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plan

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

warming

CONTENTION 1 IS WARMING –

Warming is real and anthropogenic – keeping it below 2-C is key.

Economist 9/27—“It's still our fault”, 2013, http://www.economist.com/blogs/babbage/2013/09/ipcc-climate-change-report) EL

The report is more definitive than in the past about the role of people in causing climate change. It say that it is "extremely likely"—IPCC speak for having a probability of over 95%—that man is responsible. This contrasts with the tentative tone of the early IPCC reports. “The observed increase [in surface air temperatures] could be largely due to this natural variability,” said the first one, in 1990. The next report in 1995 merely suggested a link between rising temperatures and human activity. That link was deemed “likely” (which means probability of 66%) in 2001, and “very likely” (90%) in 2007. The latest iteration identifies radiative forcing, the difference between the amount of heat coming into the climate and the amount reflected back, as the immediate cause of warming. Radiative forcing is expressed in watts per square metre (W/m2), a unit of energy. A rise indicates that heat is building up in the system. Total radiative forcing from man-made sources since 1750 (ie, before industrialisation) has risen from 0.29-0.85W/m2 in 1950 to 0.64-1.86W/m2 in 1980 to 1.13-3.33W/m2 in 2011. The average has jumped from 0.57 to 1.25 to 2.29, respectively—a four-fold increase in 60 years. The big change recently, the report points out, is that the cooling effect of aerosols seems to have been less strong than it used to be. But there is no sign that the rise in radiative forcing has slowed during the past 15 years of flat surface temperatures. The best estimate for total man-made radiative forcing in 2011 is 43% above 2005 levels. Of course, more heat does not necessarily equal perceptible climate change. The IPCC admits the pause in the rise of surface air temperatures is real. “The rate of warming over the past 15 years,” it says, “[is] 0.05ºC per decade...smaller than the rate calculated since 1951.” In its 2007 report the panel had said the rate of warming was 0.2ºC per decade in 1990-2005 (four times the current rate). It predicted that this would continue for the next two decades. But it plays down the long-term significance of the shift, saying that “due to natural variability, trends based on short records are very sensitive to the beginning and end dates and do not in general reflect long-term climate trends.” The start of the recent 15-year trend, in 1998, was a year of a strong worldwide fluctutation in the climate known as El Niño. This produced a temperature spike. Still, all the extra heat implied by higher radiative forcing has to go somewhere. It isn’t going into the air. It is possible that not all that much is going into the surface waters of the oceans, either. The report says that “it is about as likely as not that ocean heat content from 0-700 metres increased more slowly during 2003-2010 than during 1993-2002.” That only leaves one other heat sink: the deep oceans below 700 metres, where it could be locked up in the deep oceans without affecting other parts of the climate. And indeed, most of the extra heat does go into the oceans, which is not surprising given that they cover two thirds of Earth’s surface and have a much greater capacity to absorb heat than the air does. “Ocean warming,” the report says, “is largest near the surface and the upper 75 metres warmed by 0.11ºC per decade over the period 1971-2010.” It adds that more than 60% of the net energy increase in the climate system is stored in the upper ocean (0-700 metres)...and about 30% is stored in the ocean below 700 metres. In fact, vasty deeps are a plausible candidate to explain the pause in surface air temperatures. The trouble is that measurements deep down, while improving, remain patchy. The IPCC says that it is likely that the ocean warmed from 3,000 metres to the bottom in 1992-2005 and that heat will penetrate from the surface down. Moreover, in a report earlier this month in Nature (published too late to make it into the IPCC report), Yu Kosaka and Shang-Ping Xie of the Scripps Institute of Oceanography, in San Diego, suggests that a cooling trend in an area of the eastern equatorial Pacific ocean may be “the cause of the pause”. But at the moment, this conclusion remains tentative. Global warming is, then, continuing unabated in the watery world. It is not clear whether the trend itself has changed dramatically since 1990 or whether the rise is due to improved measurements, which have enabled scientists to gauge more exactly what has been going on. Probably the latter. The new assessment says that, since the fourth report in 2007, "instrumental biases in upper-ocean temperature records have been identified and reduced, enhancing confidence in the assessment of change." Either way, the trend is worrying. Since water, like almost everything else, expands as it gets hotter, its rising temperature causes sea levels to rise. It is "very likely", the report adds, “that the mean rate of global averaged sea level rise was 1.7mm a year between 1901 and 2010, 2.0mm a year between 1971 and 2010 and 3.2mm a year between 1993 and 2010.” The rate of sea-level rise all but doubled between the start of the 20th century and its end. That is a significant change and one that the first IPCC assessment report in 1990 had little inkling of. That report reckoned that “the average rate of rise over the last 100 years has been 1.0-2.0 mm a year. There is no firm evidence of acceleration in sea level rise during this century.” The rate is now thought to be higher—and growing. New instruments are providing better information about the rate at which ice sheets and glaciers are melting, too. In particular, the launch of the twin GRACE satellites has provided more detail about how much ice there actually is. GRACE, which stands for Gravity Recovery and Climate Experiment, enables the mass of objects on Earth to be worked out more precisely by measuring tiny changes in their gravitation pull. The report says that “the average rate of ice loss from glaciers around the world, excluding glaciers on the periphery of the ice sheets, was very likely 226Gt [trillion tonnes] a year over the period 1971-2009 and very likely 275Gt a year over the period 1993-2009.” In other words, it has speeded up. The Greenland ice sheet, the Antarctic sea ice and the Arctic sea ice have all lost mass (got thinner). The extent of the Arctic sea ice has shrunk by 3.5-4.1% a decade in 1979-2012, more than was estimated in 2007, and the summer sea-ice minimum is shrinking by about 10% a decade, though this year’s summer ice melt was smaller than last year’s. What does that mean for the future? The report uses four new sets of scenarios for greenhouse-gas concentrations to claim that “global surface temperature change for the end of the 21st century is projected to be likely to exceed 1.5ºC relative to 1850 to 1900 in all but the lowest scenario considered, and likely to exceed 2ºC for the two high scenarios.” The 2ºC mark is widely considered to be the dividing line between warming which is just about tolerable and that which is dangerous. For the first time, the IPCC gives some credence to the possibility that Earth’s climate may not be responding to higher concentrations of greenhouse gases quite as sharply as was once thought. The response is referred to as “equilibrium climate sensitivity” and defined as the rise in surface temperatures in the long term which accompanies a doubling of the concentration of CO2 in the atmosphere. In its previous report, the IPCC put this at between 2ºC and 4.5 ºC, with a most likely figure of 3ºC. But recent work, partly influenced by the pause in temperatures, has suggested sensitivity might be somewhat lower. The IPCC’s new range of 1.5-4.5ºC (the same as in its first report) reflects the new consensus (though some new research puts the upper bound of sensitivity below 4.5ºC). The IPCC also decided to scrap its central “best guess”. Perhaps this is meant to reflect uncertainty in the science. If so, some scientists argue, then perhaps it should not have increased its confidence that man is the main cause of global warming. In theory, a lower climate sensitivity means temperatures would rise more slowly for any given amount of extra radiative forcing. Earth might hence have a little more time to adjust to a changing climate. But whether such breathing space actually exists depends on how many tonnes of greenhouse gases people are putting into the atmosphere. So, for the first time, the IPCC has set what is usually called a carbon budget. To have a two-thirds chance of keeping global warming below 2ºC, it says, “will require cumulative CO2 emissions from all anthropogenic sources to stay between 0 and about 1,000 [trillion tonnes]”. The world has already blown through just over half that amount (531 trillion tonnes) by 2011. At current rates of greenhouse-gas emission, the rest of the budget will have been spent before 2040. The odds of keeping the eventual rise in global temperatures to below 2ºC will lengthen—even if climate sensitivity is lower than was thought and even if the pause in surface air temperatures persists for a while. As Thomas Stocker, the co-chair of the report depressingly put it: “we are committed to climate change…for many centuries even if emissions of CO2 stop.”

Models prove warming causes biodiversity loss and extinction.

IPCC 07—“Climate Change 2007: Working Group II: Impacts, Adaptation and Vulnerability”, http://www.ipcc.ch/publications\_and\_data/ar4/wg2/en/ch4s4-4-11.html) EL

Considerable progress has been made since the TAR in key fields that allow projection of future climate change impacts on species and ecosystems. Two of these key fields, namely climate envelope modelling (also called niche-based, or bioclimatic modelling) and dynamic global vegetation modelling have provided numerous recent results. The synthesis of these results provides a picture of potential impacts and risks that is far from perfect, in some instances apparently contradictory, but overall highlights a wide array of key vulnerabilities (Figures 4.2; 4.4; 4.5, Table 4.1). Climate envelope modelling has burgeoned recently due to increased availability of species distribution data, together with finer-scale climate data and new statistical methods that have allowed this correlative method to be widely applied (e.g., Guisan and Thuiller, 2005; McClean et al., 2005; Thuiller et al., 2005b). Despite several limitations (Section 4.3 and references cited therein) these models offer the advantage of assessing climate change impacts on biodiversity quantitatively (e.g., Thomas et al., 2004a). Climate envelope models do not simulate dynamic population or migration processes, and results are typically constrained to the regional level, so that the implications for biodiversity at the global level are difficult to infer (Malcolm et al., 2002a). In modelling ecosystem function and plant functional type response, understanding has deepened since the TAR, though consequential uncertainties remain. The ecophysiological processes affected by climate change and the mechanisms by which climate change may impact biomes, ecosystem components such as soils, fire behaviour and vegetation structure (i.e., biomass distribution and leaf area index) are now explicitly modelled and have been bolstered by experimental results (e.g., Woodward and Lomas, 2004b). One emerging key message is that climate change impacts on the fundamental regulating services may previously have been underestimated (Sections 4.4.1, 4.4.10, Figures 4.2; 4.3; 4.4). Nevertheless, the globally applicable DGVMs are limited inasmuch as the few plant functional types used within the models aggregate numerous species into single entities (Sitch et al., 2003). These are assumed to be entities with very broad environmental tolerances, which are immutable and immune to extinction. Therefore, underlying changes in species richness are not accounted for, and the simultaneous free dispersal of PFTs is assumed (e.g., Neilson et al., 2005; Midgley et al., 2007). The strength of DGVMs is especially in their global application, realistic dynamics and simulation of ecosystem processes including essential elements of the global C-cycle (e.g., Malcolm et al., 2002b). Thus, it is reasonable to equate changes in DGVM-simulated vegetation (e.g., Figure 4.3) to changes in community and population structures in the real world. What overall picture emerges from the results reviewed here? It appears that moderate levels of atmospheric CO2 rise and climate change relative to current conditions may be beneficial in some regions (Nemani et al., 2003), depending on latitude, on the CO2 responsiveness of plant functional types, and on the natural adaptive capacity of indigenous biota (mainly through range shifts that are now being widely observed – see Chapter 1). But as change continues, greater impacts are projected, while ecosystem and species response may be lagged (Sections 4.4.5, 4.4.6). At key points in time (Figure 4.4), ecosystem services such as carbon sequestration may cease, and even reverse (Figure 4.2). While such ‘tipping points’ (Kemp, 2005) are impossible to identify without substantial uncertainties, they may lead to irreversible effects such as biodiversity loss or, at the very least, impacts that have a slow recovery (e.g., on soils and corals). Figure 4.4 Figure 4.4. Compendium of projected risks due to critical climate change impacts on ecosystems for different levels of global mean annual temperature rise, ΔT, relative to pre-industrial climate (approach and event numbers as used in Table 4.1 and Appendix 4.1). It is important to note that these impacts do not take account of ancillary stresses on species due to over-harvesting, habitat destruction, landscape fragmentation, alien species invasions, fire regime change, pollution (such as nitrogen deposition), or for plants the potentially beneficial effects of rising atmospheric CO2. The red curve shows observed temperature anomalies for the period 1900-2005 (Brohan et al., 2006, see also Trenberth et al., 2007, Figure 3.6). The two grey curves provide examples of the possible future evolution of temperature against time (Meehl et al., 2007, Figure 10.4), providing examples of higher and lower trajectories for the future evolution of the expected value of ΔT. Shown are the simulated, multi-model mean responses to (i) the A2 emissions scenario and (ii) an extended B1 scenario, where radiative forcing beyond the year 2100 was kept constant to the 2100 value (all data from Meehl et al., 2007, Figure 10.4, see also Meehl et al., 2007, Section 10.7). In the two simulations presented in Figure 4.2 (warming of 2.9°C and 5.3°C by 2100 over land relative to the 1961-1990 baseline), the DGVM approach reveals salient changes in a key regulating service of the world’s ecosystems: carbon sequestration. Changes in the spatial distributions of ecosystems are given in Figure 4.3 (where it must be stressed that the figure highlights only key vulnerabilities through depicting appreciable vegetation type changes, i.e., PFT change over >20% of the area of any single pixel modelled). In the B1 emissions scenario (Figure 4.3b) about 26% of extant ecosystems reveal appreciable changes by 2100, with some positive impacts especially in Africa and the Southern Hemisphere. However, these positive changes are likely to be due to the assumed CO2-fertilisation effect (Section 4.4.10, Figure 4.3). By contrast, in mid- to high latitudes on all continents, substantial shifts in forest structure toward more rain-green, summer-green or deciduous rather than evergreen forest, and forest and woodland decline, underlie the overall drop in global terrestrial carbon sequestration potential that occurs post-2030, and approaches a net source by about 2070 (Figure 4.2; 4.3). In the A2 emissions scenario, roughly 37% of extant ecosystems reveal appreciable changes by 2100. Desert amelioration persists in the regions described above, but substantial decline of forest and woodland is seen at northern, tropical and sub-tropical latitudes. In both scenarios the current global sink deteriorates after 2030, and by 2070 (ΔT ~2.5°C over pre-industrial) the terrestrial biosphere becomes an increasing carbon source (Figure 4.2; see also Scholze et al., 2006) with the concomitant risk of positive feedback, developments that amplify climate change. Similar results were obtained by using a wide range of climate models which indicate that the biosphere becomes consistently within this century a net CO2 source with a global warming of >3°C relative to pre-industrial (Scholze et al., 2006). On the other hand, it must be noted that by about 2100 the modelled biosphere has nevertheless sequestered an additional 205-228 PgC (A2 and B1 emissions scenarios respectively) relative to the year 2000 (Lucht et al., 2006). Climate envelope modelling suggests that climate change impacts will diminish the areal extent of some ecosystems (e.g., reduction by 2-47% alone due to 1.6°C warming above pre-industrial, Table 4.1, No. 6) and impact many ecosystem properties and services globally. Climate impacts alone will vary regionally and across biomes and will lead to increasing levels of global biodiversity loss, as expressed through area reductions of wild habitats and declines in the abundance of wild species putting those species at risk of extinction (e.g., 3-16% of European plants with 2.2°C warming (Table 4.1, No. 20) or major losses of Amazon rainforest with 2.5°C warming above pre-industrial, Figure 4.4, Table 4.1, No. 36). Globally, biodiversity (represented by species richness and relative abundance) may decrease by 13 to 19% due to a combination of land-use change, climate change and nitrogen deposition under four scenarios by 2050 relative to species present in 1970 (Duraiappah et al., 2005). Looking at projected losses due to land-use change alone (native habitat loss), habitat reduction in tropical forests and woodland, savanna and warm mixed forest accounts for 80% of the species projected to be lost (about 30,000 species – Sala, 2005). The apparent contrast between high impacts shown by projections for species (climate envelope models) relative to PFTs (DGVMs) is likely to be due to a number of reasons – most importantly, real species virtually certainly have narrower climate tolerances than PFTs, a fact more realistically represented by the climate envelope models. DGVM projections reveal some increasing success of broad-range, generalist plant species, while climate envelope model results focus on endemics. Endemics, with their smaller ranges, have been shown to have a greater vulnerability to climate change (Thuiller et al., 2005a), and may furthermore be dependent on keystone species in relationships that are ignored in DGVMs. Therefore, for assessing extinction risks, climate envelope modelling currently appears to offer more realistic results. As indicated in the TAR, climate changes are being imposed on ecosystems experiencing other substantial and largely detrimental pressures. Roughly 60% of evaluated ecosystems are currently utilised unsustainably and show increasing signs of degradation (Reid et al., 2005; Hassan et al., 2005; Worm et al., 2006). This alone will be likely to cause widespread biodiversity loss (Chapin et al., 2000; Jenkins, 2003; Reid et al., 2005), given that 15,589 species, from every major taxonomic group, are already listed as threatened (Baillie et al., 2006). The likely synergistic impacts of climate change and land-use change on endemic species have been widely confirmed (Hannah et al., 2002a; Hughes, 2003; Leemans and Eickhout, 2004; Thomas et al., 2004a; Lovejoy and Hannah, 2005; Hare, 2006; Malcolm et al., 2006; Warren, 2006), as has over-exploitation of marine systems (Worm et al., 2006; Chapters 5 and 6). Overall, climate change has been estimated to be a major driver of biodiversity loss in cool conifer forests, savannas, mediterranean-climate systems, tropical forests, in the Arctic tundra, and in coral reefs (Thomas et al., 2004a; Carpenter et al., 2005; Malcolm et al., 2006). In other ecosystems, land-use change may be a stronger driver of biodiversity loss at least in the near term. In an analysis of the SRES scenarios to 2100 (Strengers et al., 2004), deforestation is reported to cease in all scenarios except A2, suggesting that beyond 2050 climate change is very likely to be the major driver for biodiversity loss globally. Due to climate change alone it has been estimated that by 2100 between 1% and 43% of endemic species (average 11.6%) will be committed to extinction (DGVM-based study – Malcolm et al., 2006), whereas following another approach (also using climate envelope modelling-based studies – Thomas et al., 2004a) it has been estimated that on average 15% to 37% of species (combination of most optimistic assumptions 9%, most pessimistic 52%) will be committed to extinction by 2050 (i.e., their range sizes will have begun shrinking and fragmenting in a way that guarantees their accelerated extinction). Climate-change-induced extinction rates in tropical biodiversity hotspots are likely to exceed the predicted extinctions from deforestation during this century (Malcolm et al., 2006). In the mediterranean-climate region of South Africa, climate change may have at least as significant an impact on endemic Protea species’ extinction risk as land-use change does by 2020 (Bomhard et al., 2005). Based on all above findings and our compilation (Figure 4.4, Table 4.1) we estimate that on average 20% to 30% of species assessed are likely to be at increasingly high risk of extinction from climate change impacts possibly within this century as global mean temperatures exceed 2°C to 3°C relative to pre-industrial levels (this chapter). The uncertainties remain large, however, since for about 2°C temperature increase the percentage may be as low as 10% or for about 3°C as high as 40% and, depending on biota, the range is between 1% and 80% (Table 4.1; Thomas et al., 2004a; Malcolm et al., 2006). As global average temperature exceeds 4°C above pre-industrial levels, model projections suggest significant extinctions (40-70% species assessed) around the globe (Table 4.1). Losses of biodiversity will probably lead to decreases in the provision of ecosystem goods and services with trade-offs between ecosystem services likely to intensify (National Research Council, 1999; Carpenter et al., 2005; Duraiappah et al., 2005). Gains in provisioning services (e.g., food supply, water use) are projected to occur, in part, at the expense of other regulating and supporting services including genetic resources, habitat provision, climate and runoff regulation. Projected changes may also increase the likelihood of ecological surprises that are detrimental for human well-being (Burkett et al., 2005; Duraiappah et al., 2005). Ecological surprises include rapid and abrupt changes in temperature and precipitation, leading to an increase in extreme events such as floods, fires and landslides, increases in eutrophication, invasion by alien species, or rapid and sudden increases in disease (Carpenter et al., 2005). This could also entail sudden shifts of ecosystems to less desired states (Scheffer et al., 2001; Folke et al., 2004; e.g., Chapin et al., 2004) through, for example, the exeedance of critical temperature thresholds, possibly resulting in the irreversible loss of ecosystem services, which were dependent on the previous state (Reid et al., 2005)

Ocean acidification is occuring now and will cause extinction but it’s not game over – emissions cuts are key.

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They are calling it “the other CO2 problem”. Its victim is not the polar bear spectacularly marooned on a melting ice floe, or an eagle driven out of its range, nor even a French pensioner dying of heatstroke. What we have to mourn are tiny marine organisms dissolving in acidified water. In fact we need to do rather more than just mourn them. We need to dive in and save them. Suffering plankton may not have quite the same cachet as a 700-kilo seal-eating mammal, but their message is no less apocalyptic. What they tell us is that the chemistry of the oceans is changing, and that, unless we act decisively, the limitless abundance of the sea within a very few decades will degrade into a useless tidal desert. In every way — economically, environmentally, socially — the effects of ocean acidification are as dangerous as climate change, and even harder to resist. It has been a slow dawning. Until recently, marine scientists have had little luck in engaging the public or political mind. The species most directly at risk — plankton, corals, sea snails, barnacles and other stuff that most people have never heard of — seemed as remote from our lives as cosmic dust. But now at last “the other CO2 problem” may have found a mascot of its own — the tiny but colourful clownfish, winsome star of the Disney classic Finding Nemo. In the film, Nemo gets lost. Now it turns out that real clownfish might lose their way too. In early February, the American academic journal Proceedings of the National Academy of Sciences (PNAS) carried a paper titled “Ocean acidification impairs olfactory discrimination and homing ability of a marine fish”. The sombre language concealed a stark message. What the researchers had found was that clownfish larvae in acidified water were unable to detect the odours from adult fish that led them to their breeding sites. The implications were obvious. If the fish don’t breed, the species will not survive, and what is true for one species must be true for others. In time, the world’s fishing fleets will be less a food resource than a disposal problem. What’s happening is this: the oceans absorb carbon dioxide (CO2) from the atmosphere. As most climate scientists and governments now agree, human activity — most importantly, burning fossil fuels — has intensified CO2 in the atmosphere, causing long-term climate change. The good thing is that the seas have absorbed a lot of the gas and so have slowed the pace of atmospheric warming. The bad thing is that CO2 reacts with sea water to make carbonic acid. Since 1800, humans have generated 240 billion tonnes of carbon dioxide, half of which has been absorbed by the sea. On average, each person on Earth contributes a tonne of carbon to the oceans every year. The result is a rapid rise in acidity — or a reduction in pH, as the scientists prefer to express it — which, as it intensifies, will mean that marine animals will be unable to grow shells, and that many sea plants will not survive. With these crucial links removed, and the ecological balance fatally disrupted, death could flow all the way up the food chain, through tuna and cod to marine mammals and Homo sapiens. As more than half the world’s population depends on food from the sea for its survival, this is no exaggeration. This is why 155 marine scientists from 26 countries recently signed the Monaco Declaration, identifying the twin threats of global warming and ocean acidification as “the challenge of the century”. It is, nevertheless, a challenge they have taken up only recently. “The whole scientific community was caught with its pants down,” says Jason Hall-Spencer, research lecturer at Plymouth University, who was one of the signatories. The term “ocean acidification” was coined only in 2003 — by odd coincidence the same year Finding Nemo was released and 35,000 people died in the European summer heat wave — though, unlike global warming, it has not had to face the opposition of truth-deniers. Verging on panic in 2005, the Royal Society published a 68-page report in which it calculated that acidification had increased by 30% in 200 years. If we went on as we were, it said, this would rise to 300% by 2100, making the seas more corrosive than they had been at any time for hundreds of millennia. In every practicable sense, the damage was irreversible. “It will take tens of thousands of years for ocean chemistry to return to a condition similar to that occurring at pre-industrial times,” the Royal Society said. It is a truism that might have been minted for the Darwin bicentenary. A species once lost is gone for ever. You can’t rewind evolution, or reinvent fish. We are not talking about dispossessing our children, or even our grandchildren’s grandchildren. We are talking so many generations into the fog of geological time that we might not even be talking about the same species. We are certainly not talking about low-lying countries protected by coral reefs, such as the Maldives. In future they will not be studying the marine environment: they will be part of it. Doomy stuff like this, of course, is nothing new. The “warmists”, as the deniers like to call them, have been telling us for years that our rate of consumption is unsustainable and that future generations will pay a terrible price for our carelessness. If you don’t want to believe in climate change, you can argue that forecasts created by computer modelling are “theoretical”. Or you can confuse the long-term graph of “climate” with the short-term spikes of “weather”. Look, there’s a snowflake! Global warming can’t be happening! But acidification permits no such equivocation. It is demonstrable, visible and measurable, and there is nothing theoretical about how it is caused or what it does. All the same, until now there has been one significant shortcoming. As with the clownfish, it has been easy enough under laboratory conditions to see how individual species respond to acidity. What is much less easy is to observe the effects on entire ecosystems. This problem has now been cracked by a team from Plymouth led by Jason Hall-Spencer, who scanned the world for a location where the sea conditions expected in future were already happening naturally. They found it in the Bay of Naples, just off the holiday island of Ischia. The sea bed here is chalk. Deep geological activity converts some of this into carbon dioxide and forces it up through volcanic vents into the water. In and around the neighbourhood of these vents, the result is a perfect “gradient” of pH levels from the normal 8.1 all the way down to 7.4 (remember: the lower the pH, the higher the acidity). To non-scientists, the giving or taking of a few decimal points can look undramatic. To experts they mark the difference between life and death. The 30% increase in acidity during the industrial age is reflected by a drop in pH of just 0.1. On current trends, it will plummet by another 0.4 points to hit an unprecedented low of 7.7 by 2100. By 2300 it could be down to 7.3. Few species living in the sea have experienced conditions like these at any time throughout their entire life on Earth. With pH as low as this, it is at least questionable that land creatures emerging from the primal swamp could have evolved into the bony specimens that roam the Earth today. And it is certain that the pace of environmental change is far too fast for evolution to keep in step. As a recipe for life on Earth, it is about as efficacious as nuclear war. Experiments have shown that the tipping point at which shell growth ceases comes at a pH of 7.8. This is the level which, on current trends, will be the global norm before the end of the century, and it is the level at which the Plymouth team has focused its attention. Given all the dire warnings, the first visual impression at Ischia is something of a surprise. There are plenty of fish. Is it, then, a false alarm? Could the world’s scientists have got their statistical knickers in a twist and jumped to a false conclusion? Will life just go on as normal? Alas, no. The acidified water is a small zone in a wider sea. There is no barrier. The fish are just visitors. They come to feed on the soft-bodied algae that survive in the altered conditions, then they swim away again. What they don’t do is breed — which is exactly what the Nemo research predicts. “Fish breed naturally at a pH of 8.1,” says Hall-Spencer. He believes the sensory loss observed in clownfish is only one part of the story. “Losing the sense of smell,” he says, “is not likely to be the only effect. It’s much more likely to be one impairment among many. Eggs in these conditions cannot develop normally.” Shelled creatures in the Ischian waters are visibly suffering. Sea urchins thin out and disappear as the acidity increases; so do corals, limpets and barnacles. Sea snails straying into the zone have thin, weak shells, and produce no young. There is another important absentee, too — the coralline algae (seaweed with a chalk skeleton) that glues coral reefs together. Without it, reefs become weakened and fall apart. In just a few decades, if the output of carbon dioxide does not abate, this will be the condition of all the world’s oceans. Many if not all commercially fished species, including shellfish, will suffer. So, too, will coral reefs, whose disintegration will leave low-lying coasts in the tropics unprotected from the rising seas and fiercer storms that climate change will unleash. By some calculations reefs will have vanished by 2065, and nobody expects them to survive into the 22nd century. Nature, however, will continue to abhor a vacuum. Species that disappear will be replaced by alien invaders. Shelled and vertebrate creatures will be replaced by the soft and the blobby. Celebrity chefs, if they survive as a species, will be teaching us how to stuff jellyfish. The plant species that thrive around the volcanic vents in the Bay of Naples are alien to the Mediterranean, laying the foundations of an entirely different ecosystem. Already, says Hall-Spencer, similar changes are occurring along the southern coasts of England. Oyster farmers and ships discharging ballast water have accidentally introduced Japweed, Sargassum muticum, a fast-growing brown seaweed that clogs beaches and harbours. Originally a native of southeast Asia and Japan, it is unfazed by low pH and almost impossible to eradicate. As in the classic case of the grey squirrel ousting the red, the invasive alien expels and replaces the natives. “It perturbs the ecosystem and drives out things that should live there,” says Hall-Spencer. Plants are the base of the food chain, so everything in the water depends on them directly or indirectly. With the professional caution of the scientist, he declines to speculate on which species will be the first to disappear, but acknowledges that many creatures have little hope of survival. To reprise the old Star Trek mantra, there will be life here, but not life as we know it.

Latin American countries are moving towards addressing warming now – sends a global signal that economic growth and combating warming are compatible.

Edwards and Arias 8/6-- Guy Edwards is a Brown University Research Fellow with a focus on Latin America, international relations & climate change & co-founder of Intercambio Climatico, Gilberto Arias was formerly Ambassador from Panama to the UK and Head of Delegation from Panama to the International Maritime Organization and co-chairing IMO's Expert Group on Market-based Measures dealing with international shipping emissions, principal negotiator for Panama at the UNFCCC and remains active in a number of negotiating track (2013, “Can Latin America’s leaders balance climate and growth?” http://www.rtcc.org/2013/08/06/can-latin-americas-leaders-balance-climate-and-growth/) EL

In a bid to protect future prosperity from serious climate change impacts, Latin American countries are attempting to balance climate action with economic growth, through domestic policy and at the UN climate talks. Latin American countries are challenging the conventional wisdom that confronting climate change undermines economic growth by arguing that climate action provides an opportunity to leapfrog traditional development, while delivering low carbon, sustainable development. Following the Stern Review on the Economics of Climate Change’s principal conclusion that taking action now to reduce emissions is cheaper than dealing with climate impacts later, these countries strongly back an ambitious global regime to avoid these future costs. The Inter-American Development Bank says these costs could reach US$100 billion annually in the region by 2050, even under a 2˚C average global temperature increase. Examples from Brazil, Mexico and the Dominican Republic suggest that climate policies do not necessarily undermine economic growth, while an example from Ecuador reveals how climate-related policies run the risk of being sidelined by the need to use natural resources. Brazil has established a national greenhouse gas reduction target of roughly 36 percent of projected emissions by 2020. Brazil’s greenhouse-gas emissions fell nearly 39%, with a 76% drop in cumulative emissions from deforestation, between 2005 and 2010. Brazil attributes the dramatic improvements in forestry protection to a raft of policies implemented in 2004. However, research also points out that decreasing prices for agricultural products also led to a reduction in deforestation. As Viola suggests reducing emissions does not necessarily mean compromising economic growth. From 2005-09 Brazil dramatically reduced its carbon emissions while maintaining economic growth at 3.5% annually. New legislation Mexico was the first developing country to create a comprehensive climate change law in 2012 with targets to reduce GHG emissions by 30% by 2020 and 50% by 2050. The law also states that 35% of energy should come from renewable sources by 2024. Investments in renewable energy in Mexico grew from US$352 million in 2011 to US$1.9 billion in 2012, highlighting the opportunity to combine clean energy and job creation. The Dominican Republic recently presented a voluntary pledge to reduce 25% of absolute 2010 emissions by 2030. The plan, protected by law, is projected to add 100,000 permanent jobs while expanding the DR’s renewable energy capacity and integrating low-carbon development in the tourism sector. Climate-related policies can be undermined by the need to use natural resources for economic growth. Ecuador’s Yasuní-ITT Initiative seeks compensation for roughly half the estimated value of certain untapped oil deposits, in order to leave these resources untouched. The funds are earmarked to protect national parks and promote renewable energy. However, the plan has so far raised less than US$500 million, leading President Correa to announce a re-evaluation of the initiative and its limits on oil extraction. Competitive edge Latin American countries are fast growing economies with growing middle classes with substantial development and infrastructure goals. They can take advantage of the opportunities and competitive advantages arising in a future carbon constrained world through the early introduction of climate policies for carbon-efficient economies. The region will be required to almost double its installed power capacity to roughly 600 GW by 2030, yet the Inter-American Development Bank says Latin America can meet its future energy needs through renewable sources including solar and wind, which are sufficient to cover its projected 2050 electricity needs 22 times over. Investments in sustainable development in the region are increasing, delivering climate-resilient economies while avoiding emissions. This drive has led to the introduction of cross-ministerial policies, but climate policy across the region suffers from weak implementation. Trade-offs between climate action and economic interests are inevitable, however, these trade-offs appear less significant than the major economic costs associated with climate impacts. Climate policy is becoming a fixture on Latin American political agendas, including the recognition of vulnerability to climate impacts and that early action on reducing emissions will avoid greater costs later. Latin American countries are attempting to promote a new narrative that early climate action is compatible with low-carbon, sustainable prosperity. Successful experiences in Latin America can also positively feed into the UN climate change negotiations and help push for higher ambition and strengthen the discourse that climate change action is compatible with economic growth.

Venezuela blocks climate progress –

1. 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.

2. Oil potential and a global treaty.

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 an 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.

And, the plan’s key –

1. It improves the US image in the region and makes regional coalitions possible.

Griffin, 13 – Harvard editorial writer (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 building 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.

2. 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.

3. US leadership and resources are key.

Maykranz 7/10—Research Asssociate at Global Solutions (Alisondra, 2013, “Climate Change: An Opportunity for a 'New Era of Relations'”, http://globalsolutions.org/blog/2013/07/Climate-Change-Opportunity-New-Era-Relations) EL

U.S. relations with Latin America have not always been exemplary, but climate change is an issue that presents an opportunity for the U.S. to cooperate with its southern neighbors and to provide the leadership that such a global threat requires. According to the Pew Research Center data cited in Harrison’s blog, Latin America as a whole is a region very concerned with climate change. In each of the seven Latin American countries polled, climate change was the most widely recognized threat. Sixty-five percent of Latin Americans identify climate change as a threat to their respective countries, compared to 40 percent of people in the United States. In Brazil the percentage is as high as 76, and Argentina is not far behind at 71 percent. Furthermore, not a single Latin American country reported numbers below 50 percent. Even in the oil-rich country of Venezuela, 53 percent of the public recognizes climate change as a threat. This is significant considering that oil-exporting countries generally resist the implications of climate change. A 2012 study by the World Bank shows that Latin America is at greater risk to the dangers of climate change than most of the world. To make matters worse, many regions within Latin America have insufficient capability to cope with these potentially devastating effects of climate change. The Amazon rainforest, one of the most delicate regions of Latin America, is already experiencing negative effects from climate change. The indigenous peoples who depend on the rainforest are also among the most vulnerable populations in the world, according to a 2010 World Bank study. Climate change in the Amazon not only affects Brazil’s population, but also has a far reaching impact on many other parts of Latin America, as explained by Amazon Watch: “The Amazon Basin’s hydrological system plays a critical function in regulating the global and regional climate…Among the regions directly linked to the Amazon by a complex weather system is the Rio de la Plata basin of southeastern South America, one of the most important agricultural zones on the planet.” The success of the region’s agriculture rests largely on the conditions in the Amazon. Environmental economists S. Niggol Seo and Robert Mendelsohn, through a project with the World Bank, found that climate change could lead to as much as a 62 percent loss in farm earnings in Latin America, with the Amazon and Equatorial regions likely losing the most. Given this information, it is no surprise that Brazil and Argentina reported the highest percentages of people who recognize climate change as a threat. As the Obama Administration turns its focus toward domestic policies on climate change, it should also put climate change on its international agenda. At the end of May, Vice President Biden traveled to Rio de Janeiro as part of the effort to strengthen U.S.-Brazil relations. He spoke in Rio about a “new era of relations” between the U.S. and Brazil, as well as Latin America more generally, but the focus was on increasing economic ties. Not once was the subject of climate change even mentioned, let alone given the attention it deserves. With 76 percent of Brazilians and 65 percent of Latin Americans concerned about climate change, it would truly signal a “new era of relations” between the U.S. and Latin America if the Administration were to demonstrate their own concern for what is taking place in the Western Hemisphere by taking the lead in multilateral climate change initiatives. This really is an opportunity that I can only hope the Obama Administration will consider as important as the economic opportunities it is currently pursuing in Brazil and Latin America.

investment treaty competitiveness

CONTENTION 2 IS INVESTMENT TREATY COMPETITIVENESS –

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.

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

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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

Scenario 1 is Dispute Resolution –

The international investment regime is approaching a tipping point.

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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.

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.

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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.

Procedural justice in dispute resolution is key—controls 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 is a prerequisite to global economic growth—controls capital flows

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.”

FDI with Venezuela is key – maintains 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.

# 2ac

transition wars o/w—1AC Royal says economic collapse empirically leads to war because of resources and instability

Growth is inherently sustainable – capitalism provides an incentive to preserve resources – eventual high prices will curb consumption – triggers a mindset shift towards sustainability without collapse

Cudd, 11 (Ann E., Professor of Philosophy, Associate Dean for Humanities, University of Kansas, “Capitalism, For and Against - A Feminist Debate,” Cambridge University Press, Section 3, Tashma)

I agree with Professor Holmstrom that we should be very concerned with pollution, and particularly with climate change, but in my view, this points us toward private ownership of property and not collective ownership of scarce resources. As has been proven repeatedly by experience, and as is clear from theory as well. When goods are collectively owned they are subject to the problem known as the "tragedy of the commons.” The tragedy of the commons is the overuse of a scarce resource that happens because no one has the incentive to preserve and protect the resource for the long term. Common ownership sets up a race to use the resource before it is used up by someone else, or exhausted. Even with the best of intentions on one’s own part, if one cannot be sure that others will preserve and protect the resource, then it is only rational to make full use of it while it lasts. In game theoretic terms it is like a "prisoner's dilemma" in which there is no equilibrium strategy that would counsel preservation of the resource; anyone who refrains from using the resource in order to preserve it for later generations would be played for a sucker. Real world examples abound of the tragedy of the commons: the depletion of the world's ocean fisheries; overpollution of the atmosphere; overgrazing of common pasturelands; over-gathering of firewood. This last is a particular tragedy in many places in Africa today for women, where they must search farther and farther from home to find enough fuel. Private ownership of property provides owners with an incentive to preserve their property for the long term, It is precisely the ability to exclude others from using it that allows one the security to be able to invest in it, by improving the pasture, protecting the trees, refraining from fishing at times, or taking only the mature animals. No one worries that cattle, which are owned privately and therefore cultivated, will disappear after all. But we are very worried about the disappearance of cod in the North Atlantic. Private ownership allows one to sell the good in the market, if and only if, those who would consume the good are willing to pay the price that reflects the relative scarcity of the good and the expense of preserving it. The ability to own a competing resource privately and sell it means that alternatives can be cultivated as well, which removes some of the pressure from the more scarce, and therefore more expensive, privately owned good.

even if growth is unsustainable in the long term, they have no evidence about the short term—we should maintain growth as long as possible to avoid nuclear war

Transition fails—psychology makes desire for economic growth inevitable

Friedman 5 (Benjamin M. Friedman, William Joseph Maier Professor of Political Economy at Harvard University, former Chair of the Department of Economics at Harvard University, holds a Ph.D. in Economics from Harvard University, 2005 (“Rising Incomes, Individual Attitudes, and the Politics of Social Change,” The Moral Consequences of Economic Growth, Published by Knopf Publishing Group, ISBN 0679448918, p. 80-82)

The key is that while everybody of course wants to have more income [end page 80] so as to enjoy a higher standard of living, better health, and a greater sense of security, our sense of what constitutes “more” for any of these purposes is mostly relative. Whenever people are asked how well off they think they are, they almost always respond by comparing their lives to some kind of reference point. 4 Further, whether most people think what they have or how they live constitutes “more” or “less” depends on how their circumstances compare to two separate benchmarks: their own (or their family’s) past experience, and how they see people around them living. The principal driving force underlying the positive influence that economic growth has over people’s attitudes, and through the political process therefore over the character of their society, is the interaction between how each of these two respective points of comparison affects people’s perceptions. Obviously nothing can enable the majority of the population to be better off than everyone else. But not only is it possible for most people to be better off than they used to be, that is precisely what economic growth means. The central question is whether, when people see that they are doing well (in other words, enjoying “more”) compared to the benchmark of their own prior experience, or their parents’—or when they believe that their children’s lives will be better still— they consequently feel less need to get ahead compared to other people. If so, then the reduced importance they attach to living better than others leads in the end to more wide-ranging benefits, for the society as a whole, whenever general living standards are increasing. Happiness depends, of course, on more than just money and the things money can buy. In surveys, most people say that their sense of satisfaction with their lives depends most on the strength of their family relationships and personal friendships, or their health, or their education, or their religious attachment, or their feeling of connection to a broader community beyond their own family, or their sense of being engaged in purposeful and productive work, or even on their everyday work environment. 5 In many surveys the single most important influence on adults’ happiness is whether they are married. (People who are, or who are living together as if they were, are typically happier.) 6 People with “extrovert” personalities also tend to be happier on average, perhaps simply because they have more friends. 7 Money matters too, however. People with more income typically enjoy not just a higher standard of living in terms of food, clothing, and housing but also better health (in part because of better access to medical care, but also because they drink and smoke less and get more exercise). They also have better educations and a stronger sense of security in the face of major life uncertainties. Familiar popular images of the business rat race [end page 81] notwithstanding, people with higher incomes on average also have more leisure time, and they mostly spend it in activities that foster the friendships they then say (in surveys) matter far more than money. Having at least some financial resources is even helpful in maintaining marriages, perhaps because it allows young couples to live on their own instead of with their parents. 8 At any given time, within a given country, people with lower incomes are far more likely to say that they are unhappy. 9 But the essential point is that how much income it takes to enjoy advantages like these is a relative matter, and the most obvious benchmark people have in mind when they draw such comparisons is their own past experience. People who live better now than they did before, or better than they recall their parents living, are likely to think they are doing well. Those who look back on better times— better for them and their families, that is— think they are not. As a result, psychological studies have repeatedly confirmed that people’s satisfaction depends less on the level of their income than on how it is changing. 10 But rising incomes are, in turn, what economic growth is all about.\* \* (footnote) The idea that satisfaction depends primarily on changes in economic well-being (to the extent that economic factors are important in this regard) is hardly new. Adam Smith observed that “all men, sooner or later, accommodate themselves to whatever becomes their permanent situation.” Hence “between one permanent situation and another, there [is], with regard to real happiness, no essential difference” (The Theory of Moral Sentiments, p. 149). Moreover, Smith claimed no originality for this view but attributed it to the Stoic philosophers of ancient Greece.

tech solves—timeframe

Growth solves climate change – economic resources pave the way for sustainable solutions

Bernama, 11 – Malaysian National News Agency (4/11. “RAPID DEVELOPMENT THE WAY TO FACE CLIMATE CHANGE, SAYS ENERGY EXPERT.” http://my.news.yahoo.com/rapid-development-way-face-climate-change-says-energy-20110411-022617-583.html)

A country''s rapid economic development accompanied by their adoption of higher environmental standards can be an effective way to face climatic change, says an energy expert and former top climate negotiator for India. Although it seemed a route off the usual course for the protection of the environment, Ambassador Chandrashekhar Dasgupta, Distinguished Fellow at The Energy Research Institute (TERI) of India, contends how developed nations coped better with environmental disasters than less developed countries. The developed countries have higher environment standards with superior sanitation systems, less water and air pollution and this has been possible through the financial resources that came with development, Chandrashekhar said when explaining his stand to participants at a recent forum organised by the Institute of Strategic and International Studies (ISIS). Developing countries were more vulnerable to the onslaught of weather events linked to climate changes, and unlike the developed countries which were more prepared or have the resources to respond better, these countries were less equipped to face these events, he said in his his talk on "Harnessing Development To Protect The Environment." "Traditional farmers in developing countries are most vulnerable to these events and those living in flimsy dwellings sometimes cannot even take seasonal changes," he said. He said that the "environment cannot be improved amid poverty, and indeed financial resources are needed for a better environment and this can be attained through rapid development." While changes in environment cannot be fully reversed, remedial measures could be taken both by the developed and developing countries, Chandrashekhar, who has been involved in climate negotiations for India for 15 years, said. The reality is that the environment is continuously evolving, mainly from natural causes, and the view held by the romantics that mankind has basically brought about the climate change calamities lacked basis, he said. While the contribution of human activities to climate change had accelerated in the recent decades especially with the consumption of hydrocarbon fuels, economic development on the whole has benefited mankind, he opined. Chandrashekhar also said besides adhering to environment regulations, development projects should consider using the profits from projects to offset any environment damage. He said companies and governments would have to adopt more green policies in business operations. While developing countries should adapt and adopt measures that would leave them more equipped to handle challenges of climate change, the developed countries’ focus should be on using their financial resources towards the research and development of renewable energy sources such as solar, as well as nuclear, Chandrashekhar said.

Epidemics won’t cause extinction

Coughlan, 13 – Education correspondent, BBC News (Sean, “How are humans going to become extinct?” BBC News, 4/24, http://www.bbc.co.uk/news/business-22002530)//SY

What are the greatest global threats to humanity? Are we on the verge of our own unexpected extinction? An international team of scientists, mathematicians and philosophers at Oxford University's Future of Humanity Institute is investigating the biggest dangers. And they argue in a research paper, Existential Risk as a Global Priority, that international policymakers must pay serious attention to the reality of species-obliterating risks. Last year there were more academic papers published on snowboarding than human extinction. The Swedish-born director of the institute, Nick Bostrom, says the stakes couldn't be higher. If we get it wrong, this could be humanity's final century. Been there, survived it So what are the greatest dangers? First the good news. Pandemics and natural disasters might cause colossal and catastrophic loss of life, but Dr Bostrom believes humanity would be likely to survive. This is because as a species we've already outlasted many thousands of years of disease, famine, flood, predators, persecution, earthquakes and environmental change. So the odds remain in our favour.

Burn out checks.

Posner 05 – Senior Lecturer at University of Chicago (Richard A, “Catastrophe: the dozen most significant catastrophic risks and what we can do about them.”, Winter, http://findarticles.com/p/articles/mi\_kmske/is\_3\_11/ai\_n29167514/pg\_2?tag=content;col1)//WL

Yet the fact that Homo sapiens has managed to survive every disease to assail it in the 200,000 years or so of its existence is a source of genuine comfort, at least if the focus is on extinction events. There have been enormously destructive plagues, such as the Black Death, smallpox, and now AIDS, but none has come close to destroying the entire human race. There is a biological reason. Natural selection favors germs of limited lethality; they are fitter in an evolutionary sense because their genes are more likely to be spread if the germs do not kill their hosts too quickly. The AIDS virus is an example of a lethal virus, wholly natural, that by lying dormant yet infectious in its host for years maximizes its spread. Yet there is no danger that AIDS will destroy the entire human race. The likelihood of a natural pandemic that would cause the extinction of the human race is probably even less today than in the past (except in prehistoric times, when people lived in small, scattered bands, which would have limited the spread of disease), despite wider human contacts that make it more difficult to localize an infectious disease. The reason is improvements in medical science. But the comfort is a small one. Pandemics can still impose enormous losses and resist prevention and cure: the lesson of the AIDS pandemic. And there is always a lust time.

Economic engagement is the offer of economic incentives or removing trade and investment barriers – distinct from political, military and civil society engagement

Haass and O’Sullivan, 2k - \*Vice President and Director of Foreign Policy Studies at the Brookings Institution AND \*\*a Fellow with the Foreign Policy Studies Program at the Brookings Institution (Richard and Meghan, “Terms of Engagement: Alternatives to Punitive Policies” Survival,, vol. 42, no. 2, Summer 2000, <http://www.brookings.edu/~/media/research/files/articles/2000/6/summer%20haass/2000survival.pdf>

Architects of engagement strategies can choose from a wide variety of incentives. Economic engagement might offer tangible incentives such as export credits, investment insurance or promotion, access to technology, loans and economic aid.3 Other equally useful economic incentives involve the removal of penalties such as trade embargoes, investment bans or high tariffs, which have impeded economic relations between the United States and the target country. Facilitated entry into the economic global arena and the institutions that govern it rank among the most potent incentives in today’s global market. Similarly, political engagement can involve the lure of diplomatic recognition, access to regional or international institutions, the scheduling of summits between leaders – or the termination of these benefits. Military engagement could involve the extension of international military educational training in order both to strengthen respect for civilian authority and human rights among a country’s armed forces and, more feasibly, to establish relationships between Americans and young foreign military officers. While these areas of engagement are likely to involve working with state institutions, cultural or civil-society engagement entails building people-to-people contacts. Funding nongovernmental organisations, facilitating the flow of remittances and promoting the exchange of students, tourists and other non-governmental people between countries are just some of the possible incentives used in the form of engagement.

Death precedes all other impacts – it ontologically destroys the subject and prevents any alternative way of knowing the world

Paterson, 03 - Department of Philosophy, Providence College, Rhode Island (Craig, “A Life Not Worth Living?”, Studies in Christian Ethics, http://sce.sagepub.com)

Contrary to those accounts, I would argue that it is death per se that is really the objective evil for us, not because it deprives us of a prospective future of overall good judged better than the alter- native of non-being. It cannot be about harm to a former person who has ceased to exist, for no person actually suffers from the sub-sequent non-participation. Rather, death in itself is an evil to us because it ontologically destroys the current existent subject — it is the ultimate in metaphysical lightening strikes.80 The evil of death is truly an ontological evil borne by the person who already exists, independently of calculations about better or worse possible lives. Such an evil need not be consciously experienced in order to be an evil for the kind of being a human person is. Death is an evil because of the change in kind it brings about, a change that is destructive of the type of entity that we essentially are. Anything, whether caused naturally or caused by human intervention (intentional or unintentional) that drastically interferes in the process of maintaining the person in existence is an objective evil for the person. What is crucially at stake here, and is dialectically supportive of the self-evidency of the basic good of human life, is that death is a radical interference with the current life process of the kind of being that we are. In consequence, death itself can be credibly thought of as a ‘primitive evil’ for all persons, regardless of the extent to which they are currently or prospectively capable of participating in a full array of the goods of life.81

In conclusion, concerning willed human actions, it is justifiable to state that any intentional rejection of human life itself cannot therefore be warranted since it is an expression of an ultimate disvalue for the subject, namely, the destruction of the present person; a radical ontological good that we cannot begin to weigh objectively against the travails of life in a rational manner. To deal with the sources of disvalue (pain, suffering, etc.) we should not seek to irrationally destroy the person, the very source and condition of all human possibility.82

Calculations inevitable—alt causes ideology to fill in

Fitzsimmons, 07 (Michael, Washington DC defense analyst, “The Problem of Uncertainty in Strategic Planning”, Survival, Winter 06-07, online)

But handling even this weaker form of uncertainty is still quite challeng- ing. If not sufficiently bounded, a high degree of variability in planning factors can exact a significant price on planning. The complexity presented by great variability strains the cognitive abilities of even the most sophisticated decisionmakers.15 And even a robust decision-making process sensitive to cognitive limitations necessarily sacrifices depth of analysis for breadth as variability and complexity grows. It should follow, then, that in planning under conditions of risk, variability in strategic calculation should be carefully tailored to available analytic and decision processes. Why is this important? What harm can an imbalance between complexity and cognitive or analytic capacity in strategic planning bring? Stated simply, where analysis is silent or inadequate, the personal beliefs of decision-makers fill the void. As political scientist Richard Betts found in a study of strategic sur- prise, in ‘an environment that lacks clarity, abounds with conflicting data, and allows no time for rigorous assessment of sources and validity, ambiguity allows intuition or wishfulness to drive interpretation ... The greater the ambiguity, the greater the impact of preconceptions.’16 The decision-making environment that Betts describes here is one of political-military crisis, not long-term strategic planning. But a strategist who sees uncertainty as the central fact of his environ- ment brings upon himself some of the pathologies of crisis decision-making. He invites ambiguity, takes conflicting data for granted and substitutes a priori scepticism about the validity of prediction for time pressure as a rationale for discounting the importance of analytic rigour. It is important not to exaggerate the extent to which data and ‘rigorous assessment’ can illuminate strategic choices. Ambiguity is a fact of life, and scepticism of analysis is necessary. Accordingly, the intuition and judgement of decision-makers will always be vital to strategy, and attempting to subordinate those factors to some formulaic, deterministic decision-making model would be both undesirable and unrealistic. All the same, there is danger in the opposite extreme as well. Without careful analysis of what is relatively likely and what is relatively unlikely, what will be the possible bases for strategic choices? A decision-maker with no faith in prediction is left with little more than a set of worst-case scenarios and his existing beliefs about the world to confront the choices before him. Those beliefs may be more or less well founded, but if they are not made explicit and subject to analysis and debate regarding their application to particular strategic contexts, they remain only beliefs and premises, rather than rational judgements. Even at their best, such decisions are likely to be poorly understood by the organisations charged with their implementation. At their worst, such decisions may be poorly understood by the decision-makers themselves.

No prior questions—focus on ontology makes it impossible to describe the world and act

Owen 2 David Owen, Reader of Political Theory at the Univ. of Southampton, Millennium Vol 31 No 3 2002 p. 655-7

Commenting on the ‘philosophical turn’ in IR, Wæver remarks that ‘[a] frenzy for words like “epistemology” and “ontology” often signals this philosophical turn’, although he goes on to comment that these terms are often used loosely.4 However, loosely deployed or not, it is clear that debates concerning ontology and epistemology play a central role in the contemporary IR theory wars. In one respect, this is unsurprising since it is a characteristic feature of the social sciences that periods of disciplinary disorientation involve recourse to reflection on the philosophical commitments of different theoretical approaches, and there is no doubt that such reflection can play a valuable role in making explicit the commitments that characterise (and help individuate) diverse theoretical positions. Yet, such a philosophical turn is not without its dangers and I will briefly mention three before turning to consider a confusion that has, I will suggest, helped to promote the IR theory wars by motivating this philosophical turn. The first danger with the philosophical turn is that it has an inbuilt tendency to prioritise issues of ontology and epistemology over explanatory and/or interpretive power as if the latter two were merely a simple function of the former. But while the explanatory and/or interpretive power of a theoretical account is not wholly independent of its ontological and/or epistemological commitments (otherwise criticism of these features would not be a criticism that had any value), it is by no means clear that it is, in contrast, wholly dependent on these philosophical commitments. Thus, for example, one need not be sympathetic to rational choice theory to recognise that it can provide powerful accounts of certain kinds of problems, such as the tragedy of the commons in which dilemmas of collective action are foregrounded. It may, of course, be the case that the advocates of rational choice theory cannot give a good account of why this type of theory is powerful in accounting for this class of problems (i.e., how it is that the relevant actors come to exhibit features in these circumstances that approximate the assumptions of rational choice theory) and, if this is the case, it is a philosophical weakness—but this does not undermine the point that, for a certain class of problems, rational choice theory may provide the best account available to us. In other words, while the critical judgement of theoretical accounts in terms of their ontological and/or epistemological sophistication is one kind of critical judgement, it is not the only or even necessarily the most important kind. The second danger run by the philosophical turn is that because prioritisation of ontology and epistemology promotes theory-construction from philosophical first principles, it cultivates a theory-driven rather than problem-driven approach to IR. Paraphrasing Ian Shapiro, the point can be put like this: since it is the case that there is always a plurality of possible true descriptions of a given action, event or phenomenon, the challenge is to decide which is the most apt in terms of getting a perspicuous grip on the action, event or phenomenon in question given the purposes of the inquiry; yet, from this standpoint, ‘theory-driven work is part of a reductionist program’ in that it ‘dictates always opting for the description that calls for the explanation that flows from the preferred model or theory’.5 The justification offered for this strategy rests on the mistaken belief that it is necessary for social science because general explanations are required to characterise the classes of phenomena studied in similar terms. However, as Shapiro points out, this is to misunderstand the enterprise of science since ‘whether there are general explanations for classes of phenomena is a question for social-scientific inquiry, not to be prejudged before conducting that inquiry’.6 Moreover, this strategy easily slips into the promotion of the pursuit of generality over that of empirical validity. The third danger is that the preceding two combine to encourage the formation of a particular image of disciplinary debate in IR—what might be called (only slightly tongue in cheek) ‘the Highlander view’—namely, an image of warring theoretical approaches with each, despite occasional temporary tactical alliances, dedicated to the strategic achievement of sovereignty over the disciplinary field. It encourages this view because the turn to, and prioritisation of, ontology and epistemology stimulates the idea that there can only be one theoretical approach which gets things right, namely, the theoretical approach that gets its ontology and epistemology right. This image feeds back into IR exacerbating the first and second dangers, and so a potentially vicious circle arises.

Spanos does not sufficiently connect his genealogy to specific policy recommendations—fails to influence the real world.

Lewandowski, 94 - Associate Professor and Philosophy Program Coordinator at The University of Central Missouri – 1994 (Joseph D. Lewandowsi, Philosophy and Social Criticism, “Heidegger, literary theory and social criticism,” ed. David M. Rasmussen, P. 115-116)

The point to be made here is that Heidegger's politics are not the only (or necessarily the largest) obstacle to coupling him with critical theory. Hence much of Spanos's energetic defense of Heidegger against his 'humanist detractors' (particularly in his defiant concluding chapter, 'Heidegger, Nazism, and the "Repressive Hypothesis": The American Appropriation of the Question') is misdirected. For as McCarthy rightly points out, 'the basic issues separating critical theory from Heideggerean ontology were not raised post hoc in reaction to Heidegger's political misdeeds but were there from the start. Marcuse formulated them in all clarity during his time in Freiburg, when he was still inspired by the idea of a materialist analytic of Dasein' (p. 96, emphasis added). In other words, Heidegger succumbs quite readily to an immanent critique. Heidegger's aporias are not simply the result of his politics but father stem from the internal limits of his questioning of the 'being that lets beings be', truth as disclosure, and destruction of the metaphysical tradition, all of which divorce reflection from social practice and thus lack critical perspective. Spanos, however, thinks Foucault can provide an alternative materialist grounding for an emancipatory critical theory that would obviate the objections of someone such as Marcuse. But the turn to Foucault is no less problematic than the original turn to Heidegger. Genealogy is not critical in any real way. Nor can it tame or augment what Spanos calls Heidegger's 'overdetermination of the ontological site'. Foucault's analysis of power, despite its originality, is an ontology of power and not, as Spanos thinks, a 'concrete diagnosis' (p. 138) of power mechanism. Thus it dramatizes, on a different level, the same shortcomings of Heidegger's fundamental ontology. The 'affiliative relationship' (p. 138) that Spanos tries to develop between Heidegger and Foucault in order to avoid the problem Marcuse faced simply cannot work. Where Heidegger ontologizes Being, Foucault ontologizes power. The latter sees power as a strategic and intentional but subjectless mechanism that 'endows itself' and punches out 'docile bodies', whereas the former sees Being as that neutered term and no-thing that calls us. Foucault (like Spanos) never works out how genealogy is emancipatory, or how emancipation could be realized collectively by actual agents in the world. The 'undefined work of freedom' the later Foucault speaks of in 'What Is Enlightenment?' remained precisely that in his work.4 The genealogy of power is as much a hypostatization as is fundamental ontology: such hypostatizations tend to institute the impossibility of practical resistance or freedom. In short, I don't think the Heideggerian 'dialogue' with Foucault sufficiently tames or complements Heidegger, nor does it make his discourse (or Foucault's, for that matter) any more emancipatory or oppositional. Indeed, Foucault's reified theory of power seems to undermine the very notion of 'Opposition', since there is no subject (but rather a 'docile' body) to do the resisting (or, in his later work, a privatized self to be self-made within a regime of truth), nor an object to be resisted. As Said rightly points out in The World, the Text, and the Critic, 'Foucault more or less eliminates the central dialectic of opposed forces that still underlies modern society' (p. 221, emphasis added). Foucault's theory of power is shot through with false empirical analyses, yet Spanos seems to accept them as valid diagnoses. Spanos fails to see, to paraphrase Said's criticisms of Foucault's theory of power, that power is neither a spider's web without the spider, nor a smoothly functioning diagram (p. 22l).

even if threats are socially constructed, that construction is still real. Their critical authors are equally guilty of the same epistemological bias and you should reject the neg’s methodology for not being specific enough to 1ac claims

Lipshutz, 2011- Prof of Politics at UC Santa Cruz, speaking after hearing a policy debate in which the affirmative read a straight up policy aff and the negative read a security criticism (Ronnie, Speaking about the final round at the California Round Robin, Feb 18, Accessed here: http://nfltv.org/2011/02/24/cal-round-robin-policy/ JC)

RONNIE LIPSCHUTZ: Well, many many years ago, one day when I was reading the San Francisco chronicle I clipped a little phrase. I’ve never been able to find it, but it was something like, one of the emperor Fredrichs said the surest way to ruin your country is to put it under the charge of college professors. I have to say that I am now fully convinced of the truth of that statement. But since I have been charged here with taking on the philosophical side of things, I wanna make a few point about in particular the negative arguments but also I think about the the affirmative. I’m not a debater by the way, so I don’t quite understand what’s been going on. But what I think in particular is a problem is, first of all, we have sort of incommensurate conceptual sort of categories going on here that the affirmative is taking a farther narrow policy question and proposing a change to it. The negative then raises these questions of epistemology and ontology which in a way are not obvious confronting the policy question which, and I agree with Erin, is very very narrowly construed. I mean, there was no sort of question about, well, let me put it this way: that although there was a discussion of the virtues of the alliance with Japan, It was largely taken as a given and therefore of course that causes a problem, and by taking this sort of epistemological and ontological approach, its sort of, its ships passing in the night. And then of course the theory question came up, and that I thought was problematic for both sides. A couple of things I wanna say. The first one is that, social constructions can kill. And I think this is a very important sort of thing to remember that, threats can be socially constructed but threats, social constructions have material components, and they are aimed in particular directions. So the fact that something is a social construction or is epistemologically and ontologically questionable does not mean that there aren’t missiles being deployed, and that those missiles are not going to go off. These arguments are I think operating at a somewhat different space, it does raise a question of how is it that we judge what is a threat in the first place. And of course we have nuclear friends and nuclear enemies. You ought to ask the question, “Why is it that Great Britain has nuclear weapons and yet there is nobody, as far as I know, that is planning a war with Great Britain?”. Now I could be wrong about this, since the Pentagon probably has plenty of analysts who have nothing to do ERIN SIMPSON: They make power points LIPSHUTZ: Yeah, they make power points. So that, then, of course raises some of these epistemological questions. Which I think if you want to somehow deploy the stuff that it seems like, sadly, I have said somewhere that it is important to sort of take that much more carefully into account. The other thing that I am sort of struck by is that I’ve become in recent, in the last year ago a great fan of Pierre Bourdieu. All of these guys, all of my friends that you were citing, although I don’t consider Mearshimer a friend, as I listen to this I think, what, you know, what patent nonsense it is that they are basically spouting. But this is the way that the academic realm goes, you know. I mean its attack and counter-attack. And I think you have to be very careful again in interrogating, so If you’ve got to be critical, you should be very critical of those who are critical, you know, to ask what is the politics behind the critique. Because there are politics in all of this. Not just politics in the policy, okay, and interests and all kinds of deeply imbedded commitments, which are impossible to change. If you watch congress in action right now, you can see that. But also that there is a kind of, I mean its, academics is more by other means, I guess, to take a leaf from both Clausewitz and Foucault. Anyway, to go back to Bourdieu. Bourdieu, who’s a sociologist who died several years ago, has a sort of very interesting approach to some of these things which is oriented around practice. You know, what are the practices that groups, societies, engage in, and how do we understand those practices reinforcing normative beliefs and policies and approaches. Okay, and If you really are interested in how do things change, you have to look at how practices change rather than intellectual arguments on the one hand or arming to the teeth on the other. So perhaps I would encourage, you know, if you are to go on with debate, you should probably take a look at Bourdieu. I’m done.

No link to oil—the plan can exempt specific sectors

REIL 07--Renewable Energy and International Law (REIL) is an international policy and law network at Yale, bringing together the business and finance communities, policymakers, scholars, lawyers, and science and technology experts to create enabling legislative and policy frameworks for clean energy on the international, national, and subnational levels (“From Barriers to Opportunities:

Renewable Energy Issues in Law and Policy”, <http://environment.research.yale.edu/documents/downloads/o-u/REIL-Report.pdf>) EL

Because the energy sector is typically highly regulated, often with signiﬁcant government ownership, and central to the economy, it is not unusual for IIAs speciﬁcally to exclude the energy sector. In these situations, a sector-speciﬁc agreement, such as the ECT, can be used (see Section 3.2.1). These agreements may confuse an already complex investment market, but also may “facilitate the horizontal integration across policy areas; thus investment policy-trade policy and investment policy-technology policy linkages can be address on a sectoral basis.” (Brewer, 1998). The potential implications of these standards of treatment for renewable energy policies are discussed in Section 5.2 below.

Speculators determine the price of oil

CHARLESTON GAZETTE 2011 (“Cables show Saudi Arabia often warned U.S. about oil speculators,” May 26, Lexis)

When oil prices hit a record $147 a barrel in July 2008, the Bush administration leaned on Saudi Arabia to pump more crude in hopes that a flood of new crude would drive the price down. The Saudis complied, but not before warning that oil already was plentiful and that Wall Street speculation, not a shortage of oil, was driving up prices.

Saudi Oil Minister Ali al-Naimi even told U.S. Ambassador Ford Fraker that the kingdom would have difficulty finding customers for the additional crude, according to an account laid out in a confidential State Department cable dated Sept. 28, 2008.

"Saudi Arabia can't just put crude out on the market," the cable quotes al-Naimi as saying. Instead, al-Naimi suggested, "speculators bore significant responsibility for the sharp increase in oil prices in the last few years," according to the cable.

What role Wall Street investors play in the high cost of oil is a hotly debated topic in Washington. Despite weak demand, the price of a barrel of crude oil surged more than 25 percent in the past year, reaching a peak of $113 May 2 before falling back to a range of $95 to $100 a barrel.

The Obama administration, the Bush administration before it and Congress have been slow to take steps to rein in speculators. On Tuesday, the Commodity Futures Trading Commission, a U.S. regulatory agency, charged a group of financial firms with manipulating the price of oil in 2008. But the commission hasn't enacted a proposal to limit the percentage of oil contracts a financial company can hold, while Congress remains focused primarily on big oil companies, threatening in hearings last week to eliminate their tax breaks because of the $38 billion in first-quarter profits the top six U.S. companies earned.

The Saudis, however, have struck a steady theme for years that something should be done to curb the influence of banks and hedge funds that are speculating on the price of oil, according to diplomatic cables made available to McClatchy Newspapers by the WikiLeaks website.

The cables show that the subject of speculation has been raised in working group meetings between U.S. and Saudi officials, in one-on-one meetings with American diplomats and at least once with former President George W. Bush himself.

One cable recounts how Dr. Majid al-Moneef, Saudi Arabia's OPEC governor, explained what he thought was the full impact of speculation to U.S. Rep. Alan Grayson, D-Fla., who in July 2009 was in Saudi Arabia for the first time.

According to the cable, al-Moneef said Saudi Arabia suspected that "speculation represented approximately $40 of the overall oil price when it was at its height."

Asked how to curb such speculation, al-Moneef suggested "improving transparency" - a reference to the fact that most oil trading is conducted outside regulated markets - and better communication among the world's commodity markets so that oil speculators can't hide the full extent of their trading positions.

Al-Moneef also suggested that the U.S. consider "position limits" - restrictions on how much of the oil market a company can control - something the CFTC is considering. But the proposal to prevent any single trader from accumulating more than 10 percent of the oil contracts being traded hasn't received final approval, and the CFTC also has yet to define what it considers excessive speculation.

Another confidential document from the embassy in Riyadh, dated Feb. 14, 2007, indicates that Saudi officials had concluded years ago that speculation played at least as big a role in setting oil prices as traditional issues of supply and demand did.

Recounting the presentation by Yasser Mufti, a planner for Aramco, at a conference of U.S. and Saudi officials, the cable said: "The Saudi analysis indicated a link between higher oil prices and the influx of investor funds into the oil markets."

Indeed, the cable noted, "As the oil futures markets play an increasingly large role in setting world oil prices, (Mufti) remarked his team was now obtaining better insights into prospective oil prices from banks than from those working in the real oil sector, such as refiners."

A McClatchy investigation earlier this month showed the extent to which financial institutions now influence the price of oil. Until recently, end users of oil - such as airlines, refineries and other consumers of fuel - accounted for about 70 percent of oil trading as they tried to hedge against price fluctuations.

Today, however, speculators who will never take possession of a barrel of oil account for that 70 percent of oil futures trading, and the volume of speculative trading has grown fivefold.

That's why the Air Transport Association, in a filing March 28 to the CFTC, called for aggressive curbs on speculators. The association complained of rapidly climbing jet fuel prices, which have outpaced the rapid climb in crude prices and have reached their highest point since September 2008, right before the near-collapse of the U.S. economy.

"At the same time, according to data recently released by the commission, speculators have increased their positions in energy markets by 64 percent compared to June 2008, bringing speculation to the highest level on record," wrote David Berg, the airline group's chief lawyer.

Spare Saudi capacity will stabilize oil markets:

Sangim Han, 4/26/2011 (Business Week, “Saudi Arabia ‘Not Comfortable’ With Oil Price, Al-Falih Says” <http://www.businessweek.com/news/2011-04-26/saudi-arabia-not-comfortable-with-oil-price-al-falih-says.html>)

Oil consumers needn’t be concerned by high crude prices because spare capacity can “moderate” the market, said al- Falih, who is in South Korea for a board meeting this week. Saudi Oil Minister Ali al-Naimi “has made it clear that the kingdom will continue to act in support of oil market stability,” al-Falih said. The minister on April 19 described the recent gains in prices as “unjustified.”

The economy had adapted since the 70s—oil shocks no longer have a substantial impact.

Oliver Blanchard and Jordi Gali, 11/8/2007. The Class of 1941 Professor of Economics, is a former MIT economics department head and Research Associate in the NBER's Program on Economic Fluctuations and Growth and the Program on Monetary Economics. “The Macroeconomic Effects of Oil Shocks: Why are the 2000s So Different from the 1970s?” National Bureau of Economic Research, http://www.nber.org/papers/w13368.

Since the 1970s, and at least until recently, macroeconomists have viewed changes in the price of oil as as an important source of economic ﬂuc- tuations, as well as a paradigm of a global shock, likely to aﬀect many economies simultaneously. Such a perception is largely due to the two episodes of low growth, high unemployment, and high inﬂation that char- acterized most industrialized economies in the mid and late 1970s. Con- ventional accounts of those episodes of stagﬂation blame them on the large increases in the price of oil triggered by the Yom Kippur war in 1973, and the Iranian revolution of 1979, respectively.1 The events of the past decade, however, seem to call into question the rel- evance of oil price changes as a signiﬁcant source of economic ﬂuctuations. The reason: Since the late 1990s, the global economy has experienced two oil shocks of sign and magnitude comparable to those of the 1970s but, in contrast with the latter episodes, GDP growth and inﬂation have remained relatively stable in much of the industrialized world. Our goal in this paper is to shed light on the nature of the apparent changes in the macroeconomic eﬀects of oil shocks, as well as on some of its possible causes. Disentangling the factors behind those changes is obviously key to assessing the extent to which the episodes of stagﬂation of the 1970s can reoccur in response to future oils shocks and, if so, to understanding the role that monetary policy can play in order to mitigate their adverse eﬀects. One plausible hypothesis is that the eﬀects of the increase in the price of oil proper have been similar across episodes, but have coincided in time with large shocks of a very diﬀerent nature (e.g. large rises in other commodity prices in the 1970s, high productivity growth and world demand in the 2000s). That coincidence could signiﬁcantly distort any assessment of the impact of oil shocks based on a simple observation of the movements in aggregate variables around each episode. In order to evaluate this hypothesis one must isolate the component of macroeconomic ﬂuctuations associated with exogenous changes in the price of oil. To do so, we identify and estimate the eﬀects of an oil price shock using structural VAR techniques. We report and compare estimates for diﬀerent sample periods and discuss how they have changed over time. We follow two alternative approaches. The ﬁrst one is based on a large VAR, and allows for a break in the sample in the mid 1980s. The second approach is based on rolling bivariate VARs, including the price of oil and one other variable at a time. The latter approach allows for a gradual change in the estimated eﬀects of oil price shocks, without imposing a discrete break in a single period. Two conclusions clearly emerge from this analysis: First, there were indeed other adverse shocks at work in the 1970s; the price of oil explains only part of the stagﬂation episodes of the 1970s. Second, and importantly, the effects of a given change in the price of oil have changed substantially over time. Our estimates point to much larger eﬀects of oil price shocks on inﬂation and activity in the early part of the sample, i.e. the one that includes the two oil shock episodes of the 1970s. Our basic empirical ﬁndings are summarized graphically in Figure 1 (we postpone a description of the underlying assumptions to Section 3). The left-hand graph shows the responses of U.S. (log) GDP and the (log) CPI to a 10 percent increase in the price of oil, estimated using pre-1984 data. The right-hand graph displays the corresponding responses, based on post-1984 data. As the Figure makes clear, the response of both variables has become more muted in the more recent period. As we show below, that pattern can also be observed for other variables (prices and quantities) and many (though not all) other countries considered. In sum, the evidence suggests that economies face an improved trade-off in the more recent period, in the face of oil price shocks of a similar magnitude.

Won’t pass – even piecemeal reform will divide the House GOP

Gomez, 10/17/13 (Alan, USA Today, “Shutdown over, Democrats say immigration is next”

<http://www.usatoday.com/story/news/politics/2013/10/17/government-shutdown-shift-immigration-reform/3000575/>

WASHINGTON — Before the bill to end the budget impasse even hit President Obama's desk Wednesday, he and congressional Democrats had pivoted to what they hope is the next big legislative battle: an overhaul of the nation's immigration laws including citizenship for the nation's 12 million undocumented immigrants.

"I look forward to the next venture, which is making sure we do immigration reform," Senate Majority Leader Harry Reid, D-Nev., said late Wednesday.

"Good luck," said Rep. Trey Gowdy, R-S.C., who chairs the House immigration committee.

House Republicans emerged from the 16-day shutdown fight angered at the White House and Reid for refusing to negotiate over the terms to end the shutdown and lift the nation's debt ceiling, and emboldened to wage more strategic legislative strikes in the future.

Gowdy has been moderately supportive of immigration changes and says he maintains good relationships with House Democrats. "But it's a little disingenuous to treat the House as an irrelevant branch of government and then say, 'By the way, tomorrow you'll need to go ahead and push (immigration reform),'" Gowdy said. "It doesn't work that way."

Democrats are hopeful that Republicans, mindful of the party's poor standing nationally with Hispanics, will support a comprehensive approach. Obama said Thursday that immigration is one of the three agenda items he wants Congress to pass this year. Sen. Charles Schumer, D-N.Y., told MSNBC Thursday that an immigration overhaul is "the thing (Obama) wants to get more than anything else" in his second term.

House Speaker John Boehner, R-Ohio, remains publicly and privately committed to advancing immigration legislation in this Congress, but there is virtually no interest among GOP lawmakers to advance the kind of sweeping bill that Democrats are seeking. Instead, Republicans are more likely to pursue a piecemeal approach to address issues individually, such as border security and visas for high-skilled workers.

Rep. Raul Labrador, R-Idaho, a Tea Party conservative who was once a member of a bipartisan House group that tried to draft a broad immigration bill, said the prospects for even smaller bills are slim in the House.

"It's not going to happen this year," Labrador said. "After the way the president acted over the last two or three weeks where he would refuse to talk to the speaker of the House ... they're not going to get immigration reform. That's done."

Getting immigration changes through the House was always going to be a difficult task. The majority of House Republicans have consistently opposed the bill passed by the Senate in July that allows the nation's undocumented immigrants to apply for U.S. citizenship after 13 years, something many in the conference refer to as "amnesty."

That means Boehner, who struggled to unify his members throughout the shutdown, would have to "divide the conference" to pass an immigration bill, said Rep. Tim Huelskamp, R-Kan.

"That would really melt down the conference," said Huelskamp, a Tea Party conservative.

No PC

Wilson, 10/16/13 (Scott, Washington Post, “Obama plans to renew immigration, climate change efforts” <http://www.washingtonpost.com/politics/obama-plans-to-renew-immigration-climate-change-efforts/2013/10/16/d0a96cbe-367b-11e3-be86-6aeaa439845b_story.html>

New York University public service professor Paul C. Light is pessimistic that Obama can accomplish much in coming months. He said Obama is running out of time to get things done in the face of GOP resistance and the decline of influence that comes with a second term.

“I don’t think that he’ll get anything. His agenda is finished,” Light said. “It’s a political tragedy, because he’s got more knowledge about the job and less juice to get it done.”

Keith Hennessey, who served as President George W. Bush’s top economic adviser, said people shouldn’t overstate the significance of Wednesday’s political accord.

“Substantively, the net result is they’ve pressed ‘pause.’ And that’s it,” said Hennessey, adding that while Obama “played defense successfully,” that does not mean he will now be able to go on offense.

Hennessey said it will be hard for the president and congressional Republicans to reconcile their competing fiscal goals — Obama wants to ease across-the-board budget cuts, known as the sequester, while the GOP wants broad entitlement reforms. In addition, he said, the way the White House will likely campaign for its priorities could deepen the partisan divide.

Budget negotiations thump

Wilson, 10/16/13 (Scott, Washington Post, “Obama plans to renew immigration, climate change efforts” <http://www.washingtonpost.com/politics/obama-plans-to-renew-immigration-climate-change-efforts/2013/10/16/d0a96cbe-367b-11e3-be86-6aeaa439845b_story.html>

Now administration officials say they hope to persuade a chastened Republican Party, battered in the polls, to support elements of Obama’s languishing agenda.

“There are things that we know will help strengthen our economy that we could get done before this year is out,” Obama said in a statement Wednesday night. “We still need to pass a law to fix our broken immigration system. We still need to pass a farm bill. And with the shutdown behind us and budget committees forming, we now have an opportunity to focus on a sensible budget that is responsible, that is fair, and that helps hardworking people all across this country.”

But the new fiscal deadlines, looming just months away, mean that much of Obama’s energy in the near term is likely to be consumed by budget talks. Democrats worry that the agreement may set in motion a process that runs out the clock on Obama’s ability to secure other policy gains before the 2014 midterm elections.

Prefer qualified evidence – PC doesn’t influence Congress

Dickinson 9 professor of political science at Middlebury College (Matthew, “Sotomayor, Obama and Presidential Power,” May 26, 2009 Presidential Power <http://blogs.middlebury.edu/presidentialpower/2009/05/26/sotamayor-obama-and-presidential-power/>]

What is of more interest to me, however, is what her selection reveals about the basis of presidential power. Political scientists, like baseball writers evaluating hitters, have devised numerous means of measuring a president’s influence in Congress. I will devote a separate post to discussing these, but in brief, they often center on the creation of legislative “box scores” designed to measure how many times a president’s preferred piece of legislation, or nominee to the executive branch or the courts, is approved by Congress. That is, how many pieces of legislation that the president supports actually pass Congress? How often do members of Congress vote with the president’s preferences? How often is a president’s policy position supported by roll call outcomes? These measures, however, are a misleading gauge of presidential power – they are a better indicator of congressional power. This is because how members of Congress vote on a nominee or legislative item is rarely influenced by anything a president does. Although journalists (and political scientists) often focus on the legislative “endgame” to gauge presidential influence – will the President swing enough votes to get his preferred legislation enacted? – this mistakes an outcome with actual evidence of presidential influence. Once we control for other factors – a member of Congress’ ideological and partisan leanings, the political leanings of her constituency, whether she’s up for reelection or not – we can usually predict how she will vote without needing to know much of anything about what the president wants. (I am ignoring the importance of a president’s veto power for the moment.) Despite the much publicized and celebrated instances of presidential arm-twisting during the legislative endgame, then, most legislative outcomes don’t depend on presidential lobbying. But this is not to say that presidents lack influence. Instead, the primary means by which presidents influence what Congress does is through their ability to determine the alternatives from which Congress must choose. That is, presidential power is largely an exercise in agenda-setting – not arm-twisting. And we see this in the Sotomayer nomination. Barring a major scandal, she will almost certainly be confirmed to the Supreme Court whether Obama spends the confirmation hearings calling every Senator or instead spends the next few weeks ignoring the Senate debate in order to play Halo III on his Xbox. That is, how senators decide to vote on Sotomayor will have almost nothing to do with Obama’s lobbying from here on in (or lack thereof). His real influence has already occurred, in the decision to present Sotomayor as his nominee. If we want to measure Obama’s “power”, then, we need to know what his real preference was and why he chose Sotomayor. My guess – and it is only a guess – is that after conferring with leading Democrats and Republicans, he recognized the overriding practical political advantages accruing from choosing an Hispanic woman, with left-leaning credentials. We cannot know if this would have been his ideal choice based on judicial philosophy alone, but presidents are never free to act on their ideal preferences. Politics is the art of the possible. Whether Sotomayer is his first choice or not, however, her nomination is a reminder that the power of the presidency often resides in the president’s ability to dictate the alternatives from which Congress (or in this case the Senate) must choose. Although Republicans will undoubtedly attack Sotomayor for her judicial “activism” (citing in particular her decisions regarding promotion and affirmative action), her comments regarding the importance of gender and ethnicity in influencing her decisions, and her views regarding whether appellate courts “make” policy, they run the risk of alienating Hispanic voters – an increasingly influential voting bloc (to the extent that one can view Hispanics as a voting bloc!) I find it very hard to believe she will not be easily confirmed. In structuring the alternative before the Senate in this manner, then, Obama reveals an important aspect of presidential power that cannot be measured through legislative boxscores.

Winners win—Bush proves

Fortier 9 [John, Research Fellow at the American Enterprise Institute, January 14th, Spend Your Political Capital Before It's Gone, http://www.politico.com/news/stories/0109/17395.html]

Bush came into the presidency after a protracted election dispute but acted like a man with a mandate. His election victory, no matter how small, was a form of political capital to be spent, and he pushed his tax and education reform packages through Congress. After the Sept. 11 attacks, Republican victories in the 2002 midterm election and the initial phase of the Iraq war, Bush gained more political capital. And each time, he spent it, going to Congress for more tax cuts, the creation of a Department of Homeland Security and other domestic priorities. Bush developed the image of a winner. Despite narrow Republican majorities in Congress, he succeeded in holding his party together and pulling out one legislative victory after another. He famously did not veto a bill in his first term. Even when Bush veered from a typical conservative agenda on education reform and Medicare prescription drugs, Republicans voted with him, although some held their noses. Republicans in Congress did not want to break the string of Bush’s first-term legislative juggernaut. Bush was spending his political capital and, by winning, was getting repaid. Bush’s 2004 reelection was the apex of his presidency. He won a spirited, high- turnout contest by a clear margin, he brought more Republicans to Congress, and he was ready to spend his latest cache of political capital on two big domestic priorities: Social Security reform and tax reform. But 2005 saw Bush lose all of his political capital. His domestic priorities were bold, but he had overreached and did not have plans that Congress could get to work on immediately. The legislative vacuum in Congress stood in contrast to Bush’s first term, where Congress was almost always busy at work on Bush priorities. More importantly, conditions in Iraq deteriorated, and the public began to lose confidence in the president and his ability to win the war. Bush himself said that he had spent his political capital in Iraq and had lost it there. Republican scandals and the president’s lack of leadership immediately after Hurricane Katrina further damaged Bush. The winning streak was over, the president’s job approval numbers had dropped and his days setting the legislative agenda were over. Even though Bush had his biggest Republican majorities in the 109th Congress, Republican leaders staked out their own agenda, not wanting to tie themselves to a now unpopular president. Bush never regained political capital after 2005. Ronald Reagan had early heady days when he controlled the agenda; his popularity waned, but he was able to regain his footing. Bill Clinton famously bounced from highs to lows and back again. But for Bush, there was no second act. Reagan and Clinton could counterpunch and thrive as president without control of Congress. The Bush presidency had only two settings: on and off. In his first term, Bush controlled the legislative agenda like a prime minister; in the second, others set the agenda. President-elect Barack Obama won election more convincingly than Bush, and he will have larger congressional majorities than Republicans had. No doubt he will begin with some political capital of his own. But as the Bush presidency has taught us, that capital will run out someday, and a real test of leadership will be how Obama adjusts.