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FOREIGN DIRECT INVESTMENT IN LATIN AMERICA: NICARAGUA – A CASE STUDY

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I. INTRODUCTION: NICARAGUA—A BEAUTIFUL AND BRAVE LAND

Nicaragua's landscape rises, lush and tropical, from the Caribbean coast into a cooler, mountainous interior.[1] From there, it descends majestically onto a narrow, Pacific coastal plain punctuated by volcanoes.[2] The country's approximately 4.5 million people inhabit an area slightly larger than New York State, bordered by Honduras and

1. For a discussion of Nicaragua's climate, economy, geography, government, history, and people, *see generally* U.S. DEP'T OF STATE, BACKGROUND NOTES: NICARAGUA, MARCH 1998 [hereinafter U.S. DEP'T OF STATE], *available at* http://www.state.gov/www/background_notes/nicaragua_0398_bgn.html.

2. *See id.*

Costa Rica on the north and south, respectively.[3] Theirs is a legacy fraught with adversity. Nicaragua did not become an independent republic until 1838, after nearly three centuries of Spanish colonial rule.[4] Throughout the modern era, Nicaraguans have endured more than their fair share of political and social turmoil, natural disasters, and poverty.[5] Nicaraguan President Arnoldo Aleman has described his nation as "a beautiful and brave land that does not surrender to its sorrows."[6] Now it appears that Nicaraguan perseverance may be paying off. Recent economic indicators promise a better life for Latin Americans in general, and Nicaraguans in particular. In fact, according to the United States Department of State, "Nicaragua now appears poised for rapid economic growth."[7] The reason: free market economic reforms undertaken by Nicaraguan governments throughout the 1990s have begun to bear fruit.

Consider the facts. Less than a quarter-century ago, Nicaragua was a nation that had turned to communism,[8] and consequently, found itself in a perilous state of undeclared war with the United States.[9] Today, however, Nicaragua is an emerging democracy in the process of

3. *See id.*

4. *See id.*

5. *See id.*

6. *Remarks by President Arnoldo Aleman of Nicaragua to Nicaraguan Officials and the People of Posoltega, Nicaragua,*. Mar. 8, 1999, LEXIS, Nexis Library, FED. NEWS SERV. File.

7. U.S. DEP'T OF STATE, *supra* note 1, at 6.

8. For a discussion of the ideology and tactics of the Sandinista regime that ruled Nicaragua from 1979-1990, *see generally* ROGER MIRANDA & WILLIAM E. RATLIFF, THE CIVIL WAR IN NICARAGUA: INSIDE THE SANDINISTAS (1994).

9. In 1986, the International Court of Justice (ICJ) ruled that U.S. support for contra rebels opposed to Nicaragua's Sandinista government violated customary international law. *See* Military and Paramilitary Activities In and Against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 14 (June 27). According to the ICJ, illegal acts committed by the United States against Nicaragua included mining Nicaraguan territorial waters; arming, equipping, financing, and training contra rebel forces; and attacking Nicaraguan ports and other facilities.

See generally Military and Paramilitary Activities In and Against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 14 (June 27). For a discussion of the nefarious, covert operational link between the anti-Sandinista contras and the United States Central Intelligence Agency (CIA), *see generally* GARY WEBB, DARK ALLIANCE: THE CIA, THE CONTRAS, AND THE CRACK COCAINE EXPLOSION (1998).

transforming itself from a centrally planned to a market economy, and from a state of siege to one of peace and nascent prosperity.[10] Since 1991, inflation in Nicaragua has dropped from a hyper-inflated annual rate of 13,500 percent to roughly twelve percent, and the country's foreign debt has been cut in half.[11] Between 1989 and 1998, government spending was reduced from half the annual budget to 8.4 percent of it.[12] Since 1996, the Nicaraguan economy has managed to maintain at least moderate growth, accompanied by increased private investment.[13] The Nicaraguan government has privatized some 351 state-run enterprises since 1991.[14] Current government policies should spur future growth by making Nicaragua more attractive to foreign investors, who lately have taken a renewed interest in Latin America.[15]

Prospective investors will find that Nicaragua has much to offer. The country is rich in natural resources, most of which have yet to be widely exploited.[16] Its mineral deposits include gold, silver, zinc, copper, iron ore, lead, and gypsum.[17] Of these, only gold has been

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10. *See generally* Memorandum of the President of the International Development Association and the International Finance Corporation to the Executive Directors on a Country Assistance Strategy of the World Bank Group for the Republic of Nicaragua, Mar. 18, 1998, WORLD BANK DOCUMENT, REPORT NO. 17496 [hereinafter WORLD BANK].

11. *See* U.S. DEP'T OF STATE, *supra* note 1, at 4.

12. *See Country Profile: Nicaragua 1998/1999*, THE ECONOMIST INTELLIGENCE UNIT LIMITED, *available at* 1998 WL 19899411 [hereinafter *Country Profile: Nicaragua*]. One assessment put Nicaragua's annual growth rate at seven percent in recent years. *See* Larry Rohter, *Now Ruined Economies Afflict Central America*, N.Y. TIMES, Nov. 13, 1998, at A12.

13. *See* U.S. DEP'T OF STATE, *supra* note 1, at 5; *Latin American Economy's Growth Will Fall in 1999, ECLAC Says*, EFE NEWS SERV., Aug. 4, 1999, *available in* WL 8/4/99 EFENEWSERV.

14. *See* U.S. DEP'T OF STATE, *supra* note 1, at 5.

15. For the purposes of this article, the term "Latin America" refers to North, South, and Central American nations (including the Caribbean islands), whose inhabitants speak a Romance language, such as French, Spanish, or Portuguese. *See* U.S. DEP'T OF STATE, *supra* note 1.

16. *See id.* (indicating a good investment climate for the energy, mining, tourism, and fishery industries).

17. *See id.*

mined extensively because of a lack of financing.[18]

In addition, Nicaragua is forested with vast expanses of virgin hardwoods and softwoods, and food fishes abound in its coastal waters.[19] At present, the economy is basically agricultural.[20] During the mid-1990s, Nicaragua's main exports were beef, coffee, seafood, and sugar.[21] Industry is reportedly in "an incipient stage of development," and is based primarily on the production of consumer goods, such as alcoholic beverages, cement, footwear, matches, petroleum, textiles, and vegetable oils.[22] In addition, prospective investors will be pleased to learn that Nicaragua has significant hydroelectric resources.[23] According to a 1998/1999 report by The Economist Intelligence Unit Limited, Nicaragua's government is "eager to turn the country into a free-trade zone for *maquila* (offshore assembly for re-export) operations and a grain exporter to the rest of Central America."[24]

Part I of this article examines foreign direct investment ("FDI") in Latin America generally.[25] Part II addresses the question of whether Latin American economic recovery is doomed to fail in view of the egregious gap between the region's rich and poor, and prospective foreign investors' reluctance to invest in Nicaragua. Part III discusses the economic reform policies of the current Nicaraguan government. In essence, the Aleman administration in Nicaragua recognizes that FDI has a vital role to play in its development plans, and has made

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18. *See id.*

19. *See id.*

20. *See id.* (noting the agricultural sector constitutes thirty-five percent of Nicaragua's GDP and the bulk of its exports).

21. *See* U.S. DEP'T OF STATE, *supra* note 1.

22. *See id.*

23. *See id.* (revealing large amounts of foreign investment in Nicaragua's energy industry).

24. *Country Profile: Nicaragua*, *supra* note 12, at 4.

25. For purposes of this article, the term "foreign direct investment", or "FDI," refers to investment that is "made to acquire a lasting interest in an enterprise operating in an economy other than that of the investor, the investor's purpose being to have an effective voice in the management of the enterprise." DEANNE JULIUS, FOREIGN DIRECT INVESTMENT: THE NEGLECTED TWIN OF TRADE 1 (1991) *quoted in* Edward A. Fallone, *Latin American Laws Regulating Foreign Investment*, SB04 A.L.I.-A.B.A. 323, 323 (1996) (quoting the International Monetary Fund's definition of "FDI").

its Decree Law on Foreign Investment a centerpiece of its economic policy.[26] One of the most volatile issues the Aleman administration must face is how best to resolve the ongoing controversy over private property rights that is the legacy of confiscations carried out under the Sandinistas. Until now, the property question has been a major factor keeping prospective foreign investors at bay.[27] Part III therefore emphasizes this and other problems that Nicaragua must overcome in order to win prospective foreign investors' confidence.

Part IV analyzes the economic policies that have failed Latin America in the past, stressing the possibilities for future success that the region's democratization has made possible. Part V offers, by way of background for a better understanding of current developments, a brief history of modern Nicaragua, focusing on Nicaragua's relationship with the United States, and highlighting the following eras: the Somoza dictatorship, which lasted from 1937 to 1979; the Sandinista regime of 1979 to 1990; and the Chamorro presidency of 1991 to 1996, which preceded the Aleman administration.[28]

Part VI discusses Nicaragua's chances for economic success and lasting democracy, given the country's current political situation. Part VII examines the role the United States and the rest of the world has played in the recent past and can play in the future to help Nicaragua achieve prosperity, including the provision of humanitarian assistance in the wake of 1998's hurricane damage, debt relief, and advantageous trade arrangements. The article concludes by making the case for renewed confidence in, and support for, modern Nicaragua and the policies of its current government.

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26. Ministry of Economy and Development, Rep. Of Nicar., LAW ON FOREIGN INVESTMENTS, LAW NO. 27, at Art. 1 (establishing the duties, rights, conditions, benefits and guarantees to which foreign investment will be subjected in Nicaragua, so as to protect Nicaraguan sovereignty, and to promote economic and social development) (on file with *American University International Law Review*). (hereinafter LAW ON FOREIGN INVESTMENTS).

27. *See* Steve Fainaru, *Rightist on Way to Victory in Nicaraguan Elections*, BOSTON GLOBE, Oct. 22, 1996, at A1, *available at* LEXIS, Nexis Library, Major Newspapers File. (concluding the new government must implement policies to resolve these land disputes for there to be a conducive investment climate).

28. AMERICAN CHAMBER OF COMMERCE OF NICARAGUA, DOING BUSINESS IN NICARAGUA 69 (Price Waterhouse et al. eds., 1998) (on file with the author) [hereinafter DOING BUSINESS IN NICARAGUA].

II. FOREIGN DIRECT INVESTMENT (FDI) IN LATIN AMERICA

A. NEW OPPORTUNITIES

According to the United Nations Conference on Trade and Development ("UNCTAD"), FDI in Latin America and the Caribbean rose to $97 billion in 1999, a thirty-two percent increase over the previous year.[29] By comparison, Asia attracted $84 billion in FDI over the same period, making 1999 the first year since 1986 that FDI in Latin America surpassed Asia's FDI total.[30] Much of this foreign investment capital has flowed into Latin American minerals projects, public utilities, and manufacturing ventures.[31] But service industries, such as air transport, commercial and investment banking, and telecommunications have also attracted FDI, as have other specialized fields.[32]

Anxious to exploit new opportunities, the European Union (EU), Latin America's largest aid donor,[33] now emphasizes trade with Latin

29. *See* Matt Moffett, *Latin America Tops Asia in Luring Foreign Investors*, WALL ST. J., Feb. 22, 2000, at A21.

30. *See id.*

31. *See* William Glade, *Current Trends and Problems in Foreign Investment in Latin America*, *available in* WESTLAW, JLR Database, 4-SPG NAFTA: L. & Bus. Rev. Am. 57, *60 (Spring 1998), *available at* WL 4-SPR NAFTALBRA 57 (finding that the current investment builds on prior accomplishments because these sectors customarily received FDI in the past).

32. Glade notes the following:

> Lincoln National/Lincoln Life's purchase of a 49% share of Seguros Serfin of Mexico, for instance, is but one of a new wave of acquisitions by foreign companies in the insurance markets of Latin America. In Monterey, Mexico, both Carrefour of France and H.E. Butt of the United States inaugurated modernized supermarkets to penetrate the Mexican market. In 1997, CBS Telenoticias, the world's largest pan-regional Spanish language news network, signed an agreement with the second largest Brazilian television network, the Sistema Brasileira de Televisa, to share news gathering and production resources. Nasdaq and Sun Microsystems bought a two-thirds interest in the Chilean electronic stock exchange. More examples . . . support . . . the contention that this investment represents a major amplification and elaboration of the region's business structure, i.e., its organizational capital.

See, e.g., id.

33. *Reviving the European Connection*, ECONOMIST, Jun. 26, 1999, at 37-38

America. The EU is challenging American companies for dominance in the region.[34] According to one report, 1998 was the first year in which the flow of investment from Europe to Latin America surpassed that from the United States.[35] European investors have been led by Spanish companies, prompting some analysts to dub the trend the "reconquista," or reconquest, of Latin America by Spain.[36] In 1998, United States investments in Latin America totaled roughly $14.3 billion, compared with Spanish investments of some $11.3 billion.[37] During 1999, however, Spanish investments in Latin America rose to almost $20 billion.[38]

So far, the EU has not been able to negotiate a free-trade agreement with Mercusor, a Spanish acronym for "market of the south,"[39] which comprises South America's main trading bloc (Argentina,

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(discussing the changing relationship between the EU and Latin American nations).

34. *See* Moffett, *supra* note 29 (reporting that the UN Economic Commission for Latin America and the Caribbean identified this change in a recently released study).

35. *See id.*

36. Anthony Faiola, *Spanish Firms Revive Latin America Conquest*, WASH. POST, Feb. 14, 2000, at A1.

37. *See id.*

38. *See id.* In Chile, Spanish firms have acquired the largest waterworks, telephone, and power companies, and Spanish banks have gained control of 40 percent of the Chilean market. *See id.* His national pride wounded, one Chilean told a reporter, "Every time I turn on the lights, make a phone call, cash a check or drink a glass of water, I'm putting money into pockets in Madrid." *Id.* He complained, "It's as if we're a colony again, paying taxes to the Spanish crown." *Id.*

Elsewhere, Spanish oil giant Repsol SA in 1998 acquired Argentina's leading oil company, YPF SA, for $17 billion. *See id.* The Repsol-YPF SA deal that year helped boost FDI in Argentina from $6 billion to $25 billion. *See id.* When Brazil privatized its national telephone monopoly in 1998, Spain's Telefonia de Espana bought Telsep, Sao Paulo's local telephone company. *See id.* By one estimate, Sao Paulo's population of eleven million makes it the third-largest city in the world. *See id. See also* U.S. DEP'T OF STATE, BACKGROUND NOTES: BRAZIL, MARCH 1998, at 1 [hereinafter U.S. DEP'T OF STATE (BRAZIL)]. According to one report, Telefonia de Espana now operates a quarter of all Latin American phone lines. *See* Faiola, *supra* note 36.

39. *See* Mark B. Baker, *Integration of the Americas: A Latin Renaissance or a Prescription for Disaster?*, 11 TEMP. INT'L & COMP. L.J. 309, 319 (1997) (discussing four approaches to economic integration in Latin America).

Brazil, Paraguay, Uruguay, and associate members Bolivia and Chile).[40] For the EU, the possibility of an accord with Mercusor holds obvious appeal. "If Mercusor were a single country, it would be the world's second in land mass with 7 million square miles, fourth in population with 190 million people, and seventh in gross domestic product ("GDP") with $746 billion."[41] In short, Mercusor represents an enormous potential market for EU goods and services.[42] According to one report, "spurts of higher growth and the modernisation of much local industry have made the [Latin American] region a fast-growing market for such European products as machine-tools, and one that has not slowed as much as East Asia."[43] Evidently, however, some EU members fear export competition from Mercusor's agricultural businesses.[44] Even though the EU has become Mercusor's largest trading partner and greatest source of FDI, trade with Latin America accounted for only about six percent of the EU's total foreign trade during 1999.[45]

The United States, for its part, has launched a major initiative to bolster trade and strengthen relations with Latin American and other developing nations. On May 18, 2000, President Bill Clinton signed into law the Trade and Development Act of 2000, a legislative package that contains the Africa Growth and Opportunity Act ("AGOA") and the U.S.-Caribbean Basin Trade Partnership Act ("CBTPA").[46] Recognizing that the countries of the Caribbean Basin form "an increasingly important export market for our [U.S.] goods," the

40. *See* Larry Rohter, *Latin America and Europe To Talk Trade*, N.Y. TIMES, Jun. 26, 1999, at C2 (previewing the Latin American-European Summit where negotiations for a free-trade agreement will take place); *see also Reviving the European Connection*, *supra* note 33, at 37 (discussing the possibilities and reservations about establishing a trade agreement between Europe and Latin America during the Summit in Rio de Janeiro).

41. Baker, *supra* note 39.

42. *See* Rohter, *supra* note 40 (discussing the importance of Mercusor's role in expanding EU trade as a "counterweight to American global economic dominance").

43. *Reviving the European Connection*, *supra* note 33, at 37.

44. *See id.*

45. *See id.*

46. *See* Trade and Development Act of 2000, 100 Pub. L. No. 106-200, 114 Stat. 251 (2000) [hereinafter Trade and Development Act].

CBTPA is designed to put beneficiary nations, including designated Latin American states, on a competitive par with Mexico, which enjoys preferential trade status with the United States by virtue of the North American Free Trade Agreement (NAFTA).[47] Among other things, the CBTPA reduces or eliminates duties and quotas on certain textiles imported into the United States from beneficiary nations. It also grants temporary trade benefits to countries that, like Nicaragua, were ravaged by hurricanes Mitch and George in 1998.[48]

In the meantime, American companies have not conceded Latin American markets to their European competitors without a fight. Between 1988 and 1994, for example, the amount invested by American companies in Latin America rose from $2 billion to $12 billion annually.[49] Today, prominent firms in the United States are actively "developing a web of holdings throughout the region, treating it like a single, integrated market."[50] Efforts to make Latin America's market integration a *de jure* reality are ongoing. At the December 1994 Summit of the Americas, held in Miami, Florida, the thirty-four heads of state of the Latin American democracies initiated a formal negotiation process aimed at completing a "Free Trade Area of the Americas" (FTAA) agreement by 2005.[51]

Brazil is currently regarded as Latin America's "biggest prize" by foreign investors.[52] For example, a 1999 survey of U.S. companies

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47. *White House Fact Sheet: Details of the Trade and Development Act of 2000*, U.S. NEWSWIRE, May 18, 2000, *available at* 2000 WL 21166388 (noting the reasons for the United States strengthening ties to the Caribbean and providing an overview of the stipulations of the CBTPA).

48. *See id.* (describing the four policies under the CBTPA that expand preferential tariff treatment for and eliminate quantitative restrictions for textile, apparel, and handicraft products).

49. *See* Fallone, *supra* note 25, at 323.

50. *Id.* These companies include Duke Energy Corporation, a global energy conglomerate based in Charlotte, North Carolina; McDonald's Corporation, the world's largest restaurant chain, based in Oak Brook, Illinois; and Public Service Enterprise Group, Inc., an energy generation and distribution firm based in Newark, New Jersey. *See id.*

51. *See* Free Trade Zone of the Americas, *Overview: Chronology of the FTAA Process, available at* http://www.ftaa-alca.org/view_e.asp; *see also Reviving the European Connection*, *supra* note 33, at 37.

52. Moffett, *supra* note 29.

showed Brazil to be their "preferred foreign destination for new investment."[53] The reason—with a GDP in excess of $800 billion in 1997, Brazil's 160 million people constitute the region's largest economy.[54] By comparison, Argentina (pop. 35.8 million), Latin America's second largest economy, was less than half that size, with a 1997 GDP of about $323 billion.[55] Nevertheless, Argentina, along with countries like Chile, Ecuador, and Peru, experienced increased FDI during 1999.[56] Mexico, for its part, realized a large increase in FDI from the United States due to the North American Free Trade Agreement (NAFTA).[57]

B. Is Latin America Doomed to Fail?

1. The distance between the rich and the poor

Can lasting peace and prosperity be achieved in a region where economic performance has been mixed, and where there is such a wide gap between rich and poor? Some observers question whether Latin America is doomed to fail. For example, Peter Hakim asserted that not all the region's economies flourished during the 1990s.[58] On the one hand, the Argentine, Chilean, and Peruvian economies grew at an annual rate of roughly five percent throughout the decade.[59] The Dominican Republic, El Salvador, and Panama did nearly as well.[60] On the other hand, according to Hakim, countries like Colombia, Ec-

53. *Id.*

54. *See* U.S. DEP'T OF STATE (BRAZIL), *supra* note 38, at 1, 2.

55. *See* U.S. DEP'T OF STATE, BACKGROUND NOTES: ARGENTINA, JANUARY 1999, at 1, 2, *available at* http://www.state.gov/www/background_notes/argentina_0199_bgn.html.

56. *See* Moffett, *supra* note 29.

57. *Id.*

58. *See generally* Peter Hakim, *Is Latin America Doomed to Failure?*, 117 FOREIGN POL'Y 104 (Winter 1999-2000). Hakim is president of The Inter-American Dialogue, a center for policy analysis based in Washington, D.C. *See Inter-American Dialogue* (last modified Nov. 2, 2000), *at* http://www.iadialog.org/main.html.

59. *See* Hakim, *supra* note 58 (noting that Chile was the only country to approach the economic success of the "Asian tigers").

60. *See id.* (indicating that despite Latin America's economic restructuring and policy reforms, most countries fall short of economic expectations).

uador, Paraguay, and Venezuela lost or failed to gain ground.[61] Per capita income in each of these countries will in the year 2000 "be almost the same as it was 10 years earlier."[62] Hakim contends that the 1990s represented the second consecutive decade during which the region's GDP growth per capita was less than 1.5 percent, "leaving most Latin Americans almost as poor in 2000 as they were in 1980."[63]

Meanwhile, according to Hakim, "inequalities of income and wealth are worsening almost everywhere" in the region.[64] He asserts:

> Latin America suffers the worst income disparities of any region in the world (with sub-Saharan Africa running a close second). Today, more than half of Latin America's national income goes to one seventh of the population. Per capita income among the richest 20 percent of Latin Americans is nearly 12 times that of the poorest 20 percent. In East Asia and the Middle East, that ratio is less than seven; in South Asia, it is about four and a half.[65]

These income disparities are especially disheartening coming as they do "at a time when the triumph of democracy and open markets was supposed to usher in a new age of freedom and opportunity."[66] Instead, democracy and free trade have been accused of having the opposite effect. The problem may be one of perception. Since World War II, progress toward democratization and free trade have given

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61. *See id.* (contrasting the hopes of Latin American officials with the actual failure of countries to gain economic growth).

62. *Id.* at 106.

63. *Id.*

64. *Id.*

65. *See* Hakim, *supra* note 58. For additional statistics concerning the income gap in Latin America, *see e.g.,* Nancy Birdsall, *Life is Unfair: Inequality in the World*, 111 FOREIGN POL'Y 76, 78 (Summer 1998):

> In Latin America, the ratio of income of the top 20 percent of earners to the bottom is about 16 to 1 (almost 25 to 1 in Brazil, probably the world's most unequal country, compared with about 10 to 1 in the United States and about 5 to 1 in Western Europe). The wage gap between the skilled and the unskilled increased in this decade [i.e., the 1990s] by more than 30 percent in Peru, 20 percent in Colombia, and nearly 25 percent in Mexico. Ironically, these were the countries with the greatest wage increases.

66. *See* Birdsall, *supra* note 65, at 77 (comparing the income disparities in the United States, Latin America, Europe and Asia).

rise to what one observer calls "the expectation of 'convergence'—that those now lagging behind, whether nations or groups within nations, will inevitably catch up."[67] But the gap between rich and poor, within nations as well as between and among them, appears to be widening. Even in the United States, the situation is disquieting. For instance, as Nancy Birdsall, executive vice-president of the Inter-American Development Bank, maintains:

> Income inequality in the United States is increasing, not only because of gains at the top, but more disturbingly, because of losses at the bottom .... The average wage of white male high-school graduates fell 15 percent from 1973 to 1993, and the number of men aged 25 to 54 years earning less than $10,000 a year grew. Possibly for the first time in the nation's history, educational gains may be reinforcing rather than offsetting income inequality: High education has become a prerequisite for economic success, but because access to it depends on family income, the poor are at a distinct disadvantage. . . .The situation is less clear but no more heartening in other parts of the world.[68]

According to Birdsall, wealth disparities are the result of many factors, some of them historical. Citing Latin America as an example, she observes:

> Inequality begets inequality. Therefore, history matters. Consider Latin America. The combination of mineral wealth, soils and climate suitable for sugar production, and imported slave labor, or conquered indigenous labor, helped produce two castes: large landowners and politically unarmed workers. In 1950, just 1.5 percent of farm owners in Latin America accounted for 65 percent of all agricultural land; unequal land distribution, then the highest in the world, has risen since. Wealth in natural resources invited concentration of income. History and politics subsequently conspired to produce economic and institutional arrangements that have perpetuated that concentration.[69]

Other reasons for the increases in income disparity, in Birdsall's view, include racial or ethnic discrimination in the job market; gov-

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67. *Id.*

68. *Id. But see* William Julius Wilson, Editorial, *All Boats Rise. Now What?*, N.Y. TIMES, Apr. 12, 2000, at A31 (crediting the economic boom with diminishing America's income equality that has been prevalent since the 1970s).

69. Birdsall, *supra* note 65, at 80.

ernment policies that undermine economic growth or fuel inflation; and a lack of education among the poor.[70] Birdsall emphasizes the need for education, stating, "Failure to invest in the education and skills of the poor is a fundamental cause of inequality."[71] Higher spending on education is, in fact, characteristic of those few countries that have been able to maintain high economic growth with low inequality in the postwar period.[72]

Birdsall also cites poor countries' weak infrastructures and unreliable judicial and regulatory regimes,[73] as well as disadvantageous "rational decisions" made by poor people, as factors that exacerbate the income gap.[74] For example, wealthy, educated people tend to marry each other, which concentrates their families' wealth.[75] By contrast, poor, uneducated people marry others who are similarly situated, thereby perpetuating their poverty.[76] Poor families also have more children than their wealthy, better-educated counterparts, leaving them with less to spend per child for nutrition, health, and education.[77]

2. *How free trade helps*

What can be done to bridge the gap between the rich and the poor? Evidence suggests that liberalized trade and global integration foster economic growth, which shrinks the gap.[78] In regard to trade, Birdsall

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70. *See id.* (analyzing the various reasons for increases in global income disparity, with an emphasis on practices that perpetuate a cycle of poverty among the neediest families).

71. *See id.* at 83-84.

72. *Id.*

73. *See id.* at 86, critiquing advocates of a global New Deal).

74. *See* Birdsall, *supra* note 65, at 80.

75. *See id.* (explaining that in the 1970s in Brazil, the scarcity of university graduates caused their salaries to rise, thus worsening inequality).

76. *See id.* (suggesting that predictable human behavior, such as marriage patterns, often fosters income disparity).

77. *See id.* at 82 (discussing that overpopulation of the poor leads to unemployment and low wages, which perpetuate problems of inequality).

78. *See id.* at 85 (suggesting two reasons that trade and economic integration reduce inequality); *see also* Wilson, *supra* note 68 (reporting that diminished income inequality in the United States may not bring as much progress as seen in the

has noted that "[d]eveloping countries that have been most open to trade have had the fastest growth, reducing global inequality; those least integrated into global markets, such as many African economies, have remained among the world's poorest."[79] The reasons why free trade reduces the income gap may be two-fold. First, prices drop when barriers to cheap imports fall, benefiting poorer consumers.[80] Second, free trade undermines the unfair advantages used by monopolistic players to inflate prices in domestic markets.[81] Again, the poor benefit from the resulting lower prices.

In regard to global integration, a process in which FDI plays a fundamental role, one commentator has observed:

> Despite the conflicting interests of multi-national enterprises ("MNEs") and host countries, MNE investment can deliver benefits to the host developing country, although potential benefits depend, in part, on the nature of the FDI undertaken and the economic condition of the country. Host country benefits may include: the injection of needed capital; the introduction, transfer, or spillover of technology; the introduction of sophisticated management skills; increased host country employment; increased competition in the host country market; increased foreign exchange earnings through MNE exports; and other benefits.[82]

FDI has potential pitfalls, however, which should not be understated. For example, MNEs can repatriate their profits in a way that depletes a host country's foreign reserves.[83] Also, MNEs can engage in a host of restrictive business practices that reduce their overall contribution to the local economy. These include the imposition of restrictions on subsidiary licensing of technology, and complex

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79. *See* Birdsall, *supra* note 65, at 84.

80. *See id.* at 86 (explaining that prices fall because of enhanced price competition and these lower prices benefit the poor because they use most of their income for consumption).

81. *See id.* (stating that the economic privileges and monopolies of wealth, symbolic and supportive of high inequality, are challenged by open markets and free trade).

82. Eric M. Burt, Note, *Developing Countries and the Framework for Negotiations on Foreign Direct Investment in the World Trade Organization*, 12 AM. U.J. INT'L L. & POL'Y 1015, 1021 (1997).

83. *See id.* at 1022 (describing the potential costs of MNE investment).

transfer pricing arrangements that reduce local taxes or limit host countries' export revenues.[84] In addition, MNEs can engage in practices that are harmful or destructive to the host country's natural resources or the environment.[85]

Moreover, privatization of state-run companies can, in the short-run at least, increase domestic unemployment.[86] And if corruption accompanies the privatization process, insiders can reap ill-begotten windfalls.[87] Meanwhile, competition from foreign companies can drive inefficient, formerly protected domestic industries out of business, further adding to unemployment.[88] Nevertheless, "[m]ost developing countries today subscribe to the view that in spite of potential negative effects of FDI on host country economies, the potential economic benefits of FDI render the investment desirable as long as the potential FDI costs are controlled and the FDI is 'properly harnessed.'"[89]

3. *Emerging from the "intellectual ghettos of Third Worldism"*

Latin America's receptivity to FDI represents a break with its past. To one observer, it symbolizes nothing less than the "general emergence of Latin American policymakers from the intellectual ghettos of Third Worldism . . . ."[90] Historically, Latin American countries adopted laws restricting FDI, fearing "the influence of foreign investors, the loss of their sovereignty, and the rape of their natural resources."[91] After the debt crisis of the 1980s, however, when foreign banks were no longer willing or able to finance Latin American development, the region's leaders turned to FDI as "an efficient means to fund economic growth, promote the influx of new technology, and

84. *See id.* at 1022-23.

85. *See id.* at 1022.

86. *See* Birdsall, *supra* note 65, at 82 (commenting on the effects of market reforms in contributing to inequality).

87. *See id.* at 83 (illustrating Russia as an example in support of this argument).

88. *See id.* (realizing how open trade could lead to wage reductions or unemployment for workers because the inefficiencies will be exposed when the companies are privatized or must compete with foreign counterparts).

89. Burt, *supra* note 82, at 1023.

90. Glade, *supra* note 31, at 61.

91. Fallone, *supra* note 25, at 327.

increase the labor and managerial skills of the local labor pool."[92] Regulatory reforms favorable to FDI were also inspired by the desire to privatize inefficient state-run enterprises.[93] Typically, a government that privatizes its state industries by selling or auctioning interests in them to the private sector does so in order to "increase the efficiency of its operations, develop local capital markets, raise capital from foreign sources for expansion and modernization, and promote the importation of new technology and new management techniques."[94] Whatever the symbolism and motives, the changed perspective toward FDI certainly helps to explain why Latin America has become "a major recipient of foreign direct investment in a growing variety of fields."[95]

C. RELUCTANCE TO INVEST IN NICARAGUA

1. Nicaragua is desperately poor

Foreign investors have, however, been more reluctant to invest in Nicaragua than in other Latin American countries.[96] For example, in 1997 private foreign capital investment in Nicaragua was a meager $113 million, and only twenty-five American companies were doing business there.[97] The lack of FDI may be attributable to Nicaragua's harsh economic circumstances and prospective foreign investors' fears about its "weak government, corruption, poor markets and massive problems with obtaining legal property titles."[98]

Consider the negatives. Nicaragua is desperately poor: approximately seventy percent of its people live in poverty; half the workforce is unemployed; and annual per capita income is only

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92. *Id.*

93. *See id.* (describing the origin of many of the Nicaraguan regulatory refoms).

94. *Id.*

95. Glade, *supra* note 31, at 60.

96. *See* Molly Moore, *For Nicaraguans, Promises Unkept: 20 years After Sandinista Coup, Poverty Prevails*, WASH. POST, Jul. 19, 1999, at A13 (suggesting reasons why FDI in Nicaragua has been low).

97. *See id.*

98. *Id.*

around $435.[99] In addition, Nicaragua remains a debtor nation despite the significant reduction in its foreign debt. By one estimate, the government spends eleven times more each year on debt service than on health care.[100] Nicaragua is also heavily dependent on foreign aid. By one assessment, foreign grants in 1997 "provided public finances equivalent to 17.6 percent of government revenue."[101]

An even more telling measure of Nicaragua's plight may be its low ranking on the human development index ("HDI"), used by the United Nations Development Program ("UNDP") to gauge quality of life. Applying the HDI's three-pronged indicia—life expectancy, educational attainment, and income—in 1999, Nicaragua ranked 121st out of 174 countries with high, medium, and low human development.[102] As a region, Latin America ranked third on the HDI index, lagging behind the industrialized countries, Eastern Europe, and the former Soviet Union, but ahead of parts of South and Southeast Asia, parts of East Asia, the Arab states, and Sub-Saharan Africa.[103] Ironically, Nicaragua's position marked an improvement of five spots up from its 126th ranking the previous year.[104]

2. *Lack of confidence in Nicaragua's courts*

Nicaraguan laws subject foreign investors to jurisdiction in their courts. Such investors find this troublesome because Nicaragua's legal framework is weak. They are uncomfortable with a system in which the enforcement of contracts and property rights needs en-

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99. *See id.*

100. *See* Editorial, *Peace and Poverty in Central America*, N.Y. TIMES, Mar. 11, 1999, at A11 (reporting that although the civil conflicts in Latin America have subsided, these countries still suffer from poverty and inequality).

101. *See Country Profile: Nicaragua*, *supra* note 12.

102. *See* UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 1999, at 136 (stating Nicaragua climbed five places on the Human Development Index ("HDI") from 126th in 1998 to 121st in 1999) [hereinafter UNITED NATIONS]; *Nicaragua Press Highlights 19 July*, WORLD NEWS CONNECTION, July 19, 1999, *available at* 1999 WL 21973122 (discussing the rank of Nicaragua on the HDI, which has been the lowest of all Central American countries since 1996) [hereinafter *Nicaragua Press Highlights*].

103. *See* UNITED NATIONS, *supra* note 102, at 137.

104. *See id.* at 136; *Nicaragua Press Highlights*, *supra* note 102.

hancement.[105] Yet the Decree Law on Foreign Investment ("DLFI") provides that foreign investors shall be entirely subject to the laws and courts of Nicaragua, just as citizens are.[106] In the event of a dispute between Nicaragua and a foreign investor as to the interpretation of an investment contract, Article 53 of the DLFI provides for arbitration in accordance with procedures stipulated in the contract, once negotiation and conciliation efforts are exhausted.[107] If, however, the nature of the controversy has not been included in the contract's arbitration clause, the dispute will be subjected to the jurisdiction of ordinary Nicaraguan courts. Unfortunately, by the Nicaraguan government's own assessment, potential investors consistently cite "[l]ack of confidence in the judicial system" as a deterrent to investment.[108]

Contributing to this lack of confidence is that Nicaragua has a civil, rather than a common, law system. Civil law has its roots in ancient Roman law, where judges were typically lay figures.[109] One of the major differences between common law and civil law jurisdictions is that legislative codes in common law countries are less organic, systemic, and thorough than civil law states.[110] In a common law state, a lawyer normally must look to case law for interpretive analysis or precedent as to the meaning of a statute or regulations, whereas in a civil law country, the legislative code purports to be

105. *See* WORLD BANK, *supra* note 10, Private Sector Strategy, at para. 2.

106. *See* LAW ON FOREIGN INVESTMENTS, *supra* note 26, ch. 5, art. 30. *See also* By-Laws for the Foreign Investment Law, Decree Number 30-92, Ministry of Economy and Development, Republic of Nicaragua, ch. 5, art. 52 (1991) (Nic.) [hereinafter By-Law No. 30-92]. Chapter 5, Article 52 of the DLFI states that "[f]oreign investors will, by all, be subjected to the laws and courts of Nicaragua, the same way as Nicaraguan citizens are, except in those aspects to which they have been granted rights and guarantees according to the Law and these By-Laws." *See id.*

107. *See id.* at art. 53.

108. *See* WORLD BANK, *supra* note 10, Private Sector Strategy, at para. 2.

109. *See* Jose A. Santos, *Civil Law Comparisons, Proceedings of the Ninth Annual Conference on Legal Aspects of Doing Business in Latin America: New Approaches—Looking to the Twenty-First Century*, 11 FLA. J. INT'L L. 1, 71 (1996) (explaining the history and differences between common law and civil law systems).

110. *See id.* at 70 (citing the United States as an example of a common law country).

wholly self-contained and self-explanatory.[111] Judicial decisions are not viewed as a source of law in civil law jurisdictions, and there is no concept of *stare decisis*, as judges are not expected to follow precedent.[112] Furthermore, it would be regarded as improper for Nicaraguan judges to make law, because little deference is given to judges or to judicial decisions.[113]

Another major difference between common law and civil law countries is that the rules of evidence in civil law states are not as strict as they tend to be in common law jurisdictions.[114] During a trial, evidence is presented as it arises, and trials usually tend to last much longer.[115] Also, while it is difficult to get an appellate court to overturn a decision in a common law country, trials tend to be *de novo* on appeal in civil law states, which slows the adjudicative process.[116]

Despite these and other drawbacks, Nicaragua welcomes FDI as a vital component of the development of its economy. To appreciate how significant this is, one must first understand the degree to which current policies favorable to FDI represent a break with the thinking and failed economic policies of the past throughout Latin America, in general, and Nicaragua in particular.

III. REFORMS UNDERTAKEN BY NICARAGUA

A. FREE TRADE AND ECONOMIC INTEGRATION

Throughout the 1990s, successive Nicaraguan governments tried to move the economy forward by making trade liberalization and regional economic integration cornerstones of economic policy.[117]

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111. *See id.*

112. *See id.*

113. *See id.* at 71 (comparing the role of judges in common law versus civil law countries).

114. *See* Santos, *supra* note 109, at 72 (stating the lack of knowledge relating to rules of evidence in civil law states).

115. *See id.*

116. *See id.*

117. *See Country Profile: Nicaragua, supra* note 12 (discussing Nicaragua's economic strategy in the 1990s).

Nicaragua committed itself to having an open economy by reducing or eliminating trade barriers and state trading activities.[118] The goal was to increase foreign currency earnings, reduce the national debt, and attract industrial development.[119] Nicaragua currently maintains trade relations with all countries of the world, regardless of their political systems.[120] Nicaragua has joined several free trade regimes, including the General Agreement on Tariffs and Trade ("GATT"), of which it has been a member since 1949; the Central American Common Market ("CACM"); the Caribbean Basin Initiative ("CBI"); the Overseas Private Investment Corporation ("OPIC"); and the Multilateral Investment Guarantee Agency ("MIGA"), which insures investors against possible risks.[121]

At a ceremony held in Managua on May 2, 2000, Nicaraguan president Aleman joined El Salvadoran president Francisco Flores Perez, and Guatemalan president Alfonso Portillo Cabrera, in signing an agreement aimed at promoting close cooperation in economic and foreign policy, infrastructure development, and security matters.[122] A joint declaration issued by the three rulers stated, "We hope to set the foundation for carrying the process of integration, which dates from the 1960s, into the 21st century."[123] Current plans include expanding ferry service and shipping along the countries' coasts.[124]

B. ATTRACTING FDI

1. Structural adjustments and reform initiatives

Because the Aleman government is convinced that foreign capital is essential in order for Nicaragua to develop economically, it has

118. *See* DOING BUSINESS IN NICARAGUA, *supra* note 28, at 33.

119. *See Country Profile: Nicaragua*, *supra* note 12.

120. *See* DOING BUSINESS IN NICARAGUA, *supra* note 28, at 31.

121. *See id.* at 33

122. *See Three Central American countries sign integration accord*, ASSOC. PRESS, May 2, 2000, *available in* WL 5/2/00 APWIRES 16:02:00 (describing the meeting between the leaders of Nicaragua, El Salvador, and Guatemala).

123. *See id.*

124. *See id.* (reporting the plans of Nicaragua, El Salvador, and Guatemala to expand several transportation services along their coasts).

endeavored to establish and maintain conditions that are favorable to FDI.[125] In April 1994, Nicaragua entered into an Enhanced Structural Adjustment Facility ("ESAF") agreement with the International Monetary Fund (IMF).[126] By the terms of this agreement, Nicaragua received an IMF loan of $168 million, in exchange for its commitment to free market economic reform.[127] Nicaragua signed a second ESAF agreement with the IMF in March 1998.[128] By the terms of this subsequent agreement, the Aleman administration committed itself to holding the line on government spending, and reducing the public sector deficit by 4 percent of GDP in the year 2000.[129] In return, the IMF pledged $1.8 billion to help Nicaragua reach its goals and objectives by that date.[130]

Since entering into the second ESAF agreement, Nicaragua has, in fact, made notable progress.[131] For example, the government has implemented policies designed to reduce its large fiscal deficit by cutting income, import and other tax rates in order to spur economic growth and thereby widen the tax base.[132] Nicaragua's maximum annual income tax rate of 30 percent is lower than that of many countries.[133] Nicaragua scheduled a further reduction, to 25 percent, for 1999.[134]

As its primary means of promoting FDI, Nicaragua issued its Decree Law on Foreign Investment ("DLFI")—Law Number 127, in

125. *See* DOING BUSINESS IN NICARAGUA, *supra* note 28, at 28.

126. *See Country Profile: Nicaragua*, *supra* note 12.

127. *See id.* (detailing the figures and terms of the agreement between the IMF and Nicaragua). By signing the ESAF, Nicaragua also promised to cut public expenditures, particularly in defense, public security, and publicly owned enterprises. *See id.* This commitment by Nicaragua resulted in the privatization of 340 state enterprises by the end of 1994. *See id.*

128. *See id.* (describing the 1998 ESAF agreement between Nicaragua and the IMF).

129. *See id.* (listing the goals of the 1998 ESAF agreement).

130. Inter-American Development Bank, *available at* http//:www.iadb.org, at 1 (on file with author).

131. *See Country Profile: Nicaragua*, *supra* note 12.

132. *See* DOING BUSINESS IN NICARAGUA, *supra* note 28, at 69.

133. *See id.*

134. *See id.*

1991.[135] Nicaragua designed the law to accelerate its economic and social development within a framework of respect for national sovereignty and the legal system.[136] The decree is fairly liberal to the extent that any foreign capital introduced into the Nicaraguan economy will be considered an investment, regardless of the nationality or the legal residence of the investor.[137]

Chapter Two, Article 7 of the DLFI sets out the Rights and Guarantees of the Investor. These include the right to, among other things, repatriate net foreign capital, remit abroad the net profits generated by the capital registered, and, perhaps most important to foreign investors, "rapid, adequate and effective compensation in case of expropriation for reasons of public utility or social interest."[138] The confidence of foreign investors can be won more easily when and if there is protection against expropriation.[139] Thus, Nicaragua has given foreign investors the comfort of knowing that if they do invest in Nicaragua, they will be duly compensated if the government confiscates their property.

Prospective foreign investors also should be encouraged by the fact that in 1998, Nicaragua effectively voided the Law of Agents, Representatives, and Distributors of Foreign Products, which had protected local agents and established the exclusiveness of foreign representation contracts.[140] Now any foreign investment contract signed after July 1998 will be protected in the same way as any other investment contract.[141] There are also plans for a new hydrocarbons law that should encourage FDI in the exploration in Nicaragua's mines.[142]

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135. *See id.*

136. LAW ON FOREIGN INVESTMENTS, *supra* note 26, at Arts. 1-30 (listing the general provisions of the law on foreign investments)

137. *See id.* at ch. 1, art. 2 (explaining Nicaragua's categorization of foreign investments).

138. *See id.* at ch. 2, art. 7.

139. *See generally* Note, *Protection of Foreign Direct Investment in a New World Order: Vietnam-A Case Study*, 107 HARV. L. REV. 1995 (1994) (detailing Vietnam's efforts to encourage and protect FDI).

140. *See* DOING BUSINESS IN NICARAGUA, *supra* note 28, at 28.

141. *See id.*

142. *See id.*

Meanwhile, the Las Mercedes free-trade zone, located near the international airport in the Nicaraguan capital of Managua, is expanding quickly.[143] Local producers who operate in the zone are 100 percent exempt from income tax during their first decade of operation.[144] Foreign investors who use the free trade zone are allowed to sell up to forty percent of their products locally.[145] Foreign companies currently operating within the Las Mercedes zone include Ecco de Nicaragua of Italy, and Chentex, which is based in Taiwan.[146] Taiwanese business leaders have already invested some $30 million in the free trade zone, and are planning to spend another $100 million to build a textile plant in Nicaragua that will process 300,000 bales of cotton annually and employ up to 1,200 workers.[147]

2. *Fighting poverty*

To fight poverty, the government has set out to modernize the rural sector, encouraging infrastructure investment, establishing credit funds for farmers, and improving social services.[148] Through privatization and modernization of state institutions, the government also intends to increase public savings and improve the efficiency of the public sector.[149] In fact, privatization has proved to be one of the most effective means of attracting FDI.[150] As mentioned, at least 351 state-run enterprises have been privatized since 1991.[151] These include PETRONIC, a state-owned petroleum products firm privatized in 1996 when a fifty-one percent share of the company was sold to a foreign investor, and Banco Nicaraguense de Industria y Comercio ("BANIC"), a fifty-one percent share of which was due to go on sale

143. *See id.* at 36-79.

144. *See id.* at 77.

145. *See* DOING BUSINESS IN NICARAGUA, *supra* note 28, at 30.

146. *See id.*

147. *See Nicaragua-Taiwan: Taiwan Investors to Build Textile Factory in Nicaragua*, EFE NEWS SERV., Feb. 22, 2000, *available in* WL 2/22/00 EFENEWSERV [hereinafter *Nicaragua-Taiwan*].

148. *See* Inter-American Development Bank, *supra* note 130, at 2.

149. *See id.* at 1.

150. *See* DOING BUSINESS IN NICARAGUA, *supra* note 28, at 77.

151. *See* U.S. DEP'T OF STATE, *supra* note 1 (detailing changes in Nicaragua's economy since 1991).

in 1999.[152] Thus private investment, from both domestic and foreign sources, has been rising, with FDI targeted for infrastructure projects.[153]

3. Tax reform

The government implemented tax reforms aimed at making tax enforcement and collection fairer, more efficient, and simpler, as is the case with the flat land tax.[154] A tariff reform program has also been adopted.[155] In addition, to encourage FDI, Nicaragua has opened all commercial activities to foreign investment, now allows 100 percent foreign ownership, and no longer subjects foreign-source income to Nicaraguan income tax.[156] Moreover, the government has amended the Tax and Commercial Justice Law in order to provide foreign investors with favorable tax treatment.[157] Among other things, foreign corporations are subject to income tax only on their Nicaraguan-source income; profits of foreign-domiciled exporters on their exports to Nicaragua are considered foreign-source income and are not subject to Nicaraguan income tax; and branches of foreign corporations are subject to income tax at the above-mentioned 30 percent rate.[158]

4. Electoral reform

To consolidate democracy, a new electoral law has been passed and institutions such as the Judiciary, the Comptroller General, and the Attorney General are being strengthened.[159] Furthermore, two

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152. See DOING BUSINESS IN NICARAGUA, *supra* note 28, at 77.

153. *See id.*

154. *See* WORLD BANK, *supra* note 10, at 1 (discussing Nicaragua's move out of a transition economy).

155. *See id.*

156. *See* DOING BUSINESS IN NICARAGUA, *supra* note 28, at 36-79.

157. *See id.* at 27.

158. *See id.* at 77.

159. *See* WORLD BANK, *supra* note 10, at 4 (recognizing the creation of legislation to establish administrative tribunals, the nomination of a new human rights Attorney General, and attempts by the government to improve the flow of information to the public).

administrative tribunals have been established: one protecting citizens from government abuses, and one consolidating civilian control over the military.[160] In an effort to improve communication and the flow of information to and from the public, the government set up *ad hoc* groups to discuss development issues.[161]

5. *The property question*

Because the Chamorro administration failed to resolve the issue of property ownership, it remains one of the biggest problems the Aleman administration faces. When the Sandinistas were in power, they nationalized virtually everything, including many private farms, and they confiscated many private homes. In fact, thirty-five percent of all Nicaraguan land was transferred into Sandinista hands during the course of their agrarian reforms.[162] The former property owners are known as "los confiscados," or "the confiscated ones."[163]

Now that the Sandinistas are no longer in power, "los confiscados," 471 of whom are American citizens, want their property back.[164] The Aleman administration must now attempt to resolve what property belongs to whom. In fact, the property question has been so troublesome that it is having a significant, adverse effect on FDI.[165]

Aleman has said that poor Nicaraguans who were given confiscated lands during the Sandinista regime will be given legal title to those properties.[166] But for that to happen, Daniel Ortega and other Sandinista leaders who ordered the confiscations will have to com-

160. *See id.* (describing the important pieces of legislation currently being considered to establish these tribunals).

161. *See id.* (listing some of the discussion groups' specific topics such as bargaining forums and the national dialogue that will be analyzed to broaden consensus concerning development issues).

162. *See* Fainaru, *supra* note 27, at A1 (noting that this land transfer is in excess of $1 billion worth of property in a nation with an annual GDP of $2 billion).

163. *See id.*

164. *See id.*

165. *See id.* One Pizza Hut franchise had to search all over Managua to find property not subject to an expropriation dispute. *See id*

166. *See id.*

pensate the previous owners at full market value.[167] Otherwise, the seized estates will revert to their original, rightful owners.[168]

Many say that because resolving the issue of property rights is key to attracting FDI, it could be one of the most vital issues the Aleman administration will have to solve.[169] In fact, former United States Secretary of State James Baker has been quoted as saying that "the investment community is going to take one more look at Nicaragua. . .If they don't have policies in place by then or at least don't show that they are creating an environment for investment, they're going to go somewhere else."[170] As it turns out, by the end of his first year in power, Aleman and his administration had begun negotiations with the opposition, and had begun devising a new property law.[171] The law recognizes the rights of smallholders, defines dispute resolution procedures for larger properties, and creates special courts to address pending cases.[172] The government also plans on delivering 90,000 property titles to small urban and rural plot holders in the next few years, and to create the institutional infrastructure needed for real estate markets to operate efficiently.[173]

6. *Nicaragua's debt*

Nicaragua's external debt has been reduced but still equals an amount three times greater than its gross domestic product.[174] Up to

167. *See* Fainaru, *supra* note 27, at A1 (describing the additional requirements that President Aleman has placed on former Sandinistas).

168. *See id.*

169. *See id.*

170. *See id.* (postulating that Nicaragua has a limited amount of time - about eighteen months - to convince the foreign investment community of its potential value).

171. *See* WORLD BANK, *supra* note 10, at 4 (describing cooperation on the new property law as a conciliatory act by Aleman and his administration to appease the opposition).

172. *See id.* at 8 (stating that these reforms will allow resolution of pending claims and hasten the delivery of property titles). Additionally, the government is seeking donor support for a judicial reform that plans to improve legal procedures and enhance enforcement of contracts and property rights. *See id.*

173. *See id.*

174. *See id.* at 5.

now, Nicaragua's economy has functioned as well as it has because of the influx of foreign aid Nicaragua has received.[175] But government expenditures surpass an amount roughly equal to forty percent of Nicaragua's gross domestic product, and productivity is low.[176] Thus, Nicaragua's future depends greatly on whether or not it can strengthen its external position.[177]

The current debt crisis began under the Sandinistas. According to the Oxfam International Advocacy Office in Washington, D.C. ("Oxfam"), whatever beneficial reforms the Sandinistas brought were paid for largely with borrowed money. An October 1998 Oxfam position paper entitled *Debt Relief for Nicaragua: Breaking Out of the Poverty Trap*, described how the debt crisis came about:

> Nicaragua's debt problems intensified during the 1980s. As in other heavily indebted and poor countries, external problems such as falling commodity prices, rising oil prices, and high interest rates interacted with economic mismanagement and excessive borrowing. Nicaragua's situation was worsened by armed conflict in large parts of the country.
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> In 1979 the revolutionary Sandinista government inherited from the Somoza regime US$1.6 billion of debt, low national savings, and a country debilitated by years of civil war. During the 11 years of Sandinista rule, significant advances were made in meeting the basic needs of the population, and in rapidly raising health and education standards. *Ultimately, however, these policies were financed through increased borrowing, which led to an expanding and unsustainable public sector and serious indebtedness.* The exchange rate was overvalued, and inflation rose, to reach 36,000 percent in 1988. The government faced serious balance of payments problems and rising debt. These difficulties were further compounded by the US-led economic embargo and international isolation, and the US-supported war of the 1980s. This war was both costly and destructive, and lead to greatly increased defense expenditure. The government initially responded to these external and internal problems by discontinuing debt service, assuming a massive debt with the USSR, and increasing money supply. The situation worsened, and the Sandinista government eventually introduced a stabilisation package which included devaluation, increases in interest rates, and restrictions on credit and public spending. The recession caused GDP to decline by 13 percent and

175. *See id.* (reporting that foreign aid supports about one-fifth of Nicaragua's GDP).

176. *See id.*

177. *See* WORLD BANK, *supra* note 10, at 4.

> further undermined worsening social indicators.
>
> In 1990, the new Chamorro government inherited a debt stock of $US10.7 billion, 40 per cent of which was arrears. By 1994, this debt had reached a peak of US$11.7 billion. *Nicaragua at that time had the highest debt per capita and highest ratio of debt to GDP of any country in the world.*[178]

Nicaragua's debt is one of the major obstacles to the country's development, but with good performance under the ESAF arrangements with the IMF, Nicaragua hopes to become eligible for the Heavily Indebted Poor Countries (HIPC) initiative, which could allow it to reduce its external debt burden to sustainable levels.[179] Under the HIPC framework that was originally adopted by the IMF and World Bank in 1996, poor nations that find themselves in unsustainable debt situations may apply to their creditor nations and multilateral institutions like the World Bank for various forms of debt relief, including debt reduction, or repayment delays.[180]

The problem for Nicaragua in the short-run, unfortunately, is that despite major reform put in place since the late 1980's, it still has a "broken track record" with the IMF."[181] For example, Nicaragua failed to meet certain taxation targets established under its April 1994 ESAF agreement.[182] Similarly, satisfying a number of the benchmarks contained in the March 1998 ESAF package will also be extremely difficult.[183] Consequently, Nicaragua may not, by one assessment, be eligible for HIPC debt relief until at least 2002.[184] However, its creditors may, at their discretion, grant some form of debt relief prior to that date. For example, the leaders of the world's richest democracies, the so-called G-7, meeting for their 25th annual

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178. Oxfam International, Debt Relief for Nicaragua: Breaking out of the Poverty Trap, available at http://www.caa.org.au/oxfam/advocacy/debt/nicaragua/debt.html (emphasis added) [hereinafter Oxfam Debt Relief].

179. *See* WORLD BANK, *supra* note 10, at 5.

180. *See The HIPC Debt Initiative*, The World Bank Group, *available at* http://www.worldbank.org/hipc/about/hibcbr/hipcbr.htm (describing the HIPC initiative).

181. *See* Oxfam Debt Relief, *supra* note 178.

182. *See id.*

183. *See id.*

184. *See id.*

summit in Cologne, Germany, agreed in June 1999 to forgive roughly $70 billion worth of debt owed by the poorest nations.[185] At the time, British Prime Minister Tony Blair called this "the single biggest step forward in debt relief and help for the poorest nations that we've seen in the international community for many years."[186]

For its part, the Paris Club of creditor nations in 1998 suspended Nicaragua's debt payments for three years in order to help the country recover from the damage caused by Hurricane Mitch.[187] By one estimation, Hurricane Mitch, which struck in late 1998, was the worst storm to hit the Central American region in 200 years, devastating the economies of Nicaragua, Honduras, Guatemala and El Salvador,[188] and killing as many as 9,000 people in those countries.[189]

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185. *See* James Gerstenzang, *Democracies to Ease Debt for Poor Nations*, L.A. TIMES, June 19, 1999, at A1 (describing the G-7 meeting).

186. *Id.* (describing the importance of the "Cologne initiative").

187. *See* CNN, *Paris Club Suspends Debt for two Mitch-hit countries* (Dec. 10, 1998), *available at* http://oxcamex.org.ni/mitch/English/news/Paris%20Club%20Suspends%debt%20for%20Mitch%20countries.htm. [hereinafter *Paris Club Suspends Debt*] (on file with the *American University International Law Review*).

For a discussion of the Paris Club, *see Paris Club, available at* http://www.bradynet.com/bbs/nonem/100000-0.html:

> The Paris Club is a forum for 19 creditor countries, which meet in Paris on a monthly basis to discuss debt issues. Among other things, the Paris Club addresses the issue of coordinated debt relief for developing countries that cannot service their debt. The 19 members of the Paris Club are the original OECD [Organization for Economic Cooperation and Development] and Russia . . . . The Paris Club bases its activities on five main principles:
>
> 1. Conditionality: Only countries which implement IMF economic reform programmes can obtain a new debt relief agreement in the Paris Club. 2. The Paris Club's decisions are based on a case-by-case assessment of the special needs of each individual debtor country. 3. Consensus: The Paris Club only takes decisions on which there is a consensus among all the creditor countries. 4. Comparability of treatment between creditors means that no creditor can demand larger payments or different, more favorable terms than those decided jointly in the Club. 5. Creditor solidarity means that no creditor can seek to obtain more favourable terms than those laid down by the Paris Club agreement.

See also Charlotte Denny and Peter Gaskill, *The Paris Club*, THE GUARDIAN (Dec. 9, 1998), *reprinted at* http://www.oxcamex.org.ni/mitch/English/news/ What%20is%20the%20Paris%20Club.htm (providing a description of the Paris Club).

188. *Paris Club Suspends Debt*, *supra* note 187; *see also* Charles Babington, *Clinton Offers Aid to Nicaragua; President Inaugurates Tour With $120 Million*

The Paris Club has also promised to write off about eighty percent of the debt Nicaragua owes to its members once Nicaragua qualifies for assistance under the HIPC initiative.[190]

Nevertheless, according to the World Bank's *Debt Sustainability Analysis on Nicaragua*, its debt situation is going to continue to make Nicaragua vulnerable over the next decade, even after implementation of debt relief programs, because of low national income and Nicaragua's poor export base.[191] The World Bank emphasizes that "a sustained improvement in Nicaragua's external debt situation would require the strict adherence to a strong adjustment program, eschewing nonconcessional borrowing, and recourse to debt relief."[192]

7. *Strengthening the legal and regulatory framework*

Another obstacle to Nicaragua's development is its weak legal framework.[193] The legal system needs to be strengthened in order to resolve outstanding claims that date back to the Sandinistas, as well as to allow for documenting and transforming property rights.[194] As discussed, the government has already approved a new property law that allows for the resolution of pending claims which will hopefully expedite the process of getting property to rightful owners, as well as launching legal procedures that will enforce contracts and property rights.[195] Additional improvements would include a modern commercial code, bankruptcy law, and intellectual property rights, and re-

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Pledge for Hurricane Relief, WASH. POST, Mar. 9, 1999, at A9 (discussing the damage caused by Hurricane Mitch).

189. *See* Thomas W. Lippman, *2 Nations Hit Hard by Mitch Promised Aid; Billion in Debt Relief, New Grants Are Planned*, WASH. POST, Dec. 11, 1998, at A1 (describing the debt relief offered to nations affected by Hurricane Mitch).

190. *See Paris Club Suspends Debt*, *supra* note 187.

191. *See* WORLD BANK, *supra* note 10, Annex D, at 1.

192. *See id.* (stating that the country's external debt situation remains vulnerable).

193. *See* WORLD BANK, *supra* note 10, at 8.

194. *See id.*

195. *See id.* (analyzing the new property law reforms, which the government believes will generate the institutional infrastructure necessary for an efficient real estate market).

vising the foreign investment code, so as to remove any remaining prejudice against foreign investors.[196]

8. *Upgrading Nicaragua's infrastructure*

Nicaragua's infrastructure is in dire need of repair. Access to telephone services, electricity, good road conditions, and water supply are below average.[197] Loss of water and electricity is very common.[198] As one who has visited Nicaragua knows, these problems include having to keep huge plastic containers in bathrooms in case the water happens to be shut off while one is showering; a months-long wait list for home telephone service; power outages that occur several times a week; and poor road conditions that necessitate 4-wheel drive vehicles for all who can afford them. The government is in the process of improving its roads and water systems through a public investment program, and continues to encourage investment in industries, such as telecommunications, making sure that privatization begins in areas where there is a good chance for success.[199] Through promotion of the private sector provisions and increased efficiency in public investment, Nicaragua's infrastructure services will improve.[200]

IV. THE BURDEN OF THE PAST: FAILED ECONOMIC POLICIES

A. LATIN AMERICAN PERSPECTIVES ON FREE TRADE AND FDI

Foreign investors should understand that the social and economic policies of Latin America were not developed from capitalism, and that Latin America has always been averse to foreign influence.[201] This "xenophobia" dates back to the conquest of the indigenous peo-

196. *See id.*

197. *See* WORLD BANK, *supra* note 10, at 9 (stating that the losses of electricity generated, and water produced, are excessively high).

198. *See id.*

199. *See id.* For example, the state telecommunications company, ENITEL, was scheduled for sale before the end of 1998. *See id.*

200. The World Bank Group, *supra* note 180, at 2.

201. *See* Baker, *supra* note 39, at 313.

ple of Latin America by the European conquistadors.[202] In modern times, this attitude can also be attributed to the exploitive imperialism of the 20th century.[203] Latin America does not have a history of a single, dominant, well-established economic tradition; rather, its economic ideology is a result of the combination of indigenous communal societies and exploitive colonization.[204] Today's Latin America consists of modern skyscrapers towering over slums, a stark juxtaposition of its new capitalist endeavors and its old mercantile history.[205]

B. THE FALSE DICHOTOMY: REGIONAL ECONOMIC INTEGRATION VS. FDI

After World War II, Latin American nations "pursued [regional] economic integration as the panacea to their economic woes."[206] Results have been mixed. The current Nicaraguan government's perspective, as expressed by Nicaraguan Vice President Enrique Bolanos Geyer, is that regional trade has flourished throughout the post-World War II era, and that Nicaragua has at times benefited significantly from it.[207] Other commentators have asserted, however, that early regional trade agreements, like the 1951 bilateral trade pact between Nicaragua and Guatemala, failed to increase trade, and that during the 1970s and 1980s, regional trade was undermined by differing political ideologies—more specifically, the rise of nationalistic, authoritarian, and totalitarian regimes.[208]

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202. *See id.*

203. *See id.* (commenting that Latin America's mercantile history cannot be disregarded).

204. *See id.* at 312 (stating that colonialists were interested in religious conversion and exploiting natural resources).

205. *See id.* at 313-14 (noting that for a North American to understand Latin America, it is important to have a broad view of its situation).

206. *See* Baker, *supra* note 39, at 313.

207. *See generally* ENRIQUE BOLAÑOS GEYER, EN POCAS PALABRAS . . . . NICARAGUA: 165 ANOS DE VIDA INDEPENDIENTE 20-23 (1987) (on file with *American University International Law Review*).

208. *See* Baker, *supra* note 39, at 316-18. For example, Mercursor partners Argentina and Brazil were until the 1980s embroiled in a nationalistic rivalry that "culminated in a race to build an atomic bomb." Anthony Faiola, *Spat Imperils S. American Trading Bloc*, WASH. POST, Aug. 13, 1999, at A19.

Today, Latin American nations are again attempting to integrate their economies through a plethora of free trade arrangements like MERCURSOR, NAFTA, the FTAA, the Group of Three, the Andean Pact, the Caribbean Community (CARICOM), the Central American Common Market (CACM), the Association of Caribbean States (ACS), and the Latin American Integration Association (LAIA).[209] But those who have been disappointed by similar efforts in the past now argue that these nations should focus less on regional trade agreements and more on strengthening their own economies first through increased FDI.[210] For example, Mark B. Baker, associate professor of business law at the University of Texas, Austin, has written that:

> Integrating the Americas can only do so much for Latin economies. Latin nations will eventually realize that free trade is only good if there are things to sell. For the moment, they should devote more efforts to encourage FDI. They should try to build up their economies and ensure that the necessary political and social institutions are in place. This is not to say that Latin America currently has poor political and social institutions, but one can argue that they could stand to be upgraded.[211]

Baker calls upon Latin American governments to attract FDI by making the regulation of investments more transparent, consistent, and predictable.[212] For example, he is critical of so-called "operational codes," also known as "drawer regulations," which differ in their application from the investment laws that are formally in place. University of Florida law professor Michael W. Gordon has noted that the operational codes issued by the various ministries in developing countries, while not labeled "secret," have not been widely disseminated in the public either. As a result, they are often applied inconsistently. "They are kept in a ministry official's drawer, re-

209. *See* Baker, *supra* note 39, at 319.

210. *See id.* at 330 (commenting that current level of FDI into Latin America is still insufficient); *see also* Richard Bernal, *Regional Trade Arrangements in the Western Hemisphere*, 8 AM. U. J. INT'L L. & POL'Y 683, 712 (1993) (stating that intraregional agreements have not made a contribution to intraregional trade in Latin America during the past 30 years).

211. Baker, *supra* note 39, at 330.

212. *See id.* at 336-39.

moved on one occasion, and left in the drawer on another."[213]

According to Baker, one effect of operational codes is that "investors are left confused as to the current applicability of the investment regulations."[214] Therefore, he contends, "Latin nations need to bridge the gap between the public code and the operational code on foreign investments."[215] Baker has also proposed the adoption of a multinational Charter of Economic Rights, Duties and Obligations of Foreign Investors, which favors FDI.[216]

Yet regional integration and increased FDI within individual economies are not mutually exclusive goals. In fact, the key to success is the same for both: continued progress toward democratization. If Latin America's attempts at regional integration are to succeed this time around, it may be for the singular reason that at this point in history, the "rising tide in democracy" throughout the world has made economic growth driven by FDI possible.[217] Former United States President Bill Clinton is known to have held this view.[218] At

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213. *Id.* at 337 (quoting Michael W. Gordon, *Of Aspirations and Operations: The Governance of Multinational Enterprises by Third World Nations*, 16 U. MIAMI INTER-AM. L. REV. 301, 333-34 (1984)).

214. Baker, *supra* note 39, at 337.

215. *Id.*

216. *See id.* at 340-43; *see also* Wesley Scholz, *International Regulation of Foreign Direct Investment*, 31 CORNELL INT'L L.J. 485 (1998) (discussing the potential benefits to developing countries of having in place a regime designed to protect the interests of foreign investors, such as the Multilateral Agreement on Investment (MAI) proposed by the Organization for Economic Cooperation and Development (OECD)).

217. *See* Baker, *supra* note 39, at 325 (stating that the Summit of the Americas was the perfect event to cultivate this support).

218. *See id.* (noting that President Clinton and the leaders of thirty-three other Western nations concluded the Summit of the Americas by signing a document calling for a free trade zone in the 21st century). For a discussion of the American view that democracy and FDI-driven economic development go hand-in-hand, see Hunter R. Clark, *African Renaissance and U.S. Trade Policy*, 27 GA. J. INT'L & COMP. L. 265, 276 (1999):

> From its inception, the U.S. has asserted that the legitimate exercise of government power derives from the consent of the governed, expressed through democratic mechanisms that allow for full participation in the political process. The failure or refusal to provide truly representative government gives impetus to what James Madison called the "violence of faction," which undermines social, political, and economic stability. An unstable climate in not

the 1994 Summit of the Americas, Clinton hailed the document calling for the establishment of the FTAA as a "watershed in the history of the hemisphere."[219]

C. WHY DEMOCRACY MATTERS

Why does democracy matter? Democracy matters because, other factors aside, poor countries remain so when bad governments make harmful economic and social policies. Those policies cannot be effectively reformed or reversed unless those in power are held accountable for the ill effects of their unwise or self-interested decision-making. Dictators are not accountable to their people; they are insulated from redress for the bad decisions they make. By contrast, democratic leaders are subject to the rule of law and must furthermore answer to an electorate empowered to hold them accountable for their misdeeds or poor exercise of judgment.

The UNDP recently called for a new global strategy against poverty that would include making governments more accountable to their people, especially in the developing world, where bad government is so often to blame for poverty.[220] In its *Overcoming Human Poverty, UNDP Poverty Report 2000*, the UNDP emphasized the need for democratization in the battle against poverty—for free elections and political mobilization at the grassroots level—to ensure that those in power respond to the needs of their people. The report states:

> Even when a country tries to implement economic policies to foster pro-poor growth and mount targeted poverty programmes, inept or unrespon-

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conducive to investment.

According to Madison, liberty has many advantages, including a "tendency to break and control the violence of faction." Therefore, in the U.S. view, representative democracy is the most effective means of creating the type of stable climate in which private investors prosper. Generally speaking, President Clinton has asserted that "stability in the 21st century will require high levels of freedom." (Citations omitted.)

219. *See* Baker, *supra* note 39, at 325 (commenting that the "watershed" is to be found in a desert of individual states' protectionist interests).

220. United Nations Development Programme, *Overcoming Human Poverty: UNDP Poverty Report 2000*, *available at* http://www.undp.org/poverty.report /ENGLISH/Arfront.pdf. ("Effective governance is often the missing link between anti-poverty efforts and poverty reduction.").

sive governance institutions can nullify the impact.

> When governments are unaccountable or corrupt, poverty reduction programmes have little success in targeting benefits. The poor cannot gain a hearing for their views from undemocratic and authoritarian political regimes. They cannot gain access to public services from an unresponsive central bureaucracy—or know that services exist if they lack information. Even when services are decentralized, the poor might not benefit if a local elite diverts the resources for its own interests. . . .
>
> Holding governments accountable to people is a bottom-line requirement. Having regular elections—free and fair—can bolster accountability.[221]

Furthermore, reports issued annually since 1996 by the Economic Freedom Network (EFN), an association of research institutes based in fifty-five nations around the world, suggest strongly that poor countries' lack of economic progress has more to do with the way they are governed than with natural disadvantages or the metaphorical deck being stacked against them by the wealthy nations.[222] The reports contain the indexed results of studies of over 100 nations since 1970, all of which lead to the inescapable conclusion that "the freer the economy, the higher the growth and the richer the people."[223] The most recent report defined the "core ingredients" of economic freedom as "personal choice, protection of private property, and freedom of exchange."[224] According to the report's authors:

> Individuals have economic freedom when: (a) their property acquired without the use of force, fraud, or theft is protected from physical invasions by others and (b) they are free to use, exchange, or give their property to another as long as their actions do not violate the identical rights of others.[225]

221. *Id.*

222. For an analysis of the work done by the EFN, see *20th Century Survey: Free to be poor*, ECONOMIST, Sept. 11, 1999, at 27-29 [hereinafter *20th Century Survey*].

223. *Id.* at 28.

224. James Gwartney et al., *Economic Freedom of the World: 2000 Annual Report* (last modified Jan. 10, 2000), *available at* http://www.fraserinstitute.ca/publications/books/econ_free_2000/section_05.html.

225. *Id.*

This should not be mistaken as a call for laissez-faire capitalism. Instead, the EFN studies emphasize that "economic freedom is a broad concept, which requires a great deal from government if it is to work its living-standard-enhancing magic."[226] In one assessment of the EFN's work, the proper role of government was interpreted as follows:

> Government needs to set a clear and predictable regulatory and macro-economic climate: protecting property rights, enforcing the law, avoiding inflation and, just as important, not grabbing all the money for itself. Things must be arranged in a way that gives people an incentive to invest. And investment means not just building factories or clearing land for farms, but also, for example, deciding to educate children or offering training to workers.[227]

Historically, Latin Americans have not had the chance to let the free market work, or to hold their governments accountable for economic failures. Until recently, insular despotism and the bad policy-making that tends to flow from it have been the rule rather than the exception in Latin America. Significant change did not come until the past quarter-century. As Hakim notes, between 1978 and 1990, some fifteen Latin American countries moved from dictatorial regimes to more democratic systems: "Only a few of them had any significant democratic traditions, and some, such as Bolivia, El Salvador, and *Nicaragua, had virtually no experience with democracy*."[228] It was not until the introduction of the economic reforms and disciplined fiscal management that accompanied this democratization that Latin America joined the world economy.[229]

In Nicaragua, a nation with no democratic tradition, the economic turnaround began with the democratic elections of 1990 which ousted the Sandinistas. In other words, in Nicaragua as elsewhere in Latin America, democratization made economic progress possible. Nicaragua's past experience with failed economic policies under both rightist authoritarian regimes and leftist Sandinista rule con-

226. *20th Century Survey*, *supra* note 222, at 28.

227. *Id.*

228. Hakim, *supra* note 58, at 105 (emphasis added).

229. *See id.* (noting the importance of democratization and economic and fiscal reforms).

vinced the current generation of leaders that freedom and economic development are inextricably bound.

Persistent problems like those which stem from its weak judicial system, opaque regulatory framework, and unsettled disputes over property rights, evidence the fact that Nicaragua's democratization is far from complete. But significant progress has been made. For example, EFN's *The Economic Freedom of the World* project gave Nicaragua an economic freedom rating of 6.9 out of ten for 1997, with ten representing the most free and zero the least free of countries.[230] This placed Nicaragua fifty-sixth out of 119 nations on the EFN freedom index.[231] For 1990, the last year of Sandinista rule, Nicaragua had rated only a 2.9 on the EFN scale, or 107th out of 115 countries.[232] To appreciate fully how far Nicaragua has progressed politically and economically in the short span since then requires an understanding of whence it started and how far it had to go.

V. A BRIEF HISTORY OF MODERN NICARAGUA

A. NICARAGUA AND THE UNITED STATES

Nicaragua loomed large in the American Cold War psyche throughout the decades of the 1970s and 1980s.[233] The United States feared that the Sandinista regime would align with Fidel Castro's Cuba and position Nicaragua within the former Soviet Union's

230. *See* Economic Freedom Network, *The Economic Freedom of the World* project, *available at* http://www.fraserinstitute.ca/publications/books/econ_free_2000/section_12/nicaragua.html.

231. *See* Economic Freedom Network, *Country Information: Nicaragua*, *available at* http://www.freetheworld.com/cgi-bin/freetheworld/getinfo.cgi.

232. *See id.* (noting statistics that made Nicaragua one of the least free nations on earth).

233. *See generally* MORRIS H. MORLEY, WASHINGTON, SOMOZA, AND THE SANDINISTAS: STATE AND REGIME IN U.S. POLICY TOWARD NICARAGUA, 1969-1981 (1994); ON TRIAL: REAGAN'S WAR AGAINST NICARAGUA (Marlene Dixon ed., Synthesis Publications 1985); SHIRLEY CHRISTIAN, NICARAGUA: REVOLUTION IN THE FAMILY (1985) (describing the strategic importance of Nicaragua to the United States' defense and foreign policy during the Cold War in the 1980s).

sphere of influence.[234] The Reagan administration made Nicaragua a centerpiece of its policy that came to be known as the "Reagan Doctrine."[235] By the terms of that doctrine, the United States aggressively implemented policies aimed at stemming the rising tide of leftist insurgencies across Latin America and around the world.[236] In Nicaragua, the United States pursued a two-pronged strategy. It conducted an undeclared war of attrition against the Sandinistas while at the same time emphasizing the need for free elections.[237]

The United States had since the enunciation of the Monroe Doctrine in 1823 claimed the Western hemisphere as a region of vital interest, off-limits to outsiders.[238] The United States always acted accordingly, exercising its power overtly and covertly to influence Latin nations' policies and internal affairs in whatever way was perceived to be in the best interest of the United States. In its dealings

234. *See generally* ON TRIAL: REAGAN'S WAR AGAINST NICARAGUA, *supra* note 233.

235. *See* BARRY E. CARTER & PHILLIP R. TRIMBLE, INTERNATIONAL LAW 1311-12 (2d. ed. 1995) (quoting a speech by United States President Ronald Reagan in which he described the "Reagan Doctrine"): "We stand with ordinary people who have had the courage to take up arms against Communist tyranny. This stand is at the core of what some have called the Reagan Doctrine." *Id.* Reagan gave this speech before the National Defense University on October 25, 1988, near the end of his presidency. *See id.*

236. *See id.* at 1312 (noting that the Reagan Administration provided financial and military assistance to "freedom fighters" in Afghanistan, Angola, and Cambodia, and the Nicaraguan Contras).

237. For a discussion of characteristic diplomatic maneuvering between the United States and Sandinistas over the free elections issue, see Hunter R. Clark, *Nicaragua: Sincerity or "Very Tricky"—A Puzzling Sandinista Move*, TIME, Oct. 8, 1984, at 54.

238. *See* CARTER & TRIMBLE, *supra* note 235, at 1311 (describing the Monroe Doctrine). In its original form, the Monroe Doctrine aimed to prevent any new colonization of the Western Hemisphere by the European powers, but it subsequently underwent a number of interpretations and transformations. *See id.* For example, President Lyndon B. Johnson used the Monroe Doctrine to justify sending American troops to the Dominican Republic in 1965 to quell a communist insurrection. *See id.* "The American nations cannot, must not, and will not permit the establishment of another Communist government in the Western Hemisphere." *See id.* at 1174-75 (quoting a nationally televised address by President Johnson on May 2, 1965). The idea that there should be "no more Cubas" in the Americas was a resounding and recurrent theme of United States foreign policy throughout the Cold War era. *See* MORLEY, *supra* note 233, at 86.

with Nicaragua, the United States was penultimately pragmatic. It seemed not to matter who Nicaragua's leader was as long as he was responsive to United States concerns. The United States "aided and abetted strongman rule that grossly and systematically violated human rights" in Nicaragua and elsewhere.[239] Nor did the United States make a secret of its "realist" approach to Latin America.[240] President Harry S. Truman once said of General Anastasio Somoza Garcia, whose family ruled Nicaragua dictatorially for almost a half-century, "he's a bastard but he's our bastard."[241]

Notwithstanding the strategic importance ascribed to it by the United States, Nicaragua is in fact a small country, and a society that is, to a large extent, closed, inbred, and hostile to outside influences. Grand geopolitical designs have had less to do with Nicaragua's internal and external politics than with internecine rivalries, and social and caste divisions. Most Nicaraguans inhabit the country's Pacific side, where the timber and gold deposits are concentrated.[242] These Nicaraguans are characteristically the descendants of the Spanish or other Europeans, or "ladinos," who are a mix of Spanish and Indian ancestry.[243] By contrast, the inhabitants of the Caribbean side of the country are primarily Miskito Indians and descendants of black migrants or slaves from the Caribbean islands.[244] As Shirley Christian, author of *Nicaragua: Revolution in the Family*, has observed:

> Nicaragua, then, is a small society and an inbred one, or really two such societies, one on the Pacific side, the other on the Atlantic. It seems you could easily count all of the last names in the country, though having the same last name does not automatically put two people on the same side of any issue. People who slander one another, conspire to destroy one another politically or economically, or threaten to shoot one another are often cousins, or married to cousins. . . . Frequently, first cousins are mar-

239. Richard Feinberg, Editorial, *Perspective on Central America: U.S. Aid Will Foster Progress*, L.A. TIMES, Mar. 4, 1999, at B9.

240. *See id.* (discussing the American connection to violent overthrow of democratic government of Guatemala in 1954).

241. *Id.* at B9.

242. *See* CHRISTIAN, *supra* note 233, at 4 (discussing the respective natural resources of each coast).

243. *See id.* (describing the region's demographic history).

244. *See id.*

> ried to each other. The justifications that are usually offered for such close marriages are that they keep landholdings in the family or that they protect descendants of the old Spanish families from marrying beneath themselves, although this doesn't explain why such marriages are common among the poor as well as the affluent. Making a disparaging remark about another person to almost anyone is dangerous because the person you are talking to could be his relative and childhood friend . . . . At times the greater political and social questions seem irrelevant.[245]

B. THE SOMOZA DICTATORSHIP (1937-1979)

Throughout the 19th and early 20th centuries, Nicaragua had two major political parties: Liberals and Conservatives. Their main distinction was how they viewed the Roman Catholic Church. The Conservatives believed the Church should be influential in government; the Liberals thought otherwise.[246] Each party had what was considered its own capital: the Liberals' in Leon; the Conservatives' in Granada.[247] As a practical matter, however, conflicts between the parties usually found their geneses in personal power struggles.[248] According to Christian, "It cannot be said that the United States government found either the Liberals or the Conservatives more to its liking. Like the Nicaraguans themselves, the United States tended to find the personalities more compelling."[249]

During the 1920s, the power struggle between the Conservatives and Liberals escalated into civil war, which required the intervention of United States Marines to protect foreign holdings and to keep ports and customs houses open.[250] It was during this time that two major personalities in Nicaraguan history, Anastasio Somoza Garcia and Augusto Cesar Sandino, began to make themselves known.[251]

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245. CHRISTIAN, *supra* note 233, at 4-5.

246. *See id.* at 5.

247. *See id.* at 5 (discussing the political centers of the respective parties).

248. *See id.* (depicting the groups as closer to tribes led by competing warlords, rather than organized political parties).

249. *Id.*

250. *See* CHRISTIAN, *supra* note 233, at 8 (discussing American intentions for military buildup on both coasts).

251. *See id.*

Both men were Liberals, with the former being politically shrewd and the latter a military strategist better suited to the battlefields.[252]

Somoza Garcia's ancestors had been prominent members of the Liberal armies in the 19th century, whereas Sandino was the illegitimate son of an affluent landowner and who had joined the Liberals after working as a mechanic.[253] Somoza Garcia, who had studied in Philadelphia and spoke English, eventually gave up fighting and became an interpreter for United States Secretary of State Henry L. Stimson, who had been sent to Nicaragua by President Calvin Coolidge to resolve the Nicaraguan crisis. Sandino, on the other hand, led the guerilla movement, supported at the time by revolutionary Mexico.[254] He refused to accept American arbitration and led his troops against the Marines until they left Nicaragua in 1933.[255] On February 21, 1934, Sandino was murdered on orders from Somoza Garcia by members of the Nicaraguan National Guard, the army that the American Marines had helped to organize.[256] The United States had installed Somoza Garcia as the National Guard's commander.[257] Thus, the stage was set for what was to become a forty-two year dynasty under the Somoza name. The Sandinistas ruled for eleven years after that, determined to redeem the legacy of the person for whom their party was named. All that has since followed is still a work in progress.

The Somoza dictatorship lasted from 1937 to 1979.[258] General Anastasio Somoza Garcia, the first Somoza to come to power in Nicaragua, served not only as the political leader, but also as head of the military. This was a time when the rest of the world was experiencing a wave of militarism, for which men like Chiang Kai-shek in China, Adolf Hitler in Germany, and Benito Mussolini in Italy be-

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252. *See id.*

253. *See id.* (describing the family histories of the two men).

254. *See* NEILL MACAULAY, THE SANDINO AFFAIR 8 (1998) (explaining how U.S. Marine intervention intended to prevent victory by forces supported by Mexico).

255. *See id.* (describing General Sandino's guerrilla campaign against the U.S. Marines).

256. *See id.* (addressing General Sandino's murder after American withdrawal).

257. *See id.* (discussing the selection of Somoza Garcia by the United States).

258. DOING BUSINESS IN NICARAGUA, *supra* note 28, at 16.

came the models.[259] Somoza Garcia was determined that his sons would succeed him, and sent them to study in the United States as preparation.[260] His son Luis was groomed for political leadership, and Anastasio Somoza Garcia II, or "Tachito," as he was called, was sent to the United States Military Academy at West Point to prepare him to run the National Guard.[261]

Conservative opposition to Somoza Garcia was based on more than political ideology. Corruption was rampant during his tenure, he acquired wealth for himself through questionable means, and he took kickbacks from people he helped along the way.[262] Somoza Garcia was also adept at manipulating the United States government for the greater good of his family, a diplomatic maneuver his sons would learn to perfect.[263]

It is not difficult to understand why there might have been little to no FDI in Nicaragua during Somoza Garcia's reign. World War II loomed, and the world was preoccupied with other matters. Besides, why would prospective foreign investors choose to do business in a country led by a man who shared Hitler's and Mussolini's socio-political ideals? At the same time, it can hardly be said that, for his part, boosting Nicaragua's economy with FDI was foremost in Somoza Garcia's mind. He was in it for himself. In fact, in 1945, Somoza Garcia enacted a Labor Code with the slogan "lead [as in bullets] for the enemy, stick [as in clubs] to the indifferent, and silver [as in coins or money] for the friends."[264]

Somoza Garcia was assassinated by a lone gunman at a party in 1956 and, as planned, Luis took over the presidency while Tachito took over the National Guard.[265] Luis served only one term, choosing

259. *See* GEYER, *supra* note 207, at 19.

260. *See* CHRISTIAN, *supra* note 233, at 23 (discussing his sons' enrollment in military preperatory school in Staten Island, New York).

261. *See id.* (addressing Somoza's auctioning of foreign assets and amassing of wealth).

262. *See id.* at 28.

263. *See id.* (describing how Somoza manipulated the United States even as he aligned with it politically).

264. GEYER, *supra* note 207, at 19.

265. *See* CHRISTIAN, *supra* note 233, at 28.

to hand pick a successor, Rene Schick, who won the 1963 elections.[266] However, against Luis's wishes, Tachito decided to run for president in 1967. Yet, because Luis died of a heart attack that same year, Tachito had no effective opposition.[267] The following passage from Christian's book describes the way the Somozas ran the country throughout their dynasty:

> Nicaragua under the Somoza brothers, as it had been throughout history, was a place where almost any problem could be straightened out by relatives, friendships or money. Like their father, the sons constantly added to the family's wealth. . . . As authoritarian regimes go, this one ceded to its political enemies and critics a relatively large amount of space to act in public life. By the 1970s the second Tachito liked to point out to skeptical journalists and diplomats that there could be no better proof of his tolerant nature than the fact that he allowed his chief political foe, Pedro Joaquin Chamorro Cardenal, to continue publishing *La Prensa*, the newspaper with the largest circulation in Nicaragua . . . . What the Somozas would never entertain was the idea that they should permit the opposition, however moderate, to come to power.[268]

According to Nicaragua's current vice president, Bolanos Geyer, the Nicaraguan economy mostly held its own during the Somoza years, despite the Somozas' faults. In 1950, as a result of the Korean conflict and the threat of a third World War, the price of cotton began to sky-rocket—so much so that cotton became the driving force in Nicaragua's economic development for the next three decades.[269] In addition, trade among Central American countries began to intensify.[270] Between 1950 and 1960, Fidel Castro emerged in Cuba, and insurgent groups began to threaten the Somozas' rule. Nevertheless, Nicaragua's economy continued to prosper due to the demand for cotton.[271]

By the end of 1960, El Salvador, Guatemala, Honduras, and Nica-

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266. *See id.* at 28-29.

267. *See id.* at 2 (discussing Luis' death and Tachito's election).

268. *Id.* at 24-25. Pedro Joaquin Chamorro Cardenal was the husband of future president Violeta Chamorro and an ex-classmate of Tachito's. *See id.* at 25

269. *See* GEYER, *supra* note 207, at 20.

270. *See id.*

271. *See id.*

ragua had entered into a regional trade pact that, in Geyer's view, had a positive impact on the evolution of Central America's economy.[272] This trade agreement stimulated industry in Nicaragua such that the value of Nicaragua's exports to other Central American nations increased from $2.5 million, when the treaty was originally signed in 1960, to $146 million by 1978.[273]

In fact, according to Geyer, Nicaragua's economy thrived throughout the decade of the 1960s as it never had before, or since.[274] Then, in December 1972, Nicaragua experienced a series of earthquakes that devastated eighty percent of the buildings in the capital city of Managua (pop. 1 million), and killed approximately 10,000 people.[275] Nicaragua received hundreds of millions of dollars in disaster relief from the United States and other countries, but many people soon began complaining about how the relief money was spent.[276] During the relief effort, Nicaragua's economy was mainly controlled by three different factions: the Somozas and their business and farming interests; the Pellas group, a large family that owned Nicaragua Sugar Estates Limited; and a third group, which consisted of virtually everybody else who was in business or owned farm land.[277]

The last group was made up of both Liberals and Conservatives and they represented the "degree of modern capitalism that existed in Nicaragua."[278] This was the group that had the most problems with Anastasio "Tachito" Somoza.[279] In March 1974, the Superior Council of Private Initiative ("COSIP") — an umbrella organization that grouped together business and professional people who dominated industry and commerce — released a statement accusing Somoza of

272. *See id.* at 23.

273. *See id.*

274. *See id.* at 24.

275. *See* CHRISTIAN, *supra* note 233, at 30 (describing the impact of the Managua earthquake).

276. *See id.*

277. *See id.* at 30.

278. *Id.* at 31 (showing the group's discontent with the way Somoza coordinated the earthquake recovery program).

279. *See id.* at 31 (describing COSIP as using grassroots development programs to help farmers and small businesses).

corruption in the use of funds.[280] The allegation represented private enterprise's first public break with Somoza.[281] Among other things, they accused Somoza of failing either to complete work on replacement housing for the poor or to rebuild Managua's commercial center, and of favoring his supporters when granting business recovery loans.[282]

The ground had started shifting out from under Tachito Somoza in 1976, when Jimmy Carter was elected President of the United States. Upon taking office, Carter emphasized human rights in American foreign policy, and hinted that the United States would no longer tolerate right-wing dictatorships.[283] Recognizing this, Adolfo Calero, a leader of the Conservative Party, told Tachito bluntly, "You're going to lose your best friends, the gringos. They are saying that they are going to make life impossible for you. They are going to try and get your ass." Somoza arrogantly suggested otherwise. "Aw, you think I have no friends in Washington. I can take care of Carter."[284] Throughout all of this, insurgent guerilla groups were on the rise throughout Central and South America.[285] Such groups carried on their struggle as the Sandinistas plotted their resurgence. The Sandinista regime ultimately took control of the Nicaraguan government on July 20, 1979.[286]

C. THE SANDINISTA REGIME (1979-1990)

During the Somozas' reign, Nicaraguan exiles in Cuba formed the Sandinista National Liberation Front (FSLN).[287] Financed and encouraged by Fidel Castro, the FSLN also maintained a presence in-

280. *See id.* (stemming from the Alliance for Progress era, COSIP's main objectives were "to assist subsistence farmers and small business cooperatives").

281. *See* CHRISTIAN, *supra* note 233, at 31.

282. *See id.* (discussing Somoza's preference in granting recovery loans to supporters and placing high tax rates on imports to aid recovery).

283. *See id.* at 34-35.

284. *Id.* at 36.

285. *See* GEYER, *supra* note 207, at 25-35.

286. *See id.*

287. *See* MACAULAY, *supra* note 254, at 8 (explaining how Anastasio Somoza Debayle's accession to the presidency in the 1960s marked the end of the Somoza leadership's earlier liberalizing trend).

side Nicaragua, which allowed it to exploit the last members of the Somoza dynasty's shortfalls. As Neill MacAulay chronicles in his history of the Sandinista movement, *The Sandino Affair*, the FSLN Sandinistas maintained a strong faith in state-directed collectivism and a feeling of solidarity with the Cuban regime that helped support them.[288]

But what was the FSLN? The group was founded by three men who had been active in leftist student movements during the 1950s: Carlos Fonseca, Tomas Borge, and Silvio Mayorga.[289] The Sandinistas started their military campaign in the jungles of the Miskito region of Nicaragua, and after several failed attempts to occupy certain territories, the group struggled to keep its viability throughout the 1960s.[290] In 1969, the FSLN released its "Historic Program," which addressed economic and social goals such as redistributing the land and wealth through a variety of measures; expropriating private properties; improving the status of women and minorities; and providing better health care and education.[291] Politically, the FSLN promised to respect human rights and individual freedoms, and to "govern through a revolutionary structure."[292]

At first, Somoza paid little attention to the Sandinista Front, presuming it to be dead.[293] Then in December 1974, a small group of Sandinistas raided a Christmas party that was being held in honor of the United States ambassador, Turner Shelton.[294] The group seized a foreign minister and several Somozan associates.[295] In return for their hostages' release, the Sandinistas demanded, and ultimately received,

288. *See id.* at 9 (mentioning that greed and moral corruption led Somoza Debayle to alienate segments of the Nicaraguan population and ultimately caused the regime's demise).

289. *See* CHRISTIAN, *supra* note 233, at 27 (noting the Marxist influences upon the student leaders).

290. *See id.* (describing three failed attempts by the Sandanistas).

291. *See id.* at 29 (describing the FSLN's political, economic and social blueprint for Nicaragua's future).

292. *Id.*

293. *See id.* at 31-32.

294. *See* CHRISTIAN, supra note 233, at 31-32 (describing the chronology of events leading to the raid and noting that the ambassador had left shortly before).

295. *See id.*

a $1 million ransom from the government, the release of fourteen imprisoned Sandinista colleagues the publication of a long communiqué attacking Somoza, and a flight to Cuba.[296] Their actions, however, split the Sandinista Front into three different factions: 1) the Proletarian Faction; 2) the advocates of a more Maoist strategy of peasant war; and 3) the "terceristas," who believed in reaching out to non-Marxists in order to "produce a quick victory through mass insurrection."[297] Among the members of this last group were Daniel Ortega and his brother Humberto, who, at least at the time, was the more predominant player of the two.[298]

The Ortega brothers, both of whom joined the FSLN as teenagers, came from a lower-middle-class family.[299] Their father had been jailed for supporting Sandino, and later became involved in the Sandinista Front.[300] In 1977, Humberto Ortega wrote a political tract entitled *The General Political-Military Platform of Struggle of the Sandinista Front for National Liberation*, an effort to seek an alliance with the bourgeoisie.[301] In it, he outlined a political strategy that included the following elements:

> (1) development of a program of government without leftist rhetoric; (2) creation of a broad anti-Somoza front with non-Marxist opposition groups; (3) creation of mass organizations to support the FSLN; (4) agitation to bring about the radicalization of the moderate opposition; (5) actions to undermine the integrity of the National Guard; and (6) unification of the three FSLN factions under a joint leadership.[302]

This "minimum plan" further proposed a government based on three tenets: political pluralism; "mixed" private and state enterprises; and international nonalignment.[303]

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296. *See id.* at 32.

297. *Id.* It was the *terceristas* who organized the Christmas Raid.

298. *See* CHRISTIAN, *supra* note 233, at 37. For a discussion of Daniel Ortega, see *infra* page 797-798.

299. *See id.*

300. *See id.* (describing the Ortega family's participation in the early days fo the Sandinista movement).

301. *See id.*

302. *Id.*

303. *See* CHRISTIAN, *supra* note 233, at 37.

The Nicaraguan Revolution of 1979 led to almost ten years of civil war that destroyed Nicaragua's economy.[304] Once in power, the Sandinistas abandoned all pretense of pluralism and incrementally initiated a totalitarian, Marxist-Leninist state that was modeled after Cuba and aligned with the former Soviet Union.[305] For the Sandinistas, the end justified the means, and any agreement made prior to their taking power, whether with outsiders or the Nicaraguan people, was considered a bourgeois ideal.[306] From the beginning of their regime, the Sandinistas violated every promise of democratization the people had counted on.[307] Not only did they prevent continued economic growth, but they also reversed the economic gains that had been achieved until then.[308]

Almost immediately, the Sandinistas began destroying any chance for foreign investment through systematic and widespread nationalization, with no promise of compensation.[309] The Sandinista government seized Nicaragua's television stations, a majority of the radio stations, and all but one of the newspapers.[310] At the same time, the government took charge of the trade unions and education.[311] The Sandinistas almost gained control of the Catholic Church in Nicaragua.[312] They also nationalized the gold and limestone mines, local banks and financing companies, and insurance firms, along with an endless list of businesses and other enterprises involved in domestic and foreign commerce, salaries, and foreign currency exchange. Needless to say, prospective foreign investors stayed away. Why would private investors want to invest in a country where a commu-

304. *See* DOING BUSINESS IN NICARAGUA, *supra* note 28, at 16.

305. *See* Gonzalo J. Facio, *Incumplimiento Sandinista del Plan de Paz*, VISION, July 10, 1989, at 12 (on file with author).

306. *See id.*

307. *See id.*

308. *See id.*

309. *See* Alejandro Bolaños Geyer, *Nicaragua, en Busca de la Democracia: Teme la Oposicion Elecciones Fraudulentes*, VISION, July 10, 1989, at 13 (on file with author).

310. *See id.*

311. *See id.*

312. *See id.*

nist government had complete control of all assets?[313] No foreign direct investor would wish to invest under a regime that refused to promise just, immediate, and effective compensation for nationalization or expropriation by the government.[314]

Despite the disastrous effect of Nicaragua's war with the contras and the United States, the Sandinistas achieved their primary objective—winning.[315] They could not, however, win the most important things necessary to govern: social peace and international legitimacy.[316] By June 1989, Nicaragua was poorer than it had been a decade earlier.[317] In fact, the economic scenario was shocking. For example, when the Sandinistas came to power, Nicaragua's foreign debt was approximately $1.6 million dollars, considered gigantic at the time.[318] In just ten years, however, the Sandinistas had increased the debt to seven times more than the total debt accumulated over the entire forty-five years of the Somoza dictatorship.[319] In 1977, the value of Nicaragua's exports was $900 million; in 1988, exports barely reached $230 million.[320] The Sandinistas' mismanagement of the economy put Nicaragua at the mercy of the international community, causing it to receive more aid than any other Central American

313. *See id.*

314. *See generally* Note, *supra* note 139 (discussing the well-accepted practice of a state expropriating the property of foreigners only for a public purpose and upon payment of compensation). Traditionally, what compensation was due, under the "Hull formula," included "prompt, adequate and effective" compensation. Latin American countries, however, relied on the "Calvo doctrine." *See id.* (asserting that aliens are entitled to no greater rights than those available to nationals and that compensation for expropriated aliens is under the exclusive jurisdiction of the host state's domestic courts and domestic laws, not international law). Because a growing number of countries is accepting market-based economies, recent trends have returned to the Hull formula. *See id.* at 1999 (explaining that Latin American countries are also returning to the Hull formula because FDI inflows are vital for a country's economic growth and the idea of protecting foreign investment continues to grow).

315. *See* Pedro Joaquin Chamorro, *Una Revolucion Envejecida: El Sandinismo, Diez Anos Despues*, VISION, July 10, 1989, at 15 (on file with author).

316. *See id.*

317. *See id.*

318. *See id.*

319. *See id.*

320. *See* Chamorro, *supra* note 315, at 15.

country.[321] In short, it did not take long for the Sandinista revolution to transform Nicaragua into one of the world's worst debtor nations.[322]

The Sandinistas were unable to reach an agreement with the United States that would have allowed Nicaragua to receive desperately needed financial assistance from the United States.[323] Meanwhile, considering the country's economic plight, foreign investors were not attracted to Nicaragua during the Sandinistas' rule, which did not surprise their critics.[324] By its end, the Sandinista dictatorship had succeeded only in creating a huge emigrant exodus, domestic discontent, and civil opposition.[325]

D. THE CHAMORRO PRESIDENCY (1990-1996)

A decade of Sandinista dictatorship ended in February 1990 when Violeta Chamorro was elected president of Nicaragua.[326] Chamorro inherited a virtually bankrupt economy.[327] In response to the crisis, Chamorro launched an economic stabilization program in March 1991 that included reducing the size of the Nicaraguan armed forces by 80 percent, divesting 233 state-owned enterprises; unifying the exchange rate, and normalizing relations with the International Monetary Fund and the World Bank.[328]

The Chamorro administration sent a major signal that the Nicaraguan economy was changing course when the government began the privatization of previously nationalized farms, using the revenue for the repayment of debt and to encourage FDI.[329] The United States responded to Chamorro's initiatives by resuming trade and restoring

321. See *id.*

322. *See id.*

323. *See id.*

324. *See* GEYER, *supra* note 207, at 35.

325. *See id.*

326. *See* DOING BUSINESS IN NICARAGUA, *supra* note 28, at 16.

327. *See id.*

328. *See id.*

329. *See id.*

financial assistance.[330] Shortly thereafter, inflation in Nicaragua dropped from an annual rate of 33,657 percent in 1988, to twelve percent in 1993.[331] In addition, exports rose and private investment increased to ten percent of GDP.[332] The government also unified the exchange rates and adjusted most import tariffs downward by between ten percent and forty percent. Free-trade zones were established, and debt due the former Soviet Union and other Latin American countries was reduced by ninety percent.[333]

Despite these and other improvements, Chamorro's critics asserted that leftist Sandinista elements maintained effective control over the Nicaraguan military and police.[334] They further complained that the Chamorro government was not doing enough to compensate American citizens for properties that were confiscated by the Sandinistas, and that these unsettled property disputes would serve to deter FDI, especially from the United States.[335]

E. THE ALEMAN ADMINISTRATION (1997-2002)

Partly as a result of these and other criticisms, Arnoldo Aleman, the "right-wing populist"[336] leader of the Liberal Alliance coalition, won Nicaragua's 1996 presidential election. The Liberal Alliance also became the largest group in the National Assembly.[337] Aleman, whose five-year term will end in January 2002,[338] has pledged to re-

330. *See id.*

331. *See* DOING BUSINESS IN NICARAGUA, *supra* note 28, at 16.

332. *See id.*

333. *See id.* at 19.

334. *See* John M. Goshko, *U.S. to Free $50 Million for Managua; Nicaraguan Progress on Rights Rewarded*, WASH. POST, Apr. 3, 1993, at A20 (noting the criticism of American politicians who argued that the Marxist-led Sandinista movement had retained too much power).

335. *See id.* (emphasizing that, despite giving Nicaragua $50 million in aid, the United States would not continue its economic assistance unless more progress was made in property disputes).

336. Juanita Darling, *Los Angeles Times Interview: Arnoldo Aleman: On Healing a Nicaragua Divided by War, Corruption and Poverty*, L.A. TIMES, Jan. 26, 1997, at M3.

337. *See* DOING BUSINESS IN NICARAGUA, *supra* note 28, at 16.

338. *See* Cambridge International Reference on Current Affairs, *Nicaragua*,

store peace and democracy to the nation, boost the economy, and reduce Nicaragua's fiscal deficit.[339] In an interview with a *Los Angeles Times* reporter conducted shortly after his inauguration, Aleman stated his goals for his administration. Aleman expressed the hope that, by the end of his term, "we will be on a par with the rest of Central America in unemployment. We do not say that we are going to eliminate poverty. That would be a bit of a lie. We are going to try to leave Nicaragua competitive with the rest of Central America."[340]

It may be too soon to tell whether the current government will be able to achieve its aims, but a brief review of the current political situation may help to determine its chances of success.

VI. NICARAGUA'S CHANCES OF SUCCESS

A. THE CURRENT POLITICAL SITUATION

Aleman's inauguration as president on January 10, 1997 marked the first transfer of power from one democratically elected government to another in Nicaragua's history.[341] The loosely knit Liberal Alliance, which Aleman heads, is more partisan than Chamorro's administration, which sought a reconciliation among different groups and had no real political base.[342] Due to his partisan approach, Aleman's administration has had difficulty removing incumbent staff from public sector jobs and making personnel changes in the civil service and other agencies.[343] These and other patronage issues have

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Mar. 20, 2000, *available at* 2000 WL 1456684 (explaining that under Nicaragua's current constitution, which went into force in January 1987, the president is elected by direct popular vote of the people for a five-year term, and that a president may not serve consecutive terms, but may run again in a non-consecutive term election).

339. *See* DOING BUSINESS IN NICARAGUA, supra note 28, at 16.

340. *See* Darling, *supra* note 336 (describing Aleman's goals for Nicaragua).

341. *See* WORLD BANK, *supra* note 10, at 4 (stating that the electoral campaign that led to the democratic transfer of power was acrimonious and divisive, but the election was judged impartial by international observers).

342. *See id.*

343. *See id.* (explaining that the removals and the personnel changes in some agencies have hurt government programs and project execution, along with raising

made some policy implementation more complicated, a matter of some concern to aid donors.[344]

The Sandinista (FSLN) leftists have, for their part, abandoned the armed struggle, assuming instead the mantle of political opposition. As one commentator has observed, "The idea that politics is an alternative to violence—and not that violence is a mere extension of politics, as Mao and Che Guevara preached—is growing in acceptance."[345] In fact, even Cuban leader Fidel Castro admits that Latin America's days of armed struggle are over, in part because he can no longer afford to bankroll and support leftist insurgencies.[346] Democratization has also given leftists more room to espouse their views and pursue their goals by working within the political system without fear of retribution.[347] Lastly, the United States' shift away from right wing dictators has helped create a less polarized political climate throughout Latin America.[348]

This is not to say that the Sandinistas have completely "sold out" or been co-opted by the government. The FSLN remains an obdurate and obstructive force, which has, according to one report, "tried to block the government, rather than negotiate with it, organising frequent strikes and protests."[349] Nevertheless, the general perception is that until a new generation of leadership emerges from within the FSLN to modernize its mission and message, the Sandinistas' political marginalization, like that of so many other leftist movements in the post-Cold War era, is all but assured.[350] The FSLN is still controlled by Daniel Ortega and Tomas Borge, its leaders for almost a quarter-century, since the days when the FSLN was a guerrilla movement, not an opposition political group.[351] By one assessment,

concerns in the donor community).

344. *See id.*

345. Clifford Krauss, *Latin America's Leftists Say Adios To Revolution*, N.Y. TIMES, Aug. 1, 1999, at 5.

346. *Id.*

347. *Id.*

348. *Id.*

349. *Nicaragua: A Revolution's Ageing Children*, ECONOMIST, July 24, 1999, at 34, 34.

350. *See, e.g.*, *Nicaragua Press Highlights*, *supra* note 102.

351. *See id.*

the aging Sandinista leadership's "rigid behavior causes the FSLN to lack an alternative project in light of the neo-liberal governmental policies and causes internal groups to defect from [its] collectivist policies."[352]

B. DEMOCRACY AT STAKE

The real threat to Aleman's government, and to Latin American democracy in general, comes not from the left, but from the populist, authoritarian right.[353] On the one hand, "all 35 members of the Organization of American States (OAS) except one—Cuba, whose government has been excluded from OAS participation since 1962—are now governed by elected leaders."[354] As one United States official notes, "The ballot box, and not the bullet, is now the accepted path to office."[355] On the other hand, Latin American democracy "swells and recedes."[356]

Disturbing recent developments suggest that democracy may again be receding. Disconcerting events include the January 2000 military coup that ousted Jamil Mahuad, Ecuador's popularly-elected president,[357] and the election of an authoritarian leader, Hugo Chavez, as president of Venezuela in 1998.[358] Other evidence includes the escalating guerilla warfare in Colombia, and the controversy surrounding the May 28, 2000 reelection of Peruvian President Alberto Fujimori. A United States State Department spokesperson called the manner in which Peru's election was conducted a "serious threat to the inter-

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352. *Id.*

353. *See* John Lancaster, *U.S. Sees Democracy Wane in Latin America*, WASH. POST, Jan. 30, 2000, at A21 (describing recent threats to democracy in Latin America).

354. *Id.*

355. *Id.*

356. Tina Rosenberg, *The Precarious Nature of Latin Democracies*, N.Y. TIMES, Feb. 27, 2000, Section 4, at 16.

357. Larry Rohter, *Ecuador's Coup Alerts Region to a Resurgent Military*, N.Y. TIMES, Jan. 30, 2000, section 1, at 3 (analyzing the resurgence of military coups in Latin America).

358. *See* Lancaster, *supra* note 353 (suggesting that the election of Chavez, a "left-leaning populist and former army colonel" could represent a backlash against democracy).

American system and its commitment to democracy."[359]

In these and other instances, those whose actions appeared to undermine democracy enjoyed significant popular support. According to the United States, this is due to "popular frustration in Latin America toward elected governments under siege from corruption, income inequality and narcotics trafficking."[360] According to Eric Olson of the nonprofit Washington Office on Latin America, "What you have here is growing popular discontent, massive social or popular movements that just have become so dissatisfied that they threaten or challenge the civilian authorities."[361] In Olson's view, "The risk here is that by merely reestablishing a constitutional order and not dealing with the underlying problems that brought about this crisis, democracy is under threat in Latin America."[362]

The dilemma for democratic, free market reformers is that the underlying problems to which Olson refers can only be addressed in two stages.[363] In the first stage, reforms that cut government spending, reduce tariffs, or privatize state-run industries can, in the short run, raise unemployment, widen the income gap, and generally "make economic cycles more profound."[364] The relief such measures ultimately bring is usually not felt until follow-up, second stage reforms are implemented.[365] These second stage reforms include fairer and strengthened tax collection, liberalized labor laws, and operational efficiencies in the institutions of government, especially in the

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359. Anthony Faiola, *U.S. Calls Peruvian Election Invalid*, WASH. POST, May 30, 2000, at A01; *see also* Michael Shifter, Editorial, *The Fault Line of Latin American Democracy*, WASH. POST, May 28, 2000, at B1 (analyzing the national elections in both Peru and Venezuela and concluding that the United States should be "profoundly concerned" about Latin America's political progress).

360. Lancaster, *supra*, note 353.

361. *Id.*

362. *Id.*

363. *See* Jonathan Friedland, *The Have-Nots: the Free-Market Revolution Promised So Much. To Many in Latin America, It Has Delivered So Little*, WALL ST. J. (Sept. 27, 1999), at R22 (describing the failure of free market reform in Latin America and the growing dissatisfaction of Latin American citizens).

364. *Id.*

365. *See id.*

workings of the courts and educational system.[366] However, the social and financial cost, often associated with first stage reforms, have exhausted public support before second stage benefits can be realized.[367] As one observer expressed, "Politicians generally realize these [reform stages] are the steps they have to take, but in the fledgling democratic environment in which they operate, consensus building is a painfully slow process."[368]

Whether Nicaragua's nascent democracy can survive remains to be seen. For the time-being, all the government can do is move forward with its reform agenda and hope for the best. Even a former opponent like Sergio Ramirez, who served as a vice president of the Sandinista government during the 1980s, concedes, "We have a new democracy that is very fragile."[369] In the erstwhile revolutionary's view, the nature of the struggle to democratize Nicaragua is different from the challenges the country faced in its recent past. As Ramirez sees it, "Now there is a different revolution, where ideology doesn't have much importance. It's a fight to respect laws and institutions and fight corruption."[370]

The OAS has collectively committed itself to resist any effort to turn back the clock on regional democratization. In September 1997, the Protocol of Washington was added to the OAS Charter, giving the OAS the power to suspend the membership of any OAS state in which a freely elected government is jeopardized.[371] Former United States Deputy Secretary of State Strobe Talbott hailed the agreement as "nothing less than a collective defense of democracy— and a collective deterrent against the enemies of democracy."[372]

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366. *See id.*

367. *See id.*

368. *Id.*

369. Moore, *supra* note 96, at A13.

370. *Id.*

371. *See* U.S. Deputy Secretary of State Strobe Talbott, Remarks to the Denver Summit of the Eight Initiative on Democracy and Human Rights (Oct. 1, 1997), *in* DEP'T ST. DIS., Oct. 1, 1997, *available at* 1997 WL 12331693 (describing how the OAS, as representative of the "family of democratic nations" can rally in opposition to any threat to democracy, thereby increasing the chances of democracy's global survival).

372. *Id.*

Nicaraguan President Aleman, for his part, has done his best to offer assurances. "This country is a democracy," he declared in a 1999 interview.[373] "Of all the countries in Central America we are the most secure. There is no fear of crime. We respect elections. The army does not answer to the political parties . . . .There is no hyperinflation and growth is 6 to 7 percent."[374] Aleman has rejected out of hand charges of government corruption and self-dealing, labeling such allegations "disinformation."[375]

VII. WHAT THE REST OF THE WORLD CAN DO TO HELP

A. THE U.S. ROLE

1. Humanitarian assistance

Critics of recent U.S. policy toward Nicaragua complain that when the Cold War ended, Nicaragua's strategic importance diminished, and the United States relegated Central American foreign policy to its back burner.[376] This has certainly been true in regard to the amount of foreign assistance provided by the United States to Nicaragua and, for that matter, to other countries in general in recent years. One critic has gone so far as to call the United States "the most parsimonious [country] in the world when its charity is measured as a fraction of available riches."[377] For example, the United States spent only about $7 billion on nonmilitary foreign aid in 1997, an amount equal to less than one-tenth of one percent of its gross national product of

373. Moore, *supra* note 96.

374. *Id.*

375. *Id. But see* Anthony Faiola, *Latin Nations Pay Price for Reform*, WASH. POST, Mar. 13, 2000, at A1 (noting that Nicaragua's chief anti-corruption officer, Agustin Jarquin Anaya, was charged with fraud and jailed in November 1999, when he "blew the whistle" on government corruption.).

376. *See, e.g.*, Moore, *supra* note 96.

377. Karen DeYoung, *Generosity Shrinks in an Age of Prosperity*, WASH. POST, Nov. 25, 1999, at A1.

$8.1 trillion.[378]

Unfortunately, other donor nations have followed suit. In fact, international foreign assistance dropped twenty-one percent in overall real dollars between 1992 and 1997.[379] Opponents of foreign aid had long asserted that such assistance was "wasted by bloated aid agencies pouring money into the pockets of corrupt Third World governments."[380] When the former Soviet Union collapsed, "Western powers no longer felt the need to purchase the Cold War loyalty of such governments."[381] As one commentator has observed, "With a less threatening world beyond their borders, donor nations came under pressure to attend to problems at home."[382]

Regarding Nicaragua, the United States seemed to go from a spare no expense policy in support of the anti-Sandinista contra rebels—the contras received more than $1 billion in U.S. military and other assistance between 1982 and 1997—to dwindling support of only about $35 million annually once the Sandinistas left power.[383] Given the positive changes that have been taking place inside Nicaragua, and the needs of its fledgling democracy, some have urged the United States to be more forthcoming with its support. U.S. ambassador to Nicaragua Lino Guitierrez went so far to warn in 1999 that the United States ignores Nicaragua "to our peril."[384]

Humanitarian concern for Nicaragua's people in the devastating wake of Hurricane Mitch appears, however, to have awakened the United States from its apathy in regard to the well-being of its Central American neighbor. In March 1999, President Clinton visited storm-ravaged parts of the Nicaraguan countryside, and pledged $120 million in assistance to improve Nicaraguan health care, build

378. *See id.* (noting that this figure "was the lowest percentage of any donor country and less than half the proportion that America spent just 10 years earlier.").

379. *See id.*

380. *Id.*

381. *Id.*

382. *See* De Young, *supra* note 377.

383. *See* Moore, *supra* note 96 (noting that Washington ignored Nicaragua until Hurricane Mitch devastated the country in October 1998).

384. *Id.*

schools, and provide shelter for the roughly 4,000 people made homeless by the hurricane.[385] The United States had already sent military personnel and heavy equipment to Nicaragua to assist with clean up and relief efforts, and had made available some $300 million in disaster aid throughout the Latin American region through civilian agencies and the U.S. Department of Defense.[386]

2. *Debt relief*

The Clinton administration backed the HIPC initiative.[387] In addition, the United States deferred for two years all bilateral debt payments owed the United States by Nicaragua and Honduras, a collective obligation of some $54 million.[388] Paul Solorzano, director of the Central American Resource Center in Washington, D.C., referred to the debt postponement as "an immediate measure that will enable [the Clinton administration] to review the issue of debt in the long term."[389] In fact, Clinton promised to cancel all $5.7 billion of debt owed the United States by thirty-six of the world's poorest countries, including Nicaragua, provided those countries channel the money saved into educational, health, and economic development programs.[390] On September 29, 1999, Clinton told the annual meeting of

385. *See* Charles Babington, *Clinton Offers Aid to Nicaragua*, WASH. POST, Mar. 9, 1999, at A9 (commenting that Clinton also asked Congress for an additional $956 million in aid for the region).

386. *See* John M. Broder, *At Nicaragua Mudslide Site, Clinton's Aid Offer Falls Short of His Goal*, N.Y. TIMES, Mar. 9, 1999, at A10 (remarking that the Department of Defense provided earth-moving equipment and temporary bridges for spans washed out by the heavy rains).

387. *See, e.g.*, Lawrence H. Summers, Editorial, *Debt Relief: A Fresh Start*, WASH. POST, Nov. 3, 1999, at A35 (noting that Mr. Summers, the U.S. Secretary of the Treasury, believes the Heavily Indebted Poor Countries Initiative would support global stability through debt reduction).

388. *See* Broder, *supra* note 386 (stating that the Clinton administration is also seeking to persuade other creditor nations to forgive or defer payments from Central American nations).

389. *See* William Branigin, *Debt Cancellation for Honduras and Nicaragua is Urged*, WASH. POST, Nov. 20, 1998, at A42.

390. *See* John Burgess, *Clinton Pledges to Forgive Poor Nations' Debt*, WASH. POST, Sept. 30, 1999, at A18 (describing the decision as building on an international initiative to remove an additional $27 billion in debt from the books of the world's poorest countries).

the World Bank and IMF, "Unsustainable debt is helping to keep too many poor countries and poor people in poverty."[391] The president asserted that poor nations should not have to "choose between making interest payments on their debt and investing in their children's education."[392] He declared, "Today I am directing my administration to make it possible to forgive 100 percent of the debt these countries owe to the United States, when—and this is quite important—when needed to help them finance basic human needs and when the money will be used to do so."[393]

3. *The U.S.-Caribbean Basin Trade Partnership Act*

American support for Nicaragua goes beyond humanitarian assistance and debt relief. The United States has launched a major trade initiative aimed at bolstering trade and strengthening relations with Latin American and other developing nations that have pursued economic and political reforms. As discussed, President Clinton, on May 18, 2000, signed into law the Trade and Development Act of 2000, a legislative package that contained the Africa Growth and Opportunity Act (AGOA) and the U.S. Caribbean Basin Trade Partnership Act (CBTPA).[394] Recognizing Caribbean and Central American countries as "an increasingly important export market for our goods," the CBTRA is designed to accomplish a number of objectives. Among them: offer temporary trade benefits that will help nations recover from the hurricane damage sustained in 1998; facilitate the establishment of, and participation in, the FTAA; reduce or eliminate tariffs and quotas on textiles and certain non-textile items exported to the United States; and level the playing field between Mexico, which enjoys trade benefits as a member of NAFTA, and other Caribbean and Central American states.[395]

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391. *Id.*

392. *Id.*

393. *Id.*

394. *See* Trade and Development Act, *supra* note 46.

395. *See White House Fact Sheet*, *supra* note 47 (commenting that the Act also conditions countries' eligibility for expanded trade benefits on fulfillment of WTO obligations pertaining to fair trade, cooperation in counter-narcotics efforts, and respect for basic labor standards).

B. THE ROLE OF THE INTERNATIONAL COMMUNITY

Nicaragua has acknowledged the importance of past help from the international community and stresses the need for continued assistance to help its economy grow.[396] Continued export increases and debt forgiveness through the HIPC initiative should help put Nicaragua on the road to economic viability.[397] The World Bank is already funding several projects in Nicaragua designed to improve the business environment and infrastructure, and promote private investment.[398] One example is the Roads Rehabilitation and Maintenance Project, where the World Bank has set up a micro-enterprise contracted to maintain 500 kilometers of rural roads.[399] Another is the International Finance Corporation (IFC), which was established in Nicaragua by the World Bank in 1997 to promote private investment, Nicaragua's private sector, and investment in infrastructure, tourism, and agribusiness.[400]

Other projects implemented in Nicaragua by the World Bank include the $44 million Technology and Land Management Project, which allows small and medium-sized farmers to increase production and assigns property rights; the $23 million Institutional Development Project, which assists in efficient public administration; and the $30 million Rural Municipalities Project, designed to increase community participation in decentralized decision-making.[401] All of these projects will help to improve Nicaragua's economy, making it a more attractive arena for foreign investors.

Individual nations are also providing assistance through their bilateral relationships with Nicaragua. For example, as discussed, Taiwanese business leaders have already invested tens of millions of dollars in the Las Mercedes free trade zone near Managua, and are planning to invest another $100 million to build a cotton processing plant in Nicaragua.[402] In addition, Taiwan's government has formed a

396. *See* Inter-American Development Bank, *supra* note 130, at 2.

397. *See* WORLD BANK, *supra* note 10, at 6.

398. The World Bank Group, *supra* note 180.

399. *Id.*

400. *Id.*

401. *Id.*

402. *See* Nicaragua-Taiwan, *supra* note 147, and accompanying text.

strategic alliance with several Central American nations to promote trade, investment and tourism.[403] By the terms of an agreement reached in August 1998, Taiwan will share with Central American countries its experiences with economic development.[404] Taiwan will focus its Central American investments in the development of agricultural fishery sectors, and the promotion and development of trade and basic infrastructure.[405] In return, Central American states will need to sign free trade agreements, investment promotion and protection agreements, and enhance small and medium-sized enterprises.[406] An export center will also need to be established in Central America to coordinate with the China External Trade Development Council (CETRA) and to promote Central American exports to Taiwan.[407]

VIII. CONCLUSION

Nicaraguans have throughout their history endured more than their fair share of political and social turmoil, natural disasters, and poverty. Fortunately, however, recent economic indicators promise a better life for Latin Americans in general, and Nicaraguans in particular. Nicaragua seems poised for economic growth as free market economic reforms begun during the 1990s have triggered an impressive turnaround. Little more than a decade ago, Nicaragua had turned to communism and was in a perilous state of undeclared war with the United States. Its economy was in a shambles. By contrast, today in Nicaragua democratization is proceeding, and civilians finally have control over the military.[408] Moreover, Nicaragua's economy has been growing, inflation is under control, private domestic and for-

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403. See *Taiwan Creating Strategic Alliance*, CHINA NEWS, Aug. 27, 1998, *available at* 1998 WL 14640625 (stating that the agreement was reached at a seminar focusing on how Taiwan can share its economic development).

404. *Id.*

405. *Id.*

406. *See id.* (noting that Central American states will also have to set aside economic development funds and sign fishery and manpower cooperation agreements).

407. *See id.*

408. *See* WORLD BANK, *supra* note 10, at 1.

eign investment is on the rise, and unemployment has declined.[409]

To encourage further growth, Nicaraguan President Arnoldo Aleman has made attracting FDI a cornerstone of his administration's economic policy. The Aleman administration has undertaken a number of initiatives that should make Nicaragua more attractive to prospective foreign investors. These include, among other things, a new Decree Law on Foreign Investment that is favorable to FDI; ESAF agreements with the IMF that can qualify Nicaragua for the World Bank's HIPC initiative and thereby make Nicaragua's external debt more sustainable; positive changes to the tax and electoral laws; the strengthening of Nicaragua's legal and regulatory framework; and upgrading Nicaragua's infrastructure.

Even this brief analysis reveals, however, that Nicaragua must overcome formidable obstacles to dispel prospective foreign investors' reluctance to invest there. Glaring deficiencies remain. These include, among other things, the disheartening gap between rich and poor; the need to reconcile the public codes that regulate FDI with their informal, operational counterparts, which lack transparency; Nicaragua's weak judicial system; and Latin Americans' traditional aversion to outsiders, a vestige of their resentment over foreign colonial and other exploitation of the region in the past. Beyond these issues, it is crucial for Nicaragua to resolve as quickly as possible the property rights disputes over confiscations carried out under the Sandinistas.

So far, the Nicaraguan government appears to have made substantial progress on all fronts. With the continued support of the United States and other members of the international community, that progress can and should continue. For its part, the United States has provided increased economic relief to help Nicaraguans cope with the devastation wrought by Hurricane Mitch in 1998. The United States has also canceled or postponed a significant portion of Nicaragua's debt to the United States. Meanwhile, international organizations like the World Bank and the Paris Club have assisted with the restructuring of Nicaragua's foreign debt to more sustainable levels. Thus the signs are encouraging for those who wish Nicaragua success in its struggle to achieve lasting democracy and prosperity.

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409. *See id.*