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## Argentina's Reparations Bonds: An Analysis of Continuing Obligations

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# Argentina's Reparations Bonds: An Analysis of Continuing Obligations

Christina M. Wilson

## **Abstract**

This Note will address the various avenues along which the reparation recipients might pursue the vindication of their right to reparations. Part I will provide background information on the Dirty War, reconciliation process, reparation laws and the economic events that resulted in Argentina's sovereign debt crisis. Part I will also describe the various sources of law both domestic and international upholding the right to reparations. Part II will explore the various cases that have interpreted this right and the implications they have on the reparation recipients' possible remedies. Part III will analyze which of these remedies seems most likely to yield a favorable result for the reparation recipients.

## NOTES

### ARGENTINA'S REPARATION BONDS: AN ANALYSIS OF CONTINUING OBLIGATIONS

Christina M. Wilson\*

#### INTRODUCTION

Born in 1925, Elsa Oesterheld grew up an only child in Argentina.<sup>1</sup> She married a comic book scriptwriter and had four daughters who, in 1976, were all married and ranged in age from eighteen to twenty-three.<sup>2</sup> Two of her daughters were pregnant and the other two had children.<sup>3</sup> Within months, they were all gone.<sup>4</sup> The military abducted her husband, her four daughters, and two of her sons-in-law, leaving Elsa to raise her

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1. See Marcela Valente, *Argentina: Belated Reparations for Victims of the Dictatorship*, INTER PRESS SERVICE, Feb. 7, 1997, at <http://www.ips.org> [hereinafter Valente, *Belated Reparations*] (explaining that Elsa Oesterheld's parents had been delighted with large family from their only daughter). See generally Larry Rohter, *Argentine Default Reopens "Dirty War" Wounds*, N.Y. TIMES, Mar. 12, 2002, at A3 (describing situation of recipients of reparations bonds in context of economic crisis).

2. See Valente, *Belated Reparations*, *supra* note 1 (explaining that all four daughters were married and pursuing university careers); see also Rohter, *supra* note 1, at A3 (stating that all four daughters were students with leftist sympathies).

3. See Valente, *Belated Reparations*, *supra* note 1 (stating that raising two surviving grandchildren alone kept her so busy that she had little time to console her despondent parents who died incapable of comprehending tragedy that had destroyed their family); see also Rohter, *supra* note 1, at A3 (describing how two surviving grandsons, Martin Mortola Oesterheld, 27, and Fernando Araldi Oesterheld, 26, filed separate claims for reparations and vowed to reserve portion of it for lost child of Mrs. Oesterheld's youngest daughter Marina, who was allegedly born in captivity).

4. See Valente, *Belated Reparations*, *supra* note 1 (asserting that military took her family, her home, and even royalties from her husband's work); see also Rohter, *supra* note 1, at A3 (describing how her husband and all four daughters and two sons-in-law disappeared).

two grandchildren on her own.<sup>5</sup> The military targeted Elsa's husband in part for authoring a comic book version of the life of Che Guevara.<sup>6</sup> The military imprisoned him for at least a year before he disappeared; the time of Elsa's daughters' detention before their disappearance remains unknown.<sup>7</sup> Another such victim was Sebastian Garcia-Albores, whose father disappeared in 1979.<sup>8</sup> Elsa and Sebastian represent two of 7000 victims of the "Dirty War"<sup>9</sup> who applied to receive reparations for Dirty War crimes in 1996.<sup>10</sup>

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5. See Valente, *Belated Reparations*, *supra* note 1 (stating that she survived by her own volition despite hardship of raising grandchildren by herself); see also Rohter, *supra* note 1, at A3 (explaining how those most affected by devaluation of bonds are most vulnerable sectors of society, aging retirees, and young grandchildren of disappeared).

6. See Valente, *Belated Reparations*, *supra* note 1 (explaining that she had warned her husband that if he wrote comic book about life of Che Guevara, military would label him communist, comment which he laughed off); see also Rohter, *supra* note 1, at A3 (describing how her husband had gone underground after writing Che book and arousing suspicions of *junta* due to his sympathies with left-wing Montonero guerillas). The word *junta* means an autonomous government, often a military government when used in Latin America. See OXFORD SPANISH DICTIONARY 441 (1994) (defining *junta* as autonomous government); see also WEST'S SPANISH-ENGLISH/ ENGLISH-SPANISH LAW DICTIONARY 194 (1992) (defining *junta* as board or representative group created to carry on specific purpose assigned to them).

7. See Valente, *Belated Reparations*, *supra* note 1 (noting that his imprisonment time before disappearance was one year); see also Rohter, *supra* note 1, at A3 (stating that period of detention of Mrs. Oesterheld's daughters before their death remains unknown).

8. See David Plumb & Daniel Helft, *Argentina's "Dirty War" Victims Are Losers in Default*, BLOOMBERG NEWS, Dec. 7, 2001 (describing how Sebastian Garcia-Albores lost his father during the Dirty War in 1979).

9. This Note will use the phrase "Dirty War" to refer to period of military rule from 1976-1983. This phrase is objectionable because it inaccurately implies that casualties were primarily armed combatants, whereas many *desaparecidos* [disappeared] were not involved in armed insurrection at all. See, e.g., MARTIN EDWIN ANDERSON, DOSSIER SECRETO, ARGENTINA'S DESAPARECIDOS AND MYTH OF "DIRTY WAR" 2 (1993) (arguing that use of phrase Dirty War implies that casualties came from ranks of two real armies, which was not true in Argentina); see also Tim Dockery, *The Rule of Law Over the Law of Rulers: The Treatment of De Facto Laws in Argentina*, 19 FORDHAM INT'L L.J. 1578, 1604-05 (1996) (describing how repression of this era differed from earlier repressive regimes in that it involved indiscriminate violations of human rights against anyone perceived as threatening).

10. See Valente, *Belated Reparations*, *supra* note 1 (noting that Elsa was 72 when she applied to receive reparations bonds and looked forward to comfort of knowing that her grandchildren and great-grandson would have what they needed); see also Plumb & Helft, *supra* note 8 (describing how Sebastian Garcia-Albores lost his father during the Dirty War in 1979, and quoting Tomas Ojea, chief legal council to Argentina's Undersecretary of Human Rights, as asserting that as of December 2001, 9000 families were awaiting approval of their petitions for reparations, totaling, if approved, at least another U.S.\$1 billion of bonds).

Beginning in 1991, the Argentine government, at the time headed by President Carlos Menem, paid reparations in the form of bonds worth between U.S.\$220,000 and U.S.\$256,000 for each disappeared person.<sup>11</sup> An economic crisis erupted in December 2001, however, and the Menem Administration decided to suspend payments of interest and principle on these bonds.<sup>12</sup> During the initial phases of the economic crisis, the government pressured reparation bond recipients to accept loans with lower values.<sup>13</sup>

Those that did not participate in the loan swap watched the

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11. See Valente, *Belated Reparations*, *supra* note 1 (explaining that law governing reparations provides for compensation in form of bonds worth U.S.\$220,000 per each disappeared person); *see also* Rohter, *supra* note 1, at A3 (stating that bonds issued were worth up to U.S.\$256,000 as restitution for each death); *Decreto de Necesidad y Urgencia Sobre Beneficios Para Detenidos a Disposición del Poder Ejecutivo Nacional Durante La Vigilancia del Estado de Sitio* [Decree of Necessity and Urgency Regarding Benefits for Those Detained at Disposition of Executive National Power During State of Emergency], Law No. 70/91, Jan. 16, 1991, B.O. (establishing that statute of limitations did not bar families of Dirty War victims' claims); *Beneficios Otorgados a Personas Puestas a Disposición del Poder Ejecutivo Nacional Durante el Estado de Sitio* [Benefits Granted to People Held at Disposition of Executive National Power During the State of Emergency] Law No. 24.043, Jan. 2, 1992, B.O. (creating broad criteria of proof for establishing forced disappearance and torture); *Desaparición Forzada de Personas* [Forced Disappearance of People], Law No. 24.321, June 8, 1994, B.O. (providing legal recognition of special status of disappeared in Argentina); *Ausencia por Desaparición Forzada* [Absence due to Forced Disappearance], Law No. 24.411, Jan. 3, 1995, B.O. (extending reparation benefits to common law marriages in existence at least two years prior to disappearance or death).

12. See Rohter, *supra* note 1, at A3 (explaining that Argentine government suspended payments of interest and principal on these bonds as well as other foreign and domestic debts); *see also* Plumb & Helft, *supra* note 8 (explaining that in 2001 government was pressuring recipients to accept lower value on their bonds as part of its attempt to lighten its U.S.\$132 billion debt and many were accepting due to likelihood of governmental default on all its debt); INTERNATIONAL MONETARY FUND ["IMF"], INDEPENDENT EVALUATION OFFICE ["IEO"], REPORT ON THE EVALUATION OF THE ROLE OF THE IMF IN ARGENTINA, 1991-2001 6 (2004) [hereinafter IMF, IEO] (describing how in December 2001, government defaulted on its sovereign debt); *Argentina Creditors Unite to Speed up Bond Talks*, ANSA ENG. MEDIA SERV., Jan. 12, 2004 (describing how in response to Argentina's default totaling 54 and 55 billion principal private and institutional creditors created International Committee of Argentine Bondholders ("GCAB") to spur Argentine government into negotiation).

13. See Plumb & Helft, *supra* note 8 (quoting reparations recipient who felt trapped by government pressure because he did not understand anything about bond market); *see also* IMF, IEO, *supra* note 12, at 93 (describing how on November 1, 2001, government announced two-part debt exchange, Part I of which pressured domestic creditors to exchange old credit for guaranteed loans with lower interest rates and longer maturities); Christopher Faille, *Second Circuit Finds Ambiguity in ISDA Documents Re: Argentina*, HEDGEWORLD / INSIDE EDGE, July 20, 2004 (describing how in litigation arising out of Argentina's late 2001 bond default, plaintiff will argue that Argentina's proposed debt exchange of November 1, 2001, was regarded by bondholders as coer-

value of their bonds depreciate radically because the government chose to float<sup>14</sup> the Argentine peso.<sup>15</sup> For example, the bonds Garcia-Albores received for his father's disappearance in 1979 lost seventy percent of their value, dropping from U.S.\$87,000 to U.S.\$25,000.<sup>16</sup> Reparations recipients like Garcia-Albores still hoped the government would give these bonds greater priority because of the special circumstances surrounding their issuance.<sup>17</sup> As the economic crisis deepened, however, the government decided to suspend interest and principal payments on its internal and external debt, including the reparations bonds, forcing families of the disappeared like Garcia-Albores and Oesterheld into financial difficulty.<sup>18</sup>

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cive and constituted mandatory transfer of securities as referred to in language of International Swaps and Derivatives Association agreements).

14. A Floated Exchange Rate is one that is market driven, where supply and demand determines the currency's value. *See, e.g.,* The Economist Group Asia-Pacific Limited, *Economic Definitions*, 2001, at [http://www.economistconferences.com/PeerGroup/Group\\_Meeting/Research/PG12-RES-2072.pdf](http://www.economistconferences.com/PeerGroup/Group_Meeting/Research/PG12-RES-2072.pdf) (last visited Apr. 22, 2005); *see also* BARON'S BUSINESS GUIDES DICTIONARY OF BANKING TERMS 258 (1990).

15. *See* IMF, IEO, *supra* note 12, at 6, 160 (describing how convertibility regime was created in 1991 as stabilization device in response to hyperinflation problems of early 1990s and how Argentine authorities suspended convertibility regime on January 6, 2002, causing value of Argentine peso and government bonds to plummet); *see also* Marcela Valente, *Argentina: Reparations for Banks, But Not Savers*, IPS-INTER PRESS SERV., Mar. 4, 2003, available at <http://www.ips.org> [hereinafter Valente, *Reparations for Banks*] (describing how, in January 2002, President Eduardo Duhalde's government lifted parity regime that had pegged Argentine peso to U.S. dollar for decade resulting in sharp devaluation of Argentine peso); Plumb & Helft, *supra* note 8 (noting that market prices of bonds dropped rapidly); *Argentina Faces Restructuring Challenge*, FIN. TIMES INVESTOR, GLOBAL NEWS WIRE — EUR. INTELLIGENCE WIRE, Mar. 5, 2003 (describing how Argentina's default was biggest and most complex sovereign debt default to date).

16. *See* Faille, *supra* note 13 (stating that Argentina began defaulting on its bonds via series of moves on November 1); *see also* Plumb & Helft, *supra* note 8 (stating that some recipients held onto bonds rather than swap for new lower value loans because there's secondary market for bonds).

17. *See* Plumb & Helft, *supra* note 8 (arguing that recipients of reparations bonds have distinct history from other bondholders); *see also* Rohter, *supra* note 1, at A3 (quoting lawyer representing families of disappeared explaining that reparations recipients are not normal investors but victims of crimes); NAT'L OMBUDSMAN, DEFENSOR DEL PUEBLO DE LA NACIÓN, INFORME ANNUAL 2002 38-40 (2002) [hereinafter NAT'L OMBUDSMAN, DEFENSOR] (urging Argentine Minister of Economy to lift suspension of payments on reparation bonds because suspending them constituted violation of American Convention and regression in development of human rights). *But see* Valente, *Reparations for Banks*, *supra* note 15 (describing how Argentine government is planning on providing reparations for banks but not for individuals adversely affected by crisis).

18. *See* Faille, *supra* note 13 (stating that Argentina defaulted on its bonds via series of moves beginning on November 1, 2001, and culminating in public-debt moratorium announced December 24, 2001); *see also* Paivi Munter, *Taking Action Against World's Big-*

Oesterheld's and Garcia-Albores' bonds, like all other Argentine government bonds, are part of the most complex sovereign debt crisis in history.<sup>19</sup> Yet, they and the other reparation recipients are different from other bondholders who chose to invest in the Argentine State.<sup>20</sup> The reparations recipients received the bonds as reparations for the atrocities committed during the Dirty War in accordance with domestic and international

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*gest Default; Suing Is an Option for Only a Handful of Those Hit in Argentina's Bond Issue*, FIN. TIMES, Jan. 12, 2004, available at 2004 WLNR 7607593 (stating that for many bond holders only options are either joining with others to influence debt restructuring or selling bonds at current market price); Rohter, *supra* note 1, at A3 (explaining that Argentine government's decision to suspend interest and principal payments on its debts extends to and creates great hardship for reparations recipients); Marcela Valente, *Argentina: Small Creditors to Open Talks on Defaulted Debt*, IPS-INTER PRESS SERV., Mar. 23, 2004, available at <http://www.ips.org> [hereinafter Valente, *Small Creditors*] (describing how association of Argentine bond-holders is contesting Argentina's decision to prioritize paying debts to multilateral credit institutions instead of paying more vulnerable local individuals). But see Lionel Barber et al., *International Investors Cry for Argentina's Bond Crisis to Be Resolved Quickly and Fairly*, FIN. TIMES, Mar. 8, 2004, available at 2004 WLNR 9722561 (describing how majority of 40,000 Japanese investors who bought Argentine bonds are elderly individuals or small associations who invested large portion of their assets).

19. See Ronald J. Silverman & Mark W. Deveno, *Distressed Sovereign Debt: A Creditor's Perspective*, 11 AM. BANKR. INST. L. REV. 179, 179-91 (2003) (explaining recent trends in sovereign financing, away from syndicated bank loans toward great reliance on sovereign bonds held by large number of creditors with varying concerns and interests, have rendered resolution of sovereign debt crisis via litigation impractical); see also *Week's Top Story — Government Gets 75% Reduction In Its Debt Capital*, NOTICIAS FINANCIERAS, Sept. 26, 2003 (describing that Argentina's December 2001 default created most complex restructuring in history due to numerous and diverse nature of bondholders); Hugo Alconada Mon, *Los Acreedores, con Actitudes Muy Disparas* [Creditors, with Very Varied Attitudes], LA NACION LINE, July 7, 2003, at § Economía (stating that holders of Argentine bonds are from different countries and vary greatly in their response to debt crisis, with some favoring lawsuits, and others more conciliatory approach); Elisabetta Pigué, *Crearan un super comite de bonistas* [Creating a Super Committee of Bondholders], LA NACION (Arg.), Jan. 10, 2004 (describing efforts amongst Italian bondholders to create super committee to negotiate against Argentina's proposed reduction).

20. See Rohter, *supra* note 1, at A3 (quoting lawyer representing families of disappeared explaining that as victims of State sponsored terrorism, rather than investors, reparation recipients should not be treated as ordinary creditors); see also Valente, *Small Creditors*, *supra* note 18 (stating that one reparations recipient who lost her husband in the kidnappings of Dirty War joined association of small-bondholders who seek to be treated differently from corporate bondholders); NAT'L OMBUDSMAN, DEFENSOR, *supra* note 17, at 39 (urging Argentine government to begin repayment of reparation bonds in order to acknowledge most absolute obligation owed to victims of Dirty War). But see Stephen Temple, *Argentina Fails to Persuade US Court to Block Bondholder Claims*, WORLD MARKETS ANALYSIS, Jan. 16, 2004 (describing how Argentine bond covenant had *pari passu* [impartiality] clause for treatment of all creditors which would only be considered once claims have actually been filed by plaintiffs not preemptively as Argentina had sought).

law, not because they invested in Argentina.<sup>21</sup>

Due to their unique status, Oesterheld, Garcia-Albores and the other reparation recipients have several avenues for a remedy.<sup>22</sup> First, they could try to sue within the Argentine domestic legal system based on the Argentine Constitution.<sup>23</sup> Second, they could bring an action under international law before an international tribunal to fulfill the right to receive reparations.<sup>24</sup> Third, they could sue in an extra-territorial proceeding like those possible under the Alien Tort Claims Act ("ATCA") in the United States.<sup>25</sup> Finally, the reparation bondholders could seek

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21. See Valente, *Belated Reparations*, *supra* note 1 (explaining that reparations laws provide compensation for each disappeared person); see also Rohter, *supra* note 1, at A3 (stating that bonds issued were restitution for deaths of disappeared).

22. See, e.g., Temple, *supra* note 20 (describing how, since Argentina's default, most bond-holders have stayed away from litigation preferring to seek out-of-court settlement, though tiny minority of bondholders have resorted to litigation); ANSA ENG. MEDIA SERV., *supra* note 12 (describing how some bondholders are not resorting to legal action but are negotiating in good faith with Argentina); Munter, *supra* note 18 (stating that for majority of investors in Argentine bonds taking government to court is not option, rather they must either join forces with other bondholders or sell bonds at current market prices); FIN. TIMES INVESTOR, GLOBAL NEWS WIRE — EUR. INTELLIGENCE WIRE, *supra* note 15 (asserting that Philip Poole, an emerging markets researcher for ING Financial Markets, predicted in March 2003 that final debt restructuring agreements would leave investors with twelve to fifteen U.S. cents on each U.S. dollar); H.W. Urban v. Republic of Argentina, 2004 WL 307293 (S.D.N.Y.) (granting class action for class consisting of all holders of two U.S. bond series and acknowledging that H.W. Urban now seeks to expand class to include all bondholders including Argentine citizens); EM Ltd. v. The Republic of Argentina, 382 F.3d 291 (2d Cir. 2004) (considering case in which bondholder sued Argentina for repayment in U.S. dollars rather than Argentine pesos following default).

23. See, e.g., CONST. ARG. pt. I, ch. I, § 17 (1994), translated at [http://www.hrcr.org/docs/Argentine\\_Const/Preamble.html/web/constitucion/english.html](http://www.hrcr.org/docs/Argentine_Const/Preamble.html/web/constitucion/english.html) (establishing that property may not be violated except by virtue of sentence based on law and that expropriation for public interest must be authorized by law and previously compensated); see also JONATHAN M. MILLER ET AL., CONSTITUCIÓN Y DERECHOS HUMANOS 1223 (1991) (exploring property rights in Argentina under Article 17 of Argentine Constitution).

24. See, e.g., In re Velásquez Rodríguez, [1998] Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 174 (holding that victims' torture and disappearance should be fairly compensated); Dinah Shelton, *The Jurisprudence of the Inter-American Court of Human Rights*, 10 AM. U. J. INT'L L. & POL'Y 333, 362 (1994) (discussing Inter-American Court's contribution of establishing remedies, including right to receive reparations); Diane F. Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violators of a Prior Regime*, 100 YALE L.J. 2537 (1991) (describing how Inter-American Convention on Human Rights Article 1(1) has been interpreted to require that victims receive adequate compensation); International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171, pt. III, art. 9(5) [hereinafter ICCPR] (providing for compensation to victims of unlawful arrest or detention).

25. See Alien Tort Claims Act, 28 U.S.C. § 1350 (1993) (creating original jurisdic-



a remedy via the complex and changing field of sovereign debt resolution.<sup>26</sup>

This Note will address the various avenues along which the reparation recipients might pursue the vindication of their right to reparations. Part I will provide background information on the Dirty War, reconciliation process, reparation laws and the economic events that resulted in Argentina's sovereign debt crisis. Part I will also describe the various sources of law both domestic and international upholding the right to reparations. Part II will explore the various cases that have interpreted this right and the implications they have on the reparation recipients' possible remedies. Part III will analyze which of these remedies seems most likely to yield a favorable result for the reparation recipients.

### I. *THE BACKGROUND OF THE REPARATIONS BONDS AND THE LEGAL SOURCES FOR REMEDY*

The Argentine Government passed reparations laws as part of the reconciliation process following the Dirty War.<sup>27</sup> It sus-

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tion in U.S. district court for U.S. non-citizens bringing civil tort actions that violate law of Nations); *see also* *Filartiga v. Peña-Irala*, 630 F.2d 876, 878 (2d Cir. 1980) (resolving case brought by citizens of Paraguay against person allegedly responsible for torture and disappearance of their son).

26. *See* Silverman & Deveno, *supra* note 19 (describing how change in composition of sovereign debt creditors makes both voluntary restructuring and litigation more complex due to diversity of interests represented by bondholders); *see also* Pigué, *supra* note 19 (illustrating efforts of Italian bondholders negotiate against Argentina's proposed reduction). *See generally* Horst Kohler, Opening Remarks for the Sovereign Debt Restructuring Mechanism Conference, Jan. 22, 2003, *available at* <http://www.imf.org/external/np/speeches/2003/012203.htm> (describing alternative proposals under consideration); *The Design of the Sovereign Debt Restructuring Mechanism-Further Considerations* (2002), *available at* <http://www.imf.org/external/np/pdr/sdrm/2002/112702.pdf> (last visited Mar. 3, 2005) (describing provisions of proposal including provisions regarding voting, and describing creation of Sovereign Debt Dispute Resolution Forum ("SD-DRF")); Ann Pettifor, *Resolving International Debt Crises — the Jubilee Framework for International Insolvency* (Jan. 2002), *at* [http://www.jubilee2000uk.org/analysis/reports/jubilee\\_framework.html](http://www.jubilee2000uk.org/analysis/reports/jubilee_framework.html) (last visited Mar. 3, 2005) (describing proposal based on Chapter Nine involving *ad hoc* dispute resolution committees); Barbara Samuels, *Counsel on Foreign Relations: Key Recommendations from the Roundtable on Country Risk in the Post-Asia Crisis Era* (on file with author) (describing proposals discussed at roundtable concerning sovereign debt); Silverman & Deveno, *supra* note 19, at 191-95 (describing how, at annual meeting of World Bank and IMF in September 2002, International Monetary and Financial Committee ("IMFC") requested that IMF develop framework for sovereign debt).

27. *See* Valente, *Belated Reparations*, *supra* note 1 (explaining that law governing reparations provides for compensation in form of bonds for each disappeared person);

pended payments on the reparation bonds during the economic crisis.<sup>28</sup> Thus, the obligation owed to the reparation recipients is outstanding.<sup>29</sup> Domestic, extraterritorial, and international sources of law provide various avenues through which Garcia-Albores, Oesterheld, and the other reparation recipients might seek a remedy for this unfulfilled right to receive reparations.<sup>30</sup>

### A. Background on the Reparation Bonds

The Argentine government issued the reparation bonds as part of a complex response to the Dirty War and its legacies.<sup>31</sup> Furthermore, the economic and sovereign debt crisis had the effect of dramatically altering the value of the reparation bonds.<sup>32</sup> An exploration of both of these areas is necessary to

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*see also* Rohter, *supra* note 1, at A3 (stating that bonds issued in restitution for each death).

28. *See* Faille, *supra* note 13 (stating that Argentina defaulted on its bonds via series of moves beginning on November 1, 2001, and culminating in public-debt moratorium announced December 24, 2002); *see also* IMF, IEO, *supra* note 12, at 6 (describing how, in December 2001, Argentine government defaulted on its sovereign debt).

29. *See* Plumb & Helft, *supra* note 8 (arguing that recipients of reparations bonds have distinct history from other bondholders); *see also* Rohter, *supra* note 1, at A3 (quoting lawyer representing families of disappeared explaining that reparations recipients are not normal investors but victims of crimes).

30. *See, e.g.*, CONST. ARG. pt. I, ch. I, § 17 (1994) (establishing property rights); *In re Velásquez Rodríguez*, [1998] Inter-Am. Ct. H.R. (ser. C) No. 4, at ¶ 174 (holding that, under American Convention, victims' torture and disappearance should be fairly compensated); Orentlicher, *supra* note 24 (describing how Inter-American Convention on Human Rights Article 1(1) has been interpreted to require that victims receive adequate compensation); ICCPR, *supra* note 24, art. 9(5) (creating right to compensation for victims of unlawful arrest or detention and creating jurisdiction for then to sue in district courts for torts in violation of law of Nations); *Filartiga v. Peña-Irala*, 630 F.2d 876, 878 (2d Cir. 1980) (resolving case in U.S. District Court brought by citizens of Paraguay against non-U.S. citizen allegedly responsible for torture and disappearance of their son).

31. *See* Valente, *Belated Reparations*, *supra* note 1 (explaining that law governing reparations provides for compensation in form of bonds for each disappeared person); *see also* Rohter, *supra* note 1, at A3 (stating that bonds issued in restitution for each death); Law No. 70/91, *supra* note 11 (establishing that statute of limitations did not bar families of Dirty War victims' claims); Law No. 24.043, *supra* note 11, arts. 1-2 (creating wide criteria of proof for establishing forced disappearance and torture); Law No. 24.321, *supra* note 11, art. 2 (providing legal recognition of special status of disappeared in Argentina); Law No. 24.411, *supra* note 11, art. 4 (extending reparation benefits to common law marriages in existence at least two years prior to disappearance or death).

32. *See* Rohter, *supra* note 1, at A3 (explaining that Argentine government decided to suspend interest and principal payments on its debts including reparation bonds); *see also* Faille, *supra* note 13 (stating that Argentina defaulted on its bonds via series of moves beginning on November 1 and culminating in public-debt moratorium announced December 24); *Week's Top Story — Government Gets 75% Reduction in its Debt*

thoroughly analyze the remedies open to reparation recipients, and to determine which remedies would most likely yield a meaningful result.<sup>33</sup>

### 1. Argentina's Years of "Dirty War"

The horrific years of the Dirty War in Argentina lasted from 1976 to 1983 and resulted in 15,000 to 30,000 civilian deaths.<sup>34</sup> A succession of four *juntas*, each composed of three senior officers, controlled the administration of government during the military regime.<sup>35</sup> During the Dirty War, the military (as part of its war against leftist subversives), kidnapped, tortured, and executed civilians perceived to have leftist connections.<sup>36</sup> Society called those abducted by the military regime at this time *los*

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*Capital*, *supra* note 19 (describing that Argentina's December 2001 default created most complex restructuring in history due to numerous and diverse nature of bondholders).

33. See Barber et al., *supra* note 18 (describing various bond holders' responses to sovereign debt crisis); see also Mon, *supra* note 19 (stating that some holders of Argentine bonds favor lawsuits while others favor more conciliatory approach); Munter, *supra* note 18 (describing options of either joining with others to influence debt restructuring or selling bonds at current market price); Valente, *Small Creditors*, *supra* note 18 (describing reaction of association of Argentine bondholders).

34. See Terence S. Coonan, *Dedicated to Las Madres de la Plaza de Mayo: Rescuing History: Legal and Theological Reflections on the Task of Making Former Torturers Accountable*, 20 *FORDHAM INT'L L.J.* 512, 516 (1996) (asserting that Argentina in years from 1976 to 1983 endured one of most brutal dictatorships in Latin American history); see also Dockery, *supra* note 9 (stating that repression of 1976-1983 involved indiscriminate violations of human rights against anyone perceived as threatening); David Weissbrodt & Maria Luisa Bartolomei, *The Effectiveness of International Human Rights Pressures: The Case of Argentina, 1976-1983*, 75 *MINN. L. REV.* 1009 n.15 (1991) (explaining divergence in number of disappeared ranging from 30,000, as reported by most Argentine nongovernmental organizations, to 12,000-15,000 estimates cited by Americas Watch and Amnesty International).

35. See MARGUERITE FEITLOWITZ, *A LEXICON OF TERROR; ARGENTINA AND LEGACIES OF TORTURE* 8 (1998) (describing that, of four *juntas*, first one, headed by President General Rafael Videla, Admiral Emilio Eduardo Massera, and Brigadier General Orlando R. Agosti, was most repressive, resulting in majority of disappearances); see also Familiares de Desaparecidos y Detenidos Por Razones Políticas [Relatives of the Disappeared and Detained for Political Reasons], *ABOGADOS DESAPARECIDOS REP. ARGENTINA* 37-165 (1988) (describing dates and names of disappeared lawyers); RICARDO RODRÍGUEZ MOLAS, *HISTORIA DE LA TORTURA Y EL ORDEN REPRESIVO EN LA ARGENTINA* 150-169 (1985) (exploring history of torture and repression in Argentina).

36. See La Comisión Nacional Sobre la Desaparición de Personas (CONADEP), *NUNCA MÁS: THE REPORT OF THE ARGENTINE NATIONAL COMMISSION ON THE DISAPPEARED* (describing how military regime kidnapped those they felt to be threats to Argentine State); see also Coonan, *supra* note 34, at 517 (explaining that Dirty War was designed to eradicate left-wing subversion); Dockery, *supra* note 9, at 1604 (describing that *junta* repressed anyone viewed as even mild threat).

*desaparecidos*,<sup>37</sup> or "the disappeared," because the authorities denied all knowledge of their whereabouts and their families were never able to find their bodies.<sup>38</sup> Following the fall of the military regime, newly elected Argentine President Alfonsín ordered the formation of the National Commission on the Disappeared ("Commission") to investigate and report on the crimes of the Dirty War.<sup>39</sup> The Commission was one of the first of its kind in South America, and published *Nunca Más*, detailing the policies and strategies of the successive *juntas*.<sup>40</sup>

## 2. Reconciliation

The democratic government that followed the Dirty War addressed a difficult reconciliation process.<sup>41</sup> Though Alfonsín

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37. The word *desaparecido* means missing, late or deceased. See OXFORD SPANISH DICTIONARY 238 (1994).

38. See *NUNCA MÁS*, *supra* note 36, at xiii-xiv.

Watchful Argentines soon discovered what a dirty war was. People — mainly, but not only young people — began to disappear in great numbers. They were swept off the street, or from their homes in the middle of the night, by squads in plain clothes, and bundled into the trunks of the Ford Falcons with no license plates these squads drove. Most were never seen again. When desperate parents or friends sought information from the police or the military, they were told authorities had no knowledge of who had taken the victim or where he or she was. Some relatives hired lawyers to bring actions of habeas corpus in the courts. But almost all these actions were dismissed . . . and the lawyers who brought the actions began to disappear themselves.

*Id.* at xiii-xiv. See Julia K. Boyle, The International Obligation to Prosecute Human Rights Violators: Spain's Jurisdiction over Argentine Dirty War Participants, 22 *HASTINGS INT'L & COMP. L. REV.* 187, 189 (1998) (describing war against anyone perceived by *junta* as subversive which claimed, according to human rights groups, at least 30,000 lives between 1976 and 1983); see also Weissbrodt & Bartolomei, *supra* note 34, at 1012 (explaining that over 80% of those killed were between ages of 21 and 40).

39. See FEITLOWITZ, *supra* note 35, at 63-89 (asserting *junta*'s policy of "disappearing" people was reminiscent of Hitler's decree of December 7, 1941, prescribing that prisoners should vanish in night and fog, "*nacht und nebel*"); see also Coonan, *supra* note 34, at 519-20 (explaining that Comisión Nacional Sobre la Desaparición de Personas [National Commission on the Disappearance of Persons] ("CONADEP") compiled 50,000 pages of documentation illustrating organization and methods used by *junta* in carrying out disappearances); Carlos S. Nino, *The Duty to Punish Past Abuses of Human Rights Put Into Context: The Case of Argentina*, 100 *YALE L.J.* 2619, 2623 (1991) (asserting that CONADEP was comprised of independent respected citizens who had full powers of investigation).

40. See *NUNCA MÁS*, *supra* note 36 (describing atmosphere of disappearance and fear during Dirty War); see also Coonan, *supra* note 34, at 521 (describing how CONADEP's release of *NUNCA MÁS* served as model for subsequent truth commissions in Latin America).

41. See Andrew S. Brown, *Adiós Amnesty: Prosecution Discretion and Military Trials in Argentina*, 37 *TEX. INT'L L.J.* 203, 210-16 (2002) (providing background to Argentina's

prosecuted some military leaders involved in the Dirty War crimes, pressure from the military led to a halt of such prosecutions,<sup>42</sup> and then, under Menem, a pardon for all convicted of crimes from the era of the Dirty War.<sup>43</sup> The families injured from the crimes committed, however, were not left without a remedy.<sup>44</sup>

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reconciliation process, promulgation of Amnesty Laws and their subsequent annulment); see also Orentlicher, *supra* note 24, at 2545 n.27 (exploring example of Argentina's transition to democracy while arguing for establishment of specific duty to punish crimes of former regimes). But see Nino, *supra* note 39, at 2624-26 (arguing that duty created under international law to punish and prosecute previous Dirty War crimes would not have to overcome all factors that made such action impossible in context of Argentina's fragile transitional democracy).

42. See *La Ley de Punto Final* [Full Stop Law], Law No. 23.492, Dec. 29, 1986, B.O. (halting prosecution of Dirty War crimes); see also *La Ley de Obediencia Debida* [Due Obedience Law], Law No. 23.521, June 9, 1987, B.O. (removing from prosecution officers that were only following orders); Coonan, *supra* note 34, at 522 (providing that *Punto Final* Law created sixty-day limiting period after which no new charges related to State-sponsored crimes could be brought and that *Obediencia Debida* Law created irrebutable presumption of innocence for soldiers following orders during period of Dirty War); Orentlicher, *supra* note 24, at 2544-45 (identifying argument that fragile democracies may not be able to survive destabilizing effects of politically charged trials); CENTRO DE ESTUDIOS LEGALES Y SOCIALES, ["CELS"] INFORME ANNUAL 1990, CAPÍTULO MEMORIA (1990) [hereinafter CELS 1990] (explaining that Amnesty decrees interrupted trials against: (1) 39 military personnel for illegal deprivations of liberty, grave injuries, tortments, and homicides; (2) 64 former guerilla members or political militants; (3) three former Chief Commanders of Armed Forces who were accused of negligence in conduction of Malvinas War in 1982, and of causing deaths of hundreds of soldiers; (4) 164 military personnel called *carapintadas* of Prefecture Albatros group; as well as against officials and civil agents of Air Force that participated in rebellions against democratic government).

43. See Brown, *supra* note 41, at 211-12 (explaining that chief of army threatened serious military action if federal court continued with its summons of five generals); see also Shirley Christian, *Argentine Departs, Democracy Hardly Bankrupt*, N.Y. TIMES, July 8, 1989, § 1 (explaining that military prosecutions produced tension within armed forces and ultimately led to three rebellions); Joseph B. Treaster, *Revolt by 400 Argentine Troops Quelled*, N.Y. TIMES, Dec. 3, 1988, at § 1 (describing how rebellious soldiers revolted and attempted to seize prison where senior officers convicted of human-rights abuses were held); Orentlicher, *supra* note 24, at 2544 n.27 (explaining that Argentine military was prepared to accept prosecution of its leaders, but some factions rebelled when scope of prosecutions broadened); *Argentine Defends Release of "Dirty War" Leaders*, N.Y. TIMES, Dec. 31, 1990, § 1, available at 1990 WLNR 2987170 (recounting Menem's defense of his controversial pardons and protests of human rights community and families of disappeared that ensued).

44. See, e.g., Rohter, *supra* note 1, at A3 (stating that reparations were distributed in form of bonds); Valente, *Belated Reparations*, *supra* note 1 (describing passage of reparations laws compensating families of disappeared).

### 3. Reparation

As part of Argentina's reconciliation process, the Argentine government passed several reparations laws.<sup>45</sup> In 1986, Alfonsín passed the first reparation law that provided economic compensation for the families of the disappeared.<sup>46</sup> President Menem continued the effort by enacting more reparation laws.<sup>47</sup> One of these laws extended the classification of reparations recipients to spouses of common law marriages of at least two years at the time of disappearance.<sup>48</sup> Other laws created judicial classifications for the disappeared, facilitating the inheritance of property and the remarriage of widows and widowers,<sup>49</sup> prohibited the statute of limitations from barring reparations claims,<sup>50</sup> and cre-

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45. See Rohter, *supra* note 1, at A3 (stating that reparations bonds worth up to U.S.\$256,000 were issued as restitution for each death); see also Valente, *Belated Reparations*, *supra* note 1 (explaining that reparations law provides for compensation in form of bonds to families of disappeared persons). See, e.g., *Pension a Familiares de Desaparecidos* [Pension for the Families of the Disappeared], Law No. 23.466, Feb. 16, 1987, B.O. (creating compensation packages for families of disappeared); Law No. 70/91, *supra* note 11 (establishing reparations for those whose cases had been previously held barred by statute of limitations); Law No. 24.043, *supra* note 11 (expanding criteria for proof of torture and disappearance recognizing that traditional requirements of evidence were in context of Dirty War crimes too strict); Law No. 24.321, *supra* note 11 (providing legal recognition of special status of disappeared in Argentina).

46. See Law No. 23.466, *supra* note 45 (creating compensation packages for families of disappeared); see also Centro De Estudios Legales y Sociales, *Primer Informe de La Investigación sobre Reparaciones*, [First Report on Reparations Research] [hereinafter CELS Draft] (draft on file with author), at 1 (2002) (describing how first government following military dictatorship created compensation package for families of victims of forced disappearance).

47. See Law No. 70/91, *supra* note 11 (establishing that statute of limitations did not bar families of Dirty War victims' claims); see also Law No. 24.043, *supra* note 11, arts. 1-2 (creating wide criteria of proof for establishing forced disappearance and torture); Law No. 24.321, *supra* note 11 (providing legal recognition of special status of disappeared in Argentina); Law No. 24.411, *supra* note 11, art. 4 (extending reparation benefits to common law marriages in existence at least two years prior to disappearance or death); CELS Draft, *supra* note 46, at 1-7 (discussing passage of various reparation laws).

48. See Law No. 24.411, *supra* note 11 (extending scope of reparation benefits); see also CELS Draft, *supra* note 46, at 5 (describing how Law No. 24.411 defined forced disappearance as deprivation of liberty followed by disappearance or stationing at clandestine detention center and also included those who were killed by armed forces, security forces or paramilitary groups prior to December 10, 1983).

49. See Law No. 24.321, *supra* note 11 (asserting judicial classifications for disappeared facilitating inheritance of property and remarriage of widows and widowers); see also CELS Draft, *supra* note 46, at 5 (describing how Law No. 24.321 defined absence due to forced disappearance as including those who prior to December 10, 1983, had disappeared involuntarily from their domicile or residence leaving no news of their whereabouts).

50. See Law No. 70/91, *supra* note 11 (expanding scope of cases reparation laws);

ated broad criteria acceptable as proof of torture and disappearance.<sup>51</sup> Yet, the compensation these families received soon lost its value.<sup>52</sup>

#### 4. Economic and Sovereign Debt Crises

Argentina's economic crisis and resulting sovereign debt default arrived in late 2001.<sup>53</sup> In response to the crisis, the government abandoned its currency peg with the U.S. dollar and floated the Argentine peso.<sup>54</sup> The government also defaulted on most of its U.S.\$141 billion in public debt and imposed restrictions on bank deposits and withdrawals.<sup>55</sup> The reparation bond default was just a part of the larger nationwide crisis that pushed millions of Argentines into poverty.<sup>56</sup> The complexity of the Ar-

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see also CELS Draft, *supra* note 46, at 1-2 (explaining that Law 70/91 was passed in part to save reparations suits from being barred by statute of limitations).

51. See Law No. 24.043, *supra* note 11 (changing evidentiary requirements under reparation laws); see also CELS, *supra* note 46, at 2-3 (describing documentation necessary to prove detention under Law No. 24.043).

52. See, e.g., Rohter, *supra* note 1, at A3 (discussing impact of economic crisis on reparations bonds); see also Valente, *Belated Reparations*, *supra* note 1 (describing devaluation of reparations bonds in context of economic crisis).

53. See Todd Benson, *Report Looks Harshly at I.M.F.'s Role in Argentine Debt Crisis*, N.Y. TIMES, July 30, 2004, at W4, available at 2004 WLNR 5431797 (citing report issued by Independent Evaluation Office of IMF criticizing IMF's policy of encouraging Argentina's currency peg and its effect on economic crisis); see also IMF, IEO, *supra* note 12, at 6 (describing how Argentina defaulted on its sovereign debt); *Argentina Creditors Unite to Speed up Bond Talks*, *supra* note 12 (stating that Argentina's default amounted to at least U.S.\$25 billion in unpaid bonds); Munter, *supra* note 18 (asserting that Argentina stopped repayments on U.S.\$9 billion making it world's biggest default to date).

54. See Benson, *supra* note 53 (describing how currency peg combined with IMF's increased lending to Argentina led to ballooning debt and eventual economic and sovereign debt crisis); see also Faille, *supra* note 13 (stating that Argentina defaulted on its bonds giving rise to litigation); IMF, IEO, *supra* note 12, at 6 (stating that Argentina abandoned its convertibility regime and floated the Argentine peso in early January 2002); Valente, *Reparations for Banks*, *supra* note 15 (stating that Argentina lifted parity regime that had pegged Argentine peso to U.S. dollar for decade).

55. See Benson, *supra* note 53 (stating that IMF contributed to crisis by failing to recognize Argentina's debt was unsustainable); see also Faille, *supra* note 13 (describing Argentina's default); IMF, IEO, *supra* note 12, at 159 (stating that Argentine government introduced partial deposit freeze and capital controls on December 1, 2001); Valente, *Reparations for Banks*, *supra* note 15 (stating that economy minister moved to halt run on banks by ordering restrictions on cash withdrawals).

56. See Benson, *supra* note 53 (declaring that Argentina's crisis has been compared to Great Depression in United States); see also IMF, IEO, *supra* note 12, at 13 (describing how crisis caused economy to contract by 11%, and cumulative output since 1998 to decline by nearly 20%); Valente, *Reparations for Banks*, *supra* note 15 (describing how 54% of Argentine population, 20 million people, live in poverty).

gentine sovereign debt negotiations stems from the fact that most of those now holding the debt are individual bondholders, not bank lenders.<sup>57</sup> Previously, the unified interests of the bank lenders made litigation of sovereign debt disputes feasible and practical.<sup>58</sup> Now, the creditors' diversity of interests makes resolution via litigation very difficult.<sup>59</sup> True to this analysis, the Argentine sovereign debt bondholders, among who are nationals of Germany, Ireland, Italy, Japan, and the United States, have responded to the crises in diverse ways.<sup>60</sup> Some bondholders recommended suing while the Argentine government developed its proposal for its sovereign debt settlement; others cautioned against it.<sup>61</sup> Last September, at the annual meeting of the Inter-

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57. See Silverman & Deveno, *supra* note 19, at 179-81 (describing change in composition of creditors makes both voluntary restructuring and litigation more complex due to diversity of interests represented by bondholders); see also *Week's Top Story — Government Gets 75% Reduction In Its Debt Capital*, *supra* note 19 (stating that Argentina's December 2001 default created most complex restructuring in history due to numerous and diverse nature of bondholders).

58. See Silverman & Deveno, *supra* note 19, at 179-81 (describing how bank lenders who held sovereign debt via syndicated bank loans could resolve sovereign debt disputes through multi-party litigation); see also Temple, *supra* note 20 (stating that only tiny minority of holders of Argentine bonds have resorted to litigation); Munter, *supra* note 18 (stating that fewer than 1% of defaulted Argentine bonds are objects of litigation according to Trade Association for Emerging Markets ("EMTA")).

59. See Silverman & Deveno, *supra* note 19 (asserting that due to shift in nature of creditors, litigation is less attractive as means of addressing defaulting sovereign debtor); see also Munter, *supra* note 18 (stating that for many bondholders litigation is impractical and their only options are either joining with others to influence debt restructuring or selling bonds at current market price).

60. See Barber et al., *supra* note 18 (describing how majority of 40,000 Japanese investors who bought Argentine bonds are elderly individuals or small associations who invested large portion of their assets); see also Mon, *supra* note 19 (stating some holders of Argentine bonds recommend suing in court, while others favor mediation); Munter, *supra* note 18 (stating that for many bondholders only options are either joining with others to influence debt restructuring or selling bonds at current market price); Valente, *Small Creditors*, *supra* note 18 (describing how association of Argentine bondholders is contesting Argentina's decision to prioritize paying debts to multilateral credit institutions instead of paying more vulnerable local individuals).

61. See Barber et al., *supra* note 18 (describing how Italian bond holders, numbering 450,000, are demanding that banks who sold bonds be obligated to investors nursing losses, and Japanese investors, numbering 40,000, are mostly elderly individuals or small groups who invested large portion of their assets, and are afraid they will be sidelined in negotiations by heavyweight U.S. institutional investors); see also Mon, *supra* note 19 (describing how bondholders differ in nationality, economic circumstance, and reaction to default); Munter, *supra* note 18 (describing how Argentina's default is most complex in history concerning 99 different bonds denominated in 8 currencies and hundreds of thousands of private individuals from Germany, Italy, Japan, and United States); Valente, *Small Creditors*, *supra* note 18 (describing how local creditors in Argen-



national Monetary Fund held in Dubai, Argentina shocked investors by proposing a 75% reduction of its debt capital by restructuring the country's defaulted bonds worth U.S.\$95 billion.<sup>62</sup> This proposal, if accepted, would leave bondholders, including reparation recipients like Oesterheld and Garcia-Albores, with far less than any other previous sovereign debt negotiation.<sup>63</sup> Of all the bondholders, Garcia-Albores, Oesterheld and the other reparation recipients are the only ones who never voluntarily invested in the Argentine Government.<sup>64</sup> As involuntary investors, the reparation recipients possess different sources of remedy from other bondholders.<sup>65</sup>

The changing face of sovereign debt has inspired many institutions to create proposals for change.<sup>66</sup> For example, the Ju-

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tina hold 39% of total Argentina's public debt and want differentiation in negotiations for small savers like themselves).

62. See Mon, *supra* note 19 (describing how plan proposed by Argentina would contain combination of debt forgiveness, reductions in interest rates, and extensions of amortization); see also Temple, *supra* note 20 (describing how Argentina's proposal which covered some 152 bonds denominated in 14 separate currencies and issued in 8 different jurisdictions suggested: a reduction in principal of debt of 75%); *Argentina Creditors Unite to Speed up Bond Talks*, *supra* note 12 (describing how Argentina stated it would not pay bond holders any more than U.S. 25 cents for every U.S. dollar of defaulted debt and that bondholders unanimously rejected this proposal).

63. See Mon, *supra* note 19 (stating that various bondholders responded differently to idea of debt forgiveness with some rejected idea categorically while others considered it on individual basis); see also Temple, *supra* note 20 (describing how bondholders responded negatively to proposal which, if accepted, would constitute lowest debt write-down ever received by defaulting country in history, and was even more insulting because it included repayment of 100% of principal to multilateral institutions); *Argentina Faces Restructuring Challenge*, *supra* note 15 (asserting that Argentine default is more complex than Russian financial crisis of 1998 because Argentine collapse encompassed domestic bonds and international debt).

64. See NAT'L OMBUDSMAN, DEFENSOR, *supra* note 17, at 38-40 (urging Minister of Economy to lift suspension of payments on reparation bonds because suspending them constituted violation of American Convention; arguing that although legal consequences resulting from severe economic crisis are evident they cannot constitute regression in basic human rights to life, liberty, access to justice, equality before law, which were the plan and motivation behind reparation laws); see also Plumb & Helft, *supra* note 8 (arguing that recipients of reparations bonds have distinct history from other bondholders); Rohter, *supra* note 1 (quoting lawyer representing families of disappeared explaining that reparations recipients are not normal investors but victims of crimes).

65. See Plumb & Helft, *supra* note 8 (asserting history of reparation recipients is from other bondholders); see also Rohter, *supra* note 1, at A3 (explaining that reparations recipients are victims of crimes not usual creditors); NAT'L OMBUDSMAN, DEFENSOR, *supra* note 17, at 38-40 (describing how reparation recipients were in a different category than normal investors).

66. See Ann Pettifor, *supra* note 26 (stating that some proposals suggest *ad hoc* dis-

bilee Framework for International Insolvency proposed basing international insolvency on Chapter 9 of United States Bankruptcy Code principles, creating an *ad hoc* body appointed to deal with individual petitions for insolvency.<sup>67</sup> The Council on Foreign Relations, a non-partisan, national membership organization, issued broad recommendations suggesting a voluntary proceeding modeled on Chapter 9 principles as well.<sup>68</sup> The IMF has suggested the creation of a Sovereign Debt Restructuring Mechanism ("SDRM"), and is in the process of finalizing a statutory framework for addressing sovereign debt restructurings.<sup>69</sup> At the IMF's Sovereign Debt Restructuring Conference on January 22, 2003, the IMF circulated a paper for comment and criticism covering the mechanics of a SDRM.<sup>70</sup> Under the paper's proposals, the debtor sovereign could determine whether to exclude certain claims but certain claims would automatically be ineligible for restructuring such as claims held by international organizations.<sup>71</sup> Additionally, creditors would approve the pro-

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pute resolution committees); *see also*, Jonathan Sedlak, *Sovereign Debt Restructuring: Statutory Reform or Contractual Solution?*, 152 U. PA. L. REV. 1483 (exploring IMF proposal and U.S. Treasury Department proposal); Hal S. Scott, *A Bankruptcy Procedure for Sovereign Debtors?*, 37 INT'L LAW. 103, 118 (analyzing various suggested reforms for sovereign debt restructuring).

67. *See* Ann Pettifor, *supra* note 26 (describing proposal based on Chapter 9 involving *ad hoc* dispute resolution committees). *But cf.* Sedlak, *supra* note 66, at 1491-503 (stating that IMF's proposal was designed to create functional equivalent of international bankruptcy court); Scott, *supra* note 66, at 118 (describing two approaches to resolution of sovereign debt question, one favoring contractual mechanisms and use of collective action clauses and other proposing creation of statutory sovereign bankruptcy procedure).

68. *See* Samuels, *supra* note 26 (describing proposals discussed at roundtable concerning sovereign debt). *But cf.* Sedlak, *supra* note 66, at 1491-1503 (describing conflict of proposals by U.S. Treasury Department and those advocated by some members of IMF); Scott, *supra* note 66, at 118 (describing differences between proposals of contractual mechanisms versus suggested statutory bankruptcy procedure).

69. *See* Silverman & Deveno, *supra* note 19, at 192-94 (describing how at annual meeting of World Bank and IMF in September of 2002, IMFC requested that IMF develop framework for sovereign debt); *see also* Sandra M. Rocks & Kate A. Sawyer, *Survey of International Commercial Law Developments During 2003*, 59 BUS. LAW. 1663, 1673-74 (2004) (exploring suggested creation of body to assist debtor Nations in managing their debt); Sedlak, *supra* note 66, at 1491-97 (exploring IMF proposal that market participants adopt statutory scheme to address debt restructuring); Scott, *supra* note 66, at 122-25 (comparing suggested IMF proposal to Chapter 11 model).

70. *See* Kohler, *supra* note 26 (describing function of Sovereign Debt Restructuring Mechanism ("SDRM")); *see also* Rocks & Sawyer, *supra* note 69, at 1673-74 (stating that at April 2003 IMF meeting they circulated and discussed working paper proposing creation of SDRM).

71. *See generally* Kohler, *supra* note 26 (describing provisions of proposal); *see also*

posal offered by the sovereign only a super majority vote of 75% per class at which point the proposal would be binding on all creditors who were on notice regarding the proceeding.<sup>72</sup> Finally, an IMF body would address certain restructuring disputes.<sup>73</sup> The IMF is also considering another proposal involving collective action clauses, which would allow a supermajority of bondholders to bind individual bondholders and require minimum of total number of bondholders to participate collectively before the proceeding would be valid.<sup>74</sup>

### B. *Legal Analysis*

The Argentine government issued the reparation bonds in response to the crimes committed against the disappeared and their families, in accordance with domestic and international law.<sup>75</sup> The government subsequently suspended payments on these bonds due to an economic crisis.<sup>76</sup> Therefore, acknowledging, as the Argentine government has, the domestic and international right to receive reparations,<sup>77</sup> the reparation recipi-

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Rocks & Sawyer, *supra* note 69, at 1673-74 (stating that SDRM proposed naming organizations whose claims would be initially excluded from SDRM); Scott, *supra* note 66, at 123 (asserting that certain creditors, like IMF and World Bank would not be subject to SDRM).

72. See generally Kohler, *supra* note 26 (stating provisions regarding voting). See Scott, *supra* note 66, at 123 (describing how restructuring plan would be approved by super-majority of creditors); see also Sedlak, *supra* note 66, at 1493 (quoting Krueger of IMF stating that an important component of restructuring proposal would be ability of qualified majority of creditors to bind minority creditors).

73. See generally Kohler, *supra* note 26 (describing suggested creation of SDDRF); see also Rocks & Sawyer, *supra* note 69, at 1674 (discussing creating of SDDRF as administrative agency with authority to promulgate rules and adjudicate disputes); Scott, *supra* note 66, at 123 (stating that IMF proposal included creation of independent tribunal dedicated to adjudicating lack of equitable treatment or valuation of claims).

74. See Kohler, *supra* note 26 (describing alternative proposals under consideration); see also Scott, *supra* note 66, at 123 (stating that exact percentage of majority needed to bind minority creditors was not yet determined); Sedlak, *supra* note 66, at 1493 (citing that important element of SDRM would be ability of majority of creditors to bind minority).

75. See NAT'L OMBUDSMAN, DEFENSOR, *supra* note 17, at 38-40 (describing how reparation bonds were issued in accordance with Argentina's international and domestic obligations following crimes of Dirty War); see also Plumb & Helft, *supra* note 8 (describing that reparations were paid as result of Dirty War events).

76. See Plumb & Helft, *supra* note 8 (explaining impact of economic crisis on reparation bonds); see also Rohter, *supra* note 1, at A3 (explaining that Argentine government suspended payments of interest and principal on these bonds as well as other foreign and domestic debts).

77. See CONST. ARG. pt. II, ch. IV, § 75, art. 22 (1994) (incorporating nine human

ents will confront the way that the economic and sovereign debt crises have affected their rights.<sup>78</sup> They could consider legal remedies in Argentine courts,<sup>79</sup> before international tribunals,<sup>80</sup> and via extraterritorial avenues, such as ATCA.<sup>81</sup> This Note will now explore the legal remedies available to the reparation recipients.

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rights treaties into Constitution itself); *see also* ICCPR, *supra* note 24, art. 9(5) (providing compensation to victims of unlawful arrest and detention); ICCPR, *supra* note 24, art. 7 (forbidding torture and other cruel or inhuman treatment); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 112, pt. I, art. 14 (requiring States to ensure that victims of torture have redress and rights to fair compensation); American Convention on Human Rights, art. 1(1), Nov. 22, 1969, 1144 U.N.T.S. 123 (identifying that States are obligated to respect rights enshrined in Convention), art. 4 (1) (establishing the right to life, forbidding arbitrary deprivation of life), art. 5(2) (forbidding cruel and inhuman or degrading treatment or punishment), art. 7 (providing for right to personal liberty). *See generally* BARRY E. CARTER & PHILIP R. TRIMBLE, *INTERNATIONAL LAW* 111-12 (3d ed. 1999) (describing how multilateral treaties in force, such as ICCPR, create legally binding obligations for signatory Nations). *But see* Janet Koven Levit, *The Constitutionalization of Human Rights in Argentina: Problem or Promise?*, 37 COLUM. J. TRANSNAT'L L. 281, 313-44 (1999) (stating that Argentine Constitution's disregard for international law makes Argentine Treaty obligations irrelevant; that court decisions show judiciary to be passive in recognizing new constitutional status of treaties incorporated under Section 75/22 acting with limited freedom in broadening scope of international human rights law within Argentine system; and arguing that since rule of law is not firmly anchored in Argentina such incorporation of these international human rights treaties based solely on law, rather than one that engages "myriad of transnational actors" is not likely to succeed).

78. *See* CONST. ARG. pt. I, ch. I, § 28 (1994) (providing that principles, guarantees and rights of Constitution should not be modified by laws regulating their enforcement); *see also* Nat'l Ombudsman, Press Release of National Defender, Banking Restrictions and Pesification Rendered Unconstitutional (July 8, 2002) (on file with author) [hereinafter Nat'l Ombudsman, Banking Restrictions] (referring to act that established country's state of national economic emergency); IMF, IEO, *supra* note 12, at 46 (stating that on March 29, 2001, Domingo Cavallo, Argentine Minister of Economy, secured "emergency powers" from Congress).

79. *See, e.g.*, CONST. ARG. pt. I, ch. I, § 17 (1994) (declaring that the right to property may not be violated, and no one can be deprived of it except by virtue of sentence based on law); SANTOS P. AMADEO, *ARGENTINE CONSTITUTIONAL LAW*, 33-34, 195-97, 205 (1943) (exploring case law upholding constitutional property rights in Argentina).

80. *See, e.g.*, *In re Velásquez Rodríguez*, [1998] Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 174 (holding that victims torture and disappearance should be fairly compensated in a suit before Inter-American Court); 362 (1994); *see also* Shelton, *supra* note 24, at 362 (discussing *Velásquez Rodríguez* decision and its contribution to Inter-American Court's jurisprudence).

81. *See* Alien Tort Claims Act, 28 U.S.C. § 1350 (1993) (establishing original jurisdiction in district court for non-U.S. citizens suing on torts in violation of law of Nations). *See, e.g.*, *Filartiga v. Peña-Irala*, 630 F.2d 876, 878 (2d Cir. 1980) (resolving case brought by citizens of Paraguay against person allegedly responsible for torture and disappearance of their son).

## 1. Argentine Constitutional law Protecting Property Rights

Domestic Argentine law protects the reparation recipients' property rights.<sup>82</sup> Argentina's constitutional reform of 1994 incorporated nine international human rights treaties into its Constitution, many of which provide for the right to compensation when protected rights are violated.<sup>83</sup> Additionally, the Argentine Constitution, in Article 17, provides for the protection of property rights such as those held by the reparation bond recipients.<sup>84</sup> Not only does Article 17 forbid the violation of property rights, it also requires authorization for expropriation for the public interest and compensation for the victims before the fact.<sup>85</sup> Furthermore, since the reparation bonds were devalued following economic emergency legislation, it is important to consider Article 28, which states that other national laws should not modify the principles of the Constitution.<sup>86</sup>

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82. See CONST. ARG. pt. I, ch. I, § 17 (1994) (protecting property rights); see also AMADEO, *supra* note 79 (exploring case law upholding constitutional property rights in Argentina).

83. See CONST. ARG. pt. II, ch. IV, § 75, art. 22 (1994) (incorporating American Declaration of the Rights and Duties of Man; the Universal Declaration of Human Rights; American Convention on Human Rights; International Pact on Economic, Social and Cultural Rights; International Pact on Civil and Political Rights and its empowering Protocol; Convention on the Prevention and Punishment of Genocide; International Convention on the Elimination of all Forms of Racial Discrimination; Convention on the Elimination of all Forms of Discrimination against Women; Convention against Torture and other Cruel, Inhuman or Degrading Treatments or Punishments; and Convention on the Rights of the Child into Constitution itself). See, e.g., ICCPR, *supra* note 24, art. 9(5) (affording victims of unlawful arrest and detention right to fair compensation). See generally, Orentlicher, *supra* note 24 (describing how Inter-American Court has read requirement that victims of human rights abuses receive adequate compensation into Inter-American Convention on Human Rights Article 1(1)); Levit, *supra* note 77, at 310-11 (describing how constitutional reforms of 1994 granted constitutional standing to nine international human rights treaties by incorporating them into Constitution itself).

84. See CONST. ARG. pt. I, ch. I, § 17 (1994) (describing requirements for expropriating for public interest); see also AMADEO, *supra* note 79 (exploring cases related to expropriation in Argentina).

85. See CONST. ARG. pt. I, ch. I, § 17 (1994) (allowing expropriation only for public interest and with compensation for victims before fact); see also AMADEO, *supra* note 79 (citing case law interpreting government's power to expropriate for public interest).

86. See CONST. ARG. pt. I, ch. I, § 28 (1994) (establishing that principles, guarantees and rights recognized in Constitution should not be modified by laws that regulate their enforcement); see also Nat'l Ombudsman, Banking Restrictions, *supra* note 78 (stating that Section 28 of Constitution limits extent to which government can infringe on rights during emergency).

## 2. Extraterritorial Remedy via the Alien Tort Claims Act ("ATCA") and its Jurisdictional Hurdles

Under ATCA, can sue for torts in violation of the law of Nations in U.S. district courts.<sup>87</sup> In order to succeed in a claim under ATCA, the reparation bondholders must prove a violation of the law of Nations and overcome the defenses of sovereign immunity and Act of State Doctrine.<sup>88</sup> The reparation recipients could pursue this avenue as a remedy, as have other victims of

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87. See Alien Tort Claims Act, 28 U.S.C. § 1350 (1993) (establishing original jurisdiction in district court for non-citizens suing on torts in violation of law of Nations). See CARTER & TRIMBLE, *supra* note 77, at 270 (describing difference in opinion of Judge Bork who argued Alien Torts Claims Act ("ATCA") only provided basis for subject matter jurisdiction not causes of action for individuals because at time it was enacted only States had causes of action under international law and Judge Edwards who argued it also provides statutory basis for cause of action); see also Terry Collingsworth, *The Key Human Rights Challenge: Developing Enforcement Mechanisms*, 15 HARV. HUM. RTS. J. 183, 202 (2002) (identifying that ATCA is useful but limited tool for enforcing human rights norms due to fact that federal jurisdiction over defendant must be obtained, scope of law of Nations is narrow, evidence of abuses is difficult to obtain and produce, and cost of litigating in United States is high); Ellen Lutz & Kathryn Sikkink, *International Human Rights Law in Practice: The Justice Cascade: The Evolution and Impact of Foreign Human Rights Treaties in Latin America*, 2 CHI. J. INT'L L. 1, 8-9 (2001) (describing how lawyers from Center for Constitutional Rights ("CCR") first used ATCA in 1979 to test whether its jurisdictional basis could be used to sue in U.S. court for human rights violations that occurred abroad and that success of *Filartiga* provided U.S. human rights lawyers with new avenues for enforcement of human rights norms); HENRY J. STEINER & PHILIP ALSTON, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT, LAW, POLITICS & MORALS* 739, 1056 (3d ed. 2000) (describing how ATCA cases, including *Filartiga*, take different positions on statute's purpose, effect and basis for jurisdiction: (1) ATCA only purports to create subject matter jurisdiction; (2) ATCA creates federal cause of action; (3) ATCA creates general federal question "arising under" jurisdiction because rests on federal statute.); Beth Stephens, *Conceptualizing Violence: Present and Future Developments in International Law: Panel I: Human Rights & Civil Wrongs at Home and Abroad: Old Problems and New Paradigms: Conceptualizing Violence Under International Law: Do Tort Remedies Fit the Crime?*, 60 ALB. L. REV. 579, 594-95 (2002) (describing that U.S. Congress affirmed *Filartiga* holding regarding ATCA by passing the Torture Victims Protection Act creating a federal cause of action broadening jurisdiction of ATCA by including claims by U.S. citizens as well as non-citizens). Cf. Torture Victims Protection Act (1992) (codified at 28 U.S.C. § 1350 (1994)) (providing that individuals who acting under color of law subject others to torture and or extrajudicial killing shall be liable in civil actions for damages).

88. See Republic of Argentina & Banco Central de La Republica Argentina v. Weltover, Inc., 504 U.S. 607, 609-19 (1992) (illustrating that plaintiffs, in order to prevail against Argentina, would have to show case fell into an exception of Foreign Sovereign Immunities Act ("FSIA"), such as the commercial activity exception requiring that activity have direct effect in United States); see also Frederic L. Kirgis, Jr., *Understanding the Act of State Doctrine's Effect*, 82 AM. J. INT'L L. 58 (1988) (describing Act of State Doctrine as that which prohibits countries to review decisions of other States regarding matters within their own borders).

torture and disappearance.<sup>89</sup>

## II. ARGENTINE AND INTERNATIONAL CASE LAW INTERPRETING RIGHT TO REPARATIONS

In analyzing the reparation recipients' legal options, this Note will explore how courts have interpreted their rights under domestic, extrajudicial, and international law.<sup>90</sup> The reparation recipients have the right to protected property under the Constitution.<sup>91</sup> They also have rights under international treaties and under extraterritorial statutes like ATCA.<sup>92</sup> In the pursuit of the vindication of these rights they must consider the relevant domestic and international case law interpreting these diverse laws.<sup>93</sup> Thus, it is important to consider how courts have interpreted these rights.<sup>94</sup>

### A. Argentine Cases Exploring Right to Receive Reparations and how Economic Emergency Impacts that Right

As aforementioned, Argentina, in attempting to prosecute and punish those responsible for the Dirty War crimes, met lim-

89. See, e.g., *Filartiga v. Peña-Irala*, 630 F.2d 876, 878 (2d Cir. 1980) (finding for plaintiffs who were citizens of Paraguay suing person allegedly responsible for torture and disappearance of their son under ATCA); see also Stephens, *supra* note 87, at 594-96 (describing how *Filartiga* impacted subsequent legislation).

90. See, e.g., MILLER ET AL., *supra* note 23, at 1223-33 (exploring caselaw on Argentine constitutional property rights); Nat'l Ombudsman, Banking Restrictions, *supra* note 78 (describing how Argentine Supreme Court ruled on constitutionality of emergency measure passed during economic crisis).

91. See, e.g., CONST. ARG. pt. I, ch. I, § 17 (1994) (protecting property rights); see also AMADEO, *supra* note 79 (exploring case law upholding constitutional property rights in Argentina).

92. See, e.g., Alien Tort Claims Act, 28 U.S.C. § 1350 (1993) (establishing original jurisdiction in U.S. district courts for non-U.S. citizens suing on torts in violation of law of Nations); *Filartiga*, 630 F.2d at 878 (finding against person allegedly responsible for torture and disappearance of their son under ATCA); ICCPR, *supra* note 24, art. 9(5) (affording victims of unlawful arrest and detention right to fair compensation); Stephens, *supra* note 87, at 594-95 (describing evolution of ATCA jurisprudence).

93. See, e.g., AMADEO, *supra* note 79, at 205 (showing that case of "*Sociedades Anónimas Compañía de Petróleo La República y otras*," CSJN [1932] 164 Fallos 140, upheld principle that only judgment by competent authority will deprive person of property right); see also, MILLER ET AL., *supra* note 23, at 1223-33 (exploring caselaw on Argentine constitutional property rights).

94. See, e.g., NAT'L OMBUDSMAN, DEFENSOR, *supra* note 17 (describing how Argentine Supreme Court ruled on constitutionality of emergency measure passed during economic crisis); Nat'l Ombudsman, Banking Restrictions, *supra* note 78 (illustrating that National Defender challenged legislation passed during economic emergency).

ited success given the relative instability of its democracy.<sup>95</sup> Argentine reparation laws have recently met a similar fate due to the present economic crisis.<sup>96</sup> Thus, there is a question as to whether the present economic crisis dispelled the obligation to make reparations.<sup>97</sup>

### 1. Argentine Constitution Jurisprudence and Property Rights of Reparation Recipients

Argentine constitutional jurisprudence upholds the property rights of the reparation recipients.<sup>98</sup> The right to receive reparations is established by the treaties incorporated in Section 75/22.<sup>99</sup> However, the Argentine Court has been conservative in

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95. See Coonan, *supra* note 34, at 522-23 (describing that Alfonsín responded to pressures by passing *La Ley de Punto Final* [Full Stop Law] creating 60-day limiting period after which no new charges related to State-sponsored crimes could be brought and *La Ley de Obediencia Debida* [Due Obedience Law] creating irrebutable presumption of innocence for soldiers following orders); see also Brown, *supra* note 41, at 212 (explaining that chief of army threatened serious military action if federal court continued with its summons of five generals and that President Alfonsín wanted limited trials of military personnel); Orentlicher, *supra* note 24, at 2545 n.27 (explaining that Argentine military was prepared to accept prosecution of its leaders, but some factions rebelled when scope of prosecutions broadened); *Argentine Departs, Democracy Hardly Bankrupt*, *supra* note 43 (describing military unrest resulting from prosecutions which ultimately led to three rebellions); *Revolt by 400 Argentine Troops Quelled*, *supra* note 43 (describing how rebellious soldiers revolted and attempted to seize prison where senior officers convicted of human rights abuses were held); *Argentina Defends Release of "Dirty War" Leaders*, *supra* note 43 (describing protests of human rights community in response to Menem's pardons).

96. See Plumb & Helft, *supra* note 8 (explaining that in 2001 government was pressuring recipients to accept lower value on their bonds as part of their attempts to lighten their U.S.\$132 billion debt and that many were accepting offer due to likelihood of governmental default on all their debt); see also Rohter, *supra* note 1, at A3 (explaining that Argentine government suspended payments of interest and principal on these bonds as well as other foreign and domestic debts).

97. See, e.g., CONST. ARG. pt. I, ch. I, § 28 (1994) (establishing that Constitutional rights should not be curtailed by laws regulating their enforcement); Nat'l Ombudsman, Banking Restrictions, *supra* note 78 (exploring constitutionality of governmental legislation affecting property rights in context of economic emergency).

98. See, e.g., AMADEO, *supra* note 79, at 203 (showing that case of "*Sociedades Anónimas Compañía de Petróleo La República y otras*," CSJN [1932] 164 Fallos 140, upheld principle that only judgment by competent authority will deprive person of property right); see also MILLER ET AL., *supra* note 23, at 1223-33 (exploring caselaw on Argentine constitutional property rights).

99. See CONST. ARG. pt. II, ch. IV, § 75, art. 22 (1994) (incorporating nine human rights treaties into Constitution itself); see also ICCPR *supra* note 24, art. 9(5) (providing compensation to victims of unlawful arrest and detention); ICCPR *supra* note 24, art. 7, (forbidding torture and other cruel or inhuman treatment); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10,



its integration of these new rights into the Constitutional system, only interpreting Section 75/22 to affirm new rights only to the extent that they harmonize with more traditional constitutional rights.<sup>100</sup>

The Argentine Supreme Court interpreted Article 17 of the Constitution to guarantee that the government cannot confiscate property without a judgment based upon law.<sup>101</sup> The Court outlined three significant effects of this conclusion.<sup>102</sup> First, the judgment must have a reasonable legal basis.<sup>103</sup> Second, the government must notify the person affected of the judicial proceedings and must give the person a hearing.<sup>104</sup> Third, after one has acquired a property right, the government cannot take it away except by judgment of a competent authority.<sup>105</sup> The question remains, what authority the government has to freeze bank accounts during an economic emergency.<sup>106</sup>

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1984, 1465 U.N.T.S. 85, 23 I.L.M. 1027, pt. I, art. 14 (requiring States to ensure that victims of torture have redress and rights to fair compensation); American Convention on Human Rights, art. 1(1), Nov. 22, 1969, 1144 U.N.T.S. 123 (identifying obligation to respect rights enshrined therein), art. 4(1) (creating right to life), art. 5(2) (establishing right to humane treatment), art. 7 (creating right to personal liberty).

100. See *Levit*, *supra* note 77, at 325 (stating that courts interpretation renders international human rights law latent and arguing that since rule of law is not firmly anchored in Argentina such incorporation of these international human rights treaties based solely on law, is not likely to succeed).

101. See *AMADEO*, *supra* note 79, at 203 (illustrating that procedural concepts of due process incorporated into Court's interpretation of Article 17 have three significant effects); see also *MILLER ET AL.*, *supra* note 23, at 1223-33 (exploring case law on Argentine constitutional property rights).

102. See *AMADEO*, *supra* note 79, at 203-05 (describing relevant case law affirming these three effects of due process interpretation of Article 17); see also *MILLER ET AL.*, *supra* note 23, at 1226-27 (exploring caselaw interpreting Article 17 property rights).

103. See *AMADEO*, *supra* note 79, at 203-05 (citing "*Rey*," CSJN [1909] 112 Fallos 384, "*Gobierno Nacional*," CSJN [1897] 67 Fallos 185, and "*Castro*," CSJN [1920] 131 Fallos 387, as examples of requirement that judgment must have reasonable legal basis); see also *MILLER ET AL.*, *supra* note 23, at 1226-27 (analyzing jurisprudence upholding property rights under Article 17).

104. See *AMADEO*, *supra* note 79, at 204-05 (citing "*Necchi de Rodríguez*," CSJN [1927] 149 Fallos 5, as example of Court rendering judgment invalid for failure to provide defendant with notice and hearing); see also *MILLER ET AL.*, *supra* note 23, at 1223-33 (illustrating cases upholding requirements of notice and hearing).

105. See *AMADEO*, *supra* note 79, at 205 (showing that case of "*Sociedades Anónimas Compañía de Petróleo La República y otras*," CSJN [1932] 164 Fallos 140, upheld principle that only judgment by competent authority will deprive person of property right); see also *MILLER ET AL.*, *supra* note 23, at 1226-27 (discussing cases interpreting economic rights under Argentine constitution).

106. See Doug Casey, *What's Next for Argentina*, *WORLD NEW DAILY*, Aug. 1, 2002 (analyzing Argentine President Duhalde's decision to undermine authority of Argen-

## 2. The Argentine Supreme Court's Decision on the Constitutionality of the Bank Freeze Legislation and the Executive's Response

The interaction between the judicial and the executive branches of government during the economic crisis illustrates some concerns about the efficacy of an Argentine remedy for the reparation recipients.<sup>107</sup> In the height of the unfolding economic crisis in 2003, the Argentine government froze all savings accounts over U.S.\$3,000 in order to combat the run on cash withdrawals.<sup>108</sup> The National Ombudsman, an Argentine civil liberties defense organization, brought a class action suit challenging the constitutionality of this measure.<sup>109</sup> The claim was based on the assertion that the Bank Freeze Legislation constituted a confiscation of property because it devalued bank accounts over 50%.<sup>110</sup> The Argentine government, in its defense,

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tine Supreme Court with allegations of corruption and improprieties); *see also Argentina Bank Runs Feared*, CBSNEWS.COM, Feb. 1, 2002 (discussing judicial decision on constitutionality of bank freeze legislation).

107. *See* Casey, *supra* note 106 (describing how tension between President and Supreme Court led to Duhalde undermining legitimacy of Court and issuing decree restricting access to courts); *see also Se Aceleran los Tiempos de la Corte para Resolver el Corralon* [They have Accelerated Time for Court to Resolve Bank Freeze], NOTICIAS FINANCIARAS/GRUPOS DE DIARIOS AMERICA, Aug. 1, 2002 (describing how Duhalde, in his last week, passed a decree aimed at halting execution of judicial decisions related to bank freeze); *Nuevo decreto obliga a devolver los ahorros en marzo*, NOTICIAS FINANCIARAS/GRUPOS DE DIARIOS AMERICA, July 25, 2002 (explaining that for 120 days execution of sentences were barred by Presidential Decree 1316).

108. *See Argentina Bank Runs Feared*, *supra* note 106 (describing Argentine Supreme Court's decision ruling that forbidding cash withdrawals was violation of property rights); *see also* Casey, *supra* note 106 (citing unanimous ruling of Supreme Court that Bank Freeze legislation was unconstitutional); IMF, IEO *supra* note 12, at 21 & 159 (stating that on December 1, 2001, Argentine government in response to intensified capital flight and deposit runs, introduced partial deposit freeze and capital controls).

109. *See* Nat'l Ombudsman, Banking Restrictions, *supra* note 78 (stating that National Defender was challenging Section 2(a) of Decree 1570/01 on the reprogramming established by Resolution 6/02 of the Ministry of Economy, modified by Resolution 46/02 and its annex, and Section 2 of Decree 214/02 ("Bank Freezing Legislation")). *But see* Press Release of Nat'l Defender, National Ombudsman Denounced Threats to the Federal Courts (Apr. 12, 2002) (on file with author) [hereinafter Denounced Threats] (explaining that National Defender had been receiving death threats addressed to himself and his family related to his effort involving tariff legislation).

110. *See* Nat'l Ombudsman, Banking Restrictions, *supra* note 78 (explaining that reduction proposed by legislation rendered peso value 1.4%, constituting a devaluation of over 50%); *see also Argentina Bank Runs Feared*, *supra* note 106 (citing Argentine Supreme Court's decision ruling that prohibiting cash withdrawals was violation of property rights).

asserted that it properly exercised its emergency powers under Section 28 of the National Constitution.<sup>111</sup> The Argentine Supreme Court, however, rejected this argument and found that even in emergencies, the State, as an agent of the common welfare, cannot violate the limit established by Section 28 of the Constitution.<sup>112</sup> Therefore, the Court held that the government could not so grossly violate certain Constitutional rights, such as the right to own private property, despite the state of economic emergency.<sup>113</sup> This precedent is favorable to the reparation recipients because the government also violated their property rights by devaluing the bonds during the economic emergency.<sup>114</sup>

The Argentine government also asserted that under Act 25.561,<sup>115</sup> declaring the economic emergency, the judiciary has no right to review the State's decisions on how to confront the crisis.<sup>116</sup> The Court acknowledged that it had no authority to

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111. See CONST. ARG. pt. I, ch. I, § 28 (1994) (establishing that Constitutional rights shall not be modified by laws created to regulate their enforcement); see also Nat'l Ombudsman, Banking Restrictions, *supra* note 78 (referring to act that established country's state of national economic emergency).

112. See CONST. ARG. pt. I, ch. I, § 28 (1994) (declaring that principles, guarantees and rights of Constitution should not be modified by enforcement laws); see also Nat'l Ombudsman, Banking Restrictions, *supra* note 78 (citing that Section 28 of Constitution imposes limit to what extent State can infringe on rights during emergency).

113. See *Argentina Bank Runs Feared*, *supra* note 106 (describing Argentine Supreme Court's decision ruling that forbidding cash withdrawals was violation of property rights); see also Casey, *supra* note 106 (describing how Supreme Court ruled unanimously that Bank Freeze legislation was unconstitutional); Nat'l Ombudsman, Banking Restrictions, *supra* note 77 (explaining that restriction on property rights had exceeded acceptable limit).

114. See Rohter, *supra* note 1, at A3 (describing Argentine government's suspension of payments of interest and principal on reparation bonds); see also Plumb & Helft, *supra* note 8 (explaining that government pressured recipients to accept lower value on their bonds); IMF, IEO, *supra* note 12, at 6 (discussing Argentine government's complete default on its sovereign debt).

115. See IMF, IEO, *supra* note 12 (stating that on March 29, 2001, Domingo Cavallo, Minister of Economy, secured "emergency powers" from Congress); see also Plumb & Helft, *supra* note 8 (explaining that in 2001, government was pressuring recipients to accept lower value on their bonds as part of their attempts to lighten their U.S.\$132 billion debt and many were accepting due to likelihood of governmental default on all their debt); Rohter, *supra* note 1, at A3 (explaining that Argentine government suspended payments of interest and principal on these bonds as well as other foreign and domestic debts).

116. See IMF, IEO, *supra* note 12, at 158 (describing how Argentine Government argued that restriction was valid exercise of emergency powers, and as such was not subject to judicial review); see also Denounced Threats, *supra* note 109 (describing subsequent Presidential Decree denying access to courts).

judge the correctness of the State's response to the emergency, however, they could judge whether the response went too far.<sup>117</sup> Noting that the forced conversion to the peso had established a 50% reduction in the value of the savings accounts, the Court found the government responsible for confiscating property.<sup>118</sup> Thus, the Argentine Supreme Court declared the extent of the infringement of rights invalid and unconstitutional even within the emergency framework of Act 25.561.<sup>119</sup> This holding is favorable to the reparation recipients because the government's response to the economic crisis also devalued their bonds by a high amount.<sup>120</sup>

The executive's response to these decisions creates a troubling precedent for the reparation recipients.<sup>121</sup> The National Ombudsman initiated a suit on behalf of all people with savings accounts, and the application of the Court's holding threatened to be widespread.<sup>122</sup> Thus, Duhalde issued Presidential Decree No. 1316/02 ("the Decree") that suspended, for the term of 120 days, the execution of all legal decisions on banking restric-

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117. See IMF, IEO, *supra* note 12, 158 (showing that Court distinguished between review of correctness of general response from review of extent of element of response); see also Denounced Threats, *supra* note 109 (describing executive branch's response to Court's holding).

118. See IMF, IEO, *supra* note 12, 158 (describing that Court held pesification at 1.4% constituted taking); see also Nat'l Ombudsman, Banking Restrictions, *supra* note 78 (referring to act that established country's state of national economic emergency).

119. See IMF, IEO, *supra* note 12, 158 (holding that despite emergency Court had right to conclude that government had gone too far); see also Nat'l Ombudsman, Banking Restrictions, *supra* note 78 (referring to act that established country's state of national economic emergency).

120. See IMF, IEO, *supra* note 12 (describing how in December of 2001, government defaulted on its sovereign debt); see also Plumb & Helft, *supra* note 8 (explaining that in 2001, government was pressuring recipients to accept lower value on their bonds as part of their attempts to lighten their U.S.\$132 billion debt and many were accepting due to likelihood of governmental default on all their debt); Rohter, *supra* note 1, at A3 (explaining that Argentine government suspended payments of interest and principal on these bonds as well as other foreign and domestic debts).

121. See Denounced Threats, *supra* note 109 (describing Presidential Decree denying access to courts); see also *Nuevo decreto obliga a devolver los ahorros en marzo*, *supra* note 107 (explaining that for 120 days execution of sentences were barred by Presidential Decree 1316); *Se Aceleran los Tiempos de la Corte para Resolver el Corralon*, *supra* note 107 (describing how Duhalde, in his last week, issued Presidential Decree 1316 with intent of braking the draining of resources occurring via judicial decisions which threatened the reserves of banks to point of bankruptcy).

122. See Nat'l Ombudsman, Banking Restrictions, *supra* note 78 (explaining that Ombudsman had initiated complaint on behalf of all people with savings in Argentine banking system).

tions.<sup>123</sup> The National Ombudsman challenged the constitutionality of the Decree.<sup>124</sup> The Supreme Court found that the Decree violated the constitutional right to private property,<sup>125</sup> right to access to the courts.<sup>126</sup> Thus, the interaction between the executive and judicial branches illustrates that although the courts may uphold the reparation recipients' property, rights, the executive branch may not heed its decision.<sup>127</sup>

## B. *International Caselaw Interpreting Right to Reparations in Context of International Tribunal and Extraterritorial Litigation in United States District Court*

### 1. The Inter-American Court of Human Rights

Cases, such as the *Velásquez Rodríguez* case, affirm that the atrocities suffered by the victims of the Dirty War were violations of international law and therefore proper cases for the consider-

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123. See Denounced Threats, *supra* note 109 (explaining that effect of Presidential Decree constituted denial of access to courts); see also *Nuevo decreto obliga a devolver los ahorros en marzo*, *supra* note 107 (explaining how Presidential Decree 1316 suspended execution of sentences dictated by Judges against the bank freeze for 120 days); *Se aceleran los tiempos de la Corte para resolver el corralon*, *supra* note 107 (noting that Duhalde issued Presidential Decree 1316 with intent of braking the draining of resources occurring via judicial decisions which threatened the reserves of banks to point of bankruptcy).

124. See Denounced Threats, *supra* note 109 (showing that Ombudsman's role is to protect citizen's rights and access to courts). See generally CONST. ARG. pt. I, ch. I, § 86 (1994) (creating Ombudsman as independent and fully autonomous organ dedicated to defense and protection of human rights and other Constitutional rights against acts and omission of Administration); Defensor del Pueblo de la Nación, *What is the Ombudsman*, available at [www.defensor.gov.ar](http://www.defensor.gov.ar) (last visited Mar. 9, 2005) (describing how National Ombudsman has power to pursue investigations at request of complainant or at his own initiative into cases originated by any agency of National Public Administration).

125. See CONST. ARG. pt. I, ch. I § 17 (1994) (prohibiting the violation of property rights outside of legal sanction); see also MILLER ET AL., *supra* note 23, at 1223-33 (exploring Argentine constitutional property rights).

126. See NAT'L OMBUDSMAN, DEFENSOR, *supra* note 17 (citing violation of Argentine Constitution and San Jose Costa Rica Agreement as incorporated into Constitution); see also Denounced Threats, *supra* note 109 (explaining that Presidential Decree denied access to courts); *Nuevo decreto obliga a devolver los ahorros en marzo*, *supra* note 107 (explaining how Presidential Decree 1316 suspended execution of sentences dictated by Judges against the bank freeze for one hundred and twenty days).

127. See Denounced Threats, *supra* note 109 (explaining that Presidential Decree denied access to courts); see also *Nuevo decreto obliga a devolver los ahorros en marzo*, *supra* note 107 (explaining how Presidential Decree 1316 suspended execution of sentences dictated by judges against the bank freeze for 120 days).

ation of international human rights tribunals.<sup>128</sup> The *Velasquez Rodriguez* case considered by the Inter-American Court of Human Rights ("IACHR") provides a relevant investigation of international law, both customary and conventional, regarding the recent phenomenon of disappearance as a systematic human rights abuse.<sup>129</sup> The Court declared that holding abducted people without judicial scrutiny or an official charge, deprives them of their life, liberty, and due process in violation of Article 4, Article 5, and Article 7 of the American Convention.<sup>130</sup> Furthermore, the IACHR found that the treatment associated with their custody constituted cruel and inhuman treatment, and noted that the victims prolonged isolation and deprivation of communication insulted the personhood and dignity of the detainee.<sup>131</sup> Under this reasoning, the IACHR maintained that the detention itself violated of Article 5 of the Convention.<sup>132</sup> Additionally, the forces that abducted the person often summarily executed them

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128. See, e.g., *In re Velásquez Rodriguez*, [1988] Inter-Am. Ct. H.R. (ser. C) No. 4, ¶¶ 149-90 (holding that torture was violation of law of Nations for purposes of ATCA jurisdiction); see also Orentlicher, *supra* note 24, at 2576-79 (describing implication of *Velásquez Rodriguez* holding on human rights jurisprudence); Shelton, *supra* note 24, at 362 (asserting that *Velásquez Rodriguez* case upheld jurisdiction over torture as violation of law of Nations under ATCA).

129. See *In re Velásquez Rodriguez*, [1988] Inter-Am. Ct. H.R. (ser. C) No. 4, ¶¶ 149-90 (asserting that disappearance is not new human rights violation but its use to create general state of anguish and fear is recent phenomenon); see also Orentlicher, *supra* note 24, at 2576-79 (discussing *Velásquez Rodriguez* decision); Shelton, *supra* note 24, at 362 (discussing *Velásquez Rodriguez* case and its implications on Inter-American Court's jurisprudence).

130. See *Velásquez Rodriguez*, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶¶ 186-88 (describing how *Velasquez Rodriguez*, as victim of arbitrary detention, was deprived of liberty, humane treatment, and life in violation of Article 4, 5, and 7 of Convention); see also Orentlicher, *supra* note 24, at 2576-79 (describing how Inter-American Court held *Velásquez Rodriguez*'s rights were violated), Shelton, *supra* note 24, at 159 (stating that Inter-American Court found government in power at time had violated *Velásquez Rodriguez*'s rights to liberty, life, and humane treatment).

131. See *Velásquez Rodriguez*, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 187 (identifying plaintiff's disappearance as violation of right to personal integrity enshrined in Article 5 of Convention); see also Orentlicher, *supra* note 24, at 2576-79 (illustrating how Inter-American Court held Honduran government responsible for victim's disappearance and presumed death); Shelton, *supra* note 24, at 362 (stating that victim's rights were violated).

132. See *Velásquez Rodriguez*, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶¶ 186-87 (asserting that detention constitutes failure on part of Honduras to guarantee respect of such rights under Article 1); see also American Convention on Human Rights, art. 5(2), Nov. 22, 1969, 1144 U.N.T.S. 123 (establishing that torture, cruel, inhuman, and degrading treatment is forbidden and that prisoners shall be treated with respect to inherent human dignity).

in flagrant violation of the right to life recognized in Article 4 of the Convention.<sup>133</sup>

The IACHR also held that the Convention bound the Honduran government regardless of the fact that the crime occurred unbeknownst to some members of government, and did not result from official orders.<sup>134</sup> The court specifically affirmed the government's obligation to fulfill the requirements of the American Convention regardless of changes of government over a time period.<sup>135</sup> Thus, the Court resolved the question of successor obligation for parties to the American Convention.<sup>136</sup> The reparation recipients could seek a remedy before an international tribunal because others who have suffered similar atrocities have succeeded there.<sup>137</sup> However, any decision of international tri-

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133. See *Velásquez Rodríguez*, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 188 (establishing that although his fate was not known, context in which he was disappeared creates reasonable presumption that he was killed in violation of Article 4 of Convention); see also American Convention on Human Rights, art. 4, Nov. 22, 1969, 1144 U.N.T.S. 123 (upholding right to life).

134. See *Velásquez Rodríguez*, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 183 (affirming continuous State responsibility in area of human rights even if new government is more respectful of such rights than government in power when they occurred); see also Orentlicher, *supra* note 24, at 2577 (describing how States' duties under Convention persist even if government in power at time is different from that in power at time violation occurred).

135. See *Velásquez Rodríguez*, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 184 (explaining that government responsibility exists independently of changes in government over period of time); see also Orentlicher, *supra* note 24, at 2576-79 (discussing *Velásquez Rodríguez* holding that government responsibility persists even though government in power at time of disappearances was no longer in power); Shelton, *supra* note 24, at 159 (discussing *Velásquez Rodríguez* case and its implications for Inter-American Court's jurisprudence).

136. See *Velásquez Rodríguez*, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 184 (upholding obligations to American Convention regardless of changes of government); see also Orentlicher, *supra* note 24, at 2576-79 (discussing fact that changes in government do not abdicate responsibility for crimes); Shelton, *supra* note 24, at 159 (discussing *Velásquez Rodríguez* case's holding that subsequent regimes may be responsible for remedying prior crimes).

137. See, e.g., *Filartiga v. Peña-Irala*, 630 F.2d 876, 878 (2d Cir. 1980) (holding that torture was violation of laws of Nations within meaning of Statute and that suit was not barred by Act of State doctrine); *Kadic v. Karadzic*, 70 F.3d 232, 241-44 (2d Cir. 1996) (analyzing if actions committed by Bosnian-Serb Karadzic constitute violations of law of Nations for purposes of ATCA). But see CARTER & TRIMBLE, *supra* note 77, at 849-50 (describing that human rights law is dependent on voluntary compliance by States because most States have not submitted to international courts that hear human rights disputes, because such courts are mostly open to States not individuals and because even if such courts issue a binding judgment, there is no international police force to enforce their decision).

bunal would have to be enforced ultimately by a domestic court system.<sup>138</sup>

## 2. ATCA Cases Upholding Victims Right to Receive Reparations

The reparation bond recipients from the Dirty War may succeed under the ATCA, because similar plaintiffs have prevailed.<sup>139</sup> The courts considering the *Filartiga v. Peña-Irala* and *Kadic v. Karadzic* concluded that crimes similar to the Dirty War atrocities qualified as violations of the law of Nations for the purposes of the ATCA.<sup>140</sup> For example, the plaintiffs in *Filartiga* sued in the United States under the ATCA alleging that Peña-Irala was responsible for the torture and disappearance of their son in Paraguay.<sup>141</sup> The U.S. Second Circuit, in a landmark decision, held that the United States had jurisdiction when a non-

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138. See STEINER & ALSTON, *supra* note 87 (describing how the Inter-American Human Rights Committee has no binding authority); see also CARTER & TRIMBLE, *supra* note 77, 849-50 (describing that human rights law is dependent on voluntary compliance and has no binding authority).

139. See *Filartiga*, 630 F.2d at 878 (wherein victims of torture prevailed under ATCA); see also *Karadzic*, 70 F.3d at 241-44 (holding that plaintiffs, victims of torture, should prevail against perpetrators under ATCA).

140. See Alien Tort Claims Act, 28 U.S.C. § 1350 (1993) (establishing original jurisdiction in U.S. district courts for non-U.S. citizens suing on torts in violation of law of Nations); see also *Filartiga*, 630 F.2d at 878 (holding torture to be violation of law of Nations); *Karadzic* 70 F.3d at 232-40 (discussing definition of violation of law of Nations for ATCA purposes); Collingsworth, *supra* note 87, at 186-87 (describing how *Filartiga* was first to present long dormant ATCA as means to enforce international human rights standards through U.S. federal courts); Lutz & Sikkink, *supra* note 87, at 8-9, 31 (stating that success of *Filartiga* provided U.S. human rights lawyers with new avenues for enforcement of human rights norms, but that in Argentina there has been little success in executing judgments for civil damages awarded in human rights trials abroad); STEINER & ALSTON, *supra* note 87, at 1049 (discussing fact that *Filartiga* gave new life to ATCA and has been used as reference point in over 100 cases); Stephens, *supra* note 87, at 596-98 (describing how post-*Filartiga* cases have expanded those who can be held responsible for violations of law of Nations to include those in charge of planning of abuses as well).

141. See Alien Tort Claims Act, 28 U.S.C. § 1350 (1993) (establishing original jurisdiction in U.S. district courts for non-U.S. citizens suing on torts in violation of law of Nations); see also *Filartiga*, 630 F.2d at 876 (resolving case brought by citizens of Paraguay against one allegedly responsible for torture and disappearance of their son); Collingsworth, *supra* note 87, at 186-87 n.14 (describing how torture claim was brought against former official of government of Paraguay, thereby avoiding need to conduct State action analysis because defendant was member of government); Lutz & Sikkink, *supra* note 87, at 8 (stating that plaintiffs were Dr. Joel Filartiga and his daughter Dolly, who alleged that Joelito was kidnapped in order to pressure Dr. Filartiga to end his political activities); Stevens, *supra* note 87, at 594-95 (stating that case involved murder



citizen sues an alleged torturer found and served within U.S. borders.<sup>142</sup> Further, the Court in *Kadic* also addressed the question of whether torture violated the customary law of Nations.<sup>143</sup> There, the Court held that rape, torture, and summary execution violated international law when committed by State officials under color of law.<sup>144</sup> The court established that torture violated customary international law despite the fact that an unrecognized State perpetrated the act.<sup>145</sup>

Despite the fact that the underlying atrocities present in the reparation recipients' claims are similar to those present in *Filartiga* and *Karadzic*, they would also have to overcome the jurisdictional hurdles of the Act of State and the FSIA.<sup>146</sup> *Republic of Argentina & Banco Central de La Republica Argentina v. Weltover*,

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of Joelito Filartiga who was seventeen when tortured to death in Paraguay by police officer).

142. See *Filartiga*, 630 F.2d at 241-44 (holding that non-citizens could sue in United States under ATCA for violations of law of Nations); see also Collingsworth, *supra* note 87, at 186-87 (describing how *Filartiga* held torture was violation of law of Nations); Lutz & Sikkink, *supra* note 87, at 8-9 (discussing implications of *Filartiga* on human rights jurisprudence); STEINER & ALSTON, *supra* note 87, at 1049 (discussing fact that *Filartiga* gave new life to ATCA and has been used as reference point in over 100 cases); Stephens, *supra* note 87, at 596-98 (describing how post-*Filartiga* cases have expanded those who can be held responsible for violations of law of Nations to include those in charge of planning of abuses as well).

143. See *Karadzic*, 70 F.3d at 232-40 (analyzing if actions committed by Bosnian-Serb Karadzic constitute violations of law of Nations for purposes of ATCA); see also Collingsworth, *supra* note 87, at 198 (describing how court held that genocide and war crimes were actionable irrespective of State action); Stephens, *supra* note 87, at 598 (describing how court found that international law's State action requirement does not necessitate action by recognized State).

144. See *Karadzic*, 70 F.3d at 243 (holding that Bosnian-Serb leader's actions planning and ordering campaign of murder, rape, forced impregnation, and other forms of torture were violations of international law within meaning of ATCA); see also Collingsworth, *supra* note 87, at 198 (stating that certain crimes, whether under auspices of State action or not, violate law of Nations); Stephens, *supra* note 87, at 598 (describing how court found Karadzic's could be liable for genocide even if acting as purely private citizen).

145. See *Karadzic*, 70 F.3d at 245 (holding that customary international law of human rights proscribes torture committed by State actors regardless of whether they are recognized or unrecognized); see also Collingsworth, *supra* note 87, at 202 (stating that one key problem to ATCA's usefulness as tool for enforcing human rights norms is that "law of [N]ations" is necessarily narrow in scope); Stephens, *supra* note 87, at 598 (accentuating fact that basic norms of humanitarian law apply to all parties to war whether international or internal).

146. See, e.g., *Republic of Argentina & Banco Central de La Republica Argentina v. Weltover, Inc.*, 504 U.S. 607, 609 (1992) (identifying issue of whether Argentina's decision to reschedule its bonds qualified as commercial activity exception of FSIA); *Underhill v. Hernandez*, 168 U.S. 250, 252-254 (1897) (asserting that out of respect for

*Inc.* addressed the issue of sovereign immunity while challenging Argentina's decision to reschedule bonds in the U.S. Federal Court.<sup>147</sup> There, the U.S. Supreme Court addressed various challenges to jurisdiction of foreign sovereign immunity.<sup>148</sup> The Court concluded that under the Foreign Sovereign Immunities Act ("FSIA"), Argentina's issuance and rescheduling of bonds fell within the commercial activity exception because Argentina was participating in the bond market as a private actor.<sup>149</sup> In order to find a commercial activity exception under the FSIA the Court needed to find that the issuance of the bonds had a direct effect in the United States.<sup>150</sup> The Court held that because Argentina had to make the debt payments in the United States they

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sovereignty U.S. courts will not tolerate suits brought against those acting with governmental authority within borders of their Nations).

147. See *Weltover*, 504 U.S. at 609 (identifying issue of whether Argentina's decision to reschedule its bonds qualified as commercial activity exception of FSIA); see also David E. Gohlke, *Clearing the Air or Muddying the Waters? Defining "A Direct Effect in the United States" Under the Foreign Sovereign Immunities Act After Republic of Argentina v. Weltover*, 18 Hous. J. INT'L L. 261, 279-87 (1995) (discussing *Weltover* decision); Avi Lew, *Republic of Argentina v. Weltover, Inc.: Interpreting the Foreign Sovereign Immunity Act's Commercial Activity Exception to Jurisdictional Immunity*, 17 FORDHAM INT'L L.J. 726, 741-65 (1994) (discussing implications of *Weltover* on understanding of commercial activity exception to FSIA); Silverman & Deveno, *supra* note 19, at 187 n.48 (asserting that *Weltover* implies limited U.S. jurisdiction).

148. See *Weltover*, 504 U.S. at 609 (identifying issue of whether Argentina's decision to reschedule its bonds qualified as commercial activity exception of FSIA, as defined in Section 1605(a)(2)); see also Gohlke, *supra* note 147, at 279-87 (discussing rational for analysis of commercial activity exception); Lew, *supra* note 147, at 741-65 (analyzing applicability of commercial activity exception); Silverman & Deveno, *supra* note 19, at 187 n.48 (discussing impact of *Weltover* decision).

149. See *Weltover*, 504 U.S. at 617 (holding that regardless of purpose of issuance of bonds, Argentina participated in bond market as private actor and was therefore not protected by FSIA); see also Gohlke, *supra* note 147, at 279-87 (analyzing impact of private actors on FSIA); Lew, *supra* note 147, at 741-65 (exploring commercial activity exception analysis in *Weltover*); Silverman & Deveno, *supra* note 19, at 187 n.48 (analyzing *Weltover* decision's holding on commercial activity exception).

150. See U.S. Foreign Sovereign Immunities Act of 1976, 28 U.S.C. § 1604 (1976) (providing that foreign States will be immune from jurisdiction of U.S. courts subject to enumerated exceptions); see also *Weltover*, 504 U.S. at 617-619 (analyzing whether rescheduling of bonds had direct effect in United States). See generally STEINER & ALSTON, *supra* note 87, at 1060 (describing how foreign States are immune from suit subject to exceptions which include court actions arising out of State's commercial activities in United States and actions involving expropriated property); *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699 (9th Cir.1992) (finding Argentina immune from suit under FSIA because although Argentina's official acts of torture violated international law, they were not one of exceptions enumerated in FSIA); *Saudi Arabia v. Nelson*, 507 U.S. 349 (1993) (granting sovereign immunity to Saudi Arabia because unlawful detention and torture did not fall within FSIA exceptions).

had a direct effect within the meaning of the FSIA.<sup>151</sup> Thus, the jurisdictional challenges asserted by Argentina failed.<sup>152</sup> The Court did not address whether jurisdiction would exist over Argentina if the obligation to pay existed solely outside of the United States.<sup>153</sup>

Another defense that Argentina may have against an ATCA claim is the Act of State Doctrine.<sup>154</sup> The Act of State Doctrine provides that courts will not inquire into the official acts of independent sovereigns that occur within their own borders.<sup>155</sup> The U.S. Supreme Court in *Underhill v. Hernandez* refused to investigate allegations against one side of the Venezuelan civil war based on the Act of State Doctrine.<sup>156</sup> The Court later affirmed

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151. See *Welltover*, 504 U.S. at 617-619 (asserting that Argentina's unilateral decision to reschedule payments of bonds that were to occur in United States constituted direct effect); see also Gohlke, *supra* note 147, at 279-87 (discussing rationale for analysis of commercial activity exception); Lew, *supra* note 147, at 741-65 (analyzing applicability of commercial activity exception); Silverman & Deveno, *supra* note 19, at 187 n.48 (discussing impact of *Welltover* decision).

152. See *Welltover*, 504 U.S. at 619-620 (holding Argentina not immune from suit because its issuance of bonds was commercial activity under FSIA and its rescheduling of bonds was in connection with that activity and had direct effect in United States); see also Gohlke, *supra* note 147, at 279-87 (discussing how *Welltover* decision held Argentina responsible); Lew, *supra* note 147, at 741-65 (discussing how *Welltover* decision found Argentina within commercial activity exception); Silverman & Deveno, *supra* note 19, at note 48 (stating significance of *Welltover* decision on exploration of commercial activity exception).

153. See Silverman & Deveno, *supra* note 19, at 187 n.48 (asserting that *Welltover* implies that no U.S. federal jurisdiction exists in cases involving foreign sovereign obligated to pay solely outside United States). See generally Gohlke, *supra* note 147, at 279-87 (exploring effects of *Welltover* decision and arguing that its broad application of direct effects test was inappropriate); Lew, *supra* note 147, at 741-65 (arguing it was impossible to further define commercial activity within meaning of FSIA in way that would have ceased all debate on issue).

154. See *Underhill v. Hernandez*, 168 U.S. 250, 252-54 (1897) (announcing that the courts of one country will not sit in judgment on the acts of another government conducted within its own territory). See generally STEINER & ALSTON, *supra* note 87, at 1058-59 (discussing how Act of State Doctrine is aimed at avoiding potential judicial interference with conduct of foreign relations and forbids courts of country to sit in judgment of acts of other countries' governments done within their own territory); Donald T. Kramer, *Modern Status of the Act of State Doctrine*, 12 A.L.R. FED. 707, 715-16 (1972) (stating that *Underhill* is classic U.S. statement of Act of State Doctrine).

155. See generally Kirgis, *supra* note 88 (describing Act of State Doctrine as that which prohibits countries to review decisions of other States regarding matters within their own borders); Kramer, *supra* note 154, at 715-16 (exploring the historical development of Act of State Doctrine in U.S. case law).

156. See *Underhill*, 168 U.S. at 252-54 (asserting that out of respect for sovereignty U.S. courts will not tolerate suits brought against those acting with governmental authority within borders of their Nations). See generally Kirgis, *supra* note 88 (identifying

this principle in *Banco Nacional de Cuba v. Sabbatino* when it refused to investigate the validity of a taking of property within Cuba by Cuba's sovereign government.<sup>157</sup> The Court stated that it would not investigate such takings even if the plaintiff alleged violations of customary international law.<sup>158</sup> Finally, the *Allied Bank Int'l v. Banco Creditor Agricola de Cartago* decision addressed the argument that because a non-U.S. Nation's decision to suspend payments on bonds occurred within its borders, it was an Act of State and not available for judicial review in the United States.<sup>159</sup> There, the Court held that, since the bondholders were abroad, the taking occurred abroad, where the obligation to pay resided.<sup>160</sup>

The reparation recipients have suffered losses similar to other plaintiffs who have prevailed under the ATCA.<sup>161</sup> Further-

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that countries are forbidden from reviewing decisions of other States regarding matters within their own borders under Act of State Doctrine); Kramer, *supra* note 154, at 715-16 (describing evolution of doctrine that sovereign States are bound to respect independence of other sovereigns).

157. See *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 428 (1964) (asserting that Act of State Doctrine does not forbid inquiry into extraterritorial takings). But see *Allied Bank Int'l v. Banco Credito Agricola de Cartago*, 757 F.2d 516, 521 (1985) (discussing Act of State Doctrine and cautioning that Supreme Court has been reticent to create inflexible rule and instead affirms need to apply case by case approach tempered by common sense).

158. See *Sabbatino*, 376 U.S. at 428 (stating that sovereignty should be respected regardless of assertions of violations of customary international law); see also S.W. O'Donnell, *Antitrust Subject Matter Jurisdiction Over State Owned Enterprises and the End of Prudential Prophylactic Judicial Doctrines*, 26 SUFFOLK TRANSNAT'L L. REV. 247, 279-80 (2003) (discussing how *Sabbatino* holding demanded judicial deference in examining government seizure of property); Tracie A. Sundack, *Republic of Philippines v. Marcos: The Ninth Circuit Allows a Former Ruler to Invoke the Act of State Doctrine Against a Resisting Sovereign*, 38 AM. U.L. REV. 225, 233-34 (1998) (describing how *Sabbatino* decision concluded that U.S. courts could not pass judgment on foreign State's acts).

159. See *Allied Bank Int'l*, 757 F.2d at 520-22 (exploring Act of State Doctrine in context of bond issuance abroad); see also James Finnigan, *Sovereign Default in United States Courts: The Interrelationship of the Articles of the International Monetary Fund, the Act of State Doctrine and Community Principles: Allied Bank International v. Banco Credito de Cartago*, 4 B.U. INT'L L.J. 153, 198-99 (1986) (stating that *Allied Bank Int'l* decision failed to consider applicability of Articles of IMF); Sundack, *supra* note 158, at 228 n.14 (identifying the historical background of the Act of State Doctrine).

160. See *Allied Bank Int'l*, 757 F.2d at 521 (holding that "situation of property" was in United States); see also Finnigan, *supra* note 159, at 158-61 (discussing rationale of *Allied Bank Int'l* decision); Sundack, *supra* note 158, at 228 n.14 (stating that *Allied Bank Int'l* cited link between Act of State Doctrine and sovereign immunity).

161. See *Filartiga v. Peña-Irala*, 630 F.2d 876, 878 (2d Cir. 1980) (holding that torture was violation of laws of Nations within meaning of Statute and that suit was not barred by Act of State doctrine); *Kadic v. Karadzic*, 70 F.3d 232, 241-44 (2d Cir. 1996)

more, the precedent of *Weltover* makes clear that States are responsible under ATCA if their actions fall into the commercial activity exception of the FSIA.<sup>162</sup> Thus, the remedy of suit under ATCA, though fraught with challenges, is a possible remedy for the reparation recipients.<sup>163</sup>

### III. ANALYSIS OF EFFICACY OF REMEDIES TO REPARATIONS RECIPIENTS

Oesterheld and Garcia-Albores have four avenues presenting a remedy for their outstanding right to receive reparations: domestic courts,<sup>164</sup> international tribunals,<sup>165</sup> extrajudicial litigation,<sup>166</sup> and sovereign debt negotiations.<sup>167</sup> This Note, in Part III, will explore these four alternatives in search of the best approach for the vindication of their right to reparations. The most likely remedy for the reparation recipients is one through the field of sovereign debt negotiations.<sup>168</sup> Therefore, these ne-

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(affirming that torture was violation of law of Nations and thus adequate cause of action under ATCA).

162. See *Republic of Argentina & Banco Central de La Republica Argentina v. Weltover, Inc.*, 504 U.S. 607, 619-20 (1992) (holding Argentina not immune from suit because its issuance of bonds was commercial activity under FSIA and its rescheduling of bonds was in connection with that activity and had direct effect in United States); see also Gohlke, *supra* note 147, at 279-87 (stating that *Weltover* decision held Argentina subject to suit); Lew, *supra* note 147, at 741-65 (analyzing applicability of commercial activity exception); Silverman & Deveno, *supra* note 19, at 187 n.48 (discussing impact of *Weltover* decision).

163. See, e.g., *Filartiga*, 630 F.2d at 878 (establishing that torture constituted violation of law of Nations for purposes of ATCA litigation); *Kadic*, 70 F.3d at 241-44 (finding jurisdiction over torture crimes committed in violation of law of Nations); *Weltover*, 504 U.S. at 619-20 (holding Argentina not immune from suit because its issuance of bonds was commercial activity under FSIA and its rescheduling of bonds was in connection with that activity and had direct effect in United States); Gohlke, *supra* note 147, at 279-87 (stating that *Weltover* decision held Argentina subject to suit); Lew, *supra* note 147, at 741-65 (analyzing applicability of commercial activity exception); Silverman & Deveno, *supra* note 19, at 187 n.48 (discussing impact of *Weltover* decision).

164. See *supra* notes 82-86 and accompanying text (discussing Argentine Constitutional law upholding reparation recipients' rights).

165. See *supra* notes 83, 129-36 and accompanying text (describing incorporation of international treaties into Argentine Constitution and discussing case law before Inter-American Court of Human Rights).

166. See *supra* notes 87-89, 139-63 and accompanying text (exploring ATCA and its jurisdictional hurdles and illustrating case law upholding right to receive reparations).

167. See *supra* note 26 and accompanying text (discussing field of sovereign debt negotiations).

168. See *supra* notes 56-64 and accompanying text (illustrating complex state of sovereign debt negotiations facing reparation recipients).

gotiations should respect the fact that the Argentine State owes the reparation recipients a different debt than it owes to the other normal investors.<sup>169</sup>

### A. *Domestic Remedy*

#### 1. The Supreme Court's Holding on the Bank Freeze Legislation

The declaration of unconstitutionality by the Argentine Supreme Court on the Bank Freezing Legislation held that the pesification of individuals' savings accounts violated of the right to property established in the Argentine Constitution.<sup>170</sup> In the *Bank Freeze Cases* the Court was considering bank accounts that the government had devalued by 50%.<sup>171</sup> The government's policies regarding the reparation bonds initially devalued them at a rate of 66% and later ceased making any payments of interest or principal to the bondholders at all.<sup>172</sup> Thus, under the precedent established by the Court's ruling on the Bank Freeze Legislation, Oesterheld, and other reparation recipients, would have a strong legal argument for a violation of constitutionally protected property rights.

#### 2. The Court's Interpretation of Article 17 and Relevant United States Authority

Furthermore, as the aforementioned exploration of Argentine Constitutional case law indicates, property rights covered by Article 17 of the Constitution may only be violated under authority of law with prior notice, hearing and compensation provided to the property owner.<sup>173</sup> Thus, there is a solid legal precedent for the argument that the government has violated Oesterheld's property rights.

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169. See *supra* notes 64-65 and accompanying text (stating that reparation recipients are different from normal creditors due unique circumstances of issuance).

170. See *supra* notes 107-20 and accompanying text (describing court's holding that government's pesification was restriction on property rights that had exceeded acceptable limit established by Constitution).

171. See *supra* notes 108-10 and accompanying text (describing court review of pesification, comprising 1.4 Argentine pesos to one U.S. dollar).

172. See *supra* notes 12-18 and accompanying text (illustrating impact of economic crisis on value of bonds).

173. See *supra* notes 97-104 and accompanying text (discussing property rights enshrined in Constitution of the Argentine Nation Part I, Chapter I, Section 17, and caselaw interpreting it to protect property rights from violations).

### 3. The Likelihood of an Effective Domestic Remedy

Unfortunately, as the reaction of the Presidency to the holding on the Bank Freeze Legislation illustrates, if the Court were to find that Oesterheld's property rights had been violated, either in accordance with traditional interpretations of Article 17 property rights, or under the precedent of the *Bank Freeze* decision, the other branches of government will not necessarily heed their holding.<sup>174</sup> Additionally, though Oesterheld has right to receive reparations established by the treaties incorporated in Section 75/22, the Argentine Court has been conservative in its integration of these new rights into the Constitutional system, interpreting the language of Section 75/22 as only affirming new rights that harmonize with traditional constitutional rights.<sup>175</sup> Thus, Section 75/22 as interpreted by the Court does not provide an independent right for Oesterheld outside of her traditional constitutional protections.<sup>176</sup>

#### B. *The Efficacy of International Tribunal*

The efficacy of a decision rendered by the Inter-American Court or an opinion published by the U.N. Committee ultimately hinges on whether or not Argentina is disposed to following the holding of the international body.<sup>177</sup> If Oesterheld obtained a judgment from the Inter-American Court, she would have to rely on the domestic courts to enforce it.<sup>178</sup> Since the domestic courts are having difficulties enforcing their own decisions, it is not likely that Oesterheld will obtain a meaningful

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174. See *supra* note 121-27 and accompanying text (describing how executive branch responded to Supreme Court's holding by not following it but by issuing Presidential decree banning Court from considering other similar cases).

175. See *supra* notes 99-100 and accompanying text (stating that interpretation of Section 75/22 renders international human rights law only effective to extent that they harmonize with traditional constitutional rights).

176. See *supra* notes 99-100 and accompanying text (illustrating that conservative interpretation of Section 75/22 creates no new rights).

177. See *supra* notes 137-38 and accompanying text (describing that human rights law is dependent on voluntary compliance by States because most States have not submitted to international courts that hear human rights disputes, because such courts are mostly open to States not individuals and because even if such courts issue binding judgment there is no international police force to enforce their decision).

178. See *supra* notes 137-38 and accompanying text (discussing how human rights law is dependent on voluntary compliance because even if courts issue a binding judgment they still must rely on domestic courts to enforce it).

remedy by asking them to enforce an international decision.<sup>179</sup>

### C. ATCA Remedy

The ATCA is an option for the reparation recipients like Oesterheld but it presents jurisdictional impediments.<sup>180</sup> The suit might be dismissed because of the FSIA's commercial exception requires a direct effect on the United States which would be difficult to establish.<sup>181</sup> Additionally, under the Act of State Doctrine the plaintiffs could only sue if the government was obliged to pay the bonds to plaintiffs outside the territory of Argentina.<sup>182</sup> Finally, even if reparation recipients were successful in the United States they would still have to get the judgment effectuated in Argentina, which could prove difficult.<sup>183</sup> Considering that litigating abroad is expensive in terms of time, money and travel inconvenience, bringing such a risky suit may not be a meaningful remedy for Oesterheld.<sup>184</sup>

### D. Sovereign Debt Negotiations

It is most likely that Oesterheld's bonds will be part of a settlement the Argentine government brokers with its various creditors.<sup>185</sup> Thus, the most efficacious avenue for a remedy for Oesterheld lies in the changing field of sovereign debt negotiations.<sup>186</sup> Though many groups have offered proposals to address

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179. See *supra* note 87 (identifying various jurisdictional hurdles involved in ATCA suits).

180. See *supra* note 87 (describing various jurisdictional hurdles involved in ATCA suits).

181. See *supra* note 87 and accompanying text (stating that commercial exception to FSIA demands action contested have direct effect within United States).

182. See *supra* note 87 and accompanying text (illustrating how Act of State Doctrine keeps U.S. courts from reviewing decisions of sovereign States regarding matters strictly within their own borders).

183. See *supra* notes 137-38 and accompanying text (discussing how international law is dependent on voluntary compliance because even if courts issue binding judgment they still must rely on domestic courts to enforce it).

184. See *supra* notes 53-65 and accompanying text (describing financial difficulties of reparation bond recipients).

185. See *supra* notes 57-65 and accompanying text (stating that diverse group of bondholders are mostly resorting to efforts at negotiation with Argentine Government and forgoing option of litigation).

186. See *supra* notes 57-65 and accompanying text (illustrating how litigation has become less fruitful due to fact that sovereigns often do not have sufficient assets in any one jurisdiction for attachment, creating greater reliance on sovereign debt negotiations).



the changing face of sovereign debt, in Oesterheld and Garcia-Albores' case the proposals must address their unique status, because neither<sup>187</sup> is a voluntary investor in the Argentine State.<sup>188</sup> Oesterheld, Garcia-Albores, and the other reparation bond recipients, were victims of crimes against their families and loved ones.<sup>189</sup> As such, the government must treat them in a way that acknowledges the profound continuing obligation that the Argentine State owes them.<sup>190</sup>

### 1. New Proposals in Sovereign Debt Negotiations

Whereas large commercial banks with similar interests used to primarily hold sovereign debt, now diverse groups of bondholders hold the majority of sovereign debt.<sup>191</sup> Thus, despite the fact that litigation used to be a desirable way of handling sovereign debt defaults, is now impracticable due to the diverse interests of the creditors.<sup>192</sup> Due to the new diverse character of the debt holders, voluntary restructuring has taken on a new significance.<sup>193</sup> In light of this, several new proposals have been put forth to allow the field of sovereign debt negotiation to respond to this changing characteristic.<sup>194</sup>

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187. See *supra* notes 64-65 and accompanying text (stating that reparation bondholders should be treated differently than other normal investors due to unique and involuntary origin of reparation bonds).

188. See *supra* notes 64-65 and accompanying text (commenting that reparation bondholders should be treated differently than other normal investors due to unique and involuntary origin of reparation bonds).

189. See *supra* notes 64-65 and accompanying text (describing how reparation bond holders, in stark contrast to all other bond holders, are not investors but victims of crimes).

190. See *supra* note 64 and accompanying text (identifying Ombudsman's plea urging Minister of Economy to lift suspension of payments on reparation bonds because suspending them constituted violation of American Convention and regression in development of human rights).

191. See *supra* notes 57-65 and accompanying text (explaining recent trend in sovereign financing away from syndicated bank loans towards great reliance on sovereign bonds held by large number of creditors with varying concerns and interests).

192. See *supra* notes 57-65 and accompanying text (describing that when faced with individual litigations by numerous bondholders sovereigns may have insufficient assets in any jurisdiction for attachment or individual settlements and thus sovereigns may be less likely to attempt to settle).

193. See *supra* notes 53-65 and accompanying text (illustrating how difficulties with litigating sovereign debt conflicts make efforts towards consensual, collective restructurings more vital).

194. See *supra* notes 67-74 and accompanying text (identifying various proposals for ensuring that voluntary restructurings are transparent, predictable, and equal in treatment of all creditors).

The Jubilee Framework for International insolvency proposed basing international insolvency on Chapter 9 of U.S. Bankruptcy Code principles, creating an *ad hoc* body appointed to deal with individual petitions for insolvency.<sup>195</sup> The Council on Foreign Relations, a non-partisan, national membership organization, issued broad recommendations suggesting a voluntary proceeding modeled on Chapter 9 principles as well.<sup>196</sup> The IMF proposed the creation of a SDRM which would address sovereign debt restructuring.<sup>197</sup> Under the SDRM proposal certain claims would automatically be ineligible for restructuring such as claims held by international organizations and creditors would approve the proposal offered by the sovereign by a super majority vote binding on minority creditors.<sup>198</sup>

## 2. Proposals Geared at Vindicating the Unique Debt Owed the Reparation Recipients

Those reparation bond holders are creditors because they and their families were first victims of human rights abuses and should be treated as a preferred class whose claims are ineligible for restructuring.<sup>199</sup> In this way, the Argentine State can acknowledge the debt owed to them, both financial and moral.<sup>200</sup> Additionally, this approach would enable the government to advance the reconciliation process, begun so long ago, rather than degenerate it.<sup>201</sup>

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195. See *supra* note 67-74 and accompanying text (describing proposal based on Chapter 9 involving *ad hoc* dispute resolution committees).

196. See *supra* notes 67-74 and accompanying text (identifying proposals discussed at roundtable concerning sovereign debt).

197. See *supra* note 68 and accompanying text (stating that at annual meeting of World Bank and IMF in September of 2002, IMFC requested that IMF develop framework for sovereign debt).

198. See *supra* note 71 and accompanying text (stating provisions regarding voting).

199. See *supra* notes 20, 63-65, 75 and accompanying text (identifying argument that reparation recipients should not be treated as normal investors due to unique nature of their bond's issuance).

200. See *supra* notes 20, 63-65, 75 and accompanying text (arguing that obligation owed reparation recipients is moral in addition to financial due to Dirty War atrocities suffered).

201. See *supra* notes 63-65 and accompanying text (stating that suspending payment on reparation bonds constituted violation of American Convention and regression in development of human rights).

### CONCLUSION

Since the international community is in accord that torture and forced disappearance are an abomination to all, and that those victims have a right to compensation for these horrendous crimes, then the reparations bonds should not be left devalued and suspended, for what is a right without a remedy? Nor should the Argentine government renegotiate them as if the Dirty War victims were normal investors.

Torture and forced disappearance are violations of international law both customary and conventional. There is an internationally recognized right to reparations for such violations of international law. The Argentine government owed reparations to those victims of the previous regime's crimes. It acknowledged this obligation by issuing the reparations bonds. Its obligation is outstanding due to the devaluation, suspension, and renegotiation of payment on the reparations bonds.

Despite the complexity of the sovereign debt crisis and its accompanying economic crisis, the Argentine society and government owes to the families of the disappeared a unique and profound obligation that surpasses monetary investments. Therefore, in honor of the suffering of the victims and their families, and in support of the reconciliation process, the Argentine government should give this obligation first priority. The remedies within the Argentine Court system are not likely to produce a meaningful result. The international tribunals have only persuasive authority. Jurisdictional challenges render extraterritorial options difficult and expensive. Sovereign debt negotiations seem the most likely place to seek a remedy. However, the negotiation should prioritize these bonds as a preferred class or as debt ineligible for restructuring. This approach would properly acknowledge Argentina's continuing obligation.