# 1ac – warming

**CONTENTION 1 IS WARMING –**

**Warming is real and anthropogenic.**

**Science Daily 5/15,** 5/15/13, “Scientific Consensus On Anthropogenic Climate Change,” http://www.sciencedaily.com/releases/2013/05/130515203048.htm)//DR. H

A comprehensive analysis of peer-reviewed articles on the topic of global warming and climate change has revealed an overwhelming consensus among scientists that recent warming is human-caused.

The study is the most comprehensive yet and identified 4000 summaries, otherwise known as abstracts, from papers published in the past 21 years that stated a position on the cause of recent global warming -- 97 per cent of these endorsed the consensus that we are seeing human-made, or anthropogenic, global warming (AGW)

Led by John Cook at the University of Queensland, the study has been published 16 May, in IOP Publishing's journal Environmental Research Letters.

The study went one step further, asking the authors of these papers to rate their entire paper using the same criteria. Over 2000 papers were rated and among those that discussed the cause of recent global warming, 97 per cent endorsed the consensus that it is caused by humans.

The findings are in stark contrast to the public's position on global warming; a 2012 poll\* revealed that more than half of Americans either disagree, or are unaware, that scientists overwhelmingly agree that Earth is warming because of human activity.

John Cook said: "Our findings prove that there is a strong scientific agreement about the cause of climate change, despite public perceptions to the contrary.

"There is a gaping chasm between the actual consensus and the public perception. It's staggering given the evidence for consensus that less than half of the general public think scientists agree that humans are causing global warming.

"This is significant because when people understand that scientists agree on global warming, they're more likely to support policies that take action on it."

In March 2012, the researchers used the ISI Web of Science database to search for peer-reviewed academic articles published between 1991 and 2011 using two topic searches: "global warming" and "global climate change."

After limiting the selection to peer-reviewed climate science, the study considered 11 994 papers written by 29 083 authors in 1980 different scientific journals.

**Most qualified evidence concludes it causes extinction.**

**Hansen 12** Head of the NASA Goddard Institute for Space Studies since 1981, an adjunct professor in the Department of Earth and Environmental Sciences at Columbia University, Ph.D. in Physics from the University of Iowa, best known for his research in the field of climatology, his testimony on climate change to congressional committees in 1988 that helped raise broad awareness of global warming, the author of “Storms of My Grandchildren.”(James, May 9, 2012, “Game Over for the Climate,” The New York Times, http://www.nytimes.com/2012/05/10/opinion/game-over-for-the-climate.html)//DR. H

If we were to fully exploit this new oil source, and continue to burn our conventional oil, gas and coal supplies, concentrations of **carbon dioxide** in the atmosphere eventually would reach levels higher than in the Pliocene era, more than 2.5 million years ago, when sea level was at least 50 feet higher than it is now. That level of heat-trapping gases **would assure** that **the disintegration of the ice sheets** would **accelerate out of control. Sea levels would rise and destroy** coastal **cities.** Global **temperatures would become intolerable.** Twenty to **50 percent of the planet’s species would be driven to extinction. Civilization would be at risk.** That is the long-term outlook. But near-term, things will be bad enough. **Over the next** several **decades,** the Western United States and the semi-arid region from North Dakota to Texas will develop **semi-permanent drought, with** rain, when it does come, occurring in extreme events with **heavy flooding.** Economic losses would be incalculable. More and more of the Midwest would be a dust bowl. California’s Central Valley could no longer be irrigated. Food prices would rise to unprecedented levels. If this sounds apocalyptic, it is. This is why **we need to reduce emissions** dramatically. President Obama has the power not only to deny tar sands oil additional access to Gulf Coast refining, which Canada desires in part for export markets, but also to encourage economic incentives to leave tar sands and other dirty fuels in the ground. The global warming signal is now louder than the noise of random weather, as I predicted would happen by now in the journal Science in 1981. Extremely hot summers have increased noticeably. We can say with high confidence that the recent heat waves in Texas and Russia, and the one in Europe in 2003, which killed tens of thousands, were not natural events — they were caused by human-induced climate change. We have known since the 1800s that **carbon** dioxide **traps heat in the atmosphere**. The right amount keeps the climate conducive to human life. But **add too much,** as we are doing now, **and temperatures** will inevitably **rise too high. This is not the result of natural variability**, as some argue. The earth is currently in the part of its long-term orbit cycle where **temperatures would normally be cooling. But they are rising** — and it’s **because** we are forcing them higher with **fossil fuel emissions.**

**4 internal links –**

**1. Land use emissions and system legitimacy.**

**Lee et al 10** – Research Director, Energy, Environment and Resource Governance at Chatham House (Bernice, “The United States and climate change: from process to action,” 2-23, http://www.chathamhouse.org.uk/files/16489\_us0510\_lee\_grubb.pdf)

Despite the crucial importance of national and regional initiatives, the world ultimately cannot solve the climate problem without an **effective** multilateral approach. Ironically, the election of a more multilateralist US president and the events of 2009 culminating with the Copenhagen Accord have only served to increase debate around the form it might take and how inclusive it needs to be. In reality, any major deal is always built upon smaller coalitions of powerful actors. Many proposals have been made for a core of US leadership, bilateral or trilateral leadership by variants of the US–EU–China/Japan/Asia nexus, the G8, the G8+5, the G20, or the Major Economies Forum (MEF). Doubtless, action by most of these groupings is necessary, though it is also of interest that the MEF process did not reach any specific deal until the relationships fostered during the year were put under the pressure of the Copenhagen summit. Ultimately all such efforts face serious limitations if there is no recognition of the need for a truly multilateral framework. This is for three main reasons: scope, competitiveness and political legitimacy. First, carbon emissions are so **widespread geographically** that any subset of countries becomes increasingly **unable** to solve the problem unless others are involved. The dominance of US, EU and Chinese emissions today would be swamped by 2050 if these countries delivered steep reductions while others did not. And none of these are significant contributors to land-use emissions (such as deforestation), which involve a wholly different group of countries. Moreover, models which centre upon innovative solutions by a ‘critical mass’ of the private sector diffusing technology and investment globally without government incentives can founder – carbon capture and storage (CCS), which inevitably involves significant extra costs over and above coal plants without CCS, is a case in point. Second, a partial solution that encompassed the big emitters would not solve the perceived risks of loss of competitiveness in energy-intensive sectors vis-à- vis non-participants (to smaller economies such as Singapore, for example). Third, a deal between the big emitters only is **unlikely** to secure global legitimacy. In no legal or moral system can a solution be imposed by those inflicting the damage, without at some level engaging those that would most suffer the consequences of inadequate action.

**2. Spurs south-south cooperation.**

**IAD 12** the Inter-American Dialogue is the leading US center for policy analysis, exchange, and communication on issues in Western Hemisphere affairs(“Remaking the Relationship The United States and Latin America”, April 2012, http://www.thedialogue.org/PublicationFiles/IAD2012PolicyReportFINAL.pdf)

In addition to economic and financial matters, Brazil and other Latin American nations are assuming enhanced roles on an array of global political, environmental, and security issues . Several for which US and Latin American cooperation could become increasingly important include: ¶ As the world’s lone nuclear-weapons-free region, Latin America has the opportunity to participate more actively in non-proliferation efforts. Although US and Latin American interests do not always converge on non-proliferation questions, they align on some related goals. For example, the main proliferation challenges today are found in developing and unstable parts of the world, as well as in the leakage—or transfer of nuclear materials—to terrorists. In that context, south-south connections are crucial. Brazil could play a pivotal role.¶ Many countries in the region give priority to climate change challenges . This may position them as a voice in international debates on this topic . The importance of the Amazon basin to worldwide climate concerns gives Brazil and five other South American nations a special role to play. Mexico already has assumed a prominent position on climate change and is active in global policy debates. Brazil organized the first-ever global environmental meeting in 1992 and, this year, will host Rio+20 . Mexico hosted the second international meeting on climate change in Cancún in 2010 . The United States is handicapped by its inability to devise a climate change policy. Still, it should support coordination on the presumption of shared interests on a critical policy challenge. ¶ Latin Americans are taking more active leadership on drug policy in the hemisphere and could become increasingly influential in global discussions of drug strategies. Although the United States and Latin America are often at odds on drug policy, they have mutual interests and goals that should allow consultation and collaboration on a new, more effective approach to the problem.

**3. Sustainable technology investment.**

**Edwards 11** – Brown University Research Fellow & co-founder of Intercambio Climatico [Guy, “Climate, energy to dominate US-Latin American relations”, 18 Jul, http://www.trust.org/item/?map=climate-energy-to-dominate-us-latin-american-relations]

Since the former U.S. Assistant Secretary of State for the Western Hemisphere, Arturo Valenzuela, resigned via Twitter last Friday, commentators have been debating who should replace him and whether this change presents an opportunity to alter the Obama administration’s policies in the region.

With the challenges of climate change, clean energy, resource scarcity and green growth set to dominate U.S.-Latin American relations, Valenzuela’s successor should have experience in these areas.

These issues are a priority for the Obama administration and present lucrative opportunities for the U.S. to improve trade and commercial relations with Latin America at a time when the region is a magnet for investment in clean energy.

In Chile, President Barack Obama spoke of the urgency of tackling climate change and embracing a more secure and sustainable energy future in the Americas. The Energy and Climate Partnership of the Americas, which aims to accelerate the deployment of clean energy and advance energy security, is an essential component of hemispheric relations.

Multiple U.S. agencies and departments are carrying out extensive work on climate change. The U.S. Agency for International Development (USAID), which runs the Global Climate Change Initiative, argues that climate change is one of the century’s greatest challenges and will be a diplomatic and development priority.

The U.S. Special Envoy for Climate Change, Todd Stern, says that Latin America is a significant focus of funding with over $60 million spent in 2009-10 on climate-related bilateral assistance in the region. The U.S. military Southern Command co-hosted two events in Colombia and Peru focused on climate change concluding that the issue is a major security concern and as a result could be a powerful vehicle for U.S. military engagement in the region.

This year the Union of South American Nations’ (UNASUR) Defense Council (CDS) inaugurated the new Defense Strategic Studies Center (CEED), which will look at various challenges including the protection of strategic energy and food resources and adapting to climate change.

THE REGION’S RESOURCES

Latin America and the Caribbean boast incredible and highly coveted natural resources including 25 percent of the planet’s arable land, 22 percent of its forest area, 31 percent of its freshwater, 10 percent of its oil, 4.6 percent of its natural gas, 2 percent of coal reserves and 40 percent of its copper and silver reserves.

The International Energy Agency forecasts that in the future world consumers are going to become more dependent on the Americas to satisfy their demand for oil with Brazil, Colombia, the U.S. and Canada set to meet the demand.

Brazil will host the U.N. Conference on Sustainable Development in 2012 with the green economy theme topping the agenda. Peter Hakim, president emeritus of Inter-American Dialogue, argues that while U.S.-Brazilian relations are fraught, both countries need to work harder to improve cooperation.

Climate change, clean energy, resource scarcity and green growth are key potential areas for U.S.-Brazilian relations. The launch of a U.S.-Brazilian Strategic Energy Dialogue, focusing on cooperation on biofuels and renewable energy, among other areas, is a productive start.

Although Latin America and the Caribbean continue to be the largest U.S. export market, the U.S.’s share of the region’s imports and exports has dropped over the last few years. China is now the top destination for the exports of Argentina, Venezuela, Brazil, Chile, Costa Rica, Peru and Uruguay. Latin American exports to China are concentrated in raw materials, which account for nearly 60 percent, while exports to the U.S. are more diversified.

THE RISE OF CHINA

Arturo Valenzuela says this makes Latin Americans better off trading with the U.S. because they can take advantage of greater technology in the value chain. However, crude oil remained the top export to the U.S. for Argentina, Brazil, Colombia, Ecuador, Mexico and Venezuela in the 2007-2009 time period.

The U.S. may assert it has a superior trade model to China, but the U.N.’s economic commission for the region argues there is a perceived lack of strategic vision by the U.S. in Latin America. Although the Energy and Climate Partnership of the Americas is the flagship U.S. initiative in the region and will be a key focus for President Obama at the 2012 Summit of the Americas, it is not yet comparable to past initiatives such as the 1960s-era Alliance for Progress.

This comes at a time when China’s twelfth Five Year Plan emphasizes technological innovation, improving environmental standards and various targets such as reducing energy consumption per unit of GDP by 16 percent. In 2010, China was the top installer of wind turbines and solar thermal systems, suggesting there are possible areas to collaborate between China and Latin America.

The U.S. was the largest investor in Latin America in 2010 with the majority of this investment being channeled into natural resources. But as the United Nations Environment Programme (UNEP) reports, Latin America saw the biggest increase in renewable energy investment among developing regions, presenting U.S. companies with great opportunities south of the border.

The State Department and USAID have announced a new partnership with the Private Finance Advisory Network to accelerate private finance in renewable energy projects in Central America. However, the Energy and Climate Partnership of the Americas, which aims to encourage investment in the deployment of clean energy, is yet to receive notable financial support from the private sector.

ENERGY HOTTEST INVESTMENT

Encouragingly, an American Chambers of Commerce Abroad recent membership poll listed “energy” as the hottest investment sector for members investing in Latin America. Recently, Cannon Power Group, a U.S. wind company, signed a 10-year joint-venture contract with the Spanish company, Gamesa, to harness wind energy in Mexico.

The threats of climate change and growing resource scarcity, combined with the opportunities presented by green growth, provide the impetus for increasing trade and investment in low carbon and high-tech industries.

Although the Office of the U.S. Trade Representative leads U.S. trade policy in the Western hemisphere, the State Department’s diplomats complement this work and Valenzuela’s successor can make a valuable contribution in this area with the relevant expertise.

As climate, clean energy, resource scarcity and green growth begin to define U.S.-Latin American relations, the U.S.’s top diplomat in the region should have the appropriate experience to ensure greater policy coherence among U.S. agencies and effective dialogue with Latin American governments, many of which are trailblazing in these areas.

**4. The plan prevents regional fragmentation.**

**Shifter 13**— President at Inter-American Dialogue (“So Long, Chávez Where Does This Leave Venezuela?”, 3/5, http://www.foreignaffairs.com/articles/139014/michael-shifter/so-long-chavez) EL

Since 1999, however, when the recently deceased Venezuelan President Hugo Chávez came to power, the sense of community in the region has dissipated. Policy divergences among Latin American countries have become sharper; free trade and liberal democracy are no longer popular goals; and Latin America and the United States have, albeit cordially, gone their separate ways. Admittedly, generalizations about Latin America are risky; after all, for every country that has deviated from democratic norms, another has moved toward them. And Chávez was not single-handedly responsible for deflating the hopeful spirit that prevailed two decades ago. But his relentless defiance of Washington and its chief allies -- often accompanied by aggressive, even belligerent, rhetoric -- polarized the region. To be sure, Chávez’s boldness partially helped inspire pride and political self-confidence in the region, in addition to revitalizing the dream of leftist revolution in Latin America. Chávez’s contributions, however, were minimal compared with the positive impact of larger and more important factors, such as the rise of Brazil, the commodity boom, the growing assertiveness of many of the region’s countries, and the acute fiscal and political shortcomings of the United States. Far from unifying Latin America and thereby realizing the vision of Chávez’s hero, nineteenth-century independence leader Simón Bolívar, Chávez contributed to the fragmentation of the hemisphere. His attempts at regional cooperation, such as the socialist Bolivarian Alternative for the Americas (ALBA), appealed to only a handful of like-minded countries. After all, both at home and abroad, Chávez was mainly intent on accumulating power, not fostering cooperation. That is what motivated him to curtail Washington’s influence in Latin America and around the world. To pursue his aims, Chávez not only relied on his endless energy and seductive rhetoric but also a great deal of money. The former president took full advantage of the benefits of being at the helm of one of the world’s largest oil producers. Despite declining oil production and exports stemming from Venezuela’s dismal governance and crumbling institutions, Chávez got lucky during his reign: the price of oil skyrocketed, from just $10 a barrel in 1999 to around $100 today; the peak, in 2008, was $145 per barrel. Unique among Latin American leaders in the scope of his ambitions and resource wealth, Chávez forged security and economic alliances with China, Iran, and Russia. He also became the chief benefactor to a host of regional governments, which he supplied with subsidized oil under highly favorable financing terms. In 2005, Chávez made this patronage more official by establishing the Petrocaribe oil alliance, which now includes some 18 countries throughout Central America and the Caribbean. Many member states have profited from reselling part of their share of subsidized Venezuelan oil. In Haiti, for example, the practice accounts for roughly $400 million a year, or four percent of GDP. Precise figures are hard to come by, but there is little question that a number of Petrocaribe countries depend on Venezuelan largess. In ALBA countries, shared political ideology has deepened economic reliance. Cuba, for example, imports an estimated 100,000 barrels of Venezuelan oil every day at preferential prices. The annual subsidy is approximately $3 billion to $4 billion a year, a substantial part of Cuba’s overall economy. Under Chávez’s rule, Venezuela essentially supplanted the Soviet Union as Cuba’s lifeboat. Similarly, Nicaragua enjoys roughly $500 million a year in subsidies from Venezuela. Whether even a like-minded successor government could maintain such commitments is a major worry for dependent governments, especially in light of mounting economic pressures in Venezuela. Chávez left his imprint on recently founded regional organizations, too, all of which exclude the United States and Canada. Chief among them are the Union of South American Nations, created in 2008, and the Community of Latin American and Caribbean States, which was launched in 2011 and also includes Mexico and Central American countries. Although the organizations were designed to reflect Latin America’s unity, independence, and reorientation away from the United States, there is considerable disagreement among members on key issues of economic and trade policy, democracy, and U.S. relations. This raises doubts about how meaningful a role such institutions can play in the region.

**Venezuela’s key – Chavez’s death opens up a unique opportunity.**

**Edwards and Mage 13** (Guy, research fellow at Brown University's centre for environmental studies and is co-founder of Latin America's first multilingual website on climate change, Intercambio Climático. Susanna Mage is a recent graduate from Brown University and is currently interning at Intercambio Climático, Death of Hugo Chávez gives Venezuela a choice on climate change: Will the oil-rich country become a key engineer in a new global climate deal, or will it sabotage progress?” http://www.theguardian.com/environment/blog/2013/mar/07/death-hugo-chavez-venezuela-climate-change)//DR. H

Regardless of one's position on el Comandante Hugo Chávez, **the death of the** Venezuelan **president opens the door for** a policy debate on a critical issue for Venezuela and the world's security: **climate change. As the 2015 deadline to create a new global treaty on climate change approaches, the question** for the oil-rich country **looms: will Venezuela be a key architect of a**n ambitious and equitable **deal, or will it sabotage progress?**

The International Energy Agency reports that no more than one-third of proven fossil fuel reserves can be consumed prior to 2050 if we are to limit warming to 2C. Writer Bill McKibben pointed out that **if Venezuela were to exploit its** heavy crude **oil** and Canada's tar sands are fully tapped, **this would mean "game over" for the climate** as both reserves would fill up the remaining "atmospheric space" or "carbon budget."

President Chávez oversaw a schizophrenic posture on climate change. He insisted that climate change is an existential crisis caused by capitalism, while simultaneously pushing for the development of the Orinoco's heavy crude. Under Chávez, Venezuela's oil dependency increased and it now obtains 94% of export earnings and more than 50% of its federal budget from oil revenues.

Due to high oil prices and Chávez's leadership, poverty and inequality have dropped. Chávez's administration appeared committed to increase oil production to continue funding its social programmes, often through long-term agreements with China to supply oil. Venezuela's "commodity backed loans" from China, estimated at more than $35bn, require it to pay back China in oil.

**The key to solving climate change is shifting all countries to low carbon economies.** At a United Nations negotiation in Bonn, Germany, in 2009, however, a Venezuelan official said that a shift to a low-carbon economy would adversely impact developing country oil exporters, suggesting that a robust climate change treaty would conflict with Venezuela's development model.

At the climate negotiations, Venezuela has clung to arguments that developing countries have the right to emit to ensure their development. Undermining Venezuela's position at the negotiations has been their often vociferous rhetoric, while exhibiting a lack of action at home. Meanwhile, **a number of poorer countries have shown a willingness to take on** far more ambitious **emissions cuts.**

Venezuela releases only 0.56% of the global total of greenhouse gas emissions, but its per capita emissions (at approximately six tonnes per person) are much higher than the world's poorest nations. **Venezuela's current emissions**, however, **pale in significance compared to what is at stake if it does fully develop its oil reserves.** Former UK special representative for climate change John Ashton has said that a country's ability to contribute to global efforts to tackle climate change depends on the credibility of its domestic policies.

**Venezuela**'s national development plan (2013-19) includes measures to limit emissions, which include the oil industry and **would create a world movement to confront climate change.** The Venezuelan government has invested $500m in windfarms and distributed 155m energy-saving lightbulbs.

**However**, critics suggest that **Venezuela has little** interest and **commitment** in tackling climate change, **and** that the plan's **objectives are unlikely to be implemented**. According to ClimateScope, which ranks a country's ability to attract capital for low-carbon energy sources and efforts to build a green economy, Venezuela is currently 24th out of 26 countries.

In the UN climate negotiations, Venezuela is part of the Bolivarian Alliance for the Peoples of Our Americas (ALBA) with Ecuador, Bolivia, Cuba and Nicaragua, which is praised by many citizens' groups for fighting for climate justice. Venezuela is also a member of the Like-Minded group alongside China, India, Saudi Arabia and its ALBA partners.

**Venezuela will** understandably **not stop oil production** at the expense of its social programmes, nor its loan repayments to China. Partial or full compensation for loss of revenue from keeping the oil in the ground is unlikely. **Venezuela could** consider backing Ecuador's fascinating plan to be proposed at the next Opec meeting to **create a** 3-5% 'Daly-Correa' **tax on** every barrel of **oil exported to rich countries** to raid billions **for poor countries to adapt** to climate change.

**With the death of its great leader, Venezuela has a choice** on climate change. **It can rebrand itself as a proactive actor** at home by working towards a low-carbon economy while joining with its ambitious neighbors at the UN climate negotiations. **With the largest known oil reserves,** Venezuela's position on climate change is pivotal**.** En route to 2015, it remains to be seen whether it will be regarded as an engineer of an ambitious and equitable global treaty, or as a saboteur.

# 1ac – investment treaty competitiveness

**CONTENTION 2 IS INVESTMENT TREATY COMPETITIVENESS –**

**Scenario 1 is Dispute Resolution –**

**The international investment regime is approaching a tipping point – remaking the dispute mediation is key.**

**Welsh and Schneider 13**—Nancy Welsh is the William Trickett Faculty Scholar and Professor of Law at Penn State Law and Andrea Kupfer Schneider is a Professor Of Law at Marquette University Law School (“The Thoughtful Integration of Mediation into Bilateral Investment Treaty Arbitration”, Spring) EL

Whether states are embracing mediation by developing their¶ own corps of quasi-mediators or bringing investment arbitration to a¶ point of crisis by withdrawing from BITs, the stage is set for the integration¶ of mediation into the investment treaty context.66 The International¶ Bar Association’s recent approval of rules to facilitate the¶ use of investor-state mediation offers substantial evidence that we¶ are reaching the “tipping point.”67 These developments also suggest¶ the need for discipline and precision in defining the model or models¶ of mediation that will be used, the breadth of any compulsory elements,¶ mechanisms for providing transparency and ensuring quality,¶ and the identity and role of the mediators. Such discipline and precision¶ will come from adherence to the principles of dispute system design¶ and the research and theories of procedural justice.¶ III. DISPUTE SYSTEM DESIGN AND PROCEDURAL JUSTICE¶ A. Dispute System Design¶ No dispute or dispute resolution process exists in a vacuum.¶ Rather, every “conflict, issue, dispute, or case submitted to any institution¶ for managing conflict (including one labeled ADR [alternative¶ dispute resolution]) exists in the context of a system of rules,¶ processes, steps, and forums. In the field of ADR, this is called dispute¶ system design.”68 Dispute system design is based on an amalgam¶ of conflict theory, theories of organizational development, and an¶ understanding of both “traditional” and “alternative” dispute resolution.¶ It provides guidance regarding the process to be used in structuring¶ a system, determining the component parts of the system, and¶ measuring the system’s effectiveness.¶ Based on field experience resolving disputes in the coal industry,¶ William Ury, Jeanne Brett and Stephen Goldberg first wrote about¶ dispute system design in their 1988 book, Getting Disputes Resolved.¶ 69 They found that disputes in the workplace often are resolved¶ through the use of power and rights, rather than interests.¶ When organizations focus on achieving power-based or rights-based¶ solutions, they miss the opportunity to find better solutions, better¶ engage their stakeholders, and save money.70 The second generation¶ of dispute system design, captured in Cathy Costantino and¶ Christina Sickles-Merchant’s book, Designing Conflict Management¶ Systems,71 discusses how organizations create ADR methods most responsive¶ to their needs in advance of the ripening of conflict.72 In¶ thinking about the array of choices available to organizations, they¶ outline six categories of ADR processes: (1) preventative (e.g., dispute¶ resolution clauses, partnering, consensus building), (2) negotiated; (3)¶ facilitated (e.g., mediation, conciliation, institutional ombuds); (4)¶ fact-finding (e.g., neutral experts, masters); (5) advisory (e.g., early¶ neutral evaluation, non-binding arbitration);73 or (6) imposed (e.g.,¶ binding arbitration).74¶ Applying this framework to investor-state disputes reveals that¶ the currently-dominant system for resolving investor-state disputes¶ relies explicitly on only one method in one category: binding arbitration,¶ in the imposed category. As noted earlier, a few states have begun¶ to experiment with mechanisms that fit into the preventative¶ category and that are available to an investor even before it begins to¶ frame its concern as a “dispute,”75 or has to turn to arbitration.¶ Now in the “next generation” phase of dispute system design,¶ commentators agree that the best systems are characterized by the¶ following:76 (1) multiple process options for parties,77 including¶ rights-based and interest-based processes; (2) ability for parties to**¶** “loop back” and “loop forward” among these options; (3) substantial¶ stakeholder involvement in the system’s design (with significant concern¶ about the perceived unfairness of dispute system design systems¶ designed by one disputing party and imposed upon the other¶ disputing parties78); (4) participation that is voluntary, confidential,**¶** and assisted by impartial third party neutrals; (5) system transparency**¶** and accountability;79 and (6) education and training of stakeholders**¶** on the use of available process options.¶ Dispute system design scholarship originally posited that the initial¶ focus in resolving disputes should be on interests, rather than¶ rights or power.80 The current use of arbitration represents a movement¶ from power (when some states bullied each other or bullied investors)¶ to rights (since states and investors are treated as equal¶ players, both bound by the terms of treaties and contracts). Mediation,¶ if understood as a presumptively interest-based technique,¶ would represent the next movement, from rights to interests.¶ But the more recent evolution of dispute system design no longer¶ assumes that attempts at resolution must begin with an interestbased¶ process. Instead, the best dispute systems simply include an¶ interest-based process, and parties may begin with that process or¶ another and loop forward and backward among the available¶ processes. Meanwhile, as will be discussed infra, today’s mediation¶ process is no longer assumed to be exclusively interest-based; rights¶ and power almost inevitably play a role.81 So, integrating mediation¶ into the investment treaty context would provide investors and states¶ with the opportunity to resolve their disputes through a process that¶ provides for explicit consideration of their interests, consistent with¶ dispute system design principles, without eliminating consideration¶ of rights.¶ Throughout the years, dispute system design literature also has¶ consistently emphasized stakeholders’ role in designing the dispute¶ system and the need to be able to demonstrate the system’s positive¶ impacts upon efficiency, effectiveness, stakeholders’ satisfaction, and¶ justice perceptions.82 Indeed, research suggests that stakeholders’**¶** engagement in decision-making regarding the design of a dispute system¶ (including the processes that are included, the elements that are¶ compulsory, and mechanisms to assure both informed stakeholder¶ participation and system accountability), as well as their role in selecting**¶** the particular process or processes they will use to resolve¶ their dispute and their subsequent experience with those processes,¶ all impact their perceptions of the procedural (and substantive) justice**¶** offered by the system and individual processes. This Article will¶ next turn, therefore, to a discussion of this research and theories of¶ procedural justice.

**Reforming the BIT regime to empower host states is key.**

**Bhusan and Nagaraj 12**-- fifth year students pursuing BA LLB (Hons.) from NALSAR University of Law, Hyderabad (S. and Puneeth, 1/6, “Need to align bilateral investment treaty regime with global reality”, http://www.thehindu.com/business/companies/need-to-align-bilateral-investment-treaty-regime-with-global-reality/article4276916.ece) EL

The White Industries award against India whch granted close to Australian $10 million as damages for delays by Indian courts in the enforcement of an earlier arbitration award has brought India’s Bilateral Investment Treaty (BIT) regime into focus. White Industries, an Australian company, which had undertaken to supply equipment and develop the Pipawar Mine for Coal India Ltd. (CIL) initiated arbitration against CIL over some disputed payments in 1999. Though White Industries won the case in 2002, the award was not enforced even by 2010. Hence, it initiated an investment claim against the Government of India under the Australia-India BIT. BITs are international treaties between two countries which seek to create a stable investment environment by giving investors rights against States’ abuse of sovereign powers. Since the White Industries case, Vodafone has issued a notice under the India-Netherlands BIT against India for its proposed retrospective amendment to the tax code. This is not an isolated instance as other companies such as the Russian conglomerate Sistema, Norwegian company Telenor, and the British hedge fund Children’s Investment Fund, have reportedly initiated arbitration proceedings against India for various regulatory actions.¶ GLOBAL BACKLASH¶ In the light of the claims against the government, the Department for Industrial Policy and Promotion has called for a review of all 82 BITs signed by India. The review is only symptomatic of the larger global backlash against Investment Treaty Arbitration (ITA), that is, arbitration arising from BITs and other investment agreements. Australia, for example, has stopped signing BITs, which have arbitration provisions (ironically, the White Industries award was granted in favour of an Australian investor). South Africa has decided to review its existing BITs with “a view to terminating and possible renegotiation on the basis of a new Model BIT”. Further, Venezuela, along with Ecuador and Bolivia, before it, have denounced the ICSID Convention (which establishes the International Centre for the Settlement of Investor Disputes to arbitrate investor state disputes) to stem the investment arbitration cases against it.¶ Despite threat of new arbitration claims, India is attempting to sign BITs with the United States, Canada, and a host of other nations. This dichotomy is illustrative of India’s position as an economic power. India is not only an attractive destination for foreign investment but Indian investors have substantive investments abroad, too. Companies such as Tata Steel, Bharti Airtel and ONGC Videsh have interests abroad through acquisition of mines and oil fields.¶ The principal objective of BITs is to provide a stable investment climate, inter alia, by protecting investments from the arbitrary actions of a foreign government. While BITs may expose India to claims from foreign investors, they also guarantee protection of Indian investors’ investments abroad. This might explain why the States with which India has BITs are also the ones which attract a large proportion of Indian investment.¶ Corporate Europe Observatory, an influential European think tank, published a report titled ‘Profiting from injustice’ on November 27 giving voice to some widely held apprehensions regarding ITA. Criticisms include lack of transparency in proceedings despite involvement of taxpayer money; the need for judicial independence as arbitrators and counsel are drawn from a small ‘club’ belonging predominantly to capital exporting nations from Europe and the U.S.; and that it reduces States’ regulatory space. These criticisms are based on the idea that ITA is a predominantly pro-investor and anti-developing State mechanism which seek to profit from crisis situations. These criticisms are not entirely unfounded, given the experiences of Argentina. Having gone through a financial crisis at the turn of the millennium, it faced a flurry of claims before the ICSID. Indeed, Argentina has around 25 cases still pending before the ICSID. However, the Argentine example is also an instance of balancing State and investor claims. Many of the adverse awards against Argentina have since been annulled by review panels under the ICSID. Further, States are not completely helpless in such cases as they can raise counter-claims against investors and even win damages in the process. There have also been a number of claims against developed nations by investors from developing nations such as Mafezzini v Spain, where an Argentine national initiated a claim against Spain. In fact, States can even initiate claims against investors. Though this is rare, it is not entirely unfathomable-evident from three reported State-initiated cases, namely, Gabon v Société Serete (Government of Gabon against a French investor), East Kalimantan v PT Kaltim Prima Coal (provincial government in Indonesia against an Anglo-Australian joint venture) and Tanseco v IPTL (Tanzania’s state-owned electricity supply company proceeded against a Malayisa-Tanzania joint venture). There is a movement in international law to impose greater obligations upon corporations. State-initiated claims can fuel this movement, and herald a new generation of claims in ITA. BITs are necessary, as doing away with them will mean a return to the ugly days of gunboat diplomacy, diplomatic protection and politicisation of disputes.¶ NEED FOR REFORM¶ So, a case can be made out to pursue an aggressive BIT policy for a country like India which has as much to gain from investment protection as any other State party to BITs. But the need to evolve State empowering measures must be noted. The UNCTAD 2012 World Investment Report also confirms the need for reform in the existing BIT regime by expanding the role of the State. India has done so by allowing for State-initiated arbitration in its Model BIT. Though India is in a position to push for major BIT reform, the lacunae in India’s legal regime may defeat such efforts. The Indian Arbitration and Conciliation Act, 1996, cannot be applied to investment awards, which would mean that an investment award cannot be enforced in India. This inapplicability results from strictures in the Act that requires arbitration agreements to comply with the Indian Contract Act, 1872. Since ITA finds its roots in international law, more often than not, investment awards will be incompatible with Contract law. Further, India’s abstinence from the ICSID Convention will result in difficulty for a hypothetical Indian investor to enforce an investment award in its favour. The changing dynamic of the global economy has led to a transformation in the role of developing countries as both capital importing and exporting States. There is an urgent need to redefine the global BIT regime to reflect this changing paradigm rather than rejecting it altogether, an exercise that India’s BIT policy seems to be following to fruition.

**US is falling behind globally in negotiating BITs—leadership is key to developing a multilateral investment regime.**

**Broadbent and Pancake 12**—Meredith Broadbent is a senior adviser at CSIS, where she holds the William M. Scholl Chair in International Business and Robbins Pancake a senior associate for the William M. Scholl Chair in International Business (“Reinvigorating the U.S. Bilateral Investment Treaty Program”, June, http://csis.org/files/publication/120629\_Broadbent\_ReinvigoratingBIT\_Web.pdf) EL

Background: Global Trade Context¶ The importance of the U.S. BIT program must be viewed in the context of investment as an issue¶ of international trade and the way it has been addressed—or not—in multilateral trade negotiations¶ in the General Agreement on Trade and Tariffs (GATT) and World Trade Organization¶ (WTO) since World War II. In reality, the consensus since 1947 has been that international trade¶ in goods should be addressed by the GATT/WTO, but no such international consensus has existed¶for investment. The first time that investment was incorporated at all as a trade issue in those¶ negotiations was during the Uruguay Round negotiations (the eighth such negotiating round)¶ concluded in 1994 in the WTO agreement on Trade-Related Investment Measures (TRIMs). The¶ TRIMs Code was a first, and partial, step at incorporating BIT-type provisions multilaterally.¶ In the absence of such multilateral treaty protections, the bilateral investment treaty was¶ created, beginning in 1959 with the BIT between Germany and Pakistan, as the primary means¶ for promoting, regulating, and protecting FDI flows.9 For the investor and developed countries¶ generally, the benefit of the BIT is to protect overseas investment and increase the opportunities¶of further investments. For developing countries, the BIT is an economic-development tool that¶promotes inward FDI and confirms to foreign investors that the country hosting investment intends¶to respect foreign property rights. From a legal perspective, the purpose of the BIT has been¶ to reestablish principles of international law regarding the protection of private-property rights,¶ particularly with regard to expropriations and basic minimum standards of treatment, such as fair¶ and equitable treatment. These principles had been weakened after World War II by decolonization,¶ the rise of North-South political tensions, and the emergence of a group of Soviet socialist¶ states and their allies that had a different view of private-property rights. Many developing countries¶ turned inward and restricted foreign investment, instead establishing import substitution¶ policies that included high tariffs on imported goods, import licensing regimes, and national¶ programs to stimulate local production of needed goods and services.¶ However, the steady worldwide increase of BITs between 1960 and 1990, and the explosive¶ growth of BITs through the 1990s, has still not led to a successful multilateral approach. The most¶ notable attempt was the proposed Multilateral Agreement on Investment (MAI), negotiated between¶ 1995 and 1998 at the Organization for Economic Cooperation and Development (OECD).10¶ The purpose of the MAI was to enhance the WTO TRIMs provisions to provide greater security¶ to investors and to preserve international arbitration for settling disputes between investors and¶ states. However, some developing countries (not OECD members) opposed the negotiations, believing¶ multinational corporate investors would override their sovereignty and culture. And some¶ international nongovernmental organizations (NGOs) also opposed the negotiations, complaining¶ that local labor and environmental protections would be undermined.11 Ultimately, this opposition¶ led to the withdrawals of France, Canada, and Australia, and the suspension of negotiations in late¶ 1998.12¶ Subsequently, when efforts to reopen TRIMs negotiations as part of the WTO Doha Round¶ also stalled, the bilateral BIT process provided the only way forward. This is particularly true today¶ in the United States, in the absence of any presidential trade-negotiating authority to proceed with¶ new free trade agreements.¶ Background: The U.S. BIT Program¶ The United States initiated a BIT program in 1981 and has negotiated agreements with 47 countries,¶ most of which were concluded in the 1990s. In addition, with the exception of U.S. free trade¶ agreements with Bahrain, Israel, and Jordan, U.S. free trade agreements (covering 18 additional¶ countries)13 include investment chapters that mirror the provisions of the BITs.¶ However, the United States has lagged behind the rest of the world in negotiating BITs: the¶ first European BITs were signed in 1959, more than 20 years before any in the United States; since¶ 1990, the number of BITs has exploded, with the rest of the world now having more than 2,600.14¶ In contrast, the United States has 47 BITs, and in the last 10 years the United States has negotiated¶only two—with Uruguay and Rwanda. By comparison, Germany, China, Switzerland, the United¶ Kingdom, and Egypt have each signed more than 100 BITs, and Italy, France, the Netherlands, Belgium,¶ Luxembourg, and Korea have all signed more than 80 BITs.¶ In general, modern U.S. BITs provide seven basic benefits that promote capital investment:¶ 1. Nondiscriminatory national treatment and most-favored nation treatment for the full life cycle¶ of the investment;¶ 2. Treatment in accordance with customary international law, including fair and equitable treatment¶ and full security and protection;¶ 3. Limits on expropriation and obligation to provide prompt, adequate, and effective compensation;¶ 4. Transfer of funds in and out of the country using market rate of exchange;¶ 5. Restrictions on performance requirements such as local content and technology transfer;¶ 6. Choice of top management, regardless of nationality; and¶ 7. Binding international dispute arbitration between investors and states.¶

**Foreign Direct investment, or FDI, is key to the global economy.**

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Abstract¶ We test the effect of foreign direct investment (FDI) on economic growth in a¶ cross-country regression framework, utilizing data on FDI ﬂows from industrial countries to¶ 69 developing countries over the last two decades. Our results suggest that FDI is an¶important vehicle for the transfer of technology, contributing relatively more to growth than¶ domestic investment. However, the higher productivity of FDI holds only when the host¶ country has a minimum threshold stock of human capital. Thus, FDI contributes to¶ economic growth only when a sufﬁcient absorptive capability of the advanced technologies¶ is available in the host economy.  1998 Elsevier Science B.V.¶ 1. Introduction¶ Technology diffusion plays a central role in the process of economic¶2¶development. In contrast to the traditional growth framework, where technological¶ change was left as an unexplained residual, the recent growth literature has¶ highlighted the dependence of growth rates on the state of domestic technology¶ relative to that of the rest of the world. Thus, growth rates in developing countries¶are, in part, explained by a ‘catch-up’ process in the level of technology. In a¶ typical model of technology diffusion, the rate of economic growth of a backward¶country depends on the extent of adoption and implementation of new technologies that are already in use in leading countries.¶ Technology diffusion can take place through a variety of channels that involve¶ the transmission of ideas and new technologies. Imports of high-technology¶ products, adoption of foreign technology and acquisition of human capital through¶ various means are certainly important conduits for the international diffusion of¶ 3¶ technology. Besides these channels, foreign direct investment by multinational¶ corporations (MNCs) is considered to be a major channel for the access to¶ advanced technologies by developing countries. MNCs are among the most¶ technologically advanced ﬁrms, accounting for a substantial part of the world’s¶ research and development (R and D) investment. Some recent work on economic¶ growth has highlighted the role of foreign direct investment in the technological¶ progress of developing countries. Findlay (1978) postulates that foreign direct¶investment increases the rate of technical progress in the host country through a¶‘contagion’ effect from the more advanced technology, management practices, etc.¶ used by the foreign ﬁrms. Wang (1990) incorporates this idea into a model more in¶ line with the neoclassical growth framework, by assuming that the increase in¶ ‘knowledge’ applied to production is determined as a function of foreign direct¶ investment (FDI).¶ The purpose of this paper is to examine empirically the role of FDI in the¶ process of technology diffusion and economic growth in developing countries. We¶ motivate the empirical work by a model of endogenous growth, in which the rate¶ of technological progress is the main determinant of the long-term growth rate of¶ income. Technological progress takes place through a process of ‘capital deepening’ in the form of the introduction of new varieties of capital goods. MNCs¶ possess more advanced ‘knowledge’, which allows them to introduce new capital¶ goods at lower cost. However, the application of this more advanced technologies¶ also requires the presence of a sufﬁcient level of human capital in the host¶ economy. The stock of human capital in the host country, therefore, limits the¶ absorptive capability of a developing country, as in Nelson and Phelps (1966), and¶ Benhabib and Spiegel (1994). Hence, the model highlights the roles of both the¶ introduction of more advanced technology and the requirement of absorptive¶ capability in the host country as determinants of economic growth, and suggests¶ the empirical investigation of the complementarity between FDI and human capital¶ in the process of productivity growth.¶ We test the effect of FDI on economic growth in a framework of cross-country¶ regressions utilizing data on FDI ﬂows from industrial countries to 69 developing¶ 5¶ countries over the last two decades. Our results suggest that FDI is in fact an¶ important vehicle for the transfer of technology, contributing to growth in larger¶ measure than domestic investment. Moreover, we ﬁnd that there is a strong¶ complementary effect between FDI and human capital, that is, the contribution of¶ FDI to economic growth is enhanced by its interaction with the level of human¶ capital in the host country. However, our empirical results imply that FDI is more¶ productive than domestic investment only when the host country has a minimum¶ threshold stock of human capital. The results are robust to a number of alternative¶ speciﬁcations, which control for the variables usually identiﬁed as the main¶ determinants of economic growth in cross-country regressions. This sensitivity¶ analysis along the lines of Levine and Renelt (1992) shows a robust relationship¶ between economic growth, FDI and human capital.¶ We also investigate the effect of FDI on domestic investment, namely, whether¶ there is evidence that the inﬂow of foreign capital ‘crowds out’ domestic¶ investment. In principle, this effect could have either sign: by competing in¶ product and ﬁnancial markets MNCs may displace domestic ﬁrms; conversely,¶ FDI may support the expansion of domestic ﬁrms by complementarity in¶ production or by increasing productivity through the spillover of advanced¶ 6¶ technology. Our results are supportive of a crowding-in effect, that is, a one-dollar¶increase in the net inﬂow of FDI is associated with an increase in total investment¶in the host economy of more than one dollar, but do not appear to be very robust.¶ Thus, it appears that the main channel through which FDI contributes to economic¶ growth is by stimulating technological progress, rather than by increasing total¶ capital accumulation in the host economy.¶ The paper is divided into four sections. Section 2 presents a simple model to¶ motivate our empirical investigation; Section 3 provides an account of the data¶ used in the empirical analysis; Section 4 describes the regression results, and¶ Section 5 presents some concluding remarks.

**Scenario 2 is Credibility –Investment is collapsing now—Venezuela is financing regional alternatives.**

**ADR Resources 07**—private institution dedicated solely to providing specialized information on international ADR, and to promoting a better understanding and use of alternative dispute resolution mechanisms to resolve civil and business disputes (“No more arbitration. The ICSID faces a credibility crisis”, 5/14, http://adrresources.com/adr-news/457/no-arbitration-icsid-faces-credibility-crisis) EL

\*Bolivia’s not in OPEC. \*Venz creating alts to BITs with other countries.

Argentina has long been fed-up with the Word Bank, but it has not yet withdrawn from the Institution or its International Centre for Settlement of Investment Disputes, also known as the ICSID, itself the result of the Washington Convention, of March 18th, on the Settlement of Investment Disputes between States and Nationals of Other States, which the reader may consult in the accompanying documentation. Bolivia, however, has announced its withdrawal from this institution, and so has Venezuela. In fact, these countries are orchestrating an international movement against the ICSID, and the ICSID is so far not responding to what appears to be a domino effect, which should worry the World Bank.¶ ¶ Essentially, the World Bank does what any bank does: it lends money. However, the sums of money requested of this institution allow it to impose political and macroeconomic reforms on borrowing countries. Actually, not even large financing explains the World Bank’s extraordinary power but, rather, the precarious conditions under which financing is requested, oftentimes when countries face extraordinary social, political and economic turmoil and hardship. Loans alleviate extreme circumstances but, in the long run, chain countries to the World Bank’s demands for structural reform, or so it is believed by countries leaving or contemplating leaving the World Bank.¶ ¶ Many bilateral investment treaties (BIT’s) –the vast majority, in fact—incorporate a reference to the ICSID as the institution investors can turn to, to resolve investor/state disputes through arbitration. The reference to the ICSID is meant to protect investors. Let us remember that many BIT’s have “for the protection of investments” as a part of their official title.¶ ¶ The protection of investors through BIT’s requires independent, impartial dispute resolution procedures, since investors rarely wish to litigate in open ordinary courts of a country where the public administration is a defendant. It actually does not matter that a country’s constitution establishes a clear separation of powers between the executive, the legislative and the judiciary branches if investors do not trust the independence of the judiciary of the country where they plan to invest. As a matter of fact, the World Bank’s ICSID intends to be a cure to a state’s perceived lack of judicial independence. We dare go further. Many states agree to incorporate ICSID arbitration to attract investment because they know their legal systems have a credibility problem; they know that without arbitration, large investment ventures would be none or insufficient. We are not talking about small companies seeking opportunities abroad, a niche. We are really talking about huge, sophisticated multinationals capable of managing large billion-dollar infrastructure and natural resource projects.¶ ¶ ICSID’s statistics are the weapon some states use as arguments to withdraw from the World Bank or the Washington Convention. States withdrawing, or contemplating withdrawal, believe that the ICSID’s primary goal is to make sure investors get their money. Worse, on occasions, some states believe that “the system” perpetuates “extortion” because they believe that the Bank is not out there to protect investment, but investors.¶ ¶ Certainly, most arbitrations are not initiated by states, but by investors. Statistics are very clear on this fact. Additionally, the states which have begun this –let us call it “rebellion”—argue that most cases filed with the ICSID are filed by investors against developing countries, rarely against G-8 countries.¶ ¶ The secrecy/confidentiality of ICSID proceedings is criticized. Administrative and arbitrator fees are criticized. Some developing countries criticize that investors may bring an action before the ICSID without having begun to invest, that is, that they are allowed to arbitrate for compensation on unfinished projects when changing political and socio-economic circumstances impact on expected returns on investment, as if investors had to be guaranteed a sort of a “time-freeze” on contractual conditions, provided it is to their advantage.¶ ¶ Also, some countries argue that submitting the settlement of disputes to the ICSID is unconstitutional, on grounds that no constitution cedes sovereignty to a foreign institution when the interests of the state as a contracting party are at stake. These countries believe that disputes should be settled in their own courts of law. Fallacious indeed, as detractors of the ICSID on these grounds exercised a sovereign choice to adhere to and to ratify the Washington Convention. Fallacious or not, this is how some states feel.¶ ¶ No “mea culpa” is heard from states leaving, or contemplating leaving, not just the ICSID, but the World Bank itself. It is as if the governments which entered into these international agreements had been foreign, illegitimate, anti-democratic, and corrupt. Abandoning the World Bank and reneging the Washington Convention is hailed as the only means to regain sovereignty, control, and dignity. Social and economic revolution has become the path through which to regain core values and independence. We must be mindful, however, that in cases such as Bolivia and Venezuela, the path to their very own brand of revolution is legitimate as both presidents in these two countries were democratically elected. They have every right to look inward and to abandon international institutions they once joined.¶ ¶ It would not be too far-fetched to conclude that a growing number of states believe that large-scale investment on infrastructures and natural resources will come with or without the World Bank or the ICSID, although it appears to be a dangerous premise yet to be time-tested. To cure the uncertainty of withdrawal, the path chosen is added uncertainty in the form of regional institutions similar to the World Bank.¶ ¶ Given the enormity of Venezuela’s natural resources –principally oil—this country has seen fit to lead alternative regional financing through a network of “Pan-American Bolivarian” institutions yet to be established, their efficiency yet to be tested. The long-term consequences or wisdom of this course of action can’t probably be envisioned even by Venezuela’s President, whose legitimate mandate is not necessarily eternal as he may one day lose as democratically as he won. President Hugo Chavez may very well not see his project through. In fact, he may very well see it dismantled. Additionally, Venezuela’s new-found partners are led by democratically elected presidents whose mandates have to be renewed from time to time with the exception of Cuba, of course.¶ ¶ If Venezuela manages to lead viable regional financing alternatives, will the country itself overcome the “syndrome” of demanding a political quid-pro-quo in exchange for financing, as it blames the World Bank of doing? Some countries entering new regional institutions will be recipients of funds more than donors, and recipients pay: one way or the other, borrowers have to pay. However, “regional servitude” may be more palatable than “international servitude”. Time will tell.¶ ¶ Before this scenario, the World Bank is silent, or so it seems. Naturally, states are free to join or withdraw, but there is a crisis which appears unmanaged. Little, if anything, can be done if a state or a group of states feel aggrieved in their dignity and sovereignty by the World Bank itself. Pinpointing “what happened” may prove impossible due to the sheer size and complexity of the World Bank as a major international institution.¶ ¶ Regarding the ICSID, the World Bank can and should address criticism no matter how fallacious; if not, a domino effect may result in a myriad of regional institutions established principally to spite the World Bank. While some countries may think “too little, too late”, the way the ICSID works is perceived as a problem but, at least, they are telling the World Bank what the problems are.¶ ¶ Transparency¶ Arbitral proceedings have a clear public and private interest. It goes without saying that we do not question transparency, but the ICSID may want to address how transparency is perceived. Perhaps the record should be 100% public, as defined by Member States, not the ICSID, which is but a case administrator.¶ ¶ Costs¶ Defending billion-dollar claims with underlying political and social overtones and consequences is complex and not cheap. Nothing can be done about the fees attorneys charge states to represent their interests. The ICSID can and should do something about its fees and, above all, about arbitrator fees. Perhaps a pool of funds can be established to finance proceedings subject to final allocation by arbitrators. Perhaps, the States whose investors demand arbitration the most should foot a proportionate share of the pool destined to cover arbitration fees. No doubt, this course of action would take care of this aspect of the criticism towards the ICSID.¶ ¶ Case law¶ Argentina faces financial ruin. If Argentina lost all cases presently pending before the ICSID, it would be broke for millennia. Argentina has often claimed that facing a panel is facing a brand new uncertainty because decisions are independent and not used as bases for other similar cases. A double-edge sword no doubt, but this is a bitter criticism coming from Argentina.¶ ¶ When it comes to case law, Argentina probably looks for a single case, in which the award says that as a sovereign country it has the authority and legitimacy to amend contracts unilaterally when it feels social and economic conditions warrant such amendments. In essence, Argentina claims the right of “subject to change without notice”.¶ ¶ Yes, we are talking about arbitration but, really, at its core and origins, arbitration was designed to resolve B2B disputes, employment disputes, etc. Disputes filed before the ICSID are not just any kind of dispute and it knows it. Maybe a measure of case law should be allowed to be established.¶ ¶ Representation¶ All Member States have a say, but countries withdrawing don’t think so. Worse, these countries feel that the ICSID is an institution designed to serve the interests of investors. If the ICSID handles disputes filed principally against developing countries, it stands to reason that developing countries must be taken into consideration. “They are taken into consideration” the World Bank and the ICSID may claim. Time to do more then, because some states do not think so.¶ ¶ There is discontentment with the ICSID and the World Bank, and it is causing states to dream-up regional alternatives whose future itself is uncertain and, as such, potentially destabilizing to the world economy. The time may not have come for reform and change, but the time to listen when it comes to arbitration has indeed come. Or gone?

**Venezuela currently rejects the international investment system—engagement is key.**

**Ripinsky 12**-- legal affairs officer at the United Nations Conference on Trade and Development (UNCTAD) (“Venezuela’s Withdrawal From ICSID: What it Does and Does Not Achieve”, 4/13, Sergey, http://www.iisd.org/itn/2012/04/13/venezuelas-withdrawal-from-icsid-what-it-does-and-does-not-achieve/) EL

In January 2012, the Bolivarian Republic of Venezuela denounced the ICSID Convention,[1] becoming the third country – after Bolivia and Ecuador – to do so. The exit from the global forum for the settlement of investment disputes signals these countries’ apparent loss of faith in the system and raises questions about the Convention’s fitness for purpose. This article looks at the possible reasons which prompted Venezuela to take this step, the impact it is likely to have and some broader issues arising from it.¶ Policy context¶ The Foreign Ministry’s 2012 press-release points out that the country acceded to the Convention in 1993 by “a decision of a provisional and weak government, devoid of popular legitimacy, and under the pressure of transnational economic sectors involved in the dismantling of Venezuela’s national sovereignty.”[2] The current government thus sees itself as correcting the mistakes of the earlier one. Far-reaching economic reforms by President Hugo Chávez’s government also indicate that – in the view of those currently in power – joining ICSID was one of many things where the previous regime had gone wrong.¶ Chávez’s economic programme seeks to re-establish the role of the state in the economy, especially in strategic sectors, farmed out to foreign corporations in the 1990s. Over the past few years, Chávez’s government has carried out a wave of nationalizations of domestic-and foreign-owned assets in petroleum, steel, agribusiness, construction, tourism, telecommunications, banking and some other industries. Most foreign investors’ grievances against the government are the fallout of these claw-back policies; the main issue in dispute is usually whether the amount of compensation offered by the government is sufficient.¶ Impact on pending and future claims¶ From a purely legal perspective, withdrawal from ICSID does not offer any immediate benefits to Venezuela. Being second only to Argentina in this respect, the country currently has 20 cases pending against it at ICSID[3] (ten of them initiated in 2011) and faces the prospect of having to pay billions to successful claimants. These pending cases are in no way affected by Venezuela’s denunciation of the ICSID Convention. Furthermore, disgruntled foreign investors will still be able to initiate new cases during the six months between the notice of denunciation and the date when it becomes effective (25 July 2012).¶ The question whether investors would have a right to continue bringing claims after 25 July 2012 has been a subject of some debate due to the unclear formulation of Article 71 of the ICSID Convention. The predominant view is that such claims, when they are based on a bilateral investment treaty (BIT), will not be registered, despite the fact that Venezuelan BITs remain in force and retain a reference to ICSID arbitration. This is because BITs are understood to record a country’s unilateral offer of consent to arbitration which must be “perfected” by an investor (by submitting a request for arbitration) before the country ceases to be a member of ICSID.[4] (By contrast, where consent to ICSID arbitration has been given by the country, for example, in a concession agreement with an investor, ICSID proceedings could be started even after the denunciation takes effect. This is because, unlike BITs, both parties to the contract give their advance consent to arbitration.)¶ However, of the 26 BITs in force for Venezuela,[5] only two (with Chile and with Germany) name ICSID as the sole arbitral venue available to investors. All other BITs provide, in addition to ICSID, an opportunity to arbitrate under UNCITRAL Arbitration Rules and ICSID’s Additional Facility Rules.[6] This means that even after the withdrawal from ICSID becomes effective, investors from the covered countries will still be able to sue Venezuela outside its domestic courts.¶ ICSID v. UNCITRAL¶ What is special about arbitration under the ICSID Convention by comparison to the UNCITRAL or ICSID Additional Facility rules? The most important difference is that ICSID arbitral awards are equivalent to “a final judgment of a court”[7] in all of the ICSID Contracting States (i.e., they do not require internal judicial procedures to enable enforcement), and are therefore directly executable in most countries around the world. (This reading of the Convention has been opposed by Argentina’s lawyers who insist that claimants, who have received an ICSID award against Argentina, must still apply to an Argentine court to have the ICSID award executed in the country.[8])¶ In contrast, arbitral awards rendered under the UNCITRAL Arbitration Rules (or the ICSID Additional Facility Rules) do require additional domestic enforcement procedures. This process, however, is greatly facilitated by the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which (1) contains only very limited grounds for refusing recognition and enforcement, and (2) enables enforcement in any state party to the New York Convention (currently, 146 states). Even if the enforcement procedures are thus more cumbersome than under the ICSID Convention, it is still feasible to execute these awards in countries around the world where Venezuela has assets.¶ Ideological battleground over enforcement¶ If exiting from ICSID does not solve Venezuela’s problem with foreigners bringing international claims against it, what is its main purpose? The reasons appear to be more political than legal. By denouncing the Convention, the government seems to be sending a political message: we think this system is unfair, we disavow it and refuse to cooperate with it in future. The part about the future is very important because it relates to the collection of damages to be ordered by ICSID tribunals against Venezuela.¶ Interesting to note in this connection is the government’s view, or at least its portrayal, of ICSID as pandering to transnational corporations. According to the Foreign Ministry’s 2012 press-release, ICSID tribunals have “ruled 232 times in favor of transnational interests out of the 234 cases filed throughout its history.” While a gross misrepresentation of ICSID’s record (in fact, so far states have won more cases in ICSID than they have lost[9]), it nevertheless reveals the Venezuelan government’s view of this forum.¶ Accusing ICSID of bias gives ideological backing to President Chávez’s statement that the Republic “will not recognize any ICSID decisions.”[10] The government has already moved its gold reserves from foreign banks to Caracas (160 tons valued at nearly US$9 billion);[11] it was also reported as preparing to transfer US$6 billion in cash reserves held in European and U.S. banks to Russian, Chinese and Brazilian banks.[12] The latter, presumably, are seen as less likely to accommodate freezing orders and to facilitate the enforcement of arbitral awards against Venezuela. Experience has shown that it can be a challenge to enforce an award (be it ICSID or non-ICSID) outside the territory of the respondent country as a lot of state assets are protected by the sovereign immunity doctrine.[13]¶ Is ICSID the one to blame?¶ ICSID is a dispute resolution forum; arbitrators apply the rules, which are created by states and enshrined in bilateral investment treaties. Venezuela’s discontent with ICSID seems to go beyond the remit of this forum and concerns a much broader issue regarding the ability of BITs to deal with economic and political reforms. This issue is not limited to Venezuela; it has universal significance in light of the general trend towards increasing state intervention in the economy[14] and especially in countries undergoing regime change.[15]¶ Venezuela’s disputes primarily concern nationalizations. The government has confirmed its commitment to pay “fair compensation […] in accordance with Venezuelan law”[16] which it understands as the book value of an investment (i.e., determined by reference to the amounts invested) as opposed to the market value (based on the present value of future cash flows). The latter will often be significantly higher than the former, especially if an enterprise has good business prospects.¶ BITs routinely require compensation equal to the “fair market value” of the expropriated investment, even if the expropriation is in the public interest, non-discriminatory and carried out in accordance with due process of law. Commentators have pointed out that a rigid rule for full compensation (i.e. calculated on the basis of the market value of investment) would in reality render any major economic or social programme impossible.[17]¶ The amount of compensation for assets lawfully expropriated, especially as part of a broad economic reform, should take into account equitable factors, unrelated to a strict business valuation exercise. For example, was the original “deal” agreed by an investor with the (earlier) government a reasonable bargain or was it granted on terms unfavourable to the country and against its national interests? Was there a change in circumstances (such as an increase in oil prices) that benefits one party only? Has the investor recouped its sunk costs and has it enjoyed a lengthy period of (highly) profitable operations by the time of the nationalization?¶ The law, as it currently stands in most BITs, practically wipes out the differences in compensation for lawful and unlawful expropriations.[18] The rigid compensation rule in most BITs and a high risk of arbitrators rigidly enforcing it, thereby leading to outcomes perceived as unacceptable, unfair and unsustainable financially at home, push countries like Venezuela to look for ways to get out of the system.¶ Dealing with the BIT regime¶ To fully dismantle the system of arbitration under BITs, Venezuela would need to terminate – in addition to the ICSID convention – all of its BITs. After such termination it would have to wait for the expiry of the additional period of 10-15 years (depending on a treaty), during which the agreements will continue to apply to investments established prior to the treaty’s termination. All of Venezuela’s BITs have such a “survival” clause.¶ In 2008, Venezuela gave notice to terminate its BIT with the Netherlands thus triggering the sunset period, which will end in 2023. The Dutch BIT must have been a source of particular annoyance to the country as it has served as a basis of at least ten ICSID cases against Venezuela (the Netherlands is often used by firms from other countries for incorporating holding companies and structuring investments). Aside from the Dutch treaty, Venezuela has not moved to terminate any of its other BITs.¶ Withdrawals from ICSID by Bolivia, Ecuador and now Venezuela, and termination of BITs[19] are a radical expression of a much broader trend to revisit key aspects of an international investment regime. In recent times, a significant number of countries have been reviewing their model investment treaties and renegotiating existing agreements in order to make them clearer, more balanced and conducive to fair outcomes. There is a pronounced need for further collective thinking and constructive engagement on these issues.

**Incorporating mediation is key restore the credibility of international investment**

**Welsh and Schneider 13**—Nancy Welsh is the William Trickett Faculty Scholar and Professor of Law at Penn State Law and Andrea Kupfer Schneider is a Professor Of Law at Marquette University Law School (“The Thoughtful Integration of Mediation into Bilateral Investment Treaty Arbitration”, Spring) EL

IV. THE MEDIATION PROCESS, REFERRAL SCHEMES¶ AND QUALITY CONTROL MECHANISMS¶ A. The Mediation Process¶ 1. Basic Differences between Mediation and Arbitration¶ It is a truism that mediation and arbitration are different. But¶ closer examination reveals that mediation is substantively different**¶** from arbitration—i.e., binding arbitration120—in only one key respect:¶ the neutral’s degree of control over the outcome.121 In mediation,¶ the neutral (or mediator) assists the parties with their**¶** communications and negotiation. She cannot impose a solution. If**¶** there is a binding resolution reached in mediation, it will be the result**¶** of the parties’ voluntary agreement.122 In contrast, at least in¶ binding arbitration, decision-making power vests in arbitrators¶ alone. They have the authority to decide outcomes for parties and¶ issue binding awards.123 Indeed, in the U.S. domestic context, arbitral¶ awards often appear more binding than those issued by many¶ courts. And, in the international context, there is no question that¶ arbitration awards are easier to enforce than court judgments or negotiated¶ agreements.124¶ In common law countries, arbitration also tends to have a different¶ “look” than mediation. While mediation looks more like an informal**¶** meeting, binding arbitration mimics a more formal judicial**¶** hearing.125 The arbitration process can feature opening statements,¶ direct and cross examination of witnesses, determinations regarding¶ the admissibility of documents into evidence, and even closing arguments.¶ While the arbitrators may interrupt the parties’ presentations¶ to ask questions, the parties present their cases in sequential¶ order. If lawyers are involved, the parties and witnesses tend to testify¶ only in response to the lawyers’ or the arbitrators’ questions.¶ Each party’s case is presented in the presence of the other party. The¶ process is structured to ensure that there is transparency, at least as¶ between the parties,126 and that the arbitrators have the information¶ needed to make their decision, which will be binding upon the¶ parties.127¶ In contrast to the comparatively formal arbitration process, mediation**¶** in these common law countries is a much less-obviously structured**¶** affair. The process often, but not always, begins with premediation¶ submissions and telephonic conferences with the mediator.¶ On the day of the mediation, the parties meet in a conference room,¶ 123. Note, however, that there are also important variations on binding arbitration¶ that make the size of the award or its finality contingent party choice. For example,¶ in non-binding arbitration a party may choose to reject the award and proceed to¶ a different adjudicative process or litigation. In high-low arbitration or baseball arbitration,¶ the parties agree to constrain the arbitrator’s discretion in making a monetary¶ award.¶ and the process often (but not always) begins with an orientation by¶ the mediator and opening statements by each side. The mediators**¶** and parties may remain together throughout the process but are**¶** more likely to separate into different rooms, with the mediator “shuttling”¶ among them. If the parties have separated and reach resolution,¶ they may reconvene for a joint meeting to confirm the terms of¶ the settlement. The process is structured to permit the parties to engage¶ in joint and direct communication with each other, but also private¶ deliberation and, through the medium of ex parte meetings with¶ the mediator, indirect communication with each other.128 Thus¶ structured, the process ensures that the parties—rather than a third¶ party decision-maker—have sufficient information to allow them to¶ reach a decision that they can accept and will implement.¶ Last, mediation tends to differ from arbitration in its explicit**¶** consideration of the parties’ interests. Indeed, some courts in the¶ U.S. describe mediation as follows:¶ Mediation is a process in which parties and counsel agree to¶ meet with a neutral mediator trained to assist them in settling¶ disputes. The mediator improves communication across party¶ lines, helps parties articulate their interests and understand¶ those of the other party, probes the strengths and weaknesses of¶ each party’s legal positions, and identifies areas of agreement¶ and helps generate options for a mutually agreeable resolution¶ to the dispute. In all cases, mediation provides an opportunity to¶ explore a wide range of potential solutions and to address interests¶ that may be outside the scope of the stated controversy or¶ which could not be addressed by judicial action. A hallmark of¶ mediation is its capacity to expand traditional settlement discussions¶ and broaden resolution options, often by exploring litigant¶ needs and interests that may be formally independent of¶ the legal issues in controversy.129¶ Thus, in general, mediation offers the opportunity for parties to¶ discuss both their legal and extra-legal issues and needs. In the investor-¶ state context, these may include financial constraints or aspirations,¶ domestic political realities, regional concerns, and protection¶ of important community norms or characteristics.

**Investment credibility is a prerequisite to global economic growth—controls capital flows**

**D’Agostino 2012** (Joseph D’Agostino J.D. Candidate 2012, U of Virginia School of Law; “Rescuing International Investment Arbitration: Introducing Derivative Actions, Class Actions, And Compulsory Joinder”; Virginia Law Review, Vol. 98; http://www.virginialawreview.org/content/pdfs/98/177.pdf; JRS)

THE rapidly expanding network of international investment arbitration (“IIA”) has reached a state of crisis that could threaten the foreign investment system. The number and economic influence of arbitration claims have exploded over the past two decades, along with denunciations of IIA. Many involved in IIA believe that crucial parts of the system could disintegrate over the next few years if systemic reforms are not implemented. Given IIA’s role in the growth of international investment, especially in developing countries, such a result could restrict international capital flows, improvements in the livelihoods of residents of developing nations, returns on investment in developed countries, and global economic growth itself. The future of international investment could rest on whether the World Bank-affiliated International Convention for the Settlement of Investment Disputes (“ICSID”) or the bilateral investment treaties (“BITs”) that usually operate within ICSID’s framework are reformed within the next few years. After listing the mounting complaints against it, a former official at the U.S. Agency for International Development and current Visiting Researcher at Harvard Law School concluded, “If ICSID, the principal foreign investment forum, does not adequately resolve foreign investment disputes, a backlash against foreign investment—one of the main factors for economic development—looms.” Numerous well-informed observers have warned of this developing crisis in the last few years. “[T]he rise of investment treaties and investment-treaty arbitration has attracted critical attention from the users of the dispute-settlement mechanism (that is, investors and host states) as well as various interest groups that claim to represent ‘civil society’ and the ‘public interest.’” This chorus has “contributed to a considerable amount of literature intimating that investment law may be in a veritable ‘legitimacy crisis.’” Critiques of both the substantive (“this crisis is caused by the vagueness and indeterminacy of the standard investor rights, leading to problematic predictability in the application of investment treaties”) and procedural (“relating to the overlap between different arbitral institutions and control mechanisms and the resulting inconsistencies in the decisions of different arbitral tribunals”) aspects of IIA have gained heavy traction. As prominent IIA scholar Susan D. Franck explains, “The legitimacy of investment treaty arbitration is a matter of heated debate. Asserting that arbitration is unfairly tilted toward the developed world, some countries have withdrawn from World Bank dispute resolution bodies [including ICSID] or are taking steps to eliminate arbitration.” The impact of even a partial IIA breakdown could be high since “[w]ith a four-fold increase [over the last decade] in the number of disputes, billions of dollars at stake, and national sovereignty and international relations on the line, investment treaty arbitration has become a vital aspect of the debate about the international political economy.”

**Economic decline leads to war.**

**Royal, 10** – Jedediah Royal, Director of Cooperative Threat Reduction at the U.S. Department of Defense(Economic Integration, Economic Signaling and the Problem of Economic Crises, Economics of War and Peace: Economic, Legal and Political Perspectives, ed. Goldsmith and Brauer, p. 213-215)

Second, on a dyadic level. Copeland's (1996. 2000) theory of trade expectations suggests that 'future expectation of trade' is a significant variable in understanding economic conditions and security behaviour of states. He argues that interdependent states are likely to gain pacific benefits from trade so long as they have an optimistic view of future trade relations. However, if the expectations of future trade decline, particularly for difficult to replace items such as energy resources, the likelihood for conflict increases, as states will be inclined to use force to gain access to those resources. Crises could potentially be the trigger for decreased trade expectations either on its own or because it triggers protectionist moves by interdependent states.4 Third, others have considered the link between economic decline and external armed conflict at a national level. Blomberg and Hess (2002) find a strong correlation between internal conflict and external conflict, particularly during periods of economic downturn. They write, The linkages between internal and external conflict and prosperity are strong and mutually reinforcing. Economic conflict tends to spawn internal conflict, which in turn returns the favour. Moreover, the presence of a recession lends to amplify the extent to which international and external conflicts self-reinforce each other. (Blombcrj! & Hess. 2002. p. 89) Economic decline has also been linked with an increase in the likelihood of terrorism (Blomberg. Hess. & Weerapana, 2004). which has the capacity to spill across borders and lead to external tensions. Furthermore, crises generally reduce the popularity of a sitting government. "Diversionary theory" suggests that, when facing unpopularity arising from economic decline, sitting governments have increased incentives to fabricate external military conflicts to create a 'rally around the flag' effect. Wang (1996), DeRouen (1995), and Blombcrg. Mess, and Thacker (2006) find supporting evidence showing that economic decline and use of force are at least indirectly correlated. Gelpi (1997), Miller (1999). and Kisangani and Pickering (2009) suggest that the tendency towards diversionary tactics arr greater for democratic states than autocratic states, due to the fact that democratic leaders are generally more susceptible to being removed from office due to lack of domestic support. DeRouen (2000) has provided evidence showing that periods of weak economic performance in the United States, and thus weak Presidential popularity, are statistically linked to an increase in the use of force.

**This decline is unique.**

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**The consequences of a New Great Depression** would extend far beyond the realm of economics. Hungry people will fight to survive. Governments will use force to maintain internal order at home. This section considers the geopolitical repercussion of economic collapse, beginning with the United States.

First, the U.S. government’s tax revenues would collapse with the depression. Second, because global trade would shrivel up, other countries would no longer help finance the U.S. budget deficit by buying government bonds because they would no longer have the money to do so. At present, the rest of the world has a $500 billion annual trade surplus with the United States. The central banks of the United States’ trading partners accumulate that surplus as foreign exchange reserves and invest most of those reserves into U.S. government bonds. **An economic collapse would cause global trade to plummet** and drastically reduce (if not eliminate altogether) the U.S. trade deficit. Therefore, this source of foreign funding for the U.S. budget deficit would dry up.

Consequently, the government would have to sharply curtail its spending, both at home and abroad. Domestically, social programs for the old, the sick, and the unemployed would have to be slashed. Government spending on education and infrastructure would also have to be curtailed. Much less government spending would result in a dramatic increase in poverty and, consequently, in crime. This would combine to produce a crisis of the current two-party political system. Astonishment, frustration, and anger at the economic breakdown would radicalize politics. New parties would form at both extremes of the political spectrum. Given the great and growing income inequality going into the crisis, the hungry have-nots would substantially outnumber the remaining wealthy. On the one hand, a hard swing to the left would be the outcome most likely to result from democratic elections. In that case, the tax rates on the top income brackets could be raised to 80 percent or more, a level last seen in 1963. On the other hand, **the possibility of a right-wing putsch could not be ruled out**. During the Great Depression, the U.S. military was tiny in comparison with what it became during World War II and during the decades of hot, cold, and terrorist wars that followed. In this New Great Depression, **it might be the military that ultimately determines how the country would be governed**.

**The** political **battle** over America’s future **would be** bitter, and quite possibly **bloody. It cannot be guaranteed that the** U.S. **Constitution would survive.**

Foreign affairs would also confront the United States with enormous challenges. During the Great Depression, the United States did not have a global empire. Now it does. The United States maintains hundreds of military bases across dozens of countries around the world. Added to this is a fleet of 11 aircraft carriers and 18 nuclear-armed submarines. The country spends more than $650 billion a year on its military. If the U.S. economy collapses into a New Great Depression**, the United States could not afford to maintain its worldwide military presence or to continue** in its role **as global peacekeeper.** Or, at least, it could not finance its military in the same way it does at present.

Therefore, either the United States would have to find an alternative funding method for its global military presence or else it would have to radically scale it back. Historically, empires were financed with plunder and territorial expropriation. The estates of the vanquished ruling classes were given to the conquering generals, while the rest of the population was forced to pay imperial taxes.

The U.S. model of empire has been unique. It has financed its global military presence by issuing government debt, thereby taxing future generations of Americans to pay for this generation’s global supremacy. That would no longer be possible if the economy collapsed. Cost–benefit analysis would quickly reveal that much of America’s global presence was simply no longer affordable. Many—or even most—of the outposts that did not pay for themselves would have to be abandoned. Priority would be given to those places that were of vital economic interests to the United States. The Middle East oil fields would be at the top of that list. The United States would have to maintain control over them whatever the price.

In this global depression scenario, the price of oil could collapse to $3 per barrel. Oil consumption would fall by half and there would be no speculators left to manipulate prices higher. Oil at that level would impoverish the oil-producing nations, with extremely destabilizing political consequences. **Maintaining control over** the **Middle East oil** fields **would become much more difficult** for the United States. It would require a much larger military presence than it does now. On the one hand, it might become necessary for the United States to reinstate the draft (which would possibly meet with violent resistance from draftees, as it did during the Vietnam War). On the other hand, America’s all-volunteer army might find it had more than enough volunteers with the national unemployment rate in excess of 20 percent. The army might have to be employed to keep order at home, given that **mass unemployment would inevitably lead to a sharp spike in crime**.

Only after the Middle East oil was secured would the country know how much more of its global military presence it could afford to maintain.

If international trade had broken down, would there be any reason for the United States to keep a military presence in Asia when there was no obvious way to finance that presence? In a global depression, the United States’ allies in Asia would most likely be unwilling or unable to finance America’s military bases there or to pay for the upkeep of the U.S. Pacific fleet. Nor would the United States have the strength to force them to pay for U.S. protection. **Retreat from Asia might become unavoidable.**

And Europe? What would a cost–benefit analysis conclude about the wisdom of the United States maintaining military bases there? What valued added does Europe provide to the United States? Necessity may mean **Europe will have to defend itself**.

Should a New Great Depression put **an end to the Pax Americana, the world would become a much more dangerous place**. When the Great Depression began, Japan was the rising industrial power in Asia. It invaded Manchuria in 1931 and conquered much of the rest of Asia in the early 1940s. Would China, Asia’s new rising power, behave the same way in the event of a new global economic collapse? Possibly. China is the only nuclear power in Asia east of India (other than North Korea, which is largely a Chinese satellite state).

However, in this disaster scenario, it is not certain that China would survive in its current configuration. Its economy would be in ruins. Most of its factories and banks would be closed. Unemployment could exceed 30 percent. There would most likely be starvation both in the cities and in the countryside. The Communist Party could lose its grip on power, in which case the country could break apart, as it has numerous times in the past. It was less than 100 years ago that China’s provinces, ruled by warlords, were at war with one another.

United or divided, **China’s nuclear arsenal would make it Asia’s undisputed superpower** if the United States were to withdraw from the region. From Korea and Japan in the North to New Zealand in the South to Burma in the West, all of Asia would be at China’s mercy. And hunger among China’s population of 1.3 billion people could necessitate territorial expansion into Southeast Asia. In fact, the central government might not be able to prevent mass migration southward, even if it wanted to.

In Europe, severe economic hardship would revive the centuries-old struggle between the left and the right. During the 1930s, the Fascists movement arose and imposed a police state on most of Western **Europe**. In the East, the Soviet Union had become a communist police state even earlier. **The far right and the far left of the political spectrum converge in totalitarianism**. It is difficult to judge whether Europe’s democratic institutions would hold up better this time that they did last time.

**England** had an empire during the Great Depression. Now it only has banks. In a severe worldwide depression, the country— or, at least London—**could become ungovernable**. Frustration over poverty and a lack of jobs would erupt into anti-immigration riots not only in the United Kingdom but also across most of Europe.

The extent to which Russia would menace its European neighbors is unclear. On the one hand, **Russia** would be impoverished by the collapse in oil prices and might be too preoccupied with internal unrest to threaten anyone. On the other hand, it **could provoke a war with the goal of maintaining internal order** through emergency wartime powers.

Germany is very nearly demilitarized today when compared with the late 1930s. Lacking a nuclear deterrent of its own, it **could be subject to Russian intimidation**. While **Germany** could appeal for protection from England and France, who do have nuclear capabilities, it is uncertain that would buy Germany enough time **to remilitarize** before it became a victim of Eastern aggression.

As for the rest of the world, its prospects in this disaster scenario can be summed up in only a couple of sentences. Global economic output could fall by as much as half, from $60 trillion to $30 trillion. Not all of the world’s seven billion people would survive in a $30 trillion global economy. **Starvation would be widespread. Food riots would provoke political upheaval and** myriad big and small **conflicts around the world**. It would be a humanitarian catastrophe so extreme as to be unimaginable for the current generation, who, at least in the industrialized world, has known only prosperity. Nor would there be reason to hope that the New Great Depression would end quickly. **The Great Depression was only ended by an even more calamitous global war** that killed approximately 60 million people.

**FDI is uniquely key to Venezuela—key to maintain economic stability and relationships with other Latin American countries**

**Helios Global 13**—service and professionalism of a consultancy; the principles and commitment of a social enterprise; and the creative ingenuity of a research institute (“Change in Venezuela Yields Political and Economic Uncertainty”, 4/29, World Trends Watch, http://www.heliosglobalinc.com/world-trends-watch/?p=152) EL

Nicholas Maduro’s narrow electoral triumph over opposition leader Henrique Capriles Radonski in Venezuela’s April 14 elections to serve out the remainder of the late president Hugo Chavez’s current presidential term signifies a turning point in Venezuelan politics. Maduro’s victory has also reverberated beyond Venezuela’s borders. Due to its role as a major source of oil, the course of political events in Venezuela also has important implications for the world economy. The death of Hugo Chavez has also raised concerns about the prospects of social, political, and economic stability in Venezuela. The victory of Chavez’s heir apparent – Chavez and his supporters went to great lengths to ensure the survival of the Bolivarian Revolution launched by Chavez’s United Socialist Party of Venezuela (known by its Spanish acronym PSUV) – in a politically charged and polarized climate has already resulted in unrest and violence between Maduro’s supporters and his opponents. Venezuela’s increasingly dire economic predicament has further exacerbated tensions across the country. Despite a contentious bilateral relationship, Venezuela remains the fourth-largest supplier of imported oil to the United States. Given the peculiarities of its oil, namely, the category of relatively low quality heavy crude oil that represents the bulk of its oil capacity, Venezuela relies heavily on U.S. refineries located in the Gulf of Mexico that were designed to refine oil from Venezuela (and Mexico). Roughly forty-percent of Venezuela’s oil exports are delivered to the United States. Consequently, the United States is Venezuela’s top trade partner. This is the case even as U.S. imports of Venezuelan oil have steadily declined in recent years. In 1997, the United States imported about 1.7 million barrels of oil per day (bpd) from Venezuela. In contrast, only about 1 million bpd of Venezuelan oil makes its way to the United States today. Venezuela also boasts major natural gas reserves, possibly the second-largest natural gas reserves in the Western Hemisphere. At the same time, Venezuela’s oil production capacity continues to deteriorate due to mismanagement, corruption, and antiquated infrastructure. With its emphasis on South-South cooperation, Latin American integration, and opposition to what it refers to as U.S. imperialism, Venezuela’s foreign policy has largely reflected its Bolivarian Revolutionary principles. Even as it has continued to serve as a major source of crude oil to the United States, Venezuela has also devoted significant diplomatic and economic resources toward checking U.S. influence in the Americas. Initiatives such as its Bolivarian Alliance for the Americas (known by its Spanish acronym ALBA) have served to expand Venezuela’s influence across the region. This support has come in the form of diplomatic and, especially, economic assistance to governments led by leftist political parties and movements that are often enmeshed in their own disputes with the United States, including Cuba, Nicaragua, and Bolivia. Venezuela has also supported a number of militant groups in the region, most notably, the leftist Revolutionary Armed Forces of Colombia (known by its Spanish acronym FARC) in neighboring Colombia. Venezuela has also engaged closely with other left-leaning governments across the region, including Brazil, a rising regional and geopolitical power in its own right that is slowly emerging as a challenger to the United States. Outlook Chavez’s appointment of Nicolas Maduro, a trusted loyalist, as Vice President was emblematic of efforts by the incumbent regime to ensure ideological and political continuity in any post-Chavez scenario. At the same time, despite its popularity among a sizable segment of the Venezuelan populace, it is unclear whether the PSUV will be able to retain its dominant role in Venezuelan politics without Chavez in the long-term. Maduro’s narrow victory in this month’s elections – Maduro is reported to have defeated his opponent by less than 2 percent of the total vote – reflects a shift in Venezuelan public sentiment. The removal of Chavez from the political equation will also have an important geopolitical impact that will be felt beyond Venezuela’s borders. Venezuela remains an important supplier of discounted oil for its regional partners and a source of other vital economic support. On the surface, Maduro’s decision to travel to Cuba for his first foreign trip in late April reflects his determination to continue the populist and activist foreign policy forged by his late predecessor. Venezuelan largesse in the form of discounted oil and other benefits has helped sustain Cuba’s Communist Party. Yet it appears that Maduro is operating under a weaker popular mandate. This raises important questions about his ability to maintain his late predecessor’s approach to foreign affairs, especially given the presence of an increasingly organized and emboldened opposition. Risks Operating under a weaker popular mandate and in a politically charged and polarized climate raises the specter of widespread disturbances in Venezuela. Capriles announced on April 25 that his movement plans to boycott an official audit of the election results due to concerns relating to voter registration irregularities. He has also called for a new presidential vote. Capriles and his supporters seem determined to step up pressure on the fledgling Maduro presidency. Countries that depend on Venezuelan largesse to support their economies through the receipt of subsidized oil and preferential trade access to the Venezuelan market, including Cuba, Nicaragua, and Bolivia, among others, stand to lose a great deal should Maduro choose to shift Venezuelan foreign policy, however slightly, from the Bolivarian Revolutionary ideals enshrined during Chavez’s rule. Having to contend with their own economic troubles, the loss of subsidized oil or other benefits provided by Venezuela, for example, can destabilize fragile polities, impoverishing millions in the process. This raises the potential of social, political, and economic instability throughout the region. Opportunities Despite his declared commitment to toe his predecessor’s ideological line, the gravity of the economic problems affecting Venezuela may force Maduro to depart from some of Chavez’s policies, especially those governing foreign direct investment (FDI) in Venezuela. Maduro may elect to liberalize certain sectors of the Venezuelan economy and institute other economic reforms in a possible bid to cater to his more moderate opponents, undercutting segments of the opposition and bolstering his own credentials in the process. The potential loss of a Venezuelan benefactor will also present new opportunities in countries previously dependent on Caracas. Eager to adapt to an evolving geopolitical order, countries previously reliant on Venezuela will seek out new partners and, potentially, sources of FDI.

**Independently, FDI solves war—empirics and international relations theory prove that it improves interstate political relations and deters war**

**Desbordes and Vicard 05**-- Rodolphe Desbordes is a Reader in the Department of Economics at the University of Strathclyde and Vincent Vicard is an economist at the Banque de France (6/22, “Being nice makes you attractive: the FDI - international

political relations nexus”, TEAM-University of Paris I Panth¶eon-Sorbonne, http://carecon.org.uk/Conferences/Conf2005/Papers/Vicard.pdf) EL

International Relations theory highlights the importance of taking into account the potential reversal causal relationship, i.e that bilateral FDI fosters cooperation among nations and deters the use of violence. Empirical results tend to support the liberal peace hypothesis that countries trading intensively with each other are less prone to con°ict (Oneal & Russett, 1997, 1999)6 . The traditional argument underlying the \liberal peace hypothesis" that trade reduces con°ict relies on an opportunity cost analysis. Because states sharing economic linkages bene¯t from them, war, which is considered to shut those linkages down, is costly. Hence the prospect of higher war cost is said to deter economically interdependent states from resorting to violence to solve their disputes. Economic interdependence should foster diplomacy and lead to peace. Boehmer et al. (2001) develop an alternative theoretical explanation to support this hypothesis. Their model suggests that interdependence facilitates a reduction in the frequency of interstate disputes by making it easier for states economically linked to engage in costly signaling short of military violence . Both arguments can be applied to interdependence through trade or FDI; if bilateral FDI is considered as bene¯ting both countries, it should deter interstate con°icts and foster cooperation as international trade does7 ; the empirical literature has put forward that FDI tend to generate a positive impact on the host country's productivity and growth (Lispey, 2004). Hence, it is likely that FDI and interstate political relations are jointly determined8

# 1ac – plan

**Plan: The United States federal government should negotiate a mediation-inclusive Bilateral Investment Treaty with Venezuela.**