonds. However, in that valuation much hinged on the discount rate used in the analysis, knowing that a lower rate would be applicable (rather than the emerging market rate benchmark) since it could be assumed that the Argentine debt would end up being less risky after the restructuring. In late 2004, world liquidity was also stimulating risk appetite and both the GDP coupon and local currency CPI-indexed bonds opened a window of opportunity for higher returns. Indeed, at the time of the debt swap, spreads on Argentine bonds were at low levels (they fell steadily from about 2,000 basis points to close to 500 basis points), fueled by high steady growth (annual growth rate of 8.8 percent in 2003 and 9.0 percent in 2004), low inflationary pressures, strong fiscal numbers (2004 ended with a consolidated primary surplus of about 5 percent of GDP) and pent-up commodity prices. Moreover, the authorities' decision to buy back outstanding performing debt encouraged higher participation.

In other words, the implicit valuation derived from the price of defaulted bonds just prior to the exchange, at 30 to 33 cents on the dollar, proved to be extremely low compared to the markets' valuation only six months

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after the swap, when the peso-indexed par bonds reached 50 cents and the discount bond reached 45 cents. Therefore, we contend the idea of an exorbitant haircut in Argentina's swap process that proved that the country was not playing by the rules of the international financial community. Considering that the average restructuring haircuts have been in the range of 45–63 percent[10], there are no special reasons for finger pointing at Argentina other than for the purpose of discrediting its independent debt restructuring process. As a matter of fact, the U.S. Congressional Research Service has estimated the value of the 2005 debt swap at 60 cents on the dollar, once the performance of the GDP-linked coupons is considered.

Third, the magnitude of the haircut was the result of a realistic fiscal-financial program. Indeed, the restructuring proposal was based on a key strategic decision: Argentina should not issue new debt in the international market. In other words, no new funding would be available for the foreseeable future. Hence, if that were to be the case (as it was indeed), the haircut and the extension of maturity required in order to reach a sustainable debt position would have to be significant.

As mentioned above, Argentina agreed with the IMF on a primary fiscal surplus of 2.4 percent of GDP and committed itself to a higher target (2.7 percent of GDP during the following five years) when launching its debt exchange offer. The calculation made by Argentina´s authorities showed that this fiscal effort would finance the interest payments under a reasonable economic growth scenario (3.3 percent average growth), but a significant part of the capital maturities were left aside and would require new funding sources. If renegotiation with multilateral

10 According to the IMF, Russian restructuring haircuts were in the range of 45 and 63 percent; Ukraine, between 30 and 56 percent; Pakistan, 31 percent; Ecuador 27 percent; and Uruguay, around 13 percent. Taken together, this suggests on balance a post-default recovery of 50 and 65 percent. According to the World Bank's Global Development Finance Data, the average haircut - weighted by the level of outstanding debt - is 38 percent, with the median around 42 percent. Interestingly, data also suggest that debt restructuring does not always successfully reduce a country's long-term debt burden. The data shows that both lower and lower-middle income countries often exit default more indebted than when they enter into this process, as private debt restructuring is outweighed by higher official debt. Greece faces this challenge today.

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organizations aimed at refinancing Argentina’s debt amortizations failed, in order to make payments on the capital, the government would have to obtain additional annual funding amounting to an additional 2 percent of GDP for the next 10 years, representing an average of 4 percent of GDP during the same period.

Even after the debt restructuring, with a significant haircut and new maturities, Argentina was facing a heavy debt burden in order to repay capital payments maturing during the first 10 years following the swap. Indeed, the debt relief achieved still left Argentina with a debt-to-GDP ratio of almost 80 percent, as the fiscalized crisis losses represented around $30 billion in new debt.

When taking into account the need to ensure that the economic recovery was cut short, it is quite evident that Argentina put forward the best possible offer.

Fourth, the introduction of a GDP-linked coupon proves that Argentina acted in good faith and was enthusiastic to share with foreign creditors the benefits of an economic recovery. The aim was to reward bondholders with a coupon tied to Argentina’s economic growth rate, with a yearly distribution of the equivalent of 5 percent of the revenues in excess of a stipulated GDP growth trend, starting in 2006. All new bonds tendered added this facility, that was issued in a number of unities equal to the amount of the capital effectively swapped and could then be sold separately six month after that. These GDP-linked bonds offered investors an equity-like exposure to the country in an upside period, while helping to contain the typical pro-cyclical borrowing in emerging market economies.

Rhetoric aside, on the whole Argentina put forward a fair, reasonable, credible and sustainable debt exchange proposal. The Argentine Government was firm in negotiating the restructuring, but, at the same time, committed to significant financial and fiscal efforts in order to come to a closure on the default.

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Why does Argentina blame "vulture funds"?

A significant part of Argentina's defaulted bonds was, and still is, in the hands of the so-called "vulture funds". From the onset, their ludicrous tactic was crystal-clear: they bought defaulted debt at a discount in the secondary market, refused to participate in any general restructuring in which the value of the debt was to be written-down, and sued Argentina for a higher payback. This strategy, coupled with aggressive litigation, actually worked in other countries that were desperate to re-gain access to international capital markets. For them, paying off a minority of litigious bondholders was a reasonable price to pay for a quiet life. Yet, this was never the case of Argentina.

Vulture funds hold several billion dollars of Argentine defaulted bonds. They were not primary lenders, but bought these debt claims for pennies on the dollar with the goal of suing Argentina for the face value of the debt, plus interest. These funds are often based in offshore tax havens and frequently use U.S and U.K courts to seize the debtor country's assets worldwide. They regularly threaten and interfere in established trade relationships or try to make settlements with other creditors all the more difficult. Litigation in court and strong-arm tactics like systematically discrediting the debtor country are common tools to force governments into settling the dispute to their gross advantage. Tellingly, Paul Singer, the founder of Elliot Management Corporation (whose subsidiaries claim about $2 billion in Argentine defaulted bonds) once stated when referring to companies bankruptcy: *"Our primary goal is to find bankruptcy situations where our ability to control or influence the process is the driver of value*".[11]

Ironically, when Argentina launched its debt swap proposals in early 2005, many vulture funds called it "scandalous, offensive, and morally

11 Foroohar , Kambiz . "Vulture Fund Founder Singer Helps Back Giuliani Bid (Update1)." (2008). <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a28yFQW._1bY>.

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unacceptable"[12] and claimed that there was no way Argentina could possibly avoid legal challenges to this offer. Yet, vulture funds paid on average no more than 20 cents on the dollar for the defaulted bonds (probably even much less), but demanded to be repaid in full as a "legitimate and morally acceptable" right. Certainly, they had taken the gamble before and it had paid off[13].

One extreme example of the extraordinary profits involved in this sovereign debt profiteering activity is reflected in the cases brought against Argentina before U.S. Courts by vulture funds holding bonds known as FRAN (Floating Rate Accrual Notes). These lawsuits against Argentina represented a face value of $289 million, but the judgments totaled $2.8 billion. U.S. courts did not accept any considerations based on equity to somehow limit the interests calculated at 101 percent annually.

Today, FRAN bonds' judgments represent a gain for vulture fund holders of more than 1,000 percent over the amount originally claimed in the lawsuit. As these vulture funds obtained Argentine bonds at a value that presumably was not greater than 20 percent of their face value, the estimated gain may have risen to at least 5,000 percent.

Yet, these funds did not get far with Argentina even though they tried everything they could to prevent an orderly debt restructuring. Typically, they were the most active stakeholders and camouflaged their real

12 Dennis, Small. "Vulture Funds Descend On Dying Third World Economies." *Executive Intelligence Review*. October.2003 <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a28yFQW._1bY>.

13 For example, when Peru defaulted on its debts in the 1990s, Elliot Associates bought some of the country's defaulted debt for $11 million on the secondary market and then sued in a U.S Federal Court, which ruled in its favor adducing the standard "*pari passu*" clause (all creditors must be treated equally). Elliot Associates' holding of Peruvian debt was the only debt held outside the Brady Plan restructuring scheme. When Peru attempted to pay off the Brady bondholders before Elliot Associates, the vulture fund filed an injunction and succeeded. But Elliot also went for additional means, using American courts to "attach" those Peruvian payments designated to pay off other debtors. Because the bondholders were not being paid, Peru nearly defaulted on its newly restructured debt. So, Peru decided to settle, as a result of lawsuits and political pressure, its debt with Elliot Associates for about $56.3 million (a 400 percent profit).

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interests acting on behalf of small bondholders or even U.S. teachers whose pension fund owned a minimal amount of Argentine defaulted bonds (for example, the TIAA/CREF pension fund owned merely $58 million of Argentine defaulted bonds out of a portfolio of $400 billion, that is to say 0.0145 percent thereof).

The responsibility of their own banking allies who cheated the original bondholders out of their money is also worth noting. For instance, Italian courts have expressly recognized in dozens of cases the responsibility of banks and financial intermediaries that sold Argentine bonds to small non-expert clients (mostly retirees). They found a breach of the rules of conduct and even imposed sanctions on members of the respective executive boards and other employees. This jurisprudence "reflected a disturbing picture of neglect and inefficiency in the way the banks approached this issue".[14] It is worth recalling that when caught by surprise by the default, Italian banks were holding around €473 million worth of bonds, while middle-class Italian retirees held around 14 billion. Who defrauded who is many times the right question that remains to be answered.

All these arbitrary actions have had a detrimental effect on Argentina. Despite its strong fundamentals (namely high growth rates, robust external and fiscal surpluses, high level of foreign reserves), our country has been singled out as a high-risk investment. Yet, making public groundless allegations against Argentina has been the name of the game. As those special interest groups proved to be wrong vis-à-vis Argentina's pent-up growth, the next step was to put into question the "credibility" of our policy framework. As we stated before, it has always been easier to launch harsh statements against Argentina as long as myths and realities soon get mixed.

Taken together, vulture funds have tried whatever it takes to reach their goals, even throwing obstacles to a better U.S.-Argentine relationship, particularly through its outreach to the U.S. Congress. As a matter of fact, holdouts have a lobbying group in Washington, D.C. (the American Task Force Argentina or ATFA), which is trying to use the U.S Congress

14 G. Cottino, Una giurisprudenza in bilico: I casi Cirio, Parmalat, bonds argentini, in Giurisprudenza Italiana 541 (2006).

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to put pressure on Argentina and punish it by resorting to a whole array of initiatives.

About 90 percent of all existing claims against Argentina before U.S. courts belong to individuals or entities domiciled outside the U.S In particular, if we look at the 15 holdouts that have more than $25 million in claims against Argentina, we find that 9 of them are domiciled in the Cayman Islands (among them NML Capital Ltd., affiliate of Elliot Associates). Furthermore, almost 80 percent of the total amount of the claims against Argentina belong to vulture funds (around $4.7 billion in judgments and $710 million in pending claims).

In short, vulture funds have tried to create the false impression that the holdout debt is an impediment to a better U.S.-Argentine relationship. But, in fact, they only act on their own behalf by trying to put pressure on Argentina in order to reap extraordinary benefits.

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Did the IMF take part in Argentina's 2005 debt restructuring process?

The IMF did not participate in the design and handling of Argentina's debt restructuring. This is, perhaps, one of the most distinctive characteristics of this process.

Rather than remaining saddled with large debt burdens and trapped by sovereign credit ratings, the Argentine Government realized that prioritizing socio-economic recovery and enabling pro-growth and socially-inclusive policies was the only option to overcome the crisis. Indeed, Argentina fostered the economic recovery and ensured that domestic demand was its key driver while running large trade surpluses (through a competitive exchange rate) to avert foreign financing. Thus, the recovery was not hindered by Argentina's reduced access to international credit markets.

As we explained before, Argentina had a three-year arrangement with the IMF at the time of the debt exchange. However, as the restructuring proposal did not involve additional multilateral funding, Argentine authorities requested that the IMF not intervene. It was not an easy task. The Fund not only pressed for higher primary fiscal surpluses (that is to say, stronger pro-cyclical policy adjustments), but also lobbied for a better deal for the defaulted foreign creditors.

In September 2003 Argentina almost went into technical default against the IMF. Being one of the biggest debtors, though, there was a chance that Argentina would stop giving seniority to the multilateral debt, which could have generated a complex international problem. Against that background, the IMF backed down and rolled over Argentina's debt to the Fund. In addition, our country managed to obtain more lenient terms under the Stand-By Arrangement, with a 2004 primary budget surplus

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of “only” 3 percent of GDP and limited structural policy conditionality.[15] The Fund was unable to exert considerable influence over economic policy. Yet, IMF efforts on behalf of the creditors continued throughout 2004, and it invoked its policy of not “lending into arrears”[16] to “freeze” its bilateral relationship with Argentina. Indeed, the IMF could have terminated the Arrangement, but this would have resulted in a serious negative shock for the country and the institution if its preferred creditor status were to be lost. The rest of the story is well known. The impasse was overcome by Argentina’s decision to suspend the program in early 2005. The high acceptance of the swap made the process a *fait accompli* for the IMF. By the beginning of 2006 Argentina had paid all its outstanding obligations to the Fund ahead of schedule.

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15 For instance, the IMF pressured the government to get rid of the emergency protection for homeowners from mortgage foreclosure as a precondition for a new arrangement. In other words, the freeze on mortgage foreclosure had to go if there was to be a new arrangement. Consistent with the legislation passed in 2002, the government insisted on delaying foreclosures for homes that were the “sole and permanent residence” of a family. The Argentine authorities stood firm on this position.

16 “Lending into arrears” means lending to a government that has fallen behind on its debt payments “unless the member is pursuing appropriate policies and is making a good faith effort to reach a collaborative agreement with its creditors”.

Is Argentina's default now over? Has Argentina been "swimming against the stream"?

Argentina is finally turning the page on one of the saddest chapters of its recent history[17].

Ever since the suspension of all debt payments took place in late 2001, Argentina has been firmly embarked on a continuous dis-indebtedness process. Undoubtedly, the successful debt restructuring process of 2005 was a key milestone that significantly reduced the debt burden. Yet, Argentina has been committed to avoiding the harsh experience of the 1990s, which, at the end of the day, resulted in its poor integration into the financial globalization process. While many countries (particularly advanced ones) engaged in large external indebtedness to fuel domestic demand (and asset bubbles), Argentina has relied on its own resources to sustain its recovery and pay its outstanding debt obligations.

Thus, Argentina has been "swimming against the stream". Argentina's experience challenges the conventional wisdom that no country can ever succeed without access to international financial markets. Moreover, Argentina's recovery was accomplished without any help from the international financial institutions.

Still, the Argentine puzzle deserves careful attention: How could Argentina's economy grow at such a fast rate without access to international financial markets? How could the country achieve such progress in paying down its debts without impairing its economic growth? The answer is straight forward: Argentina has generated enough domestic resources (savings) to pave its way to recovery. It is worth bearing in mind that Argentina's savings amount to around 30 percent of its GDP, or more than $100 billion a year. This is the cornerstone of resource accumulation and financial sustainability.

17 Beyond having settled 92 percent of the amount of defaulted debt and having paid all of its obligations to the IMF, discussions with official creditors of Paris Club members are well-advanced. Agreement has been reached in key areas, and significant progress was made in the consolidation of the numbers. Both parties are committed to come to a closure in the short term.

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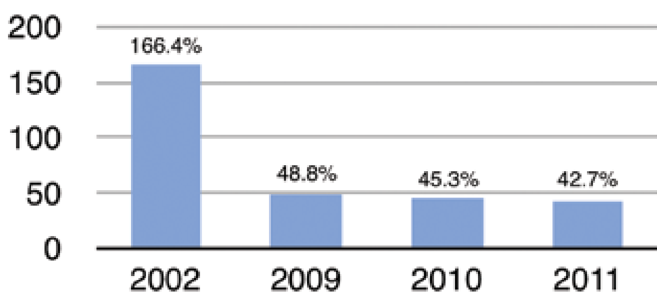
Indeed, by targeting a stable and competitive exchange rate and relying on fiscal prudence and active income policies that ensure a better distribution of the benefits of growth, Argentina's unorthodox macroeconomic framework has played a key role in this dis-indebtedness process and the accrual of sustained fiscal and external surpluses. Growth has been driven primarily by domestic demand[18] (both pent up consumption and investment) and this has shielded our economy from the current global financial crisis. Without a doubt, this strategy has paid off for Argentina, as it not only reduced its national-public-debt-to-GDP ratio from 166.4 percent in 2002 to 42.7 percent in 2011 (Graph 2), but also more than quadrupled its international reserves (from $12 billion to $50 billion). Thus, in a nutshell, Argentina's new economic framework instituted since 2003 brought about a robust basis for resolving its debt problems without cutting short the recovery, impairing needed social programs, and curtailing the promotion of decent jobs.



The second exchange offer that took place in 2010 was fully consistent

18 Argentina's economic recovery has been remarkable and has far exceeded the expectations of almost everyone in mainstream economics. Despite its record sovereign debt default, a 'V' shaped recovery took place soon after the suspension of all debt payments. Indeed, we have enjoyed uninterrupted growth ever since. During the last 8 years (2003-2010), with the exception of a hiatus in 2009 due to the global economic crisis, Argentina has grown at an unprecedented annual average rate exceeding 8%, with a total GDP growth of 76% since 2002. Other key figures denote Argentina's remarkable recovery. Since 2002, investment grew 239%, industrial GDP increased 70%, and unemployment decreased to 7.8 % from a record-high 23.6%.

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with Argentina's unbroken strategy to reduce its debts. First, the government allocated a small part of its international reserves to meet foreign debt payments coming due in 2010, despite the unprecedented global financial crisis. Then, with the aim of addressing the issue of remaining arrears, the authorities decided to re-open the debt restructuring process. This move was made possible by late 2009 legislation that allowed a new exchange offer under terms that could not be better than those of the 2005 debt exchange, since its reopening was at that time not permitted by the so-called "Padlock Law". Thus, once again Argentine authorities got involved in a broad consultative process to come to a closure on this issue.

The result of the second debt swap exceeded the government's expectations, as creditors holding about $12.1 billion of $18.3 billion in defaulted debt tendered their securities in the restructuring (an acceptance rate of around 67 percent). Coupled with the results of the earlier 2005 debt swap, Argentina was able to announce that the sad chapter of its default was being left behind, as 91.2 percent of the defaulted bonds had been voluntarily restructured.

Moreover, by the end of 2010 Argentina took another final step to address the holdout problem by offering a bid to swap certain defaulted bonds - at the request of some bondholders who were not able to participate in the June 2010 exchange process and expressed interest in exchanging their bonds - under similar terms and conditions to those offered to participants on that opportunity. Hence, the Argentine Government decided to offer these creditors a third and final opportunity to exchange their bonds. A smaller operation to clean up defaulted Brady bonds was also launched before year's end but vulture funds' previous attachments and active litigation blocked the proposed exchange. In any case, another successful process was completed by the end of 2010 with better-than-expected participation, allowing Argentina to clearly demonstrate to the international community its good faith and resolute commitment to end the past era of default.

Last but not least, there is a legacy in the Argentine debt restructuring as regards changes to bond contracts that have become standard ever since. Indeed, the use of collective action clauses (CACs) require all creditors to bargain collectively, with a compulsory decision by the

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majority applicable to all bondholders. Accordingly, given the current high level of acceptance of the Argentine debt restructuring process, had the defaulted Argentine bonds used current standards, Argentina would already be considered as having normalized its debt servicing, making vulture funds' profiteering unlikely. A report from the United States Congressional Research Service recently recognized this fact.[19]

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19 Hornbeck, Jeff F. *Argentina's Defaulted Sovereign Debt: Dealing with the "Holdouts*. Congressional Research Service, 2010.

III. Comparison between debt restructurings in Argentina and Greece

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What lessons can be drawn from a comparative analysis of Argentina's and Greece's debt restructurings?

Depicted as a parable of the risk of fiscal profligacy, Greece has been forced to implement severe austerity measures engineered by its peers, the European Central Bank (ECB) and the IMF under a so-called "bail-out program".

Ever since, the Greek economy has been contracting at a rate of 7 percent a year and dragged down in a vicious cycle of soaring unemployment, overextended social unrest, and continuous political instability.

Greece has now managed to put forward a debt swap, the largest ever debt restructuring in history. Called "Private Sector Involvement," the truth is that – to some extent - Greece has defaulted on its debt obligations in an "orderly" fashion. An immediate hard default has been avoided.

Along the way, many analysts have traced a parallel between Argentina's experience back in 2001 and today's Greece conundrum. There are indeed a lot of common elements in the macroeconomic imbalances that gave rise to both debt crises, as well as the role played by third parties in pushing the economies to the brink of collapse. If anything, both cases clearly show that trying to eliminate the deficit through austerity measures once the economy is already in trouble is not the solution.

However, significant differences prevail in the way the debt exchange processes have been managed and in their main outcomes.

First, unlike Greece, Argentina put its debt on a sustainable path as a result of the debt restructuring processes (2005 and 2010) and the new macroeconomic framework adopted since 2003. The national-public-debt-to-GDP ratio went from 166.4 percent in mid-2002 to around 80

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percent right after the debt swap.[20] After years of fast economic growth and continued dis-indebtedness policies, this ratio is around 42.7 percent (September 2011).

In contrast, beyond the figures that point to an unprecedented debt-to-GDP ratio of 120 percent by 2020, experts have observed that Greece swept away €100 billion of private debt but that that amount has been matched by the increase in the debt owed to official creditors (ECB, IMF and the Eurozone members) of equal or higher magnitude. In a nutshell, the debt restructuring looks more like a debt rescheduling engineered to avoid an imminent default.[21] Thus, despite the case of Greece being the biggest sovereign restructuring ever, it only partially helps overcome its main problems.

The puzzle can be easily disentangled: debt-stricken countries are often left with too much debt and too little growth. Here is where the Argentine experience becomes unique and relevant. According to Mark Wright[22], World Bank data shows that both lower and lower-middle income countries have exited default between 1989–2004 more highly indebted than when they entered default[23]. Typically, the decline in private debt is more than offset by a rise in official debt. This does suggest that debt restructuring does not always successfully reduce a

20 Counting $30 billion in new debt as the fiscal cost of the crisis.

21 If the debt restructuring entails little debt forgiveness or is matched by higher debt to the official sector, it is mostly a debt rescheduling. Analysts have pointed out that in 2013 Greece will still have a debt-to-GDP ratio of 168 percent.

22 Wright, Mark. *Restructuring Sovereign Debt with Private Creditors: Theory and Practice*. Chapter 12

Braga & Vincellette, *The Financial Crisis by the World Bank*. 2010.

23 According to Wright, debt to GDP ratio rose almost 60 percent in lower-income countries and 70 percent in lower-middle income countries. Upper-middle income countries fared better, but even among them debt-to-GDP ratio fell less than 10 percent. Data covers 90 defaults and negotiations by 73 countries between 1989 and 2004 using the World Bank's global Development finance database.

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country's long-term debt burden. The case of Greece does not seem to be an exemption.

Second, Argentina's recovery can be critically explained by two factors that have been broadly absent in other debt exchange processes: 1) Argentina recovered the sovereignty of its own economic and political decisions; 2) economic growth was a pre-condition to ensure future repayment capacity, but without cutting short the economic recovery, impairing social programs or curtailing job creation.[24]

Indeed, Argentina's debt swap was unique in the sense that it rejected "predatory lending". Similarly, the other distinctive characteristic of Argentina's debt restructuring process has been its government efforts to maximize economic growth. Argentina knew from its own experience and crisis that fiscal austerity was not the answer. Defaults caused by true inability to repay are indeed unavoidable. From that point on, pro-growth and socially-inclusive policies have been the cornerstone of our government's strategy. It worked, not only for the benefit of the vast majority of the Argentine population, but also as the basis for restoring our repayment capacity.

Third, Argentina's and Greece's haircuts have been fairly similar,[25] but Greece has not been accused of harsh treatment towards bondholders despite the fact that the amount submitted for restructuring was more

24 This explains why Argentina gave creditors "equity" in the country by offering GDP bonds as part of the debt restructuring. This aligned creditors and debtor interests, reducing the risk of future debt crisis.

25 In both cases, new bonds worth at the time of restructuring around 30-32 percent of the original bonds were exchanged. In the case of Argentina, the value of the exchanged bonds went up soon given Argentina's solid growth rates, sound fiscal position and external surplus. Greek bonds still face lower demand and the 30-years bonds are quoted on 15-17 cents. There is a problem in using CDS (credit default swaps) when buying Greek bonds as "credit event" has recently been declared, hence restricting demand.

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than three times as high as the one tendered by Argentina.[26] Why the blame and shame game has been solely thrown against Argentina? There is no easy answer.
Perhaps, the lack of an internationally-agreed-on mandatory system to deal with sovereign debt resolution that manages to avoid holdouts is at the origin of this. Unfortunately, Argentina´s debt crisis and restructuring took place under conditions that facilitated the actions by foreign debt profiteers. The fact that 86 percent of Greece's debt is governed by Greek Law makes a difference. At a minimum, the application of collective action clauses (CACs) ensures a high participation rate from the outset. In contrast, the overwhelming majority of Argentina's bonds were issued under foreign jurisdiction and CACs were not applicable as there were 152 different types of bonds in seven currencies under several jurisdictions. More likely, as we pointed out, Greece was left with too much debt and this restructuring delivers more time for others (mainly official creditors) to reposition against other scenarios.

In concluding, time will tell, but recent debt restructurings seem to vindicate Argentina's experience. Argentina had no other alternative but to write-down a sufficient part of its debt in order to maximize its growth potential. The current system, where the IMF imposes discipline in exchange for financial assistance, is not only very costly in terms of global prosperity, but ineffective and "too big to fail" now that advanced economies are at the center of the crisis. The global financial architecture is incomplete. A statutory sovereign debt restructuring mechanism with a clear set of multilateral rules and procedures to force holdouts to accept the terms of a debt restructuring agreed by a majority of creditors needs to be added to the governance of international finance. Argentina has long called for the introduction of an internationally-agreed-on mandatory system to deal with the problem of sovereign insolvency under the umbrella of an institution that is not a

26 Argentina tendered $80.6 billion -$62.3 billion in 2005 and $18.3 billion in 2010-, while Greece submitted $ 272 billion (Euros 206 billion) for restructuring. Similarly, Greece wiped off as much as $140 billion (Euros 107 billion) or 53 percent of the debt held by private creditors, while Argentina chopped off only 41 percent of the defaulted debt ($33 billion, $25 billion in the first exchange and $6 billion in the second one). Also, it is worth noting that Argentina received no external aid from the international community at the time of the restructuring.

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creditor to sovereigns. This important piece of the international financial architecture is missing in this world of free capital flows. Its absence has been felt in protracted and painful workout processes. The current non-system benefits creditors, but this will only exacerbate the lack of global aggregate demand now that advanced economies face a decade of debt. Reforms that a couple of years ago were unthinkable must enter the realm of the politically doable. Time is running out fast. The current system is broken and needs to be fixed.

Beyond its systemic implications, it is worth recalling that, had it enjoyed some of the conditions Greece has today, Argentina would already be considered as having fully normalized its relations with the international financial community.

Given the different treatment and conditions imposed on the sovereign debtor, we strongly believe that Argentina deserves better credit when dealing with the pressures imposed upon it by holdouts that are overwhelmingly sovereign debt profiteers.

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IV. Repercussions in the United States

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Much has been said by vested interest groups about the consequences of the Argentine default with regard to U.S. bondholders and stakeholders. However, reality shows a very different picture.

United States bondholders scarcely represent no more than 10 percent of the total amount of outstanding claims against Argentina brought before U.S. courts. Indeed, as explained above, the overwhelming majority of these claims ($3.35 billion) belong to non-U.S. nationals, particularly to the so-called “vulture funds”. Nearly 85 percent of the cases currently before U.S. courts belong to entities domiciled outside of the U.S. or to non-U.S. citizens, representing at least 90 percent of the total amount claimed.

More specifically, out of the 15 bondholders that have judgments of $25 million or more against Argentina, 9 of them are domiciled in the Cayman Islands and some of these entities belong to individuals like Kenneth Dart (EM Limited), who renounced his U.S. citizenship to avoid paying taxes in the United States.

Furthermore, the vast majority of U.S. bondholders have participated in Argentina’s successful debt swaps. Many bondholders such as the “Teachers Insurance and Annuity Association of America,” for instance, often cited as an example of ordinary U.S. citizens affected by the Argentine default, decided to participate in the 2010 debt swap and, as a consequence, dismissed their legal actions against Argentina.

In addition, it is important to underline that Argentina has fully cooperated with the U.S. judiciary. With regard to the payments ordered by some U.S. courts, however, international law and the lack of an internationally-agreed-on regime to deal with sovereign default allow Argentina to uphold its position. Argentina has prioritized the basic notions of fairness and non-discrimination in order to the undesirable situation where vulture funds that bought distressed debt are paid more expeditiously, or under better terms, than the rest of the bondholders that accepted the terms of the debt swap.

Finally, it is important to highlight that the effect of Argentina’s default on U.S taxpayers has been negligible, as Argentina has never placed retail debt on the U.S. market. That is to say, no U.S. taxpayer has been

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directly prejudiced by the suspension of Argentina's debt services.

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Legislative actions in the United States Congress

Judgment Evading Foreign States Accountability Act (J.E.F.S.A.)

During the first session of the 111th United States Congress, New York Representative Eric Massa, who resigned his congressional seat on March 8, 2010, for reasons that are widely known by the public, introduced H.R. 2493, entitled ''Judgment Evading Foreign States Accountability Act of 2009'' or "J.E.F.S.A.". This bill, which gained the support of merely 7 percent of U.S. Congress members, presented inaccurate statements that Argentina was compelled to rebut, and ignored any serious analysis of Argentina's post-default history. This bill never made it out of either the House Foreign Affairs or Financial Services Committees.

The stated purpose of the bill, tailor-made to fit Argentina's debt situation, was to protect future investors by compelling those countries identified as "judgment evading foreign states" to raise their standard of behavior. It would prevent such states and their state-owned corporations from issuing debt in the U.S. capital markets or borrowing money in the United States. The bill also required that any request for bilateral or multilateral assistance be accompanied by a statement identifying the country as a "judgment evading state". It was meant to be applicable to middle-income countries that failed to satisfy United States court judgments totaling $100 million or more.

Conversely, during the second session of the 111th United States Congress, New York Representative Michael McMahon, a freshman who did not gain re-election during last year's congressional elections, introduced H.R. 5564: ''Judgment Evading Foreign States Accountability Act of 2010.'' Representative McMahon's bill was supported by an even smaller number of U.S. Representatives and, like H.R. 2493, never made it out of either the House Foreign Affairs or Financial Services Committees.

It is important to highlight that most of the co-sponsors of H.R. 2493 also supported H.R. 5564, and almost half of them represented the state of New York, jurisdiction under which Argentine creditors had chosen to bring their cases against Argentina.

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On May 6 and 9, 2011, during the 112th United States Congress, Representative Connie Mack IV (R-FL) and Senator Wicker (R-MS) introduced bills H.R. 1798 and S.912, basically reediting the previous J.E.F.S.A. bills in both Chambers of the U.S. Congress. The bills were referred to the Committees of Foreign Affairs and Financial Services of the House and the Committee on Banking, Housing and Urban Affairs of the Senate. Bill H.R. 1798 has 27 co-sponsors and S. 912 has none in the Senate. No action has been taken with regard to either of them.

Proposed legislation aimed at conditioning Multilateral Development Banks (MDB) loans to Argentina (H.R. 3188)

In the context of a capital increase requested by MDBs (and agreed on in the G-20), freshman Representative Robert Dold (R-IL) introduced bill H.R. 3188 entitled *"The Supporting Economic and National Security by Maintaining U.S. Leadership in Multilateral Development Banks Act"* that was favorably reported to the House Financial Services Committee by the Subcommittee on International Monetary Policy and Trade, subjecting the authorization to increase the capital of the MDBs to a number of conditions.

In the context of the discussions related to this bill, the Subcommittee on International Monetary Policy and Trade held five hearings where a few congressional members repeated the baseless accusations against Argentina employed by the American Task Force Argentina. In the context of one of these hearings, Assistant Secretary for International Markets and Development, Marisa Lago, announced a new policy of the Administration by which the U.S. Executive Directors at the World Bank and the Inter-American Development Bank (IADB) would vote against loans to Argentina.

Specifically, H.R. 3188 contains a section dedicated to Argentina whereas, as a condition to grant authorization for the capital increase, the Secretary of the Treasury should instruct U.S. Executive Directors at the World Bank and at the IADB to "*oppose any loan to the government of Argentina (other than those that serve basic human needs)*".

The purported object of this section was to *"advocate and vigorously*

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promote efforts to encourage Argentina to normalize relations with its official and private creditors and elsewhere in the international community, including its dealings with the ICSID, the Paris Club, the Financial Action Task Force, and the IMF."

However, it disregarded Argentina's numerous efforts to fully normalize its debt situation and, instead, was based on a number of unfounded allegations. As a matter of fact, sensible legislators like the Chairman of the House Financial Services Committee, Representative Spencer Bachus (R-AL), and House Financial Services Committee Ranking Member, Representative Barney Frank (D-NY), expressly rejected the inclusion of the section devoted to Argentina in a letter to their counterparts of the House Appropriations Committee.

Finally, with the approval of the "Consolidated Appropriations Act, FY 2012" in December 2011, which included the requested authorization to increase the capital of the MDBs, H.R. 3188 turned out to be moot.

The "Rubio Amendment"

In parallel with the introduction of bill H.R. 3188, Senator Marco Rubio (R-FL) proposed an amendment to include similar language about Argentina in the Senate "Department of State, Foreign Operations and Related Programs Appropriations bill, FY 2012" (S.1601), that considered financing for the Department of State's activities, contributions to international organizations, IFIs, and MDBs, and also examined bilateral assistance and other foreign operations for fiscal year 2012.

Ultimately, the outcome of the conference sessions held at the House and Senate Appropriations Committees in order to reconcile the different bills did not contain any language about Argentina.

The "Connie Mack IV Amendment"

Representative Connie Mack IV (R-FL), author of the latest J.E.F.S.A. bill introduced in the House, also presented an amendment to H.R.

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2583, including Argentina among a group of countries for which U.S. bilateral assistance would be forbidden. It is worth mentioning that the Secretary of State, Hillary Clinton, objected to this language in a letter to the Chairwoman of the House Committee on Foreign Affairs, Representative Ileana Ros-Lehtinen (R-FL). The amendment was not part of the final version of the bill.

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Legislative Actions in the New York State Legislature

Meanwhile, the New York State Legislature has also witnessed similar attempts to put pressure on Argentina.

In May 2010, three bills were presented before the New York State Legislature (bills 7766A, 7767A and 7768A) which together would have imposed certain taxes, a notification requirement, and related fees on the so-called "debt evading foreign states" and their financial transactions in the state of New York. These bills were also specifically targeted at Argentina and its 2010 exchange offer. As was the case of H.R. 2493 and H.R. 5564 before the U.S. Congress, these bills never made it out of the Committees where they were pending. Even the Securities Industry and Financial Markets Association (SIFMA) "*strongly opposed*" this proposed legislation on diverse grounds, including the fact that it would prejudice New York investors.

However, despite the lack of success of these bills in 2010, during 2011 lobbying efforts by vulture funds in the state of New York managed to – again - push a new set of proposed bills targeted against Argentina (A05855, A10658/S03491, S02530, S03767), which were very similar to the unsuccessful bills introduced the year before.

The above-referenced proposed legislations had many elements in common. These bills purportedly pretended to address debt obligations by foreign states but were all based on similarly false premises. Beyond the legal or technical aspects, these legislations stated that *"… the most egregious example of a country that is capable of paying its debt, but that chooses not to, is the Republic of Argentina"*.

One of the bills (S03767), aimed at aiding a single litigant with a specific argument against Argentina, even managed to pass the New York State Senate. However, all those bills were defeated in June 2011 at the conclusion of the State Legislature sessions.

As explained above, many times vested interests have managed to put obstacles on the road to further strengthen the relationship between the United States and Argentina. Above all, they have tried to give

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the false impression that the default is an impediment to improve our bilateral relationship. Unlike legislative branches in other countries, the U.S. Congress can have a foreign policy of its own, but one that not necessarily coincides with the objectives of the U.S. Executive. This happens when individual members of Congress who represent special interests introduce specific legislation as the one mentioned that disregard those efforts by the Executive to improve relationships with some countries. Many times, the seriousness of these congressional actions is overstated by omitting the limited support that these have within the U.S. Congress just for the sake of undermining the Argentine Government.

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V. Argentina's proceedings before ICSID and other investment-related dispute settlement fora (UNCITRAL)

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What is the origin of Argentina's numerous cases before ICSID?

The origin of these cases is almost exclusively related to the effects of the "pesification" legislation passed by the Argentine Congress immediately after the default (Law 25.561) as well as the taxes applied to extractive operations.

In the midst of the 2001 crisis, Argentina's unavoidable "pesification" of the dollar-denominated obligations imposed the need to renegotiate the fees established under the concession contracts agreed to by the Argentine Government with public utility services providers. The government immediately began negotiations in a very difficult environment, marked by internal instability and, despite this dire situation, successfully renegotiated 86 percent of all government-related contracts, terminating only 7 contracts out of 66 that existed at the time of the crisis.

This automatic and self-imposed renegotiation process prevented numerous arbitral cases to proceed altogether, which constitutes a scenario largely overlooked when considering the Argentine meltdown and the subsequent investment disputes.

A fact which is often ignored is that foreign investment negatively affected by the effects of the 2001 crisis only represents a minor portion of all foreign investment in Argentina. Currently, more than 450 U.S. companies operate in our country - as well as several thousand foreign investors from all over the world - which not only were not harmed by the emergency measures adopted, but also benefited from them, as they were able to recover their competitiveness after several years of exchange rate overvaluation and recession.

Nevertheless, not all foreign investors settled their disputes with Argentina. Some foreign investors brought claims against Argentina arguing breaches to the corresponding Bilateral Investment Treaties (BITs) due to alleged expectations that the Argentine Government would maintain public utilities´ fees at the previous level - in U.S. dollars - than before the devaluation of the peso. In turn, Argentina contested that the emergency measures were commensurate with the extreme

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circumstances prevailing during the crisis and rejected all allegations of unfair treatment, discrimination, or expropriation in sectors with direct implications in the daily well-being of millions of Argentines. In total, 48 of these arbitration disputes were initiated before ICSID and UNCITRAL. As of today, no tribunal that was called to consider the validity of the emergency measures has found that Argentina expropriated or discriminated against foreign investors. Besides, all ICSID tribunals that have been called on to judge the Argentine emergency cases have recognized the severity of the Argentine 2001 crisis.

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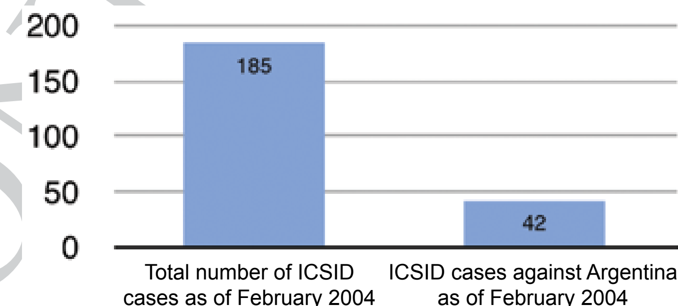
Does Argentina account for most of the cases before ICSID?

During the 1980s and 1990s recourse to international arbitration to resolve investment disputes was exceptional. Since its creation in 1965 and up to 2001, the ICSID arbitration mechanism had rarely been used. That fact led some experts to consider it a "sleeping beauty".

The new century began with an influx of investment cases, especially in the framework of NAFTA Chapter XI Arbitration, which fueled the beginning of a boom of ICSID disputes. In that context, the disputes brought against Argentina were a key development raising a new and complete breed of cases based on BITs. ICSID disputes began to pile up against an ever-increasing number of investment-recipient countries. Even though Argentina represented an important portion of the arbitrations initiated during 2003, the successful negotiation policy conducted by the Argentine Government and the fact that the number of total ICSID cases grew rapidly determined that Argentina's share diminished substantially.

Indeed, by February 2004, 42 cases had been registered against Argentina in a universe of 185, thereby representing 22.7 percent of the total disputes before ICSID. Since the pool cases was smaller than today, ICSID arbitration proceedings against Argentina represented an important portion of its overall activity, as depicted below.



Source: Embassy of Argentina in Washington, D.C. on the basis of ICSID caseload statistics

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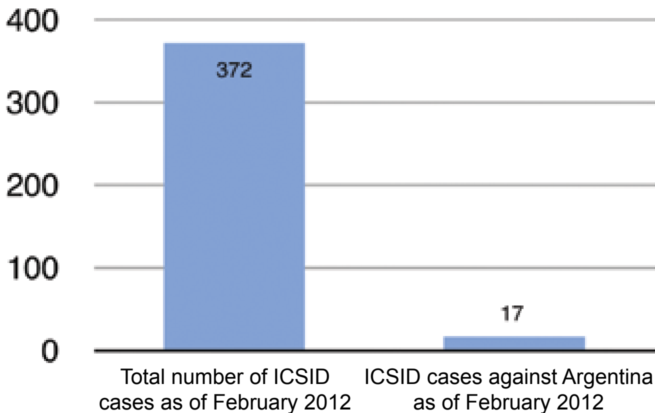
Nevertheless, the increasing number of cases against other countries (196 new cases registered between 2004 and 2011) and the decrease in the number of cases against Argentina due to the renegotiation of public utility service contracts, drastically diminished the presence of Argentina in this scenario. After 2003, few cases were initiated against Argentina, all of them still related to the emergency measures.

As of February 2012, there are only 17 active cases against Argentina out of the 372 currently registered before ICSID, thus representing only 4.5 percent of the total. Out of the 42 cases initiated before ICSID tribunals against it, Argentina has won, settled, suspended, or obtained annulment in 21 cases. In only four cases did the ICSID tribunals render final awards against Argentina, and three of them originally involved U.S. companies.



Source: Embassy of Argentina in Washington, D.C. on the basis of ICSID caseload statistics

Since the beginning of ICSID litigations against Argentina in the aftermath of the 2001 crisis, the Argentine Government has settled ICSID disputes for an amount in excess of $13.6 billion. In addition, approximately $2 billion already in dispute were settled as a result of the 2010 debt exchange offer.

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Have ICSID tribunals given any credit to the emergency situation?

It is worth noting that several ICSID tribunals called to review the application of the BIT between Argentina and the United States concluded that the protection of the most vital interest of Argentina and its people were endangered at the time of the adoption of the measures at issue ("pesification") and, consequently, the situation demanded prompt and urgent action from Argentine authorities.

In this regard, the ICSID Tribunal in *LG&E v. Argentina* admitted that the Non-Precluded Measures Clause (a typical clause contained in BITs signed by the United States) was applicable to Argentina's 2001 crisis. The Tribunal stated:

> "*231. Evidence has been put before the Tribunal that the conditions as of December 2001 constituted the highest degree of public disorder and threatened Argentina's essential security interests. This was not merely a period of "economic problems" or "business cycle fluctuation" as Claimants described (Claimants' Post-Hearing Brief, ¶14). Extremely severe crises in the economic, political and social sectors reached their apex and converged in December 2001, threatening total collapse of the government and the Argentine State.*
>
> *232. All of the major economic indicators reached catastrophic proportions in December 2001. An accelerated deterioration of Argentina's Gross Domestic Product (GDP) began in December 2001, falling 10 to 15 percent faster than the previous year. Private consumption dramatically dropped in the fourth quarter of 2001, accompanied by a severe drop in domestic prices. Argentina experienced at this time widespread decline in the prices and in the value of assets located in Argentina. The Merval Index, which measures the share value of the main companies of Argentina listed on the Buenos Aires Stock Exchange,*

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experienced a dramatic decline of 60% by the end of December 2001. By mid-2001, Argentina's country risk premium was the highest premium worldwide, rendering Argentina unable to borrow on the international markets, and reflecting the severity of the economic crisis.

233. At this time, capital outflow was a critical problem for the government. In the fourth quarter of 2001, the Central Bank of Argentina lost US$ 11 billion in liquid reserves, amounting to 40%. The banking system lost 25% of its total deposits.

234. While unemployment and poverty rates gradually increased from the beginning of 1998, they reached intolerable levels by December 2001. Unemployment reached almost 25%, and almost half of the Argentine population was living below poverty. The entire healthcare system teetered on the brink of collapse. Prices of pharmaceuticals soared as the country plunged deeper into the deflationary period, becoming unavailable for low income people. Hospitals suffered a severe shortage of basic supplies. Investments in infrastructure and equipment for public hospitals declined as never before. These conditions prompted the government to declare the nationwide health emergency to ensure the population's access to basic health care goods and services. At the time, one quarter of the population could not afford the minimum amount of food required to ensure their subsistence. Given the level of poverty and lack of access to healthcare and proper nutrition, disease followed. Facing increased pressure to provide social services and security to the masses of indigent and poor people, the government was forced to decrease its per capita spending on social services by 74%."[27]

27 LG&E Energy Corp. and LG&E International Inc v. the Argentine Republic. ARB/02/1, Decision on Liability dated 3 October 2006, 231 – 234

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The Tribunal finally concluded:

> *"238. The Tribunal rejects the notion that Article XI is only applicable in circumstances amounting to military action and war.* ***Certainly, the conditions in Argentina in December 2001 called for immediate, decisive action to restore civil order and stop the economic decline. To conclude that such a severe economic crisis could not constitute an essential security interest is to diminish the havoc that the economy can wreak on the lives of an entire population and the ability of the Government to lead. When a State's economic foundation is under siege,*** *the severity of the problem can equal that of any military invasion.* (*Emphasis Added).*"[28]

Only three tribunals decided not to grant Argentina its request for the application of the *Non-Precluded Measures Clause.*[29] Those decisions were subsequently overturned by ICSID Annulment Committees.

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28 *LG&E Energy Corp. and LG&E International Inc v. the Argentine Republic. ARB/02/1, Decision on Liability dated 3 October 2006, 238.*

29 CMS Energy International v. the Argentine Republic, ICSID Case ARB/01/8; SEMPRA Energy International v. the Argentine Republic, ICSID Case ARB/01/12; and ENRON Corporation v. the Argentine Republic, ICSID Case ARB/01/3.

Do ICSID tribunals have jurisdiction to deal with Class-Action Arbitrations brought by holdouts?

In January 2012, the tribunal in an ICSID case against Argentina ruled by majority that it had jurisdiction to decide in a class-action case brought by Italian bondholders against Argentina (the so-called "*Beccara case*"). Instead, Professor Abi-Saab, also a member of the Tribunal, issued a dissenting opinion in the understanding that the decision adopted by the majority wrongfully extended ICSID jurisdiction beyond Argentina's consent to arbitration.

Two recent U.S. Supreme Court's decisions (cases *Stolt Nielsen* and *AT&T)* addressed very similar issues. The Supreme Court decided, despite the pro-arbitration mandate in the American Arbitration Act, that consent to class-action arbitration cannot be presumed and that, for a valid arbitration agreement to exist, it is necessary to express consent to class-action arbitration.

Moreover, two other recent decisions, *Argentina v. British Gas (*District of Columbia, Federal Circuit Court) and *ICS v. Argentina* (UNCITRAL Tribunal) confirmed this trend, providing recognition of a condition in the arbitral clause that has also been overlooked by the majority of the arbitrators in the *Beccara* case.

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Has Argentina failed to comply with ICSID awards?

Argentina has recognized ICSID's decisions in these four cases as final and binding and, as established by the ICSID Convention, to be enforced *"… as if they were a final judgment of a court in that State …"*[30]

Nevertheless, Argentina disagrees with the United States in connection with the interpretation to be given to Articles 53 and 54 of the ICSID Convention. In other words, both countries differ in their good faith interpretation of the provisions dealing with compliance with ICSID awards.

Whereas the United States interprets that compliance with ICSID awards is instrumented exclusively under Article 53, Argentina interprets that both Articles 53 and 54 of the ICSID Convention apply. In that regard, Argentina does not agree that Article 54 does apply after the losing State fails to pay an award pursuant to Article 53 and believes that the text, object, and purpose and negotiating history of the ICSID Convention do not support this interpretation. Argentina understands that Articles 53 and 54 of the ICSID Convention complement each other.

Transcendental ICSID decisions, especially those issued during the first few years of implementation of the ICSID mechanism (particularly *Klockner and Amco Annulment Decisions*) issued when the memories of the negotiations were still very much alive, confirm that Article 54 is the key provision in the compliance mechanism foreseen in the ICSID Convention. Moreover, other celebrated ICSID tribunals - particularly those that did not have to deal with the Argentine case - confirmed that compliance with ICSID awards is enshrined in Article 54 (Annulment Committee decisions in cases *MTD v. Chile* and *CMS v. Argentina*).

Therefore, given that ICSID awards should be complied with as *"... if it were a final judgment of a court in that State ..."* (Article 54, ICSID Convention) owners of these awards must abide by the corresponding

30 Idem 3

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Argentine administrative procedures established for compliance with final judgments by the Argentine courts. So far, these companies have not done so.

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VI. Recognition of Argentina's efforts in the United States

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A number of well known public figures such as United States government officials and Noble Prize laureates have recognized the progress made by the Argentine Government on several occasions. In that regard, we transcribe statements made by the U.S. Secretary of State Hillary Clinton and Nobel Memorial Prize in Economic Sciences Laureates Joseph Stiglitz and Paul Krugman to illustrate the public recognition made regarding Argentina's debt restructuring and sustained economic recovery.

Remarks by the United States Secretary of State Hillary Clinton on the occasion of a meeting with Argentine President Cristina Fernández de Kirchner:

"… I think that Argentina has made a tremendous amount of progress in paying down its debt. And the president and I were talking about the progress, which is very dramatic, just in the last several years. And I confessed to her that so far as I know, based on the figures, Argentina's debt-to-GDP ratio is a lower percentage now than the United States debt-to-GDP ratio. So however Argentina is doing it, it's working."[31]

United States Secretary of State Hillary Rodham Clinton
Casa Rosada - Buenos Aires, Argentina - March 1, 2010

Statement by Noble Prize Laureate Joseph Stiglitz:

"… as we have learned from experience, life is not over after debt restructuring. No one would wish upon any other country the trauma endured by Argentina in 1999-2002, but this country also faced crisis the previous years - years of rescues by the IMF and of austerity - as a result of very high unemployment and rates of poverty and low or negative growth rates … since debt restructuring and the devaluation of its currency, Argentina has enjoyed years of extraordinarily fast GDP

31 United States. Department of State. *Remarks With Argentine President Cristina Fernandez de Kirchner*. 2010.<http://www.state.gov/secretary/rm/2010/03/137539.htm>.

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growth of almost 9 per cent from 2003 to 2007 … Argentina's poverty has decreased in three quarter parts compared to the worst moment during its crisis and this country weathered the world financial crisis much better than the US."[32]

Nobel Memorial Prize in Economic Sciences *Laureate Joseph Stiglitz*

Statement by Noble Prize Laureate Paul Krugman:

"Argentina suffered terribly from 1998 through 2001, as it tried to be orthodox and do the right thing. After it defaulted at the end of 2001, it went through a brief severe downturn, but soon began a rapid recovery that continued for a long time. Surely the Argentine example suggests that default is a great idea; the case against Greek default must be that this country is different (which, to be fair, is arguable).

I was really struck by the person who said that Argentina is no longer considered a serious country; shouldn't that be a Serious country? And in Argentina, as elsewhere, being Serious was a disaster."[33]

Nobel Memorial Prize in Economics Sciences *Laureate Paul Krugman*

32 "Joseph Stiglitz remarks on growth of Argentine economy from 2003 to 2007." *TELAM*. Web. 18 april 2012. <http://english.telam.com.ar/index.php?view=article&catid=37:economy&id=10941:joseph-stiglitz-remarks-on-growth-of-argentine-economy-from-2003-to-2007&tmpl=component&print=1&layout=default&page=&option=com_content>

33 Source: The New York Times. "Blog: The conscience of a liberal - Don't Cry For Argentina". June 23, 2011.http://krugman.blogs.nytimes.com/2011/06/23/dont-cry-for-argentina/ .

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VII. Final Comments

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A cloud of doubts was thrown against Argentina right after its sovereign default. A number of unfounded allegations were recklessly made, mainly by sovereign debt profiteers and advocates of free-market fundamentalism, to discredit Argentina in the international arena. Sometimes, these voices even found echo in misinformed stakeholders, certain media, and ordinary citizens.

Quite the contrary, the sacrifices of the vast majority of the Argentine people and the impressive results achieved by Argentina´s economy during the last decade, despite the lack of any support whatsoever by the international financial community, have not been sufficiently highlighted.

The resolution of Argentina's debt problems took years and some effects of this unfortunate legacy still linger. However, Argentina has come a long way towards the complete normalization of its debt situation and is in full compliance with its international obligations.

Beyond any doubt, Argentina always acted in good faith. It made a fair and reasonable debt exchange proposal and, at no point did it ever intentionally delay a solution for its creditors. Argentina has always been committed to fulfill its international treaty obligations and will continue along this path in the future.

During the last few years, after painful sacrifices, Argentina was able to solve many problems, including settling about 92 percent of the amount of debt in default and most of the investment-related disputes brought against it. The above-mentioned lack of support from the international financial community took place despite the recognized potential of Argentina's economy and its excellent prospects to overcome its debt crisis. Argentina's successful economic recovery and the drastic reduction of its debt-to-GDP ratio is a clear evidence of this fact. In fact, the ongoing dis-indebtedness process initiated in 2003 has allowed Argentina to withstand the current global financial crisis from a position of strength.

During the ruinous 1990´s Argentina was praised by the international financial community while IMF-inspired policies and conditionalities brought its economy to a disastrous situation. The IMF´s questionable

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lending and policy advice led to unsustainable levels of foreign currency-denominated debt and internal devaluation through lower growth, higher unemployment, and wage restraint until Argentina collapsed.

Now, in the midst of an impressive economic recovery and after implementing policies that led to the solution of most of its problems, Argentina is frequently criticized for its “unorthodox” policies - that greatly helped build its repayment capacity - and suffers severe attacks fostered by sovereign debt profiteers with the expectation of extraordinary gains that in some cases reach 5000 percent. On the other hand, the impact of Argentina’s current debt situation (holdouts) is insignificant for U.S. taxpayers and does not, in any way, justify legislative actions on behalf of the interests of ludicrous entities based outside the United States.

Something is wrong with this perception. Far from representing a problem for the world economy, today Argentina is part of the solution.

Time and again, Argentina has been blamed for “swimming against the stream”. While the rest of the world (advanced economies in particular) were over-borrowing as if there was no tomorrow, Argentina was engaged in an unprecedented dis-indebtedness process. While free market fundamentalists called for deregulation and minimum government intervention, Argentina has critically broadened regulations with a stronger governmental oversight. While inflation targeting regimes continue to further mainstream economics, Argentina has consistently deployed pro-growth and pro-job policies, as well as measures to combat poverty. Debt restructuring has been a key component of this strategy.

Besides, Argentina’s experience may offer valuable lessons in the context of today’s global financial crisis.

First, **abusive demands of financial markets are incompatible with economic growth** and only bring about the risk of political and social fracture.

Second, **economic growth is a key determinant of debt repayment capacity**. Countries therefore need room to grow. Embracing further

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fiscal austerity will predictably produce a wider crisis. In brief, Argentina has shown that an equitable distribution of the costs of the crisis among debtor and creditors[34] and pro-growth policies are the right answer. In fact, the GDP-linked bonds proposed by Argentina have proven to be a great way to align both creditors' and debtors' competing interests to enhance the country's growth. In the current crisis, these bonds should be an important part of the debt restructuring of advanced economies.

Finally, **renewed international cooperation is required to regulate sovereign debt restructurings and capital flight**. Indeed, the lack of a clear set of international rules and procedures to force holdout creditors to accept the terms of a debt restructuring process is a fundamental gap in the global financial architecture. This incomplete system only favors creditors and those who want to take advantage of others' calamities. Private creditors should be required to share some of the costs of solving the crisis since they benefited from interest rates that compensated them in advance from default. Ad-hoc political decisions have proven to be insufficient to solve these problems. As President Cristina Fernández de Kirchner clearly stated in the G-20 summit held in France: ***"… it is time to save this anarcho-capitalism from itself"***.

After many efforts, Argentina is on the brink of completing its process of nttormalizing relations with the international financial community. Nevertheless, these efforts have been significantly disregarded. Argentina did the right thing and deserves an adequate recognition. It is high time to unveil the myths and realities about Argentina's default and recovery process.

34 The notion of equity and fairness has been a critical part of Argentina's response to its debt crisis. We have underscored that lenders must be responsible for due diligence in assessing risks. We are of the view that the interest rate that lenders received prior to the default has compensated them for the risk of default. That is to say, since markets would have fully compensated creditors for the risks they bore in the form of higher ex ante interest rates, the issue of equitable treatment of creditors turns out to be less relevant than is usually advocated. In fact, prior compensation should presumably be taken into account in determining the magnitude of the debt write-down. All that is needed then is clear rules and procedures.

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Annex

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Argentina's 2005 Debt Exchange Proposal

The 2005 debt exchange offer comprised a menu of three securities:

1) A Par Bond (with no face value reduction) with a maturity of 35 years, paying low but increasing coupons and an amortization of 19 bi-annual installments starting in September 2029.

2) A Discount Bond (with a high face value reduction) with a maturity of 30 years and an amortization of 20 equal installments beginning in June 2024. These were exchanged at 33.7 percent of the original face value but paid a high constant coupon of 8.28 percent for the dollar bond, or 5.83 percent for the indexed peso bond.

3) A Quasi-par Bond (in between) with a maturity of 42 years. It was exchanged at 69.6 percent of face value, paying an interest rate of 3.31 percent, capitalizing during the first 10 years, and with an amortization in 20 semesters starting in 2036.

Par and Discount Bonds were offered in four currencies: U.S. dollars, euros, yens, and CPI-Indexed pesos. The existing bonds denominated in U.S. dollars, euros, or yens could be exchanged for new debt securities denominated in the original currency, in U.S. dollars, or in indexed pesos, while debt denominated in other currencies could be exchanged for new debt in pesos, dollars, or euros. Quasi-par bonds were offered in indexed pesos only. The applicable law would vary according to the currency chosen in the new security: New York Law (US. dollars), U.K. Law (euros and yens), and Argentine law (pesos).

The new bonds would pay interest as of the date of issuance (December 31, 2003) and those interests were paid in cash at settlement. Unpaid and accrued interest through the default date would also be included, but there was no recognition of interest between December 2001 and December 2003.

Thus, the main financial conditions could be summarized as follows:

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		Par Bond	
	Dollars	Euros	Pesos
Issue Date	12/31/2003	12/31/2003	12/31/2003
Due Date	12/31/2038	12/31/2038	12/31/2038
	35 Years		
Discount	0%	0%	0%
Amortization	19 biannual payments starting on September 30, 2029. Final quartely payment on due date	19 biannual payments starting on September 30, 2029. Final quartely payment on due date	Idem. Principal linked to CPI-Index
Cupons	Year 1-5: 1.33% Year 6-15: 2.50% Year 16-25: 3.75% Thereafter: 5,25%	Year 1-5: 1.20% Year 6-15: 2.26% Year 16-25: 3.38% Thereafter: 4,74%	Year 1-5: 0.63% Year 6-15: 1.18% Year 16-25: 1.77% Thereafter: 2,48%
Law	New York or Argentina	U.K.	Argentina

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	Discount Bond		Quasi-par Bond
Dollars	Euros	Pesos	Pesos
12/31/2003	12/31/2003	12/31/2003	12/31/2003
12/31/2033	12/31/2033	12/31/2033	12/31/2045
30 Years			42 Years
66.3%	66.3%	66.3%	30.1%
20 Equal payments starting on June 30, 2024	20 Equal payments starting on June 30, 2024	Idem. Principal linked to CPI-Index	20 Equal payments beginning June 30, 2036
Year 1-5: 3.97% in cash and 4.31 capitalizing Year 6-10: 5.77% in cash; 2.51% capitalizing Year 11-30: 8.28%	Year 1-5: 3.75% in cash and 4.07 capitalizing Year 6-10: 5.45% in cash; 2.37% capitalizing Year 11-30: 7.82%	Year 1-5: 2.79% in cash and 3.04 capitalizing Year 6-10: 4.06% in cash; 1.77% capitalizing Year 11-30: 5.83%	3.31 (capitalizes during first 10 years)
New York or Argentina	U.K.	Argentina	Argentina

Incentives and key contractual features

All bonds offered a “GDP kicker”. This coupon would distribute the equivalent of 5 percent of the excess GDP beyond a stipulated trend (initially at around 3 percent) payable on December 15 of every year starting in 2006. Three conditions were attached: a) the GDP had to be higher than the stipulated trend; b) GDP growth in the previous year must had surpassed 3 percent; c) total payments could never exceed 48 cents on the dollar.

To encourage participation, the Argentine Government also committed to buy back through 2009 outstanding performing debt in the amount of the “annual excess payment capacity,” which is the difference between debt service if participation in the debt exchange had been 100 percent and the actual debt service. Furthermore, if GDP exceeded the baseline path defined in the GDP warrant, Argentine authorities committed to use 5 percent of the excess GDP to purchase outstanding bonds issued in the exchange.

At the same time, the new bonds carried novel contractual features. First, a “most favored creditor clause” was included, giving bondholders the right to participate in any future exchange offer as a way of reassuring participating creditors that holdouts would not get a better deal. This was the first time that this provision was used in sovereign bonds under New York law. Second, Collective Action Clauses (CACs) were included in all new bonds, prompting changes in the payment terms with a 75 percent majority of bondholders. Finally, aggregation clauses were allowed, opening the door for amending the terms of multiple bonds with the consent of bondholders representing 85 percent of the outstanding aggregate principal across all issues, provided that at least 66 percent of the bondholders of each specific issue supported the amendment.

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Argentina's 2001 Default: Myths & Realities represents an effort from the Embassy of Argentina in Washington D.C. aimed at elucidating many of the misconceptions and inaccurate ideas promoted by vested interests, and perhaps simply misinformed stakeholders, about the current status of the Argentine debt.

Argentina's 2001 Default: Myths & Realities describes the history of the crisis and the strenuous efforts made by Argentina in the last decade in order to normalize its debt situation. Its overarching goal is to provide a response to the questions most frequently raised about this issue in a consistent, brief and systematic manner.