**1AC -- Investment Regime**

**CONTENTION 1 IS THE INVESTMENT REGIME --**

**The international investment regime is approaching a tipping point.**

**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.

**Venezuela’s leading a domino effect of alternative systems to the ICSID.**

**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?

**The procedural justice component of mediation increases investor confidence.**

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B. Procedural Justice Empirical research reveals that decision-making and dispute resolution procedures are most likely to be effective if they are **perceived as procedurally fair**.83 If parties perceive a dispute resolution or decision-making process as procedurally fair, they are more likely to perceive the outcome as substantively fair even if it is adverse to them,84 comply with that outcome,85 and perceive the institution that provides or sponsors the process as legitimate.86 Indeed, in the U.S., researchers have found that the public’s overall approval of, and confidence in, the courts are influenced most strongly by their perception that the procedures offered by the courts are fair.87 Researchers have found that perceptions of procedural justice matter in decision-making processes as well as dispute resolution processes,88 in one-on-one negotiation89 as well as mediation90 and arbitration, in workplaces as well as courts,91 and in countries with very different cultures.92 Four process characteristics reliably predict parties’ perceptions of fairness: the opportunity for parties to express themselves and their positions (“voice”),93 demonstration of sincere consideration of these expressions by a trustworthy decision-maker (“being heard”),94 even-handed treatment and the neutrality of the forum,95 and dignified, respectful treatment.96 Parties assess decision-makers’ trustworthiness97 in order to determine whether they “can trust that in the long run the [decision-making] authority with whom they are dealing will work to serve their interests.”98 Perhaps because parties element of procedural justice, it has also been described as an element of interactional justice, and even of distributive justice. See Robert J. Bies, Are Procedural Justice and Interactional Justice Conceptually Distinct?, in HANDBOOK OF ORGANIZATIONAL JUSTICE 85 (Jerald A. Greenberg & Jason A. Colquitt, eds., 2005). See also Welsh, Perceptions, supra note 83, at 170; Nancy A. Welsh, Remembering the Role of Justice in Resolution: Insights from Procedural and Social Justice Theories, 54 J. LEGAL EDUC. 49, 52 (2004); Welsh, Making Deals, supra note 83, at 820–21. Tom R. Tyler, one of the most prominent procedural justice researchers, has described these four elements slightly differently: What makes a process fair in the eyes of the public? Four critical factors dominate evaluations of procedural justice. First, people want to have an opportunity to state their case to legal authorities. They want to have a forum in which they can tell their story; they want to have a “voice” in the decision-making process. Second, people react to signs that the authorities with whom they are dealing are neutral. Neutrality involves making decisions based upon consistently applied legal principles and the facts of the case rather than personal opinions and biases. Transparency and openness foster the belief that decision-making procedures are neutral. Third, people are sensitive to whether they are treated with dignity and politeness and to whether their rights as citizens and as people are respected. Finally, people focus on cues that communicate information about the intentions and character of the legal authorities with whom they are dealing. People react favorably to the perception that the authorities are benevolent and caring and are sincerely trying to do what is best for the public—that is, when they trust that authority. Authorities communicate this concern when they listen to people’s accounts and explain or justify their actions in ways that show an awareness of people’s needs. Tyler, Rule of Law, supra note 85, at 664. realize that these procedural characteristics can be manipulated, however, they tend to be on high alert for “sham” procedures.99 For fairly obvious reasons, parties are likely to be particularly vigilant regarding the potential for a “sham” when they are uncertain that they can trust the others involved a dispute resolution process and/or the dispute is a very serious one, involving the potential for grievous harm.100 Several theories explain why parties care so much about procedural justice. First, parties want to be reassured that the decisionmaker has access to, and considers, the information they present. If the decision-maker has this information, and demonstrates consideration of it, parties are more willing to believe that their interests will be protected.101 Indeed, because it can be so difficult to determine whether an outcome is substantively fair, some have theorized that parties’ judgment regarding the fairness of a procedure acts as a heuristic for their judgments regarding the fairness of outcomes.102 Second, the procedures themselves communicate whether the parties The Effects of Trust in Authority and Procedural Fairness in Cooperation, 92 J. OF APPLIED PSYCHOL. 639, 646-47 (2007); see also David Markell, et al., What’s Love Got To Do With It?: Sentimental Attachments and Legal Decision-Making, 57 VILL. L. REV. 209, 239-40 (2012) (reporting research finding that trust in the motives of authorities is primary when sentimental values are at stake, while perceiving a decision-maker to be neutral is most important when monetary interests are primary). accessing those procedures are deserving of respect. If the neutral in a dispute resolution process listens to the parties before her and consistently demonstrates both respect and a sincere attempt to be openminded and even-handed, these behaviors signal to the parties that they are valued members of the group, regardless of whether that group is a nation, a local community, or a workplace.103 Refusal to listen or closed-mindedness signals a lack of respect. More recently, Allan Lind and others have urged that parties use their perceptions of procedure as a mechanism to manage the negative dynamics, sense of vulnerability, and risk often associated with uncertainty.104 A fair procedure communicates the decision maker’s (and the sponsoring institution’s) respect for, and well-meaning attitude toward, the party which can then help to reduce the anxieties associated with actual loss, feared loss, and/or an uncertain future. Recent research has also revealed that although procedural justice matters to most people, it can matter to some people more than others. For example, those who perceive themselves as having lower or uncertain status are more likely to perceive a just outcome if the higher status decision-maker—who could be the neutral or the other negotiator—treats them in a procedurally just manner.105 Parties who are collectivists or who find themselves in situations that accentuate hierarchy and unequal status106 are also likely to be very aware if they are treated in a procedurally just manner.107 Individualists and higher status parties, in contrast, are much less influenced by procedural justice. Indeed, their positive perceptions regarding a 103. This is the “group value” or “relational” theory. People notice the psychological message that procedures convey regarding their value to the relevant social group. To receive respect and sincere consideration signals the individual’s value and social standing. See Tyler, Psychological Models, supra note 85, at 858. process will matter less than the “bottom line”—i.e., whether the outcome is at least consistent with their expectations.108 Procedural justice research is particularly important in the investment treaty context, as some states threaten noncompliance and as all stakeholders express a desire to know that they are being treated fairly within a system that they perceive as legitimate. It is obviously important that states and investors perceive the investment treaty arbitration process as procedurally just.109 Procedural justice theories and research can provide useful procedural benchmarks to arbitrators and arbitral organizations committed to 108. See JANE ADLER ET AL., SIMPLE JUSTICE: HOW LITIGANTS FARE IN THE PITTSBURGH COURT ARBITRATION PROGRAM, 61-62 (1983) (discussing difference between organizational and individual parties’ reactions to Pittsburgh arbitration program); Lind et al., supra note 102, at 247 (reporting that procedural justice judgments strongly influenced litigants’ decisions whether or not to accept non-binding arbitration awards, regardless of whether litigants were individuals, small business owners, or corporate officers, except that corporate employees failed to demonstrate such link); Wayne Brazil, Hosting Mediations as a Representative of the System of Civil Justice, 22 OHIO ST. J. ON DISP. RESOL. 227, 237-38 (2007) (expressing no surprise that “bigtime economic actors” would acquire thicker “‘process skin’” and be “much more concerned about ends than means . . . [and thus] not likely to mind a little ‘process roughness’ if they sense that it increases the odds that they will get a deal”); Tyler, Social Justice, supra note 83, at 123 (describing the significance of social categorization and referencing research showing that “people are less concerned about justice when they are dealing with people who are outside their own ethnic or social group;” and “when people have a dispute with someone who is not a member of their own social group, they pay more attention to the personal favourability of a proposed dispute resolution when deciding whether to accept it”); Diane Sivasubramaniam & Larry Heuer, Decision Makers and Decision Recipients: Understanding Disparities in the Meaning of Fairness, 44 CT. REV. 62, 66 (2007-2008) (reporting several experiments that demonstrated that those assuming the role of authority or decisionmaker were more likely to define fairness in terms of outcome, while those who were decision recipients were more likely to be concerned with respectful, fair treatment). But see Donna Shestowsky & Jeanne Brett, Disputants’ Perceptions of Dispute Resolution Procedures: An Ex Ante and Ex Post Longitudinal Empirical Study, 41 CONN. L. REV. 63, 94-106 (2008) (finding that those who expressed pre-process preference for a process in which a third party made the decision were likely to be satisfied with that process, and detailing research indicating that corporations **prefer mediation** due to their ability to control outcome, which can be understood as being consistent with achieving expectations). achieving these goals.110 Perceptions regarding the procedural justice of investment treaty mediation, however, will also matter.111 In fact, perceived and actual procedural justice should be the goal for all of the dispute resolution procedures that comprise the dispute resolution system available in the investment treaty context.112 Further, we should take a step back to examine the decisionmaking process that leads to the development of the dispute resolution clauses in investment treaties, including such clauses’ definition of the array of available processes and the mechanism that will determine the process to be used for a particular dispute. Research suggests that stakeholders’ perceptions of procedural justice are likely to matter just as much in this “upstream” decision-making context as in the later “downstream” dispute resolution process.113 Professor Lisa Bingham has noted, “[i]n its best practice, DSD. . .uses inclusive, participatory, stakeholder-driven processes to change existing or create new dispute resolution structures. Its goal is to improve the capacity of systems to prevent, manage, or resolve certain streams or kinds of conflict.”114 Stakeholders are likely to perceive procedural justice in this sort of “inclusive, participatory” process, used to design or amend the dispute resolution clause in an investment treaty, if and **only if they receive the opportunity for voice**, serious and **trustworthy consideration**, and even-handed, dignified treatment in a neutral forum. 115 In other words, their perceptions of procedural justice will depend upon how their participation is managed. Such perceptions will matter because they will **influence stakeholders’ perceptions** regarding the substantive justice of the treaty’s dispute resolution clause and prescription of particular procedures. It will also impact the likelihood of the stakeholders’ compliance with the treaty provisions and their respect for the legitimacy of the states engaged in making the treaty. Thus, attention to procedural justice should enhance the effectiveness of the participatory stakeholder processes prescribed by dispute system design.116 urging that such opportunity will enhance parties’ perceptions of procedural fairness of process). But active “participation” in a decision-making process is likely to require something more than just “voice.” It requires give-and-take, and listening as well as expressing one’s own point of view. See Welsh, Stepping Back, supra note 81, at 606. Researchers have found that while mediating parties’ perceptions of procedural justice are enhanced by the opportunity to “tell their views,” these perceptions are not affected by the opportunity to “participate” in the process. This has led Roselle Wissler to suggest that “parties’ sense of voice is more important to their experience in mediation than is how much they participate.” Wissler, supra note 90, at 450. Much later, when a particular dispute emerges, dispute system design’s preference for loop-backs and loop-forwards suggests that the designated dispute resolution facility should provide the disputing state actors and investors with another opportunity for input— into the selection of the particular process that will be used to resolve their dispute (including, if appropriate, the particular model of that process),117 the timing of such process, and the particular neutral or neutrals who will conduct the process. Again, the opportunity for such input118 is likely to have positive effects in terms of procedural justice perceptions, provided that the parties believe that their input is being received respectfully, given serious and trustworthy consideration, and judged in an even-handed manner in a neutral forum.119 With this brief introduction to dispute system design and procedural justice, this Article will now turn to an examination of the experience with court-connected and court-oriented mediation in the U.S. This examination will reveal significant variations among mediation models. Only some of these variations are different enough from other available procedures (especially conciliation) to meet dispute 9; see also Chris Carlson, Convening, in THE CONSENSUS BUILDING HANDBOOK: A COM- R PREHENSIVE GUIDE TO REACHING AGREEMENT 169 (Lawrence Susskind et al., eds., 1999) (discussing the convening function); BARBARA GRAY, COLLABORATING: FINDING COMMON GROUND FOR MULTIPARTY PROBLEMS 261-7 (1989); BERNARD MAYER, THE DYNAMICS OF CONFLICT RESOLUTION: A PRACTITIONER’S GUIDE 225 (2000); Laurel S. Terry, From GATS to APEC: The Impact of Trade Agreements on Legal Services, 43 AKRON L. REV. 875, 888-89 (2010) (demonstrating the value of “conversation starter” provisions in international trade agreement that require the development of crossborder professional services working groups and have resulted in the active participation of state judiciaries responsible for the regulation of lawyers). system design’s prescription for multiple process options, interestbased processes as well as processes based on rights and power, and the need for meaningful loop-backs and loop-forwards. The Article will also examine the many variations among compulsory mediation referral schemes in order to find those few that are most likely to meet dispute system design’s prescription for stakeholder involvement as well as the opportunity for voice, serious and trustworthy consideration, and even-handed, neutral and dignified treatment that lead to procedural justice perceptions. Finally, the Article will discuss potential quality controls in the selection and performance of the pool of mediators, to provide for accountability pursuant to dispute system design.

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

**D’Agostino 12** (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 causes 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.

**Independently, FDI solves escalation of 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 conflict (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 benefit 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 benefiting both countries, it should **deter interstate conflicts** 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**

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

**1AC -- Relations**

**CONTENTION 2 IS RELATIONS --**

**US-Latin American relations need to be kick started -- revamped relations solve illegal immigration and climate adaptation.**

**Zedillo 08,** Ernesto, Commission co-chair, Former President of Mexico, Brookings Institute Report, “Rethinking U.S.-Latin American Relations: A Hemispheric Partnership For A Turbulent World,” pdf)//DR. H

If a hemispheric partnership remains elusive, the costs to the United States and its neighbors will be high, in terms of both growing risks and missed opportunities. Without a partnership, the risk that criminal networks pose to the region’s people and institutions will continue to grow. Peaceful nuclear technology may be adopted more widely, but without proper safeguards, the risks of nuclear proliferation will increase. Adaptation to climate change will take place through isolated, improvised measures by individual countries, rather than through more effective efforts based on mutual learning and coordination. Illegal immigration to the United States will continue unabated and unregulated, adding to an ever-larger underclass that lives and works at the margins of the law. Finally, the countries around the hemisphere, including the United States, will lose valuable opportunities to tap new markets, make new investments, and access valuable resources.

It is important to note at the outset that the term “partnership” as used in this report does not mean equal responsibility for all. The asymmetries between the United States and its neighbors are large and will remain so for the foreseeable future. Partnership here means a type of international cooperation whereby a group of countries identifies common interests, objectives, and solutions, and then each partner country undertakes responsibilities according to its own economic and political capacities to generate shared benefits.

Today, four changes in the region have made a hemispheric partnership both possible and necessary. First, the key challenges faced by the United States and the hemisphere’s other countries—such as securing sustainable energy supplies, combating and **adapting to climate change, and combating organized crime and drug trafficking**—have become so complex and deeply transnational that they cannot be managed or overcome by any single country. Washington needs partners in the LAC region with a shared sense of responsibility and a common stake in the future.

For example, drug trafficking and its associated criminal networks have now spread so widely across the hemisphere that they can no longer be regarded as a “U.S. problem,” a “Colombian problem,” or a “Mexican problem.” The threat posed by these networks can only be countered through coordinated efforts across producing, consuming, and transshipment countries, all of which have a shared interest in controlling the flow of

arms, money, vehicles, and drugs. The process of combating and adapting to climate change also exemplifies the need for a hemispheric partnership. All carbon-emitting societies contribute to the problem to different degrees, and all will experience its consequences. The solutions—ranging from developing alternative fuels to adapting to ecological shocks—all require sustained cooperation among the hemisphere’s countries.

**Scenario 1 is Immigration --**

**Cooperative measures toward reducing illegal immigration allow the effective allocation of resources toward counter-terrorist measures.**

**Barry 13** (Tom, January 9, 2013, Director for the TransBorder project at the Center for International Policy in Wash. DC. “With the Resurrection of Immigration Reform We'll Hear a Lot About Securing Our Borders, But What Does It Really Mean?” http://www.alternet.org/immigration/resurrection-immigration-reform-well-hear-lot-about-securing-our-borders-what-does-it)

Yet rather than prioritizing focusing their intelligence gathering on likely foreign threats to the borders, the post-9/11 border security apparatus has quickly returned to its traditional targeting of illegal drugs and unauthorized immigrants as “dangerous goods and people,” while recklessly labeling illegal border crossers as part of the operations of Mexican criminal organizations. The Border Patrol should, as part of its risk-based and intelligence-driven strategy, maintain a near-exclusive focus on the TCO hierarchies and their enforcers. Likewise, the Border Patrol should end its characterization of all drug-trade networks as TCOs but instead focus on those designated as TCOs by the State Department. CBP, ICE and the Border Patrol have also used its post-9/11 commitment to risk-based enforcement to shift many immigrants into criminal categories, such as “criminal aliens” and “fugitive aliens.” In the borderlands and elsewhere, DHS has found broad support for its professed commitment to prioritize the arrest and deportation of the most dangerous immigrants, both those here legally and illegally. The widespread use of illegal recreational drugs in the United States combined with harsh anti-immigrant statutes have resulted in routine deportation of otherwise law-abiding legal immigrants for even minor drug violations, thereby making a travesty of the risk-based criteria. This all counts, in the estimation of DHS, as improved border security. The crossing of illegal drugs has long characterized the border and will continue to do so as long as there is a U.S. market for these substances. Currently, the Border Patrol routinely labels illegal border crossers carrying marijuana as being accomplices or members of TCOs, thereby demonstrating its lack of strategic focus. \*Bipartisan Support for Border Security Deserves New Scrutiny\* \* \*As part of its stated determination to pursue risk-based border protection, the Border Patrol should deprioritize immigration enforcement. A credible risk-management process cannot justify operations that make no distinction between truly dangerous individuals and ordinary immigrants seeking work and family reunification. The Border Patrol should instead target border bandits who prey upon vulnerable immigrants and the smugglers of truly dangerous illegal and prescription drugs. Marijuana is not a security threat, and there is mounting momentum for its decriminalization on both sides of the border. More than 95% of the Border Patrol’s drug war activities involve marijuana. This is a waste of scarce government resources; it diverts DHS from actual security threats, and contributes to the unnecessary militarization of the border. Administratively, DHS could, and should, mandate that the Border Patrol end what is, in effect, its strategic focus on the marijuana drug war.

**Terror’s extremely probable and nuclear use causes extinction.**

**Hellman, 08** [Martin E. Hellman, Professor @ Stanford, “Risk Analysis of Nuclear Deterrence” SPRING 2008 THE BENT OF TAU BETA PI, http://www.nuclearrisk.org/paper.pdf]

The threat of nuclear terrorism looms much larger in the public’s mind than the threat of a full-scale nuclear war, yet this article focuses primarily on the latter. An explanation is therefore in order before proceeding. A terrorist attack involving a nuclear weapon would be a catastrophe of immense proportions: “A 10-kiloton bomb detonated at Grand Central Station on a typical work day would likely kill some half a million people, and inflict over a trillion dollars in direct economic damage. America and its way of life would be changed forever.” [Bunn 2003, pages viii-ix]. The likelihood of such an attack is also significant. Former Secretary of Defense William Perry has estimated the chance of a nuclear terrorist incident within the next decade to be roughly 50 percent [Bunn 2007, page 15]. David Albright, a former weapons inspector in Iraq, estimates those odds at less than one percent, but notes, “We would never accept a situation where the chance of a major nuclear accident like Chernobyl would be anywhere near 1% .... A nuclear terrorism attack is a low-probability event, but we can’t live in a world where it’s anything but extremely low-probability.” [Hegland 2005]. In a survey of 85 national security experts, Senator Richard Lugar found a median estimate of 20 percent for the “probability of an attack involving a nuclear explosion occurring somewhere in the world in the next 10 years,” with 79 percent of the respondents believing “it more likely to be carried out by terrorists” than by a government [Lugar 2005, pp. 14-15]. I support increased efforts to reduce the threat of nuclear terrorism, but that is not inconsistent with the approach of this article. Because terrorism is one of the potential trigger mechanisms for a full-scale nuclear war, the risk analyses proposed herein will include estimating the risk of nuclear terrorism as one component of the overall risk. If that risk, the overall risk, or both are found to be unacceptable, then the proposed remedies would be directed to reduce which- ever risk(s) warrant attention. Similar remarks apply to a number of other threats (e.g., nuclear war between the U.S. and China over Taiwan). his article would be incomplete if it only dealt with the threat of nuclear terrorism and neglected the threat of full- scale nuclear war. If both risks are unacceptable, an effort to reduce only the terrorist component would leave humanity in great peril. In fact, society’s almost total neglect of the threat of full-scale nuclear war makes studying that risk all the more important. The cosT of World War iii The danger associated with nuclear deterrence depends on both the cost of a failure and the failure rate.3 This section explores the cost of a failure of nuclear deterrence, and the next section is concerned with the failure rate. While other definitions are possible, this article defines a failure of deterrence to mean a full-scale exchange of all nuclear weapons available to the U.S. and Russia, an event that will be termed World War III. Approximately 20 million people died as a result of the first World War. World War II’s fatalities were double or triple that number—chaos prevented a more precise deter- mination. In both cases humanity recovered, and the world today bears few scars that attest to the horror of those two wars. Many people therefore implicitly believe that a third World War would be horrible but survivable, an extrapola- tion of the effects of the first two global wars. In that view, World War III, while horrible, is something that humanity may just have to face and from which it will then have to recover. In contrast, some of those most qualified to assess the situation hold a very different view. In a 1961 speech to a joint session of the Philippine Con- gress, General Douglas MacArthur, stated, “Global war has become a Frankenstein to destroy both sides. … If you lose, you are annihilated. If you win, you stand only to lose. No longer does it possess even the chance of the winner of a duel. It contains now only the germs of double suicide.” Former Secretary of Defense Robert McNamara ex- pressed a similar view: “If deterrence fails and conflict develops, the present U.S. and NATO strategy carries with it a high risk that Western civilization will be destroyed” [McNamara 1986, page 6]. More recently, George Shultz, William Perry, Henry Kissinger, and Sam Nunn4 echoed those concerns when they quoted President Reagan’s belief that nuclear weapons were “totally irrational, totally inhu- mane, good for nothing but killing, possibly destructive of life on earth and civilization.” [Shultz 2007] Official studies, while couched in less emotional terms, still convey the horrendous toll that World War III would exact: “The resulting deaths would be far beyond any precedent. Executive branch calculations show a range of U.S. deaths from 35 to 77 percent (i.e., 79-160 million dead) … a change in targeting could kill somewhere between 20 million and 30 million additional people on each side .... These calculations reflect only deaths during the first 30 days. Additional millions would be injured, and many would eventually die from lack of adequate medical care … millions of people might starve or freeze during the follow- ing winter, but it is not possible to estimate how many. … further millions … might eventually die of latent radiation effects.” [OTA 1979, page 8] This OTA report also noted the possibility of serious ecological damage [OTA 1979, page 9], a concern that as- sumed a new potentiality when the TTAPS report [TTAPS 1983] proposed that the ash and dust from so many nearly simultaneous nuclear explosions and their resultant fire- storms could usher in a nuclear winter that might erase homo sapiens from the face of the earth, much as many scientists now believe the K-T Extinction that wiped out the dinosaurs resulted from an impact winter caused by ash and dust from a large asteroid or comet striking Earth. The TTAPS report produced a heated debate, and there is still no scientific consensus on whether a nuclear winter would follow a full-scale nuclear war. Recent work [Robock 2007, Toon 2007] suggests that even a limited nuclear exchange or one between newer nuclear-weapon states, such as India and Pakistan, could have devastating long-lasting climatic consequences due to the large volumes of smoke that would be generated by fires in modern megacities. While it is uncertain how destructive World War III would be, prudence dictates that we apply the same engi- neering conservatism that saved the Golden Gate Bridge from collapsing on its 50th anniversary and assume that preventing World War III is a necessity—not an option.

**Scenario 2 is Climate Change --**

**Climate change now causes biodiversity collapse, enables massive spread of tropical diseases, collapses agriculture, and the manufacturing industry -- adaptation is key.**

**Kloppenburg 11,** Dr. Norbert, Ph.D., serves as a Member of the Managing Directors Board and Director of Financial Cooperation - Europe & Asian Regional Department at KfW, June 2011, “Adaptation to climate change,” https://www.kfw-entwicklungsbank.de/Download-Center/PDF-Dokumente-Brosch%C3%BCren/2011\_Juni\_Brosch%C3%BCre\_Klimawandel\_E.pdf)//DR. H

Climate change is not a potential scenario of the future – it is already here, and its consequences are already harming people and ecosystems in many parts of the world. Developing countries and emerging economies are particularly affected. The reasons for this include their geographic location, the reduced ability of poorer countries to adapt to changing requirements, and their often strong economic dependency on particularly climate sensitive sectors such as agriculture.

Climate change is already costing billions every year. Some economies could lose up to a fifth of their gross domestic product (GDP) as a result of climate damage. However, between 40 and 70% of **this** damage **can be averted by** timely **adaptation** measures.

Rising sea levels mean a greater risk of flooding

During the 20th century, sea levels rose by an average of 2 mm per year – with the rise even increasing to 3 mm per year for the period from 1993 to 2003. While this may not seem like much, the consequences are severe for people who live in low-lying coastal regions or on land which is below sea level. This is the case for small island states in the Pacific and in the Caribbean, but also for countries in large river deltas like the Mekong, Ganges or Nile. In these regions, ever higher flood waves are already eroding the coast lines, resulting in the destruction of infrastructure and valuable arable land.

It is feared that a number of island states in the Pacific will largely be swallowed up by the sea by the end of the century, and as a result they already now need to start looking for new land for their population. In large river deltas which are home to millions of often extremely poor people, rising sea levels lead to the intrusion of saltwater into groundwater supplies in areas near the coast. As a result these supplies become largely unusable, both as drinking water and for irrigation in agriculture. In addition, the saltwater also damages valuable farmland.

Increasing occurrences of extreme weather events and higher risk of natural disasters

The effects of climate change are clearly manifested by extreme weather events like flooding and tropical cyclones, whose strength is set to increase further still in many regions. This endangers human lives, infrastructures and ecosystems, thereby destroying the source of many people’s livelihoods.

Increasing ocean temperatures are exceeding the threshold of 27 °C earlier and earlier in the year. This threshold is considered by experts to play a critical role in the formation of tropical cyclones and now also extends to regions which rarely experienced such storms in the past. The consequences can be dramatic and devastating, as witnessed when Cyclone Nargis struck in Burma (Myanmar) in 2008, claiming more than 80,000 lives, or the flooding in Pakistan in the summer of 2010 which affected more than 15 million people.

Scientists also believe that heat waves and heavy rain events will occur more frequently. Heat waves can cause significant health hazards particularly in large cities. In add-ition, tropical diseases like malaria will spread to more and more regions as a result of rising temperatures.

More frequent heavy rain events will ag-gravate the problem of soil erosion in many parts of the world. This in turn leads to increased and more severe river flooding and represents a major challenge for flood protection, urban drainage, the effective-ness of sewage treatment plants and the protection of settlements against landslides and mudslides.

A gradual threat

Storms and floods are spectacular conse-quen ces of climate change which are immediately apparent. However, it is the more gradual changes of temperature and precipitation patterns which will probably be more significant in the long run. In many regions, the quantity of rainfall is already scarcely enough for the supply of drinking water as well as for agriculture or forestry, or for use in the production of energy and in the manufacturing industry.

In many cases it can be expected that due to climate change this situation will worsen. In the regions around the Mediterranean, Southern Africa, north-eastern parts of Brazil and Central America, experts anticipate water availability to decline in some cases by over 20% by the end of the century. As a conse-quence, drinking water will become scarce, long-term efforts to combat desertification will be endangered, and ecosystems will be permanently damaged or even destroyed.

Scientists fear that the decline in water avail-ability in some rainforest regions, which are of significant importance for global biodiversity, will result in a shift in the variety of species and cause important species to become extinct.

Another gradual but very real consequence is the melting of glaciers, particular in the Himalayas and in the Andes. During the dry season, most of the water in the rivers comes from glacial melts. For millions of people, this meltwater forms the basis for drinking water supplies and agricultural irrigation. However, as the melting glaciers initially de-liver particularly large amounts of water, this problem is often not taken seriously – but some glaciers could already disappear within the space of a few decades, with a devastat-ing impact on drinking water supplies, agri-culture and hydroelectric power generation.

**Biodiversity loss causes extinction.**

**Suurküla 06** - Chairman of Physicians and Scientists (Jaan, M.D., for Responsible Application of Science and Technology (PSRAST), “World-wide cooperation required to prevent global crisis; Part one— the problem”, Physicians and Scientists for Responsible Application of Science and Technology, 6/24, http://www.globalissues.org/article/171/loss-of-biodiversity-and-extinctions)

The world environmental situation is likely to be further aggravated by the increasingly rapid, large scale global extinction of species. It occurred in the 20th century at a rate that was a thousand times higher than the average rate during the preceding 65 million years. This is likely to destabilize various ecosystems including agricultural systems. …In a slow extinction, various balancing mechanisms can develop. No one knows what will be the result of this extremely rapid extinction rate. What is known, for sure, is that the world ecological system has been kept in balance through a very complex and multifacetted interaction between a huge number of species. This rapid extinction is therefore likely to precitate collapses of ecolosystems at a global scale. This is predicted to create large-scale agricultural problems, threatening food supplies to hundreds of millions of people. This ecological prediction does not take into consideration the effects of global warming which will further aggravate the situation. Industrialized fishing has contributed importantly to mass extinction due to repeatedly failed attempts at limiting the fishing. A new global study concludes that 90 percent of all large fishes have disappeared from the world’s oceans in the past half century, the devastating result of industrial fishing. The study, which took 10 years to complete and was published in the international journal Nature, paints a grim picture of the Earth’s current populations of such species as sharks, swordfish, tuna and marlin. …The loss of predatory fishes is likely to cause multiple complex imbalances in marine ecology. Another cause for extensive fish extinction is the destruction of coral reefs. This is caused by a combination of causes, including warming of oceans, damage from fishing tools and a harmful infection of coral organisms promoted by ocean pollution. It will take hundreds of thousands of years to restore what is now being destroyed in a few decades. …According to the most comprehensive study done so far in this field, over a million species will be lost in the coming 50 years. **The most important cause was found to be climate change**

**Agricultural collapse causes extinction.**

**Lugar 4** – U.S. Senator (Richard, http://www.unep.org/OurPlanet/imgversn/143/lugar.html)

In a world confronted by global terrorism, turmoil in the Middle East, burgeoning nuclear threats and other crises, it is easy to lose sight of the long-range challenges. But we do so at our peril. One of the most daunting of them is meeting the world’s need for food and energy in this century. At stake is not only preventing starvation and saving the environment, but also world peace and security. History tells us that states may go to war over access to resources, and that poverty and famine have often bred fanaticism and terrorism. Working to feed the world will minimize factors that contribute to global instability and the proliferation of weapons of mass destruction.

With the world population expected to grow from 6 billion people today to 9 billion by mid-century, the demand for affordable food will increase well beyond current international production levels. People in rapidly developing nations will have the means greatly to improve their standard of living and caloric intake. Inevitably, that means eating more meat. This will raise demand for feed grain at the same time that the growing world population will need vastly more basic food to eat.

Complicating a solution to this problem is a dynamic that must be better understood in the West: developing countries often use limited arable land to expand cities to house their growing populations. As good land disappears, people destroy timber resources and even rainforests as they try to create more arable land to feed themselves. The long-term environmental consequences could be disastrous for the entire globe.   Productivity revolution  To meet the expected demand for food over the next 50 years, we in the United States will have to grow roughly three times more food on the land we have. That’s a tall order. My farm in Marion County, Indiana, for example, yields on average 8.3 to 8.6 tonnes of corn per hectare – typical for a farm in central Indiana. To triple our production by 2050, we will have to produce an annual average of 25 tonnes per hectare.

Can we possibly boost output that much? Well, it’s been done before. Advances in the use of fertilizer and water, improved machinery and better tilling techniques combined to generate a threefold increase in yields since 1935 – on our farm back then, my dad produced 2.8 to 3 tonnes per hectare. Much US agriculture has seen similar increases.

But of course there is no guarantee that we can achieve those results again. Given the urgency of expanding food production to meet world demand, we must invest much more in scientific research and target that money toward projects that promise to have significant national and global impact. For the United States, that will mean a major shift in the way we conduct and fund agricultural science. Fundamental research will generate the innovations that will be necessary to feed the world.

The United States can take a leading position in a productivity revolution. And our success at increasing food production may play a decisive humanitarian role in the survival of billions of people and the health of our planet.

**Mutations ensure diseases cause extinction.**

**Darling 12** (David, Astronomer, “9 Strange Ways the World Really Might End”, Seattle's Big Blog, 3-18, http://blog.seattlepi.com/thebigblog/2012/03/18/9-strange-ways-the-world-really-might-end/?fb\_xd\_fragment, Washington State University)

Our body is in constant competition with a dizzying array of viruses, bacteria, and parasites, many of which treat us simply as a source of food or a vehicle for reproduction. What’s troubling is that these microbes can mutate and evolve at fantastic speed – the more so thanks to the burgeoning human population – confronting our bodies with new dangers every year. HIV, Ebola, bird flu, and antibiotic-resistant “super bugs” are just a few of the pathogenic threats to humanity that have surfaced over the past few decades. Our soaring numbers, ubiquitous international travel, and the increasing use of chemicals and biological agents without full knowledge of their consequences, have increased the risk of **unstoppable pandemics** arising from mutant viruses and their ilk. Bubonic plague, the Black Death, and the Spanish Flu are vivid examples from history of how microbial agents can decimate populations. But the consequences aren’t limited to a high body count. When the death toll gets high enough, it can disrupt the very fabric of society. According to U.S. government studies, if a global pandemic affecting at least half the world’s population were to strike today, health professionals wouldn’t be able to cope with the vast numbers of sick and succumbing people. The result of so many deaths would have serious implications for the infrastructure, food supply, and security of 21st century man. While an untreatable **pandemic could strike suddenly and** potentially **bring civilization to its knees in weeks** or months, degenerative diseases might do so over longer periods. The most common degenerative disease is cancer. Every second men and every third women in the western world will be diagnosed with this disease in their lifetime. Degeneration of our environment through the release of toxins and wastes, air pollution, and intake of unhealthy foods is making this problem worse. If cancer, or some other form of degenerative disease, were to become even more commonplace and strike before reproduction, or become infectious (as seen in the transmitted facial cancer of the Tasmanian Devil, a carnivorous marsupial in Australia) the very survival of our species could be **threatened**.

**The plan’s key to overall relations–**

**1. Venezuela’s creating regional fragmentation away from Washington.**

**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 **U**nion of **S**outh **A**merican **N**ations, created in 2008, and the **C**ommunity of **L**atin **A**merican and **C**aribbean **S**tates, 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.

**2. Bolsters US credibility in the region and makes regional coalitions possible.**

**Griffin, 13** – Professor of Finance McCombs School of Business University of Texas at Austin, John, “Engage with Venezuela,” The Harvard Crimson, 3 April 2013, http://www.thecrimson.com/article/2013/4/3/Harvard-Venezuela-Chavez-death/)

Diplomatically, positive engagement with Venezuela would be a major step toward **build**ing **American credibility** in the world at large, especially in Latin America. Chávez (along with his friends the Castros in Cuba) was able to bolster regional support for his regime by pointing out the United States’ attempts to forcibly intervene in Venezuelan politics. Soon, a number of populist governments in Latin America had rallied around Chávez and his anti-American policies. In 2004, Bolivia, Ecuador, Nicaragua, and three Caribbean nations joined with Venezuela and Cuba to form the Bolivarian Alliance for the Peoples of our America, an organization in direct opposition to the Free Trade Area in the Americas proposed (but never realized) by the Bush administration. Chávez galvanized these nations—many of whom have experienced American interventionist tactics—by vilifying America as a common, imperial enemy. Unfortunately for the United States, its general strategy regarding Venezuela has often strengthened Chávez’s position. Every time Washington chastises Venezuela for opposing American interests or attempts to bring sanctions against the Latin American country, the leader in Caracas (whether it be Chávez or Maduro) simply gains more evidence toward his claim that Washington is a neo-colonialist meddler. This weakens the United States’ diplomatic position, while simultaneously strengthening Venezuela’s. If Washington wants Latin America to stop its current trend of electing leftist, Chavista governments, its first step should be to adopt a less astringent tone in dealing with Venezuela. Caracas will be unable to paint Washington as an aggressor, and Washington will in turn gain a better image in Latin America. Beyond leading to more amicable, cooperative relationships with Latin American nations, engagement with Venezuela would also be economically advisable. With the world’s largest oil reserves, countless other valuable resources, and stunning natural beauty to attract scores of tourists, Venezuela has quite a bit to offer economically. Even now, America can see the possible benefits of economic engagement with Caracas by looking at one of the few extant cases of such cooperation: Each year, thousands of needy Americans are able to keep their homes heated because of the cooperation between Venezuela and a Boston-area oil company. Engagement with Venezuela would also lead to **stronger** economic **cooperation** with the **entirety** of Latin America. It was mostly through Venezuela’s efforts that the United States was unable to create a “Free Trade Area of the Americas,” an endeavor that would have eliminated most trade barriers among participant nations, thereby leading to more lucrative trade. In a world where the United States and Venezuela were to enjoy normalized relations, all nations involved would benefit from such agreements. For both diplomatic and economic reasons, then, positive engagement is the best course of action for the United States. As it stands, the negative relationship between the countries has created an atmosphere of animosity in the hemisphere, hindering dialogue and making economic cooperation nearly impossible. While there is much for which the Venezuelan government can rightly be criticized—authoritarian rule, abuse of human rights, lack of market-friendly policies—nothing that the United States is doing to counter those drawbacks is having any effect. The United States should stop playing “tough guy” with Venezuela, bite the bullet, and work toward stability and prosperity for the entire hemisphere. We aren’t catching any flies with our vinegar—it’s high time we started trying to catch them with honey.

**3. Develops information sharing and communication channels**

**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

3. Recommended “Default” Model of Mediation for the Investor-State Context Arguably, at least, the aim of **mediation** in the investment context should be **enhancing parties’ ability to communicate**, inform, and **negotiate directly** with each other. After all, it will be important for the parties to maintain or improve ongoing relationships, collaborate on the implementation of any agreement, and acknowledge volatile political situations (often accompanied by difficult emotions) to enable representatives (and their constituencies) to embrace good solutions, even if they are not everyone’s preferred solutions. All of these factors suggest the value of a “default” model of mediation that begins with facilitative or elicitive interventions and a **focus on interests**. Such a model should be preceded by careful preparation. Importantly, however, this model of mediation should also be supplemented as necessary with evaluative or directive interventions and consideration of legal rights and norms. As we have discussed supra, it is the combination of these interventions that is the hallmark of effective mediators. A process that begins facilitatively should enable the parties’ “mutual consideration”165 of each other’s perspectives and underlying needs. In other words, it should facilitate the parties’ ability to engage in a procedurally just process with each other. Investors and states will need sufficient opportunity to speak and be heard, but also to listen to each other, reflect upon what was said, demonstrate that they have listened to each other, and also make meaningful movement toward resolution.166 This recommendation assumes that states and investors need access to mediation because they currently have only three other procedures available to them—negotiation, conciliation, and arbitration— to resolve their disputes.167 The “default” mediation model that is presumptively facilitative and interest-based therefore offers something new and useful. First, of course, it provides a third party to assist the parties’ negotiations; this differentiates it from negotiation. Second, its focus is on facilitating the parties’ **communication**, **information- sharing** and **negotiation**, thus placing it within the “facilitated” category of processes, while conciliation and binding arbitration fit into the “advisory” and “imposed” categories, respectively. Finally, this model of mediation provides an explicit opportunity to identify and focus on the discussion of interests, while conciliation and arbitration presumptively focus on rights. As a “default,” parties may elect to depart from this model, but they must do so explicitly and agree upon such a departure.

#### Venezuela says yes --

**1. Oil proves antagonism is just rhetoric.**

**PBS 2/25/**14, “Maduro sends mixed messages about U.S.-Venezuela relationship,” http://www.pbs.org/newshour/bb/maduro-mixed-messages-us-venezuela-relations/, Accessed 2/26/14)//DR. H

We really are getting mixed messages, as you say, from Nicolas Maduro, about his relationship with the state. Last week he kicked out two U.S. diplomats, this week that Washington in turn in a tit-for-tat move which is always what happens, they kicked out three of Venezuela’s own diplomats.

But at the same time, Nicolas Maduro is saying that he wants some dialogue with the U.S. He’s also saying that he wants to appoint an ambassador to Washington.

This move, this idea of kicking out diplomats and blaming the U.S. when times get tough is not new.

Your viewers might remember in 2006 when Hugo Chavez took the stand at the United Nations, he called George Bush the devil. When (INAUDIBLE) in fact just a few hours beforehand, Nicolas Maduro kicked out a couple of ambassadors — a couple of diplomats — sorry.

And then in September, again, Nicolas Maduro kicked out some diplomats from the U.S. So, it’s a tried and tested move. But when we look at the relationship that the U.S. has with Venezuela, it’s better to look at the oil and the money that’s changing hands, as opposed to necessarily the rhetoric and the politics.

The U.S. remains one of — well, it remains the biggest buyer of Venezuelan oil. Venezuela is the fourth biggest supplier, I think, to the United States, and that really says it all.

#### 3. Desperation. (Read yellow).

Graef 4/2, Aileen, staff writer for UPI, quotes Maduro, 2014, “Maduro asks U.S. not to impose sanctions in Venezuela in op-ed”, <http://www.upi.com/Top_News/World-News/2014/04/02/Maduro-asks-US-not-to-impose-sanctions-in-Venezuela-in-op-ed/8481396470110/>, accessed 4/7/14)//HH

"I hope that the American people, knowing the truth, will decide that Venezuela and its people do not deserve such punishment, and will call upon their representatives not to enact sanctions," said Maduro in his plea.

As for the "truth," Maduro also says in the piece that the media has distorted the civil unrest in Venezuela to make the anti-government activists look like peaceful protesters against a violent and oppressive government, but in reality the protesters are the ones who are violent and trying to cause the ouster of a democratically elected government.

"The claims that Venezuela has a deficient democracy and that current protests represent mainstream sentiment are belied by the facts. The anti-government protests are being carried out by people in the wealthier segments of society who seek to reverse the gains of the democratic process that have benefited the vast majority of the people."

Along with his plea, Maduro says the time has come for diplomacy between the two nations and says the Venezuelan government has reached out to U.S. President Barack Obama to once again exchange ambassadors.

"Venezuela needs peace and dialogue to move forward. We welcome anyone who sincerely wants to help us reach these goals."