INTERNATIONAL COURT OF JUSTICE

APPLICATION

INSTITUTING PROCEEDINGS

filed in the Registry of the Court
on 7 August 2014

DISPUTE CONCERNING JUDICIAL DECISIONS OF THE UNITED STATES OF AMERICA RELATING TO THE RESTRUCTURING OF THE ARGENTINE SOVEREIGN DEBT

(ARGENTINA v. UNITED STATES OF AMERICA)

COUR INTERNATIONALE DE JUSTICE

REQUÊTE

INTRODUCTIVE D'INSTANCE

enregistrée au Greffe de la Cour
le 7 août 2014

DIFFÉREND RELATIF À DES DÉCISIONS JUDICIAIRES DES ETATS-UNIS D'AMÉRIQUE RELATIVES A LA RESTRUCTURATION DE LA DETTE SOUVERAINE ARGENTINE

(ARGENTINE c. ETATS-UNIS D'AMERIQUE)

TABLE OF CONTENTS

To the Registrar

International Court of Justice

The undersigned, Ambassador of the Argentine Republic to The Netherlands, being duly authorized by the Government of the Argentine Republic, and pursuant to Article 36, paragraphs 1 and Article 40 of the Statute of the Court, and Article 38, paragraph 5 of the Rules of Court, has the honour to submit the present Application instituting proceedings against the Government of the United States of America.

I. SUBJECT MATTER OF THE DISPUTE

1. This dispute refers to certain decisions of the US Judiciary, the enforcement of which prevents creditors of Argentina from receiving payment made by Argentina, and which, more generally, would result in frustrating the restructuring of the Argentine Republic's sovereign debt and which violate – generally and without prejudice to any further explanations to be provided at the opportune procedural occasion – the obligation to respect the Argentine Republic's sovereignty and immunities, the obligation not to use or encourage the use of coercive measures of an economic character against another State, as provided for in Article 20 of the Charter of the Organization of American States (OAS Charter), and the obligation to act in good faith in the fulfilment of judicial duties concerning Argentina, and to the exclusive extent that Argentina has accepted them. As a result of such violations, the United States of America is under the obligation to cease such wrongful acts and make reparation for all damage caused to Argentina pursuant to general international law.

II. FACTS AND GROUNDS UPON WHICH THE CLAIM IS FOUNDED

2. Argentina is committed to paying its sovereign debt to all of its creditors. As a result of a successful debt restructuring process in 2005 and 2010, 92,4% of the defaulted bondholders participated in this process. From 2005, the Argentine Republic pays them in due time and manner.

3. However, the decisions rendered by the U.S. Judicial Branch have now prevented payment of the amounts duly deposited by the Republic of Argentina – such payment having been made in compliance with the payment of the restructured bondholders- from being effectively collected. At the same time, the decisions rendered by the U.S. Judicial branch request full payment of principal and interests on bonds acquired at negligible value by the so- called ""vulture funds" who voluntarily decided not to participate in sovereign debt restructuring processes so as to obtain exorbitant speculative returns. Those decisions rendered by the U.S. Judicial branch have been unfair and are beyond their authority and jurisdiction, contrary to international law, and cause express harm to the rights of the great majority of bondholders participating in the restructuring, granting privileges to the negligible minority. In turn, they are an obstacle

to the ordinary course of the Argentine sovereign debt restructuring processes and threaten to defeat said processes and the rights acquired by third parties who are holders of debt restructured securities.

4. As further described in detail- in particular in Annex G of Chapter II- the U.S. Judiciary has opened a path for the judicial harassment of the Argentine Republic by the "vulture funds", by making an arbitrary and unprecedented interpretation of the pari passu clause which, absurdly, concluded that the Republic shall pay, simultaneously or in advance the total of the sums claimed by said vulture funds if it wants to continue paying the restructured debt. This interpretation was set forth in the December 7, 2011 Order issued by the District Court for the Southern District of New York supplemented by the February 23, 2012 Order. The said interpretation was affirmed by the Court of Appeals for the Second Circuit of New York, a decision which the Supreme Court then refused to review.

5. These decisions have been supplemented by other decisions recently issued during the judgment enforcement stage by the District Court for the Southern District of New York. This affects the rights of the bondholders who, in flagrant violation of their right of defense of their property, have been prevented from collecting the monies that Argentina has deposited to comply with the obligations it owes by virtue of its restructured debt. Such a decision went well beyond the jurisdiction of that Court, also because it restrained collection even for holders of securities under foreign law and jurisdictions other than New York. The decision rendered at said enforcement stage aggravates the unfair scenario purported by the District Court, which- among other examples of arbitrariness- has not distinguished between Argentine External Public Debt Securities and Argentine Domestic Public Debt, and between securities subject to or not to the New York jurisdiction. Even, at this stage, said Court incurred in flagrant contradictions, creating a chaotic procedural situation which, in turn, it sought to avoid by appointing a special master from outside the court to seek a possible solution to such matter. The latter has also acted with unfairness and served the interests of the "vulture funds". This shows that the enforcement of the judgment, as repeatedly asserted by Argentina, is impossible because, if the nonsensical interpretation of the pari passu clause as interpreted by Judge Griesa in his judgment be correct, the current situation of retention of funds- these being in a real judicial limbo- would have no bearing owing to the fact that one part has been distributed without applying the "pari passu Griesa" clause and the other part has been retained with neither judicial basis nor judicial framework. Hence, we should ask why the Judge- if we consider his interpretation to be correct- does not proceed to distribute the sums as ordered to the Republic. The only possible answer to explain such an omission is that he knows that funds paid by Argentina in due time and manner are already the legitimate property of the holders of the restructured debt.

6. In addition, and this is crucial for Argentina to institute these proceedings before the International Court of Justice, the decisions of the American courts have been rendered in a manifestly, arbitrary, abusive and unfair manner thus pretending to impose obligations onto Argentina which are impossible to comply with, not only from the legal perspective (it would involve an infringement of the maintenance of law and order and an imposition of illegitimate obligations) but also from the economic and financial perspective because the Republic could not face full and immediate payment of that

part of its debt that is not subject to the Exchange offers of 2005 and 2010 without falling in new crises because payment of such an extent would reduce the Republic's reserves in a substantial manner.

7. On the other hand, in adopting the resolutions intended to prevent holders of restructured debt securities from collecting their monies, American justice has challenged the Republic´s ordinary compliance with its obligations in the framework of a restructuring process, in flagrant violation of the Republic's sovereign immunity. This immunity is supported by principles of international law appearing even in the Foreign Sovereign Immunity Act (FSIA) of the United States of America. This is particularly serious because the Republic´s debt restructuring was a clear *iure imperii* act, i.e. a sovereign decision taken within the framework of jurisdictional immunity as described in detail in Chapter III.

A. The economic crisis of the Argentine Republic as a cause of default

8. The collapse of the Argentine economy was one of the most formidable in modern history. In early 1998, the Argentine Republic experienced an economic recession – which resulted in economic depression – that hit its peak in late 2001 and in early 2002, along with the onset of the worst political, financial, social and economic crisis of its modern history.

9. A series of unexpected external events triggered this crisis. Argentina suffered a severe blow especially because of the unexpected disruption of capital inflows after the crisis in Southeast Asia in 1997 and Russia's default in August 1998. With regard to trade, Argentina's exportable supply was severely affected, on the one hand, by the dramatic reduction in demand from Brazil, Argentina's main trade partner, after the Brazilian currency devaluation in 1999 and, on the other, by the sharp drop in the prices of commodities exported by Argentina. This situation was further compounded by interest rate increases applied by the US Federal Reserve since mid-1999, which had a huge impact on Argentina and its currency, tied as it was to the dollar at a fixed exchange rate at times when the Argentine economy was contracting.

10. This crisis is regarded as the worst economic, political, financial and social crisis of Argentina's modern history. Poverty and unemployment rates soared to unprecedented levels. The living standards of more than half of the Argentine people dropped below the poverty line, while more than half of the population did not have access to such basic necessities as food. The prevailing situation led, in turn, to severe unrest and social protest actions.

11. During this period, Argentina's GDP shrank every year and the accumulated fall in output in Argentina was similar to that experienced by the United States of America during the Great Depression in the 1930s.

12. In early 2001, greater and greater sums of money were withdrawn from the Argentine banking system. In an attempt to raise liquidity and maintain the value of the

Argentine Peso, the Central Bank of the Argentine Republic (BCRA) used foreign reserves to the tune of billions of USD.

13. All of these circumstances combined, along with the sharp decrease in public income as a result of the economic depression and reduced access to foreign capital markets and other credit sources, resulted in Argentina being forced to default on its public debt in late 2001.

B. Argentina's worsened economic financial and social conditions made default inevitable

14. The worsening of the economic conditions, which led to a catastrophic collapse of Argentina's economy and default, resulted in political and social turmoil. The worsened social situation of the Argentine Republic was a clear reflection of its increasingly deteriorating financial condition, which included public debt. During the 1999-2001 period, Argentina's debt grew continuously.

15. In the face of this situation, the need to obtain some kind of financial assistance was clear, a point which Argentina openly stated. In June 2001, Argentina implemented an overall voluntary exchange offer, known as "*mega canje*", by which 46 series of outstanding bonds in an amount of principal of approximately ARS 29.5 billion were exchanged for 5 new bonds whose total principal amount was ARS 30.4 billion. Unfortunately, Argentina's efforts to keep its debt in check were not enough. With limited access to international capital markets, by December 2001, Argentina could not avoid the deferral of payment of principal and interest on its entire external debt represented in bonds owed to Argentine and foreign creditors, and which totalled USD 100 billion. This was the greatest default in the financial history of the world.

C. Default and its repercussions

16. On 24 December 2001, Argentina was forced to defer payment of principal and interest on all its foreign debt bonds, in a total amount of over USD 100 billion. By then, political and social unrest in Argentina had reached crisis proportions. In the weeks leading up to default, the Government had introduced restrictions on bank withdrawals. Widespread demonstrations and disturbances erupted in the streets of Buenos Aires, which resulted in numerous deaths. After the resignation of the elected President, Fernando De la Rúa, the appointed President, Adolfo Rodríguez Sáa, formally declared default on the country's public debt. On 1 January 2002, Congress elected Eduardo Duhalde as President, who was the *fifth* person to take on that office in just ten days.

17. In view of this unprecedented economic, political, financial and social crisis, in January 2002, Congress declared a state of public emergency in the social, economic, administrative, financial and foreign-exchange spheres by means of the Public Emergency and Exchange Regime Reform Law of 2002.[1] This law, among other things, put an end to the dollar peg.

---

[1] Annex 1: Law No. 25561, Public Emergency and Exchange Regime Reform (6 January 2002).

18. The market imposed a high devaluation of the Argentine Peso, both against foreign currencies and in terms of domestic purchasing power. The first day after the elimination of the convertibility system, the Argentine Peso lost approximately 40% of its value as against the US dollar. During the first six months of 2002, it lost approximately 73.8% of its value as against the US dollar. Argentina suffered a GDP reduction of around 10.9%. Gross investments dropped by 36.4%; private consumption, by 15.0%; governmental consumption, by 5.1%; and the industrial sector, by 10.5%. Exports fell by approximately 15% in the one-year period ending August 2002, while imports decreased by 55.8% in 2002. During 2002, there was also a rise in inflation. The CPI (Consumer Price Index) rose by 41% and the WPI (Wholesale Price Index) rose 118%.

19. The effects of the economic crisis on the Argentine population were devastating. By May 2002, the unemployment rate had reached 21.5%, which accounted for an 8% increase on the rate recorded in 1998, the year in which the crisis broke out. Another 19% of the population was underemployed. Poverty and extreme poverty indicators – *i.e.*, households whose income is not sufficient to meet basic needs – reached the highest levels in Argentina's history. Poverty struck 54.3% of Argentina's urban population and extreme poverty amounted to 22.7%. From May 1999 to October 2002, poverty levels rose twice, while extreme poverty levels doubled between October 2001 and May 2002. This increase in poverty pushed up the crime rate. For instance, the crime rate recorded in 2002 in Buenos Aires Province doubled when compared to the 1991 rate.

D. Argentina's public debt after default

20. The payment crisis in Argentina worsened after it defaulted on its external debt. This was due in part to the dramatic devaluation of the Argentine Peso. Since most of the debt incurred by Argentina was denominated in foreign currency, it was supposed to be paid in that currency, the costs of which had increased considerably due to the devaluation of the Argentine Peso, brought about by the market. By late 2002, the total of Argentina's public debt was approximately USD 137 billion. With regard to the main creditors of Argentina, approximately USD 76 billion of the total public debt was owed to holders of government bonds that resided within the country or abroad, approximately USD 23 billion was owed to holders of guaranteed loans (PGGs), and approximately USD 32 billion was owed to multilateral organizations such as the IMF. Argentina's gross public debt amounted to 129.7% of GDP in 2002 and 139.5% of GDP in 2003. However, tax revenues continued to decline at the same time, and the levels recorded in 2002 were much lower than those of 2001 in US dollar terms.

E. The efforts to pay bondholders

21. The most complex problem that Argentina's default posed was that an agreement had to be reached with thousands of holders of bonds that had been defaulted on since 2001 for a total amount of USD 81 billion, represented by 152 different types of securities. This situation was globally unprecedented as far as sovereign debt restructuring is concerned. For illustration purposes, one of the most important cases of

restructuring was Russia's default in 1998. Russia's debt only amounted to approximately USD 31 billion, represented by 3 types of bonds to be exchanged.

22. Despite this complex challenge, Argentina successfully tackled this problem through two Debt Exchange offers, which took place in 2005[2] and 2010.[3]

i. The public debt restructuring process that culminated in the 2005 Exchange Offer

23. With external factors making Argentina's external debt unsustainable, Argentina recognized the need to restructure this debt pursuant to established international practice through the reduction of such debt to amounts that it could pay. In September 2002, the Secretary of Finance of Argentina met with IMF representatives, US representatives and European holders to discuss the terms of a possible restructuring. On 24 January 2003, the IMF and Argentina agreed on a USD 2.98 billion Stand-By Arrangement to meet debts owed by Argentina to the IMF during the first eight months of that year. By July 2003, negotiations had already begun for an extension and a three-year IMF package, which was a necessary prerequisite for Argentina's debt restructuring. In September 2003, Argentina reached an agreement with the IMF on that three-year package, in an amount of approximately USD 12.5 billion.

24. Shortly after the establishment of the programme with the IMF, Argentina disclosed the general guidelines of the restructuring of its external debt owed to private sector creditors on 22 September 2003 at the IMF and World Bank annual meeting held in Dubai. The Dubai announcement became the subject of intense discussions between Argentina and several groups of creditors. In October 2003, Argentina met with representatives of minority holders of securities in Zürich, Rome, Tokyo, San Francisco and New York. These meetings also included presentations made to financial institutions. Moreover, Argentina created consultative groups with holders of securities in the US, Germany, Italy and Japan, markets that concentrated most of the private holders of bonds, in order to discuss a restructuring agreement.

25. After this painstaking and lengthy negotiation process, on 10 June 2004, Argentina presented its proposal to the US Securities and Exchange Commission, which allowed it to implement the restructuring of its sovereign debt in September that year. Furthermore, this proposal was endorsed by other securities regulators of Germany, Italy and Japan. Finally, on 14 January 2005, Argentina presented the Exchange Offer, which was voluntary and global, and made no distinction between Argentine and non-Argentine creditors, based on reasonable guidelines and in conformity with the UNCTAD principles on this matter. According to the terms of the exchange proposal, Argentina proposed that the bondholders exchange 152 different series of bonds, the payment of which had been suspended by Argentina in 2001, for new debt securities to be issued by Argentina. The Exchange Offer offered to the beneficiaries of approximately USD 81.8 billion in outstanding debt a menu of options from which to choose the form that their new debt would take. These options included par bonds

---

[2] See Annex 2: Prospectus: *"The Republic of Argentina as Issuer and the Bank of New York Mellon as Trustee – Trust Indenture – June 2, 2005. Debt Securities"*.

[3] See Annex 3: Prospectus *"The Republic of Argentina as Issuer and the Bank of New York Mellon as Trustee – First Supplemental Indenture 2010 – Debt Securities"*.

having the same principal amount, but an interest rate lower than that of the non-performing debt, "Discount" bonds with a reduced principal amount but a higher interest rate and Quasi-par Bonds with intermediate principal amount and interest rates between the other two options, accompanied in each case by securities whose payment was linked to Argentina's GDP ("GDP-linked Securities").

26. Argentina's debt restructuring process established a series of benefits and incentives for exchange bondholders. One of the first incentives consisted in making an offer that was as generous as possible, always taking into account the country's payment capacity. This offer was based on introducing a maximum haircut at the beginning that would abate in line with the expansion of the country's repayment capacity. Another benefit consisted in the repurchase of securities with the remaining amount that originated in the rejection of the exchange. The surplus, arising from a minority that chose not to enter the exchange, went to the repurchase of new securities, thus increasing their market value and allowing exchange bondholders to establish more favourable conditions if they wished to dispose of them. Finally, another benefit consisted in attaching priority to bondholders that entered the exchange earlier.

27. In addition to these incentives, Argentina passed Law No. 26017[4], which provided for the need for Congressional approval for any future debt restructuring, which, therefore, could not be unilaterally approved by the Executive. This law set a framework of seriousness and certainty for exchange bondholders, as it eliminated any speculation surrounding any future improvement on the offers made.

28. In view of the voluntary character of the 2005 Exchange, the bondholders who entered into this exchange did so with the clear expectation that no other holder would in future receive any better offer than that which they had accepted. Accordingly, at the request of the bondholders, the Offer prospectus included a "Right Upon Future Offer" clause (the "RUFO clause"). This provision established that if, after the expiration of the offer and up to 31 December 2014, Argentina voluntarily made an offer to purchase or exchange, or requested consent to change any eligible security that had not entered the 2005 exchange, then it would have to take all necessary measures in order for each exchange holder to have the right, for a period of 30 days after the announcement of the offer, to exchange any of their securities for those issued under the new offer.

29. The final outcome of the 2005 exchange was highly successful, with bondholders submitting Argentina's non-performing bonds accounting for approximately USD 62.3 billion, *i.e.*, 76.15% of the total debt. This meant that this exchange offer was the largest debt restructuring process in history.

ii. The public debt restructuring process that culminated in the 2010 Exchange Offer

30. Despite the high rate of acceptance of the 2005 Exchange Offer, Argentina made every effort so that bondholders that did not enter into the 2005 exchange would be able to enter into a new one. Accordingly, the Argentine Congress passed Law No.

[4] Annex 4: Law No. 26017 (Public Debt) of 9 February 2005.

26547,[5] providing for a new possibility for restructuring the debt securities that were eligible for the 2005 exchange and which had not been submitted, without affecting the interests of bondholders that did enter the restructuring.

31. On 30 April 2010, Argentina presented its second debt regularization offer, which was open until 22 June of that year. Although this offer differed from the 2005 offer, it essentially maintained the same characteristics. It provided for the issuance of the following instruments: 1) Discount bonds with maturity in 2033; 2) par bonds with maturity in 2038; 3) Global Bonds with maturity in 2017; and 4) GDP-linked securities with maturity in 2035. With the exception of global bonds issued exclusively in USD and subject to New York law, the other three bonds allowed for the options in Argentine Pesos, Dollars or Yens, and subject to the jurisdiction of Argentina, New York or Japan, respectively. This new exchange was offered to a total eligible debt of USD 18.3 billion, consisting of USD 17.6 billion in principal and 0.7 billion in interest. Thus, holders of defaulted bonds were allowed to choose between two bonds, the par or discount bond, and the payment of interest for the 2003-2009 period in a global 2017 bond (discount option) or in cash (par option). This new proposal from Argentina was presented to the Securities and Exchange Commissions of the different countries involved, including the US Securities and Exchange Commission.

32. The eligible amount that entered the exchange amounted to USD 12.9 billion, of which USD 2.7 million chose the par option, and USD 10.2 million the discount option. As a result, Argentina managed to regularize 92.4% of the eligible debt. A minimum of 112,000 minority holders accounting for an average of USD 22,000 each entered the exchange. The high level of acceptance of the exchange confirms the generous character of the Argentine offer.

iii. The involvement of US authorities in the exchanges

33. The 2005 and 2010 exchange offers of the Argentine Republic were above all motivated by the Argentine Republic's sincere intention to regularize the payment of its sovereign debt and to offer holders of defaulted bonds alternatives for them to collect on their debts in accordance with the country's actual payment capacity. That process would not have been possible without the necessary involvement of different governmental agencies of the United States of America, such as the SEC. The SEC issued a Notice of Effectiveness of the Registration Statement[6] in both cases, after revising the Debt Exchange proposals in 2005 and 2010, which formally enabled Argentina to offer its securities. Furthermore, the US administration expressed its support for both the sovereign debt restructuring processes launched by Argentina before the SEC in an attempt for the country to recover financially.

iv. Compliance with the restructuring process

[5] Annex 5: Law No. 26547 (Public Debt) of 18 November 2009.

[6] See Annex 76: a) Communications from the Argentine Republic to the SEC requesting a notice of effectiveness (28 September 2004 and 23 December 2004); b) SEC Notice of Effectiveness (19 March 2010); c) SEC Notice of Effectiveness (13 April 2010).

34. Argentina, thanks to the efforts of its entire population and without access to the international financial market, has been regularly meeting its entire restructured debt. In the negotiations with its creditors, Argentina held as a principle that, in order to be able to pay, its economy had to grow, since this was the only way to generate the resources that would allow it to honour its commitments in a sustainable manner. It is through this principle that Argentina managed to maintain its foreign-denominated public debt to the private sector at no more than 8% of its GDP, which allowed it to concurrently grow and pay its debts.

F. Argentina's efforts to regularize other debts

35. The default scenario, in addition to the servicing of the debt owed to bondholders, required that Argentina, since 2003, implement measures to normalize all its international financial relations, respecting the principle of sustainability, based on which the growth of its economy would serve as a guarantee of payment of its debts.

36. Along these lines, Argentina repaid its debt to the IMF, fully complied with its obligations towards international agencies such as the Inter-American Development Bank (IDB), the World Bank (WB) and the Development Bank of Latin America (CAF), and has recently arrived at a payment agreement with the Paris Club member countries, by which it undertook to disburse USD 9.7 billion, of which it has already, on 28 July, made the payment envisaged for 2014.

37. As part of this huge effort, Argentina also paid all the amounts due under final awards rendered by arbitral tribunals established before the International Centre for Settlement of Investment Disputes (ICSID). Most of such awards, which originated in claims from foreign investors, found Argentina liable for the measures it adopted as a result of the state of necessity that arose from the political, economic and social crisis that hit the country since 2001.

G. The harassment by the vulture funds on the Argentine sovereign debt restructuring process

i. The vulture funds and the Argentine debt

38. The so-called "vulture funds" are entities that are generally established in tax havens, and their activity is focused on purchasing securities (or bonds) in defaulting States at prices that are far below their par value in the secondary market with the intent, through legal action, attachment of assets or political pressure, to subsequently collect on 100% of the principal of the debt securities, plus any interest, penalties and fees of the professionals that represent them. In this way, they obtain very high profits that translate into a rate of recovery of their investments that ranges between 3 and 20 times the actual value of their investment, which amounts to a 300% to 2000% yield. The vulture fund that is most actively involved in actions against Argentina is *NML Capital Limited*, which is headquartered in the Cayman Islands (United Kingdom) and belongs to Elliot Capital Management, owned by Mr Paul Singer.

39. The strategy most commonly used by these funds is "judicial harassment". This entails the reliance on aggressive court-ordered measures by which they force States to grant them better treatment than that afforded to other creditors that accepted the debt exchange in good faith. Their ultimate purpose is to obtain full payment of the par value of the debt along with interest, and costs and fees.

40. For such purposes, these funds commenced numerous legal proceedings before different local courts, relying on a clause that is commonly established in the prospectuses of some of these bonds which provides for the jurisdiction of local courts (in this case, New York) for the settlement of any disputes that may arise between the parties. Such bonds had been originally issued by the Argentine Republic in the US in October 1994, through a Fiscal Agency Agreement (hereinafter, FAA). A portion of them was purchased in the secondary market in the run-up to the 2001-2002 Argentine crisis, and most of them were purchased after the default was declared.

41. These funds undermine any possibility for the affected countries to get back on their feet through debt conversion programmes and other measures. In this way, they prevent the affected countries, for years and decades, from participating in international financial markets and obtaining funds again. This threat was expressly stated in the Declaration of the Summit of Heads of State and Government of G77 plus China, which took place on 14 and 15 June 2014, in the following terms:

> "*...Such funds pose a risk to all future debt-restructuring processes, both for developing and developed countries. ...*"[7]

42. Regarding their structure, vulture funds are usually secretive as to their ownership and transactions. Many of them are set up in transnational financial centres and in jurisdictions where bank secrecy applies, the so-called tax havens that the G-20 has referred to as offshore tax hideouts.

43. In the case of Argentina, these vulture funds bought up part of the defaulted Argentine bonds on the secondary market just before the collapse of the Argentine economy in 2001, but most of these instruments were purchased after the default and some even after the exchanges. The defaulted bond series purchased by these vulture funds had been issued by the Argentine Republic in October 1994, through a Fiscal Agency Agreement ("FAA") entered into by Argentina and BANKERS TRUST COMPANY, New York. The bonds that had originally been bought by individuals were then purchased on the secondary market by NML Capital, Ltd. (NML), Aurelius Capital Master, Ltd. (Aurelius), ACP Master, Ltd., Blue Angel Capital I LLC, among others, at bargain prices, for the sole purpose of obtaining fabulous gains through legal harassment.

44. Vulture funds constitute approximately 1.6% of all bondholders. They do not even account for a significant share of the 7.6% of creditors who did not accept the 2005 and 2010 debt exchanges. Nonetheless, these holdings allowed NML and other

[7] See Annex 6: Declaration of G77 + China of Santa Cruz de la Sierra (14 and 15 June 2014).

vulture funds to deploy a legal harassment strategy – centred in the United States of America – against Argentina and its debt restructuring.

H. The US Judiciary hinders normal compliance with Argentina's sovereign debt restructuring and tends to frustrate the entire restructuring process

45. Although different US supervisory government agencies (SEC and others) made Argentina's successful 2005 and 2010 Debt Exchanges viable, a number of subsequent actions by the US Judiciary have sought to frustrate Argentina's public debt restructuring, also affecting its sovereign immunity.

i. Vulture fund litigation in US courts

46. In order to file their claims, NML and other Funds have availed themselves of the FAA clause by which the Argentine State can be subject, among others, to the jurisdiction of the New York courts with regard to matters related to bonds issued within the above framework.

47. Thus the vulture funds first obtained US judgments recognizing their claims. Then, in order to collect such claims, on several occasions they tried to seize – in the United States – assets linked to the Argentine Central Bank (BCRA), *Banco de la Nación Argentina* (BNA), National Social Security Administration (ANSES), *Energía Argentina S.A.*, energy company (ENARSA), National Commission on Space-related Activities (CONAE), and the Argentine Securities Commission (*Caja de Valores*), as well as several Argentine trust funds and diplomatic and military property, besides an Argentine satellite – Acquarius SAC-D-.

48. Additionally, these vulture funds have been trying to have the US judicial decisions enforced outside the United States of America. EM and NML were able to file claims in France, the United Kingdom, and Luxembourg. Furthermore, in France, Belgium and Switzerland, they requested attachment orders to freeze bank accounts and confiscate assets of the Argentine embassies, *Aerolíneas Argentinas* airline company property in France, BCRA reserves at BIS Switzerland, and taxes owed to the country and to the Argentine provinces by French corporations. All attempts to seize diplomatic assets were rejected by judgments issued by the high courts in France,[8] Belgium[9] and Switzerland.[10] Likewise, in Ghana, NML impounded the Argentine Navy's flagship, the "ARA Libertad" Frigate, which was then released by decision of the International Tribunal for the Law of the Sea on 15 December 2012.[11]

---

[8] See Annex 7: Court of Cassation of France Judgment, 28 September 2011 (Case NML Capital v. the Argentine Republic).

[9] See Annex 8: Court of Cassation of Belgium Judgment, 22 November 2012 (Case NML Capital v. the Argentine Republic).

[10] See Annex 9: High Court of the Canton of Zurich Judgment, 24 January 2013 (Case NML Capital v. the Argentine Republic).

[11] See Annex 10: Ruling of the International Tribunal for the Law of the Sea, 15 December 2012 (Case ARA Libertad. Argentina v. Ghana).

49. Although, as already mentioned, rulings were issued in favour of Argentina in all the above cases, these proceedings entailed, on the one hand, disbursement by the State of huge amounts of money to pay court defence fees and, on the other hand, the exposure of Argentina to situations affecting the normal operations of its embassies and other State agencies abroad.

ii. Arbitrary interpretation of the pari passu clause

50. Within the framework of the judicial harassment to which the Argentine Republic is subjected by NML and other vulture funds in order to collect on their claims, those funds adopted a new strategy based upon the *pari passu* clause contained in the FAA. This provision states that:

> *"The securities will constitute the direct, unconditional, unsecured and unsubordinated obligations of the Republic. Each Series will rank pari passu with each other Series, without any preference one over the other by reason of Priority of date of issue or currency of payment or otherwise, and at least equally with all other present and future unsecured and unsubordinated external Indebtedness (as defined in the fiscal Agency Agreement) of the Republic"*[12].

51. It was only in 2010 – i.e., five years after the implementation of the first debt restructuring process and the successful completion of the 2010 exchange – that NML and other funds formulated this new judicial strategy with a view to hindering the rescheduling process, notwithstanding the vast number of judicial actions that had already been filed by them.[13] This new manoeuvre consisted in contending that the Argentine Republic violated the *pari passu* clause included in the FAA since, allegedly, it was not affording NML the same treatment as that granted to the holders of bonds issued in 1994 who accepted the 2005 and 2010 restructuring offers. The purported unequal treatment was based on the fact that Argentina only paid its debt to exchange bondholders and did not pay the debt to those who did not participate in the exchange, thus giving rise to different classes of creditors, i.e., privileged creditors (who did collect on their debts) and other creditors (who did not receive any amounts since their treatment was subordinated to the one accorded to the former creditors).

52. Within this context, NML requested that the District Court for the Southern District of New York order the Argentine Republic to pay the full amounts owed to that fund simultaneously with the payments to bondholders who participated in the Argentine restructuring processes of 2005 and 2010.

53. Contrary to that claim, Argentina argued[14] – in the first place – that, almost seven years before the action brought by NML in this case, it had requested the issuance

---

[12] See Annex 11: Debt Securities and/or Warrants to Purchase Debt Securities (22 September 1994).

[13] See Annex 12: Memorandum of Law in support of the motion by NML Capital, LTD. for partial summary judgment and for injunctive relief pursuant to the equal treatment provision (20 October 2010).

[14] See Annex 13: Memorandum of Law in opposition to plaintiff's motions for partial summary judgment and for injunctive relief pursuant to the pari passu clause (10 December 2010).

of a declaratory judgment for the purpose of protecting the debt restructuring it had just begun to implement against the serious attacks that could be carried out by bondholders who might decide not to accept the terms of the exchange to be proposed.[15] This motion was supported by the US Government in its declaration of interest of 2004, where it stated that an erroneous interpretation of the *pari passu* clause could have adverse consequences for future voluntary restructurings of debts and the stability of the international financial system.[16] In addition to the abovementioned support, several *amicus curiae* briefs were presented which expressed support for Argentina's position (the Federal Reserve Bank – NY – and eleven other federal reserve banks,[17] as well as the Clearing House Association).[18]

54. In April 2004, the District Court precluded the issuance of a resolution in this regard by stating that, at that stage, an academic interpretation of the *pari passu* clause was not required, since there was no real controversy on this matter and, thus, it would be a waste of time.[19]

55. With regard specifically to the interpretation of the *pari passu* clause, Argentina contended that it is a boilerplate clause which is generally included in debt agreements and is not aimed at regulating the order or number of payments to be made to the different creditors or at requiring pro rata payments. Furthermore, it stated that it certainly does not force a debtor to pay the full amount of its debt in a lump sum.

56. For illustration purposes, reference was made to the debt instruments issued by Mexico, Russia, Ukraine, Pakistan and Ecuador during the 1980s and 1990s, which also include *pari passu* clauses governed by US or English law, and which did not give rise to any claims by creditors who did not participate in their debt restructuring processes.

57. Argentina maintained that, with regard to sovereign debt, the *pari passu* clause has been considered – for more than 50 years – as a means of providing protection to debt holders against legal subordinations or other classifications that could entail discrimination, thus seeking to avoid the creation of legal priorities by the sovereign State in favour of creditors with a particular type of debt.

58. In the year 2011, the US District Court for the Southern District of New York (District Court)[20] held that the Argentine Republic had violated the "*pari passu*" clause contained in the FAA, as it considered that Argentina gave priority to the holders of exchange bonds over bondholders in the situation of NML. According to the court, that discrimination was allegedly evidenced by two facts: first, exchange bondholders were paid while the Republic insisted on its refusal to meet its obligations to NML; second, the Republic enacted Laws Nos. 26,071 and 26,547, which purportedly prevented

---

[15] See Annex 14: Memorandum of Law of the Republic of Argentina in support of its motion pursuant to CPLR 5240 to preclude plaintiff judgment creditors from interfering with payments to other creditors (12 December 2003).

[16] See Annex 15: Statement of Interest of The United States (12 January 2004).

[17] See Annex 16: Memorandum of Law of Amicus Curie Federal Reserve Bank of New York in support of Defendant's motion for an order pursuant to CPLR art. 5240, (12 January 2004)

[18] See Annex 17: Memorandum of Law of Amicus Curie Clearing House Association in support of Defendant's motion for an order pursuant to CPLR art. 5240, (12 January 2004)

[19] See Annex 18: Letter from NML to Judge Griesa challenging the submission of the Argentine Republic (14 January 2004) and Annex 19: Transcript of Hearings, 2 April 2004.

[20] See Annex 20: United States District Court Southern District of New York, Order (7 December 2011).

bondholders that had brought legal actions from recovering the amount of their defaulted bonds.

59. In order to execute this order, the District Court adopted a precautionary measure on 23 February 2012, requiring Argentina to pay the vulture fund NML and the other plaintiffs seeking remedies under the *pari passu* clause known as "*me too*" [other vulture funds or bondholders who did not participate in the restructuring – holdouts] simultaneously with any payment on the bonds issued through the 2005 and 2010 Exchange Offers. This decision would mean, for instance, that NML could collect over USD 800 million on account of bonds that it purchased in the year 2008 for approximately USD 50 million; that is to say, it would obtain a return of about 1600%.[21]

60. The two orders passed by the District Court are evidence of the ignorance by the Judge of the basic elements that should have been taken into account when rendering those decisions. In effect, the behaviour of Judge Thomas Griesa at the hearing held on 22 July 2014[22] is proof of his incorrect understanding of the Argentine sovereign debt structure, which results from his superficial knowledge of the matter. In this respect, at the abovementioned hearing, the Judge showed that he did not fully understand the particularities of the different series of bonds issued by the State and the laws applicable to each of them. As a matter of fact, the transcripts demonstrate that the abovementioned Judge did not know, among other things, the series of bonds to which his decision of 23 February 2012 applied, or the years in which Argentina carried out its two restructuring processes.[23]

61. In this scenario, the arbitrary interpretation of the pari passu clause made by the Judge is not a surprise, since he has shown an obvious lack of knowledge and understanding with respect to the complexity of the Argentine sovereign debt and, in general, with respect to the types and characteristics of the capital markets, sovereign debt restructurings aside. This point is pathetically illustrated in the nonsensical judgment's enforcement, which was absurdly full of contradictory and erratic orders affecting not only the Argentine Republic but also third parties who did not participate in this litigation, including holders of restructured bonds who are not a party to this litigation

62. Argentina filed an appeal against these trial court decisions, which were upheld by the United States Court of Appeals for the Second Circuit on 26 October 2012.[24] In relation to the *pari passu* clause, the Court of Appeals held that there was a violation of such provision by the Argentine Republic. It based its decision on the following arguments: (1) There is no well-settled or uniform interpretation of that clause. (2) The issue lies in determining what constitutes "subordination" under the terms of the *pari passu* clause used in the FAA. Along these lines, it ruled that the clause expresses the intention to protect bondholders despite any formal subordination by the sovereign debtor. In effect, according to the interpretation of the Court of Appeals, the *pari passu* clause protects the holders of bonds issued in pursuance of the FAA against two types of discrimination: (i) the formal subordination of the bonds to any other debt (first

[21] See Annex 21: Order Thomas P. Griesa, 23 February 2012.
[22] See Annex 79: Transcript of Hearings, 22 July 2014.
[23] See Annex 79: Transcript of Hearings, 22 July 2014. In particular, see p.19, lines 15 to 25, and page 20, lines 1 to 13.
[24] See Annex 22: United States Court of Appeals – Decision of 26 October 2012.

sentence)[25] and (ii) the giving of priority to other payment obligations not included in the FAA (second sentence).[26]

63. On the basis of this interpretation of the *pari passu* clause, the Court of Appeals found that, through the Prospectuses of the exchange offers of 2005 and 2010 submitted to the SEC and Laws Nos. 26,071 and 26,547 enacted by the Argentine State, Argentina subordinated plaintiff's bonds to other obligations of the Republic and gave precedence to any claim brought by exchange bondholders. In addition, it held that the provision on equal treatment contained in the clause in question forbids Argentina as payor from discriminating against bonds issued under the FAA in favour of other bonds.

64. As a consequence of the abovementioned decision, on 21 November 2012, the District Court (Judge Griesa) issued a set of orders requiring Argentina to pay USD 1.3 billion to the plaintiffs on 15 December 2012 (i.e. 100% of the bonds held by holdouts) and lifting the stay affecting the measure ordered on 23 February 2012.[27]

65. At the request of Argentina, the enforcement of these measures was stayed by the Court of Appeals through its decision of 28 November 2012.[28] Moreover, by means of its submission of 28 December 2012, the Republic appealed the orders issued by the District Court on 21 November of that year. In addition to those appellate proceedings, Argentina submitted a new payment formula to the bondholders on 27 February 2013, the details of which were presented on 29 March of that year.

66. On 23 August 2013, the Court of Appeals decided to uphold the set of orders issued by Judge Griesa in November 2012.[29] Furthermore, it made the execution of the orders in question conditional upon the decision on the petition for writ of certiorari filed by Argentina before the Supreme Court of the United States on 24 June 2013.[30] In the face of this decision, Argentina requested a rehearing en banc. This request was rejected on 18 November 2013.

67. In view of this judicial situation, the Argentine Republic challenged the lawfulness of NML's claim before the highest court of that country:[31] the United States Supreme Court of Justice. Argentina filed a petition for writ of certiorari with the Supreme Court, which was denied on 16 June 2014.[32] As a result, the order issued by the US District Court for the Southern District of New York became final and the stay of enforcement of the payment order was lifted.[33] The Supreme Court of Justice of the United States decided not to hear the merits and thus deprived the Argentine Republic of the possibility of obtaining subsequent reviews of the abusive and excessive decisions of the New York courts. As a corollary of this, the US Judiciary froze the

---

[25] *("[t]he Securities will constitute ... direct, unconditional, unsecured, and unsubordinated obligations...").*

[26] *("[t]he payment obligations ... shall at all times rank at least equally with all its other present and future unsecured and unsubordinated External Indebtedness.").*

[27] See Annex 23: Order of 21 November 2012. Judge Thomas Griesa.

[28] See Annex 24: Order by the United States Court of Appeals for the Second Circuit (28 November 2012).

[29] See Annex 25: United States Court of Appeals for the Second Circuit (Decision of 23 August 2013).

[30] See Annex 26: Petition for Writ of Certiorari (24 June 2013).

[31] See Annex 27: Petition for Writ of Certiorari (18 February 2014) and Reply Brief (27 May 2014).

[32] See Annex 28: Supreme Court - Certiorari – Summary Disposition (16 June 2014).

[33] See Annex 29: Order by the United States Court of Appeals for the Second Circuit (18 June 2014).

funds belonging to bondholders which had been duly deposited by Argentina in the account of its trustee (Bank of New York Mellon) in accordance with the obligations arising from the bond prospectuses, in relation to the instalment payable to the holders of exchange bonds and due to mature on 30 June 2014, thus making those funds unavailable for the sovereign purpose determined by Argentina.

iii. *The unlawfulness inherent in the interpretation of the* pari passu *clause made by the US Judiciary*

68. The interpretation made by the US Judiciary of the *pari passu* clause is contrary to international law both because it breaches the duty to act in good faith in the exercise of the judicial powers accepted by Argentina, and it exceeds such powers and affects the sovereign immunities of the Argentine Republic.

a. The interpretation of the *pari passu* clause made by the US Judiciary is contrary to the duty to act in good faith in the exercise of the judicial powers accepted by Argentina

69. When the Argentine Republic decided to implement its sovereign decision to restructure part of its external debt under the jurisdiction of the United States of America, it did so with the clear expectation that such restructuring would not be challenged or hindered by the authorities of that country. In the implementation of the 2005 and 2010 debt exchanges, the US authorities allowed the issuance of Argentine exchange bonds. One of the clauses provided that creditors who failed to accept these exchanges would not in future enjoy better treatment than creditors who had accepted.

70. Nonetheless, the court decisions in question have the effect of frustrating the restructuring processes implemented by Argentina under US jurisdiction. This has been recognized by the US Executive itself in the brief in support of the position adopted by the Argentine Republic before the Court of Appeals, where it literally stated that:

> *"Because the district court's interpretation of the pari passu clause disrupts settled expectations concerning the scope and effect of boilerplate language contained in many sovereign debt instruments, it is contrary to U.S. policy interests"*[34].

71. Along the same lines, as was previously mentioned, and acting with due diligence, Argentina requested the District Court in 2004 (i.e. prior to making its 2005 Exchange Offer) to pass a declaratory judgment with a view to protecting the debt restructuring and preventing a false and unprecedented interpretation of the *pari passu* clause such as the one that was ultimately made. However, the judge denied the motion based on his understanding that the issue was moot and academic.

72. In disrupting "*settled expectations concerning the scope and effect of boilerplate language contained in many sovereign debt instruments*", the court decisions in

[34] See Annex 30: Brief for the United States of America as Amicus Curiae in support of Reversal (4 April 2012).

question are contrary not only to *"US policy interests"*, but also – as regards the matter that concerns this Court – to the legitimate expectation of the Argentine Republic that the restructuring of its debt under the jurisdiction of the United States of America would not be subsequently challenged by the authorities of the very country that gave its consent for the 2005 and 2010 exchange operations to be carried out under its rules. The fact that the legitimate expectation held by the Argentine Republic was not fulfilled results in a manifest breach of the duty to act in good faith in international relations, a rule that is deeply rooted in general international law and that is also reflected, among other instruments to which Argentina and the United States are parties, in the Charter of the United Nations (Article 2(2)) and the Charter of the Organization of American States (Article 2(c)).

73. By allowing on two occasions the restructuring of the Argentine sovereign debt through the issuance of bonds under its jurisdiction, the United States induced the Argentine Republic to envision a situation in which the debt exchanges in that jurisdiction would not be challenged or hindered through the acts or omissions of that country's authorities, whether judicial or otherwise. The situation that arose from the successive decisions rendered by the US Judiciary is exactly the opposite.

74. Furthermore, the court decisions challenged are not only contrary to international law, but they also end up opposing the very principles on which they are intended to be based, which amounts to an absurdity. Indeed, this judgment creates better conditions for the minority group of holdouts and harms the immense majority of creditors who accepted the debt restructuring.[35]

i) The court proceedings were affected by serious defects

75. The judicial decisions challenged were also the result of seriously defective proceedings. Suffice it to say that only ten days after confirmation of the district court's ruling, claims, demands and requests for clarification from countless affected third parties had already piled up. Everyone from the Bank of New York Mellon (BoNY) to the main clearing house, "Euroclear", Citibank Argentina, JP Morgan and the bondholders based in Europe have appeared before the judge who passed the judgment in order to request clarifications and interpretations on the scope of his decision.

76. Furthermore, the arbitrary actions taken by the judge involved not only disregard the sovereign capacity of one of the parties to the dispute – even if the Argentine Republic accepted the jurisdiction of the courts of New York, that does not mean that it ceases to be a sovereign State – but also clearly depart from the applicable rules with respect to equal treatment of the parties in the proceedings and the effect of his decisions on third parties. This was clearly demonstrated at the hearing held on 22 July 2014, where the judge disregarded the impact of his previous decisions – especially that of 23 February 2012 – on the holders of exchange bonds and on the obligations to those bondholders and the Argentine Republic that were incumbent upon the banks operating as trustees for the payment of Argentina's restructured debt.

---

[35] Cf. for example, the interpretation made by the Supreme Court of the Kingdom of Belgium in case No. C.04.0294.F, of 23 December 2005, *in re* "LNC Investments LLC Vs. The Republic of Nicaragua and Euroclear Bank" (See Annex No. 77).

77. What is more, the actions taken by the judge show an excess of his powers with respect to the holders of bonds issued under the laws of other places and payable outside the United States, in manifest violation of both Argentina's sovereign immunities and the scope of his jurisdiction. This attitude has attracted the attention of the most renowned scholars and mass media in the United States of America.[36] In this respect, one of the statements by the judge which is evidence of his serious ignorance of international law and of the scope of his own jurisdiction was made at the hearing, when he studied the possibility of considering that the payment on restructured debt under jurisdictions that are completely outside the scope of his powers – such as Argentina, the United Kingdom and Japan – was also affected by his decision.

78. Moreover, the behaviour displayed by the judge shows a manifest lack of impartiality, to the detriment of the Argentine Republic. His statements are irreconcilable with the treatment that any sovereign State deserves from any foreign court. For example, at the hearing of 22 July 2014, the abovementioned judge declared that:

> *"We went for about 10 years, 11 years...with the republic refusing to pay the judgments, and of course they didn't supply anything against which the judgments could be recovered. The rhetoric that was developed in the republic during this time was unfortunate although not as incendiary as recent rhetoric".*[37]

79. And he further claimed that:

> *"The republic took every step it could to indicate it would not pay the judgments, it would not negotiate the judgments...This was unfortunate...[f]or 11 years or so the republic not only did not pay the judgments but in everyway indicated its unwillingness to recognize those judgments...".*[38]

80. Throughout the hearing of 22 July 2014, Judge Griesa once again displayed a manifest lack of impartiality by making statements that led to a situation of imbalance between the parties. Those statements are yet another sign of the lack of impartiality that violated the rules of due process of law in general and the right of defence of the Argentine Republic in particular. Specifically, in referring to the possibility of ordering another stay, Judge Griesa asserted that:

> *"It really wouldn't be a stay in the sense of holding the* status quo. *In my view, the stay application, pro or con is not something that is necessary to a negotiation of settlement".*[39]

81. In addition, the behaviour of the judge in this case entails a prejudgment, as well as the undue adoption of a position on issues that not only exceed the scope of his jurisdiction, but also have economic consequences for the Argentine Republic and for

---

[36] See Annex 78: *"The Muddled Case of Argentine Bonds"*, The New York Times, 24 July 2014.

[37] See Annex 79: Transcript of Hearings, 22 July 2014. In particular, see p. 19, lines 20 to 25.
[38] *Ibidem*, p. 46, lines 1 to 10.
[39] *Ibidem*, p. 54, lines 19 to 22.

third parties. In effect, through his statements, which are consistent with those of the Special Master recently appointed by him,[40] the Judge expressed on 30 July 2014 that the Argentine Republic was in default. These statements on the situation of the payment of bonds that are not subject to the proceedings conducted by Judge Griesa bear witness to the abovementioned excess of powers, which is aggravated by the fact that his assertion was relied upon by credit rating agencies and this had an immediate economic impact on the Argentine Republic's ability to take out loans. Furthermore, the statements made by the US judge and by the mediator appointed by him bear directly on the decisions taken with respect to the Credit Default Swaps (CDSs), such as that made by the International Swaps and Derivatives Association (ISDA) on 1 August 2014, whereby such entity (of which NML itself is a member) determined that the Argentine Republic had incurred in an event of failure on its payment on 30 July 2014.

82. The correlation between these statements and the subsequent ratings, especially that of the ISDA, reveals the possibility of a certain link between the decisions of judicial bodies of the United States and the abovementioned credit rating agencies. The purpose of such connivance would be to enable the collection of Credit Default Swaps (CDSs), which the vulture funds themselves admit to holding either directly or indirectly. This has triggered the commencement of an investigation by the Argentine Securities and Exchange Commission (CNV), the agency in charge of regulating the stock exchange to which cooperation of their US counterparts has been requested.

83. Finally, it is impossible to comply with the court decisions challenged, as stated by the Minister of Economy of the Argentine Republic.[41] Not only because those rulings would translate into the breach of legal and contractual obligations incumbent upon Argentina and other third parties that participate in the payment process, but also because they would result in a new debt crisis.

b. The bias of the US courts has also been displayed by other entities of that country

84. Apart from the bias shown by the US courts to the detriment of the Argentine Republic, other government and private entities have followed the same line of conduct. For illustration purposes, we could mention an *Amicus Curiae* brief submitted by 21 States of the United States in support of the position of NML within the framework of the Global Discovery process, closely related to the *pari passu* case.[42] By means of that brief, those States expressly showed their firm support for the substantive claim brought by the bondholders who did not accept the exchange proposed by Argentina in the years 2005 and 2010 and referred to Argentina as a "recalcitrant debtor". At the same time, they demanded severe treatment against Argentina with a view to preserving an American financial market that would promote the protection of the creditors operating

[40] See Annex 31: Statement by Mr. Daniel A. Pollack, Special Master in Argentina Debt Litigation, 30 July 2014.

[41] See Annex 32: Speech by the Minister of Economy of the Argentine Republic at the Twenty-Eight Meeting of Consultation of Ministers of Foreign Affairs of the Organization of American States (OAS) on "Sovereign Debt Restructuring: The Case of Argentina and its Systemic Consequences" (3 July 2014).

[42] See Annex 82: Brief of South Carolina and 20 others States as Amicus Curiae in support of respondent, 1 April 2014.

in it as its main goal. As stated in the abovementioned brief, this special viewpoint derives from the interest of those States in protecting the investments of their pension funds in sovereign debt.

85. This position was backed by the submission of letters from different members of the United States Congress to the Secretary of State, John Kerry, for the purpose of requesting the US Federal Government to adopt measures in order to force Argentina to pay all of its non-restructured debt to holdouts.[43]

86. The letters submitted by those members of Congress have been published on the webpage of the so-called American Task Force Argentina (ATFA). This task force is an alliance of organizations working, according to their own definition, for "a just and fair reconciliation" of Argentina's 2001 defaulted sovereign debt and its subsequent restructurings. Its members *work together with US legislators*, the press and other interested sectors, with a view to urging the government of the United States to reach an agreement with the Argentine government that will favour the interests of US bondholders.[44] This organization is made up of various private associations from that country, including Elliot Associates, L.P. – the parent company of the NML fund – and other associations which have an interest in the full payment by Argentina of its debt to holdouts.

87. In sum, it is clear for Argentina that there is a close connection between several members of the US Congress and ATFA. Those Congresspersons are especially responsive to the dictates of ATFA, since once of its members is Elliot Associates, L.P., which is the parent company of the NML fund.

c. The decisions rendered by the US Courts violate the sovereign immunity of the Argentine Republic

88. The decisions issued by the US Judiciary impair the sovereignty of the Argentine Republic and, in particular, its sovereign immunity, in two ways. First, they seek to render ineffective Argentina's sovereign decision to restructure its public debt. Second, in precluding the collection, by creditors who accepted the restructuring of their claims, of the amounts deposited by the Argentine Republic, they violate the country's immunity from jurisdiction and immunity from execution.

89. With regard to the first issue, as recognized by the Supreme Court of Cassation of Italy,[45] the suspension of payments (debt moratorium), the restructuring process and the payment of public debt are acts that reflect the exercise of the sovereign power of

---

[43] See Annex 83: Letters written by the following members of Congress: Charles W. Dent, Mario Diaz-Balart, Bill Posey (Florida), Scott Garrett (New Jersey), Michael Macul (Texas), Lynn Westmoreland (Georgia), Bill Huizenga (Michigan), Tom Cotton (Arkansas), Gary Miller (California), Mike Grimm (New York), Mick Mulvaney (South Carolina), Chris Gibson (New York), Brian Kolb (New York), Edolphus Towns (New York), Joe Baca (California), Paul Tonko (New York), William L. Owens (New York), Loretta Sanchez (California), Carolyn Maloney (New York), Henry C Johnson Jr (Georgia), Brian Higgins (New York), Charles A. Gonzalez (Texas) and Grace F Napolitano (California), among others.

[44] See ATFA's web site http://www.atfa.org/about-us/ [last visited on 1 August 2014].

[45] See Annex 33: Ordinanza N° 6532/2005 of 27/05/2005 issued by Corte Suprema di Cassazione Sezioni Unite Civili of Italy (Case entitled "Borri Luca v. Argentine Republic").

the State (*jure imperii* acts) and, as such, are exempted from the jurisdiction of foreign States, by application of the *"par in parem non habet iurisdictionem"* principle. In the case of Argentina, those actions were taken by the National Legislative Branch and were mainly aimed at preserving the Nation itself and protecting the basic needs for the survival of the population in a historical context of serious national emergency, giving the highest priority to the interests of the community as a whole, and thus excluding the possibility of assessing those interests from the perspective of a potential violation of the legal regime applicable to *"jure privatorum"* acts.

90. From this point of view, the decisions rendered by the US Judiciary in interpreting the *pari passu* clause and ordering Argentina to pay *holdouts* the full amount of their bonds under penalty of precluding the payment on the restructured debt refer to a matter in relation to which Argentina has not waived its immunities: the sovereign act of restructuring Argentina's public debt, implemented by means of the 2005 and 2010 Exchanges.

91. On the other hand, the funds allocated by a country to the payment of its sovereign debt constitute assets that enjoy immunity and, therefore, they cannot be subjected to any restrictive measure imposed by another State. The Argentine Republic has not waived its immunity from jurisdiction and execution in this regard. In blatant contradiction with those immunities, the US courts have prevented funds deposited by Argentina with a view to paying exchange bondholders from being collected by those bondholders, who are their legitimate owners.

92. The violation of immunity through such judicial measure is so conspicuous that the District Judge himself has recognized it in asserting that:

> *"The advantage of the* pari passu *process is that it is finally, after all these years, yielded a mechanism to compel the Republic to pay the plaintiffs who are supposed to be paid."*[46]

93. What is more, the judicial measure concerned is not only contrary to international law but is also inconsistent with US law. Indeed, the United States Foreign Sovereign Immunities Act (FSIA), which reflects, in this regard, the basic principles of general international law in relation to the Sovereign Immunity of the State provides that the property of a foreign State in the United States will be immune from attachment, arrest and execution (except where it is used for a commercial activity). In this respect, the judicial measure consisting in precluding Argentina's payment to its creditors is contrary to the FSIA, since the sovereign assets earmarked for the payment of the debt cannot be affected by the authorities of the United States.

iv. The Argentine sovereign debt restructuring is threatened by the decisions of the US Judiciary

94. Through the successive decisions rendered by the US Judiciary within the framework of the claim for violation of the *pari passu* clause brought by NML and

[46] See Annex 34: Transcript of Hearing of Thomas Griesa, 18 June 2014.

other vulture funds, 1.6% of the bondholders who were not willing to reach an agreement with the Argentine Republic – for the speculative purpose of obtaining enormous profits on bonds acquired in exchange for an extremely low price – managed to hinder the restructuring of creditors who represent 92.4% of the total debt.

95. The situation in which the US Judiciary has placed the Argentine Republic is completely contradictory. If the Argentine Republic were to comply with the order issued by the District Court for the Southern District of New York, which makes an abusive interpretation of the *pari passu* clause, and paid the 1.63 billion US dollars sought by plaintiffs, it would have to face, in the immediate future, claims for about 15 billion US dollars for the total defaulted bonds that were not presented in the 2005 and 2010 exchanges. Moreover, in this scenario, there is a risk of extremely serious consequences, which would thwart the whole restructuring of the Argentine debt. By virtue of a possible interpretation of the so-called "*most favoured creditor*" clause or "*RUFO*" ("*Right Upon Future Offer*") clause, if vulture funds were paid under the conditions set by the US courts, all bondholders who participated in the exchange could bring actions with a view to invoking the right to demand the same treatment, which represents an estimated cost of over 120 billion US dollars. In contrast, if the Argentine Republic decides not to pay the vulture funds, the judgment passed by the District Court precludes the country from paying the 92.4% of the bondholders who accepted the restructuring offer. In this respect, the Court ordered the Bank of New York and other clearing houses not to transfer to those bondholders the amounts duly and timely paid by the Argentine Republic.

96. Within this framework, with a view to negotiating and reaching an agreement with the plaintiffs, on 23 and 26 June 2014, Argentina requested the District Court to reinstate the "stay". That stay would have granted the country a protection (a "legal umbrella") in order for negotiations to take place under conditions that take into consideration the legal and financial complexities of the process. Judge Griesa and the US Court of Appeals request Argentina to pay holdout creditors – simultaneously with the payment on the restructured debt – the full amount of principal and interest on their claims. Not only is this legally inadmissible, but the country is not in a position to pay plaintiffs in full or to pay the full amount owed to some creditors and not to others. The total amount of the claims that could be faced by the country in connection with the bonds that were not covered by the restructuring of the debt, i.e. over 15 billion US dollars, exceeds half the international reserves of the country. It is completely unacceptable for a country to be forced to use half its reserves to make a payment and to be deprived of the means for administering its funds, managing its economy and meeting the most basic needs of its population. In addition, Argentina cannot close its eyes to a possible interpretation of the obligations imposed upon it by the so-called RUFO clause – which is one of the terms of the debt restructured under the laws of New York and which expires on 31 December 2014 – since this may lead to the filing of an action in other jurisdictions that may disrupt the successful restructuring of 92.4% of the debt that the Argentine Republic had defaulted on. What is more, it is an undisputable fact that the Argentine Republic, as a sovereign nation, is subject to its own constitutional procedures and to the laws enacted by its Congress which are applicable in terms of debt restructuring.

97. On 26 June 2014, the District Court did not grant the "stay" requested by Argentina. On the same day, Argentina – in compliance with the prospectus and the

agreement in force with the holders who voluntarily accepted the 2005 and 2010 debt exchanges – paid the principal and interest on its bonds under the foreign law for an amount equal to 832 million US dollars, 539 million US dollars of which were deposited into accounts Nos. 15,098 and 15,002 held by the Central Bank of the Argentine Republic (BCRA) in the Bank of New York Mellon (BoNY).

98. The Argentine Republic considers that the conduct of the judicial bodies of the United States is not only contrary to International Law for the reasons explained above, but is also in blatant contradiction with the previous participation and acts of its governmental bodies, which were required at a given point in time for the successful completion of the restructuring process of the Argentine Republic. The contradictions existing between the different conduct shown by the different governmental authorities of the United States result in acts and omissions by that country that are irreconcilable with its duty to act in good faith in international relations. Those acts and omissions have placed the Argentine Republic in grave and imminent peril of being subject to a vast number of legal disputes, which would affect not only Argentina but the international system of sovereign debts as well.

99. In its order given on August 6, 2014, the District Court not only qualified the payments performed by the Argentine Republic to the restructured debt bondholders as "illegal", but also even intends to compel the Argentine Republic to refrain from demanding from the banks -through which it pays such bondholders- the fulfilment of the obligations accepted by those financial institutions as fiduciaries. Such treatment is plainly and simply unacceptable regarding a sovereign State. The District Court has once again exceeded its competence and besides intends deprive a State of its right to claim fulfilment of a lawful contract in force.

100. In light of this serious situation, the Argentine Republic reiterates, yet again, its willingness and intention to honour its obligations concerning the restructured sovereign debt to creditors who accepted the 2005 and 2010 Exchanges. Argentina rejects the conduct of the United States as contrary to the duty to act in good faith, as recognized in Article 2.2. of the Charter of the United Nations, and in serious violation of the obligation to respect the sovereignty of other States and, particularly, their immunities, all of which precludes the Argentine Republic from making, in a timely fashion, the payment of those debts.

101. In sum, the decisions of the Judiciary of the United States of America are arbitrary, exceed the scope of its powers, disregard the sovereign immunities of Argentina, and disrupt the sovereign restructuring of Argentine external debt.

I. Concern by the international community due to the negative systemic effects of the decision of the US Judiciary

102. In this context, it should be reiterated – once again – that, since the declaration of default in 2001, Argentina has followed a long path with the ultimate aim of offering all creditors, without any distinction, an alternative payment formula based on the real possibility of the country meeting its sovereign debt. It should be noted that only 1.6% of the total Argentine debt that was not restructured is held by NML and other vulture

funds. That 1.6% is threatening the payment of 92.4% of the debt that was actually restructured.

103. Throughout these proceedings, international organizations, States and world-renowned academic and technical figures have expressed their doubts and concern about the decisions rendered by the American courts regarding the subject under consideration, as well as their support to the Argentine Republic.

104. The Governments of France,[47] Mexico,[48] Brazil;[49] recognized economists such as Nobel Prize Joseph Stiglitz;[50] entities such as Euro Bondholders,[51] Euroclear Bank SA/NV,[52] Fintech Advisory Inc.,[53] Jubilee USA Networks,[54] Caja de Valores S.A.,[55] and Puente Hnos. Sociedad de Bolsa S.A.; and the Argentine American Chamber of Commerce[56] have expressed their support to Argentina before the US courts.

105. Furthermore, this matter has been addressed by Anne Krueger,[57] Nouriel Roubini,[58] the International Monetary Fund,[59] and over 100 economists throughout the world in a letter sent to the Congress of the United States of America.[60] The latter group referred to the impact of the rulings of the District Court. On the one hand, they referred to the unnecessary economic damage to the international financial system, as well as to U.S. economic interests and, on the other, to the manner in which these rulings preclude future processes for the restructuring of sovereign debt. Within this framework, that group, led by Prof. Robert Solow – Nobel Laureate in Economics, 1987 – urged the US Congress to take the legislative measures required to mitigate the negative impact of this kind of judicial decision, bearing in mind that, at the country's internal level, there is no mechanism regulating the sovereign suspension of payments. For illustration purposes, they allude to the legislation of the United Kingdom of Great Britain and of Belgium, which provide for measures aimed at avoiding speculative behaviour by holdouts. To conclude, they express concern about the restrictions imposed on banks, which prevent them from distributing payments to the holders of the restructured bonds.

---

[47] See Annex 35: France Amicus Curiae in support of the Republic of Argentina's Petition for a Writ of Certiorari (24 March 2014).
[48] See Annex 36: Mexico Amicus Curiae in support of petitions for Writ of Certiorari (24 March 2014).
[49] See Annex 37: Brazil Amicus Curiae in support of Petitioner (24 March 2014).
[50] See Annex 38: Brief of Joseph Stiglitz as Amicus Curiae in Support of Petitioner (24 March 24, 2014).
[51] See Annex 39: Brief of Respondents Euro Bondholders in Support of Petition for Writ of Certiorari (24 March 2014).
[52] See Annex 40: Brief of Amicus Curiae Euroclear Bank SA/NV in Support of Petitioner (24 March 2014).
[53] See Annex 41: Brief of Respondent Fintech Advisory Inc. in Support of Petitioners.
[54] See Annex 42: Brief of Jubilee USA Network as Amici Curiae in Support of Petitioners.
[55] See Annex 43: Brief of Amicus Curiae Caja de Valores S.A. in Support of Petitioner (24 March 2014).
[56] See Annex 44: Brief of Amici Curiae in Support of The Petition for Writ of Certiorari – Puente Hermanos Sociedad de Bolsa and Argentine American Chamber of Commerce.
[57] See Annex 45: Anne Krueger, *"A New Approach to Sovereign Debt Restructuring"; "Argentina's Sovereign Bondage"* (9 July 2014).
[58] See Annex 46: Roubini, Nouriel: *"From Argentina to Greece: Crisis in the Global Architecture of Orderly Sovereign Debt Restructurings"; "Gouging the Gauchos"*.
[59] See Annex 47: International Monetary Fund: *"Sovereign Debt Restructuring: Recent Development and Implications for the Fund's Legal and Policy Framework"*.
[60] See Annex 81: Letter to the US Congress from over 100 economists around the world, 31 July 2014.

106. At a multilateral level, the following institutions have voiced their support to the Argentine Republic: IMF,[61] CELAC,[62] G-24, G-77 plus China,[63] UNASUR,[64] MERCOSUR,[65] ALADI,[66] ECLAC,[67] MERCOSUR Parliament,[68] OAS,[69] Bank of the South,[70] UNCTAD[71] and SELA.[72]

107. In this regard, the G-77 plus China, which is formed by 134 of the 193 States that make up the United Nations General Assembly, stated as follows.

> *"We (...) stress the importance of not allowing vulture funds to paralyse the debt-restructuring efforts of developing countries, and that these funds should not supersede a State's right to protect its people under international law (...)"*

108. Driven by the same concern, in the Meeting of Consultation of Ministers of Foreign Affairs, the OAS stated that:

> *"That is essential for the stability and predictability of the international financial architecture to ensure that agreements reached between debtors and creditors in the context of sovereign debt-restructuring processes are respected by allowing that payment flows are distributed to cooperative creditors in accordance with the agreement reached with them in the process of consensual readjusting of the debt".*

109. Along the same lines, different Heads of State and high-ranking officials from Brazil,[73] Bolivia,[74] Chile,[75] Colombia,[76] Cuba,[77] Ecuador,[78] Honduras,[79] Italy,[80]

---

[61] See Annex 48: The Fund's Lending Framework and Sovereign Debt – Preliminary Considerations (June 2014).
[62] See Annex 49: CELAC communiqué in support of Argentina's position regarding its Sovereign Debt Restructuring Process C.008-2014 (20 June 2014).
[63] See Annex 50: Declaration in Support of Argentina Regarding the Ruling on the NML Capital Ltd. vs. Republic of Argentina issued by G-77 plus China (25 June 2014)
[64] See Annex 51: Declaration of the Council of Heads of State of UNASUR Supporting Argentina's Position on the Restructuring of its Sovereign Debt (24 June 2014).
[65] See Annex 52: Special Declaration of States Parties to MERCOSUR in support of the Argentine Republic (June 2014).
[66] See Annex 53: ALADI Resolution No. 409 (26 June 2014).
[67] See Annex 54: Office of the Executive Secretary of ECLAC (26 June 2014).
[68] See Annex 55: MERCOSUR Parliament – June 2014.
[69] See Annex 56: RC.28/DEC.1/14 OAS (3 July 2014) and OAS Secretary General's Speech (3 July 2014).
[70] See Annex 57: Communiqué issued by the Board of the Bank of the South (2 July 2014).
[71] See Annex 58: UNCTAD: *"Argentina's 'vulture fund' crisis threatens profound consequences for international financial system"* (25 June 2014).
[72] See Annex 59: Communiqué issued by the Permanent Secretariat of the Latin American and Caribbean Economic System (SELA) in support of Argentina's position in its sovereign debt Restructuring (Caracas, 11 July 2014).
[73] See Annex 60: Statement by the Brazilian Ambassador to the United Nations (Telam, 28 June 2014).
[74] See Annex 61: Letter from President Evo Morales to the President of the Argentine Republic (25 June 2014) and Speech by the Minister of Foreign Relations of Bolivia at the OAS (3 July 2014).
[75] See Annex 62: Speech by the Minister Secretary General of the Government of Chile at the OAS (3 July 2014).
[76] See Annex 63: Speech by the Minister of Foreign Relations of Colombia at the OAS (3 July 2014).
[77] See Annex 64: Speech by the Minister of Foreign Relations of Cuba.

Nicaragua,[81] Panama,[82] Peru,[83] the Bolivarian Republic of Venezuela,[84] the Dominican Republic,[85] the Eastern Republic of Uruguay,[86] and Saint Lucia,[87] among others, have challenged the decisions of the US Judiciary. This concern is shared by other authorities from different States that have supported Argentina's position, such as the Italian House of Representatives[88] and a group of 106 members of parliament of the United Kingdom of Great Britain and Northern Ireland[89].

110. The common denominator of these expressions is the concern over the effects that these judicial rulings may have at a global level, as they set a negative precedent in the event that a country needs to restructure is sovereign debt. By contrast, the situations of suspension of payments are governed by the domestic laws of the States through criteria stating that, where a majority close to 60% of creditors accepts the restructuring of its claims, such acceptance forces the remaining creditors to accept that restructuring.

III. APPLICABLE LAW

111. As set forth in Article 4 of the ILC Articles on Responsibility of States, the conduct of judicial organs is attributable to the State.[90] This is a well-established rule of International Law.[91] The decisions of the Judiciary of the United States of America to which this claim refers thus trigger the responsibility of the State. They are decisions that are in force and are already having grave effects.

112. On the basis of the grounds exposed above, these decisions rendered by the US courts entail a violation of, at least, the following international obligations:

---

[78] See Annex 65: Speech by the National Secretary of Planning and Development of Ecuador at the OAS (3 July 2014).
[79] See Annex 66: Speech by the Secretary of State for Foreign Relations and International Cooperation of Honduras at the OAS (3 July 2014).
[80] See Annex 67: Communiqué by the Italian Chief of Cabinet to the President of the Argentine Republic (11 July 2014).
[81] See Annex 68: Speech by the Vice-Minister of Foreign Affairs of Nicaragua at the OAS (3 July 2014).
[82] See Annex 69: Speech by the Interim Representative of Panama at the OAS (3 July 2014).
[83] See Annex 70: Speech by the Vice-Minister of Foreign Affairs of Peru at the OAS (3 July 2014).
[84] See Annex 71: Speech by the Minister of Foreign Affairs of Venezuela at the OAS (3 July 2014) and Communiqué by the Ministry of Foreign Affairs (25 June 2014).
[85] See Annex 72: Statement by the Vice-Minister of Foreign Affairs of the Dominican Republic at the OAS (3 July 2014).
[86] See Annex 73: Statement by the President of the Eastern Republic of Uruguay (Infonews.com: 19 June 2014).
[87] See Annex 74: Statement by the Permanent Representative of Saint Lucia to the Organization of American States (3 July 2014).
[88] See Annex 80: Statement by the Italian Parliament on Argentina's sovereign debt situation
[89] See Annex 75: Parliament of The United Kingdom, Early motion 666 tabled 4 November 2013
[90] International Law Commission, Responsibility of States for Internationally Wrongful Acts, 2001, *Yearbook of the International Law Commission*, 2001, vol. II (Part Two); annexed to United Nations General Assembly resolution 56/83 of 12 December 2001, UN Doc. A/56/49(Vol. I)/Corr.4.
[91] *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, I.C.J. Reports 1999*, p. 62, at p. 87, para. 62.

A. The obligation to respect the sovereignty of other States, in particular, their sovereign decision on the restructuring of their public debt;
B. The obligation to respect the immunity from jurisdiction and the immunity from execution of sovereign States;
C. The obligation not to use or encourage measures of an economic or political character in order to force the sovereign will of another State member of the Organization of American States, as set forth in Article 20 of the OAS Charter and general international law; and
D. The obligation to exercise in good faith and in accordance with the rule of law the judicial functions that the Argentine Republic has accepted, within the exclusive framework of the scope of its acceptance.

A. The actions by the US Judiciary to decide on and frustrate the decision of the Argentine Republic to restructure its debt constitute a violation of Argentine sovereignty and immunity.

113. The decision to restructure public debt is, in itself, an action that can only be categorized as *jure imperii*, whatever the standard used to analyse it. It is for the State to decide, without interference, about the way to manage and restructure its public debt. Therefore, the US judicial decisions, by preventing Argentina from doing so, infringe its sovereignty. Argentina enjoys immunity from jurisdiction in relation to such a sovereign decision. The fact of having carried out this decision by resorting to different national jurisdictions to implement some aspects of its public debt in no way alters the jure imperii nature of the specific decision to restructure it. Respect for State sovereignty and immunity are amongst the most elementary rules governing international relations.

B. The attempt to attach the funds with which Argentina has paid the restructured debt bondholders in US jurisdiction is in violation of the sovereign immunity of the Argentine Republic, since they are funds earmarked for a* jure imperii *purpose consisting in payment of service of its sovereign debt; moreover, these funds are already property of the said bondholders.

114. The funds paid by the Argentine Republic to Bank of New York Mellon are intended for payment of debts originating in the restructured public debt. Payment of public debt is also an activity typically categorized as being *jure imperii*, which makes such sums of money non-attachable.

115. The attempt by the US Judiciary to attach such sums of money for purposes other than those specifically established by the Argentine Government – transfer thereof to the restructured debt bondholders that are the legitimate owners – constitutes a clear violation of the Argentine Republic's immunity from jurisdiction and immunity from attachment under general international law.

116. Besides, it is worth mentioning that in accordance with the "Trust Indenture" provisions that legally bind the Republic of Argentina to the Bank of New York Mellon, the amounts deposited in due time and manner as payment by the Republic of Argentina are no longer the property of the Republic, but a fiduciary property held in trust for the benefit of the holders of restructured debt securities.

C. The decisions of the US Judiciary contravene the obligation not to use or encourage measures of an economic or political character in order to force the sovereign will of another State as provided for in Article 20 of the OAS Charter and general international law

117. The American judicial decisions challenged are contrary to this obligation as they would mean that Argentina would not be able to comply with the schedule of payments to holders of sovereign debt bonds that accepted the debt exchange offers of 2005 and 2010, thus frustrating Argentina's sovereign decision to restructure its debt.

D. The decisions of the US Judiciary objected to by Argentina are contrary to the duty of States to exercise in good faith in accordance with the rule of law the judicial functions that the Argentine Republic has accepted, and within the exclusive framework of the scope of its acceptance.

118. As demonstrated above, the decisions contested here were adopted inconsistently, in an arbitrary and discriminatory way, without respecting the elementary condition of impartiality and the sovereign character of Argentina, exceeding the courts' jurisdiction. Furthermore, the intervention of the competent areas of the US government, such as the Securities and Exchange Commission and other official agencies with powers to exercise government control of private entities under US jurisdiction, whose actions made the debt restructuring possible, created a legitimate expectation in the Argentine Republic that such an intervention, as well as the terms on which the Argentine debt was restructured, would not be challenged by other branches of power in the United States.

119. The judicial decisions ordering payment of 100% of the value of bonds held by the funds NML Capital etc. seek to create an obligation for the Argentine Republic that represents a violation of the terms on which the Republic restructured its debt. Compliance with it would make the total original debt payable, thus rendering ineffective the restructuring agreed upon with 92.4% of creditors and endorsed by other agencies of the US government itself.

120. Consequently, this conduct of the United States of America violates the obligation to act in good faith, firmly rooted in general international law and reflected in Article 2, paragraph 2, of the Charter of the United Nations Organization.

121. In brief, the decisions of the US Judiciary are abusive, arbitrary, beyond its jurisdiction, ignore the sovereign immunities of Argentina, frustrate the sovereign restructuring of Argentina's external debt and are thus measures seeking to force its sovereign will.

IV. JURISDICTION OF THE COURT

122. The Argentine Republic seeks to found the jurisdiction of the Court on the basis of Article 38, paragraph 5, of the Rules of the Court. In fact, as there is no agreed rule in force providing for mandatory jurisdiction of this Court in relation to all of the law and facts invoked, the jurisdiction of the Court will depend on acceptance by the United States of America.

123. The Argentine Republic directs the attention of the United States of America to the need to reach a settlement of this dispute by the principal judicial organ of the United Nations. Argentina referred to this situation before the Permanent Council of the Organization of American States, on the occasion of the 28th Meeting of Consultation of Ministers of Foreign Affairs held on 3 July 2014. On that occasion, the Delegation of the United States, although reiterating its concern about the impact of US judicial authority decisions on sovereign debt restructuring processes, did not join the appeal made by the Organization to provide a solution that would guarantee for the Argentine Republic the possibility of continuing to comply with its obligations by means of a fair, equitable and legal arrangement.[92]

124. At the OAS, the government of the United States has invoked the independence of the Judiciary as an excuse for not joining an overwhelming majority of the Organization.[93] As the US government knows and has recognized before this Court, actions by its Judiciary involve its responsibility as a State.[94] Argentina particularly notes that the practice of the Court shows that resorting to it is an appropriate means to resolve disputes between States in which judicial decisions by one of the parties have been the subject matter of the dispute.[95] This has been so even in cases like the one under review, in which there was no previous connection in terms of jurisdiction and the defendant accepted the jurisdiction of the Court on the basis of Article 38, paragraph 5, of the Rules of the Court.[96] By filing this application with the Court, the Argentine Government gives the US Government an opportunity to settle this dispute in a manner consistent with law and justice. Argentina considers that voluntary acceptance of the jurisdiction of this Court by the United States of America in this case would be a responsible and sensible decision of the US government, which would enable it to reestablish consistency in the decisions adopted within its jurisdiction in relation to countries that resort to US jurisdiction for the purpose of implementing their sovereign public debt restructuring decisions.

125. The show of support by an overwhelming majority of the international community, including organizations specializing in financial matters, clearly shows that the situation faced by Argentina, far from concerning Argentina alone, is a situation whose systemic implications are enormous, with political, economic, financial and

---

[92] See Annex 84: Declaration of the Delegation of the United States to the Permanent Council of the Organization of American States, on the occasion of the 28th Meeting of Consultation of Ministers of Foreign Affairs.

[93] *Ibidem.*

[94] *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America) (Mexico v. United States of America), Judgment, I.C.J. Reports 2009,* pp. 18-19, para. 55.

[95] *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening), Judgment, I.C.J. Reports 2012*, p. 99.

[96] *Certain Criminal Proceedings in France (Republic of the Congo v. France) Order of 16 November 2010, I.C.J. Reports 2010*, p. 635; *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France), Judgment, I.C.J. Reports 2008*, p. 177.

social consequences that are hard to predict, although without doubt very serious in terms of magnitude.

126. In all events, if the United States of America should not accept the jurisdiction of the Court, the Argentine Republic considers that the US has an obligation to indicate a peaceful alternative method of resolution to deal with this dispute, in keeping with the relevant provisions of the Charter of the United Nations,[97] the Charter of the Organization of American States[98] and general international law, which call for States to resolve their international disputes through peaceful means.

127. Therefore, should the United States of America fail to consent to the jurisdiction of this Court, the Argentine Republic states that notice of this application should be regarded as a request for the US to fulfil its obligation to agree on a procedure that enables a settlement of this dispute.

V. DECISION REQUESTED TO THE COURT

128. On the basis of the arguments presented above, the Argentine Republic – while reserving its right to complete, modify or amend this Application in the course of the subsequent procedure – respectfully requests the Court to decide and declare:

A. That the United States of America, as a result of the acts of its Judiciary challenged in this Application, which constitute arbitrary and abusive exercise of judicial functions beyond the scope of its jurisdiction, including, but not limited to, the freezing of sovereign funds deposited by the Argentine Republic with trustees located in the United States of America as payment of the restructured Argentine public debt, and seek to decide on and frustrate the restructuring of Argentina's external public debt, has violated:

a) The obligation to respect the sovereignty of the Argentine Republic, in particular its sovereign immunities;

b) The obligation not to use or encourage measures of an economic and political character in order to force the sovereign will of another Member State of the Organization of American States, as provided for in Article 20 of the OAS Charter;

c) The obligation to exercise in good faith and pursuant to law the judicial functions that the Argentine Republic has accepted;

B. That, as a result of failing to comply with the above-mentioned international rules, the United States of America have incurred international responsibility vis-à-vis the Argentine Republic and, therefore:

a) The United States of America must take all necessary steps to immediately leave without effect the decisions of the US Judiciary that violate international law as

[97] Article 2, paragraph 3 and Article 33 of the UN Charter.
[98] Articles 24, 25 and 26 of the OAS Charter.

far as this application is concerned, and in particular, must refrain from freezing funds deposited by the Argentine Republic for payment of its public debt and from adopting any measures, through any branches of government, whose effect may frustrate or interfere with the public debt restructuring process of the Argentine Republic;

b) The United States of America must fully redress the Argentine Republic for all damage caused by violations of international law attributable to the United States of America in relation to this application, the amount of which shall be determined at a later stage in these proceedings.

* *

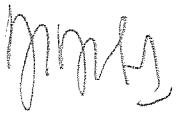
129. Once the United States of America consents to the Court's jurisdiction for the present proceedings, the Argentine Republic reserves its right to request the Court to indicate provisional measures.

130. The Argentine Republic reserves its right to appoint an *ad hoc* Judge under Article 31 of the Statute of the Court.

* * *

It is requested that all communications of this case be notified to the following address:
Embassy of the Argentine Republic
Javastraat 20,
2585 AN The Hague
The Netherlands

Respectfully,



Ambassador H. Horacio Salvador

The Hague, 7 August 2014