

# THE ARGENTINE FINANCIAL CRISIS: STATE LIABILITY UNDER BITS AND THE LEGITIMACY OF THE ICSID SYSTEM

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## ABSTRACT

*With an extraordinary increase in the number of BITs and the development of the ICSID allowing direct investor-state arbitrations of alleged violations of BITs, international investment law has expanded tremendously over the past two decades and afforded investors with unprecedented protections. This contributed to the initiation of more than forty ICSID cases against Argentina for its measures taken in response to the 2001-2002 financial crises. Among them, four cases decided by early 2008 are of particular significance, in part because of ICSID Tribunals' treatment of Argentina's claims of treaty-based NPM and the necessity principle under customary international law. As analyzed in this article, the resulting jurisprudence is deeply problematic: not only is the reasoning seriously flawed, but the four ICSID Tribunals' rulings also lack consistency even in the face of identical factual circumstances. In turn, this poses a serious challenge to the legitimacy and viability of the BIT regime and the ICSID system more generally, and hence a deep rethinking of various proposed solutions is urgently needed to restore confidence in the system.*

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