UNIVERSITY OF MANITOBA

BILATERAL INVESTMENT TREATIES IN THE DEVELOPING WORLD: A DISCURSIVE APPROACH TO THE ANALYSIS OF REGIME FORMATION

A THESIS SUBMITTED TO THE FACULTY OF GRADUATE STUDIES IN PARTIAL FULFILMENT OF THE REQUIREMENETS OF THE DEGREE OF MASTER OF ARTS

DEPARTMENT OF POLITICAL STUDIES

BY
ESTEBAN NICHOLLS

WINNIPEG, MANITOBA
JULY, 2008

THE UNIVERSITY OF MANITOBA

FACULTY OF GRADUATE STUDIES

*****

COPYRIGHT PERMISSION

BILATERAL INVESTMENT TREATIES IN THE DEVELOPING WORLD: A DISCURSIVE APPROACH TO THE ANALYSIS OF REGIME FORMATION

BY

Esteban Nicholls

A Thesis/Practicum submitted to the Faculty of Graduate Studies of The University of Manitoba in partial fulfillment of the requirement of the degree

Of

MASTER OF ARTS

ABSTRACT

The objective of this thesis is to analyze the emergence of bilateral investment treaties (BITs) in the developing world with a particular focus on Ecuador. This thesis argues that the emergence of BITs responds to the dominant status of neoliberal development as a discursive formation. This thesis conducts its analysis based on the ideas and analytical precepts developed by French social philosopher and historian, Michel Foucault. It gives particular attention to Foucault's ideas about power, knowledge and discourse. Moreover, it analyzes how knowledge and power, joined in discourse, interact to form the basis of the policy alternatives and policy choices that constituted the origin of the BIT-based foreign direct investment regime.

A second objective of this thesis is to evaluate the saliency of interest-based and power-based International Relations (IR) theories in explaining the emergence of international regimes and systems of cooperation between states. This thesis finds that these theories underemphasize the importance of identity, interest and preference construction in processes of regime formation and interstate cooperation. It finds, furthermore, that conventional IR theories' understanding of the concept of power misconstrues the role of developed nations in influencing the policy choices of developing states such Ecuador.

AKNOWLEDGEMENTS

I would like to thank, above all, Karen and Juan Javier for their love and support. I dedicate this thesis to them. I would like to thank Professor George MacLean, my thesis advisor, for all his valuable insight, support and trust. I would also like to thank Esteban Mariano, Gabriela and Pilar, my family, for their encouragement and continuous belief in my objectives. Finally, I would like to thank Rita and Wayne, for their generosity and appreciation.

TABLE OF CONTENTS

INTRODUCTION

In the last thirty years the world economy has witnessed a continuous expansion of flows in foreign direct investment (FDI). As a consequence, multinational corporations (MNCs), the bearers of FDI, have experienced a striking growth both in size and numbers. By the end of the 1980s, for instance, MNCs were responsible for more than half of all trade in manufactures; by 1994 the largest 500 MNCs controlled three-quarters of all trade (Leys, 2001:15), a figure which reached almost eighty percent by the year 2000 (Mody, 2002). FDI relations are largely governed by the application of Bilateral Investment Treaties (BITs). BITs are instruments of international cooperation designed to establish rules, norms and procedures which provide "order" to FDI relations between developed and developing and between developing and developing nations. By 2006 there were approximately 2200 BITs in operation, most of which are modeled around the United States (US) model BIT of 1980 (Picciotto, 2003; Peterson, 2005). The widespread application and homogeneity these treaties' contents constitute a de facto international foreign direct investment regime (Peterson, 2005). Nonetheless, and despite the widespread use of BITs and importance of FDI for the relations between developing and developed states, BITs have received relatively little attention by media as well as academic sources. According to C.P. Chandrasekhar and Jayati Ghosh, for instance, BITs are one of the "better kept secrets of the international economic regime in the recent past"

(Chandrasekhar and Ghosh, 2007: 1). The objective of this thesis is to contribute to a better understanding of BITs by attempting to provide an interpretive explanation of the emergence of the BIT regime in Latin America and Ecuador in particular. A second objective of this thesis is to evaluate the explanatory capabilities of the two main approaches to International Relations (IR) theorizing, namely, neorealism and IR liberal cooperation theories.

To accomplish these objectives, this thesis argues that the emergence of BITs responds to the dominant status of neoliberal development discourses in the developing world. The development of this argument involves, therefore, analyzing neoliberalism and development as discourse. In particular, however, this thesis focuses on the hegemonic status of neoliberal development discourse. In this sense, this thesis suggests that in order to understand the formation of international regimes one must analyze the discursive formations which establish the need for those regimes. An important component of the thesis' argument is, therefore, to show that dominant IR theories are inadequate in explaining the emergence of BITs. In particular, the limitations in their treatment and understanding of the concept of power and rationality, in addition to their failure to account for processes of identity, preference and interest formation, fundamentally compromises their capacity to satisfactorily explain the emergence of BITs, especially in the case of Ecuador. In this sense this thesis establishes the need to adopt a different analytical approach, one that bypasses the many of the important limitations of traditional IR approaches.

As shown in Chapters Three and Four, the limited conception of power that informs neorealism and IR liberalism undermines their capacity to understand the

influence of developed states over developing states and how power actually operates to determine international political outcomes. In particular, the notion that the power of developed states can be measured in terms of their economic and military capabilities and utilized instrumentally to modify the behavior of developing states misrepresents power as a force that operates through the effects of coercion, prohibition, repression and/or negation. This thesis utilizes the ideas developed by Michel Foucault to define power as a substance that is exercised, not possessed, and as a force that is productive as well as destructive and that operates in more ways than coercion, prohibition and repression.

By characterizing the effects of power beyond its capacity to coerce, one opens a new dimension to the understanding of the interactions between "powerful" and "weak" actors. Foucault's conception of power suggests new ways of interpreting how developing nations become engulfed in relations of subordination vis-à-vis developed states without the presence of repression and/or coercion. By employing Foucault's concept of power, it becomes possible to step beyond the idea that a stronger economy or a more powerful military are instruments of power. As Foucault notes, if power were only repressive, negative, prohibitive and coercive, no one would obey it (Foucault, 2000). For power to be effective it must also be positive and productive.

At the core of power's productive nature lies its nexus with knowledge. As Foucault points out, power and knowledge imply one another and are, therefore, inseparable. This differs from traditional approaches in that, as Karen Liftin notes, these theories "tend to work from a simplistic view of … knowledge as divorced from power" (Liftin, 1994: 4); a good example of this is the notion that scientific knowledge and/or science in general is apolitical and that it is not a product of power but of impartial

scientific inquiry. For Foucault (1994c), on the other hand, knowledge and power are inseparable; every form of knowledge emerges from a set of power relations and, in turn, creates new relations of power.

The final theoretical underpinning of this thesis is Foucault's concept of discourse. The importance of discourse cannot be overstressed, for, as Foucault (1994c) shows, it is in discourse that power and knowledge are joined together. Understanding discourse is fundamental, therefore, in any understanding of power and political decisions. For this reason, this thesis analyzes the emergence of BITs as an offspring of not only of a particular discourse, but of a dominant discourse like the neoliberal development discourse. At this juncture it should be noted that future references to "neoliberal development" are deliberate. The application of neoliberalism in less developed countries (LDCs) was framed in the context of a development strategy, and, as such, neoliberalism is fundamentally linked with the development discourse in the developing world (Escobar, 1992). Discourse analysis is also fundamental in uncovering critical aspects of interest, identity and preference formation. This thesis utilizes discourse analysis to provide an account of the processes which led LDCs, Ecuador in particular, to prefer and rationalize the use of BITs.

In order to approach the study of BITs, this thesis will focus on the experience of Latin American states and in particular to the experience of Ecuador. Ecuador is one of the countries, along with Argentina and Chile, with the highest number of BITs and one of the countries with the lowest levels of FDI growth in the region. In this sense, the Ecuadorian experience is illustrative of the application of BITs. It should be noted, however, that methodologically, this thesis does not treat Ecuador as a case study. Rather,

the case of Ecuador is treated as a reference through which the theoretical approach of this thesis can be illustrated. Thus, the main methodological focus of this thesis is not Ecuador, but the theoretical/interpretive implications of employing Foucault's thought to the analysis of International Relations and international regimes particularly.

At this point it should be noted that the methodological approach of this thesis is mainly interpretive given that its intellectual foundations are found in critical theory. Consequently, this thesis refrains from developing and/or employing a theoretical approach that seeks to establish universally applicable generalizations about issues pertaining to human (subjective) affairs—a positivist approach. A discursive analysis of regimes thus offers little in the way of methodological tidiness and causal explanations. As Karen Liftin notes, when outcomes are "dependent upon interdependent variables and idiosyncratic contextual factors, universally applicable generalizations are not to be expected" (Liftin, 1994: 7).

Organization of Chapters

Chapter One provides a brief overview of the historical context in which BITs developed in Latin America. In addition it provides a detailed analysis of BITs, their contents and consequences for developing states. Chapter Two reviews the main theoretical approaches to the study of international relations. In particular, Chapter Two divides IR approaches along interest-based, power-based and knowledge-based approaches. Chapter Three provides a critique of the theoretical approaches provided in Chapter Two in order to establish the necessity to move beyond them. The main objective of Chapter Three, however, is to present and develop the analytical framework of this

thesis. Finally, Chapter Four "applies" the analytical framework provided in Chapter Three. Chapter Four is followed by a Conclusion and a brief observation regarding this thesis' methodological approach.

CHAPTER ONE

BILATERAL INVESTMENT TREATIES

This chapter is divided into two main sections. First, it provides a brief discussion of the evolving international political economy and historical underpinnings of the advent of neoliberal development in Latin America. The second section of this chapter will be devoted to an analysis of the BIT-based regime, its contents and its legal implications for developing states. In particular, this section shows that the BIT-based regime is not a beneficial regime for LDCs such as Ecuador.

Historical Overview

The Evolving International Political Economy: Multinational Corporations and the Growth of FDI

The process of economic globalization has been accompanied by a corresponding increase in the number and geographical expansion of multinational corporations. The dramatic influence that these firms have in world production processes and trade patterns makes the question of the appropriate mode for governing foreign direct investment ineludible. Currently, the investment regime based on BITs is premised primarily on conferring rights to investors in order to protect their interests in host

economies.[1] The growth of BITs has taken a dramatic upward shift, along with growth in FDI levels and MNCs, since the 1980s. With the collapse of the Bretton Woods system in the 1970s, the world economy experienced a boom in the levels of global foreign direct investment and consequently the number of MNCs operating both in the developed and developing worlds. In general, FDI refers to a financial investment in a firm in which the foreign investor holds an important stake in the firm's equities. In most national accounting systems, FDI is defined as an equity share of 10 per cent or more (Gallagher and Zarsky, 2005). An alternative view defines FDI as "a form of inter-firm cooperation that involves significant equity stake and effective management decision power in, or ownership control of, foreign companies" (de Mello, 2005: 15-16). MNCs operate in a wide range of economic sectors. Nevertheless, many of the most influential MNCs in the developing world such as Chevron-Texaco, Occidental Petroleum and Shell operate in the extracting industry. "Extracting" MNCs are devoted to the extraction of natural resources such as minerals, metals and oil. Ecuador's case is quite illustrative of this phenomenon as approximately 81% of its FDI is concentrated in the extraction industry (Banco Central del Ecuador, 2006).

MNCs, however, not only control the majority of world trade, but also have the ability to control large portions of international investment, especially portfolio investments. In 2000 global FDI figures peaked at a value of $1.4 trillion (UNCTAD, 2007c). By 2005 FDI accounted for nearly half of all private capital flows to developing countries (Mugabe, 2005: 75). In fact, in 2005 inflows to developing

[1] "Host" economy refers to the economy receiving FDI, while "home" economy refers to the economy which owns the investment. Put differently, in the context of the developing world, a "host" economy (typically a developing state) is a capital importing economy, while the "home" economy (typically a developed state) is a capital exporting economy.

economies amounted to $334 billion—the highest figure ever recorded—$104 billion of which were directed to Latin America and the Caribbean (World Investment Report, 2006). It can be concluded from these figures that there has been a dramatic shift in the determination of "what goods and services are produced, how, where and by whom" (Strange, 1996: 44). These changes signal a significant variation in the structure of global economy, one in which MNCs play a leading role by determining trade, investment and productions patterns at a global scale. As such, the new structure of the international political economy in which MNCs represent a determinant force politically and economically means that LDCs must be more aware of the consequences and prospects of MNC presence in their territories.

Presence of Multinationals in Latin America

The history of FDI in Latin America is long and volatile. From the early 1900s until the 1930s levels of FDI in Latin America were significant. MNCs from the United States (US) in particular, maintained an important presence in the region. These firms not only had an important economic presence in the region but were politically active as well. Often, MNCs from the US acted as an instrument of its foreign policy in Latin America. This initiated a long a tumultuous relationship between US MNCs and governments in the region.

Since the 1930s, Latin American governments embarked on a process of "statisization" of national economies which responded to the upsurge of nationalism as a political doctrine and Import Substitution Industrialization (ISI) as its economic expression. From the 1930s until the 1970s, many Latin American countries expropriated

US MNCs and converted these firms into state-owned enterprises (SOEs) (Biglasier and DeRouen, 2004: 54). Left-leaning, military, and populist governments resorted to expropriations. A notable example was the series of expropriations undertaken by the government of Jacobo Arbenz in Guatemala of the US-owned United Fruit Company in the 1950s. Arbenz's intervention prompted a quick and radical response by the US government by plotting Arbenz's overthrow, ending the second democratically elected government in Guatemalan history (Schlesinger and Kinzer, 1999). Another well known example is that of Salvador Allende's expropriation of US mining firms in Chile in the early 1970s. Allende's decision to attack foreign capitalists was one of the chief reasons for his quick removal from power by a US-supported military coup on September 11th, 1973.

Notwithstanding the importance of the economic dimension of both interventions (that is, the loss of US assets in Latin America), it should be noted, that the expropriation of US assets in Guatemala and Chile took place in the context of the Cold War. Given the intense political confrontation between the US and the Soviet Union, the expropriation of US assets by Latin American leftist leaders was regarded with more hostility in the United States.

By the early 1970s however, many economies in Latin America had begun a turn towards liberalization. The perceived failure of nationalist policies and ISI along with internal and external factors (more on this below) prompted national governments to initiate a process of rapid economic liberalization in which foreign capital would play an integral part. During this time international financial institutions and capital exporting countries began to portray FDI as a quick solution to the economic crises of LDCs. By

the mid 1980s and the early 1990s, as Kevin Gallagher and Lyuba Zarsky (2005: 13) point out, FDI came to be seen as a "miracle drug–a jumpstart to economic growth and sustainable development."

Economic discourse about FDI contends that FDI and MNCs can foster economic development through a number of mechanisms: first, through the direct flow of financial resources from one economy to another; second, MNCs are often considered effective agents for the transfer of technology and management skills; third, MNCs can create efficiency spillovers, increase trade and help incorporate a developing country's firms into global markets (Gallagher and Zarsky, 2005; Sachs, 2003). Nonetheless, the *overall* effects of FDI in Latin America are debatable to say the least. According to Gallagher and Zarsky (2005), for example, the benefits of FDI are "exaggerated and its centrality in development strategies is misplaced" (Gallagher and Zarsky, 2005: 13). In fact other studies have found that FDI can have immiserizing effects for LDCs (Correa and Kumar, 2003). Similarly, the wave of FDI in Latin America has been devastating for local producers. Upon the liberalization of FDI (formerly limited by nationalist governments), small and medium size local producers soon joined the pool of unemployed or underemployed that has been characteristic of Latin American economies since the 1980s (Chasteen, 2002).

Perhaps more relevant for the purposes of this thesis, is not whether FDI fosters development but that the discourses portraying the benevolence FDI have created a whole set of pressures which discourage regulatory initiatives in developing states to control the behaviour of MNCs and the effects of FDI in local economies. This has had, in numerous instances, catastrophic effects for the environment, labour conditions,

corrupt practices and the economic well being of communities in the region (Monshipouri, Welch and Kennedy, 2003). A notable example of this is the damages caused by US MNCs Texaco, Maxus, Arco and Conoco to Ecuador's indigenous populations and Amazon region. According to Kay Treakle (1998: 225), these firms are responsible for causing "extensive pollution, expropriation, colonization and deforestation in the Amazon region, as well as cultural destruction among Amazonian indigenous peoples."

The Neoliberalization of Latin America: A Brief Historical Overview

As will be argued in Chapters Three and Four, this thesis regards neoliberal development as more than a dominant ideology. It regards and defines the effects of neoliberal development as products of a hegemonic discourse. Nonetheless, it would be worth pointing out some of the most relevant politico-economic factors which preceded the adoption of neoliberal development strategies in the 1980s and 1990s in Latin America and Ecuador in particular.

Broadly, the neoliberalization of Latin America and Ecuador in particular began in the early 1970s, developed during the 1980s and acquired its maturity in the 1990s (Chasteen, 2002; Acosta, 2006). Prior to the 1980s, Latin America traversed an extended period of economic and political nationalism embodied in the policies of ISI. By the late 1970s however, a combination of various factors such as the perceived failure of ISI, the presence of military dictatorships in many countries such as Argentina, Brazil or Chile, global factors such as the international shift towards the free market (Munck, 2003) and the deterioration of left-leaning political parties, paved the way for the

"neoliberalization" of Latin America. The neoliberalization of Latin America was, in fact a conflictive, even bloody process, as cases like Chile under Pinochet clearly illustrate.

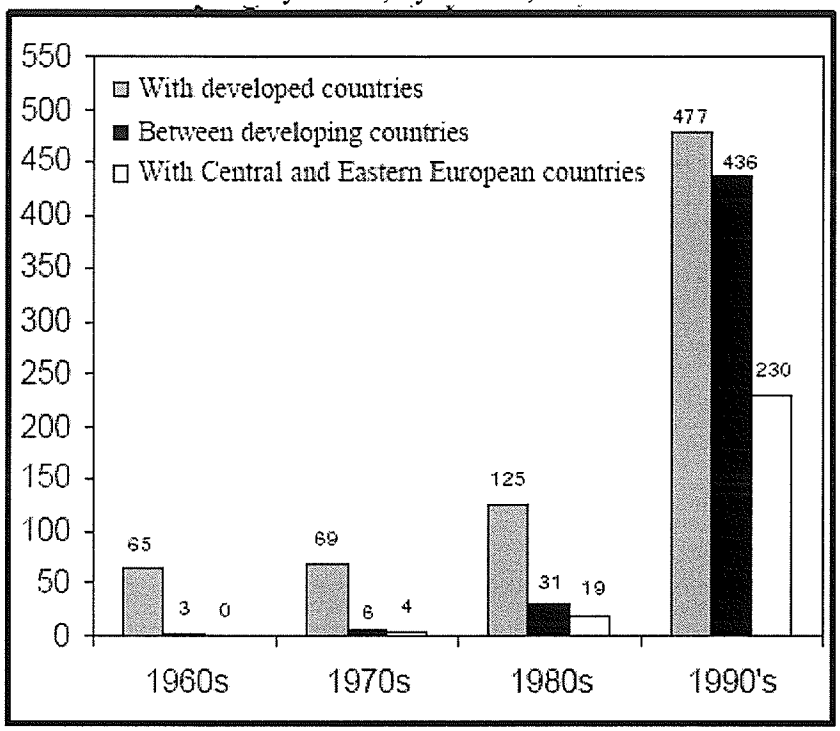
Notwithstanding the importance of these historical factors, there are, however, other elements underlying the neoliberal assault of Latin American societies and the policies and international arrangements (like BITs) associated with it. Chapters Three and Four show that underlying Latin America's historical experience were the potent effects of discourse and their defining consequences over the course of historical experience, outcomes and interpretation.

The Advent of Bilateral Investment Treaties

A Brief Historical Overview

The modern BIT originated in 1959 when Germany and Pakistan signed the first BIT recorded (UNCTAD, 2000). Since then, and especially after 1990, when governments in the developing world began to deregulate their economies, the number of BITs has increased dramatically. BITs grew from 165 in 1980 to over 1100 in 1999 (see Table 1.1) (UNCTAD, 2000, 2007a). Today, there are approximately 2200 BITS in operation. The sharp increase in the number of BITs means that the presence of MNCs and FDI in LDCs is largely governed by the contents of these treaties. The main objective of BITs is to provide protection for foreign direct investors in the hope that by doing so FDI inflows will increase. In other words, BITs are not instruments of liberalization per se but are designed to attract investment by offering to protect investors from governmental actions such as direct or indirect expropriation.

Table 1.1
Number of BITs Concluded by LDCs, by decade, 1960-1999



Source: UNCTAD (2000: 5)

All of these treaties involve LDCs, including 413 in Latin America and the Caribbean and over 100 in South America only (see Table 1.2) (UNCTAD, 2000; ICSID, 2008). The reason for this is that developed countries do not sign BITs between themselves. As mentioned above, BITs are, in effect, an instrument designed to boost capital exporting nations' confidence in capital importing countries' capacity to respect foreign property.

Table 1.2
South American Countries with the Highest Number of BITs, 2008

Country	*Number of BITs*
Argentina	56
Chile	53
Peru	30
Ecuador	26

Source: ICSID, 2008

Content of BITs

The functional purpose of BITs is, as mentioned above, to promote and protect FDI. The majority of BITs are generally composed of a Preamble and the following clauses: Scope of Application, Admission and Establishment, Investment Promotion, General Standards of Treatment, Expropriation, War and Civil Disturbance, Transfer of Funds and other specific clauses, such as Transparency, Treaty Exceptions, Emerging Issues and Dispute Resolution (UNCTAD, 2007a). BITs also contain important Articles (such as National Treatment), designed to provide fair and equitable treatment to investors, which, unlike some of the Articles mentioned above, provide stability and security to investors in accordance to the parameters established under the law of the host state.

The Preamble of most BITs lays out the basic premises under which BITs are to be regarded and applied. In other words, it expresses the recognition that the objective of

the treaties is, ultimately, to foster the development of the parties (UNCTAD, 2007a). In general, BIT Preambles state that the general objective of BITs is to foster development while its specific objective is to do so by promoting FDI through the protection of foreign investment. The Preamble of the BIT between Ecuador and United States, for example, notes that:

> *Recognizing:* that the agreement is about the treatment to be given to investment will foster the flow of private investment and the economic development of the parties ... (Preámbulo al Tratado sobre Promoción y Protección Reciproca de Inversiones, entre Ecuador y Estados Unidos, 1993).

And,

> *Recognizing*: that the development of the economic and commercial links can contribute to the well being of the workers of both parties and to promote respect for internationally recognized labour rights (Preámbulo al Tratado sobre Promoción y Protección Reciproca de Inversiones, entre Ecuador y Estados Unidos, 1993).

As shown by these examples, the Preamble of BITs are revealing in the sense that they denote some of the discursive underpinnings of BITs. Preambles state explicitly and implicitly that BITs are instruments that foster *development* by offering *protection* to foreign investors. This shows that the underlying assumptions behind BITs are, first, that foreign investors require protection in order to invest, and, second, that if FDI flows increase so will economic development.

A second important component of BITs is the "Scope of Application" clause. This clause is important because it states what is encompassed by the term "investment." "Investment," in the majority of BITs, is an encompassing concept which covers all assets of a firm, including, rights and investments (Correa and Kumar, 2003). Because investment protection is a paramount objective of BITs, the measure of success in terms

of investment protection is closely linked to the number of assets both tangible and intangible and processes which are covered by this clause in particular. The all-encompassing protective blanket provided to investors is achieved not only through the mention of specific processes and assets that are covered by the treaties, but also by the ambiguity of certain concepts. For instance, BITs protect the "technical knowledge" of investors (Bilateral Investment Treaty between the Republic of Ecuador and the United States of America, Scope of Application Clause, 1993) without specifying what its conceptual boundaries are. As a result of this, host governments can be held accountable in international arbitration tribunals if, for instance, local firms are allowed to employ production techniques which are deemed to belong to foreign investors (Tandazo, 2007a).

According to Peterson (2005), one of the characteristics of BITs is the ambiguity of its concepts and the imprecision of their language. Specifically, citing a legal expert, he describes BITs as "dazzlingly abstract" and "maddeningly imprecise as to the substantive legal standard to be applied by [arbitration] tribunals" (Peterson, 2005: 15). This suggests that one of the most prominent aspects of BITs is that MNCs get a considerable range of discretionary power. MNCs can, therefore, interpret the content of BITs according to their objectives and needs. Moreover, the fuzziness of certain concepts included in BITs produces situations in which it is quite difficult to identify what constitutes a legitimate case of unfair treatment to MNCs and what does not. It is not surprising, therefore, that the number of cases elevated to international arbitration by MNCs has risen sharply over the last fifteen years (UNCTAD, 2004).

In addition, BITs contain restrictions on direct and indirect expropriation and the free transfer of funds (Peterson, 2005: 7). The concept of expropriation given in BITs, as

Tandazo (2007a) notes, transforms the concept of expropriation from an indispensable tool of development at the disposal of governments to an inexcusable transgression of acceptable behavior. The Ecuadorian legal system has, for a long time, clearly defined the concept of expropriation, its purposes, and limits. The rights of investors are, thus, already protected under Ecuador's Laws (Tandazo, 2007a).

Furthermore, these provisions require that performance requirements be eliminated from the content of BITs (UNCTAD, 2007a). Performance requirements usually have been used by LDCs as policy tools designed to achieve economic goals by demanding that investors meet certain obligations such as hiring nationals of the host country, utilizing locally produced raw materials or inputs in their production processes, and exporting only a certain portion of their produce (UNCTAD, 2007a). However, according to BITs, performance requirements are considered detrimental to the principle of non-discrimination (also because they are believed to deter investors from undertaking new investments). The prohibition of performance requirements is not exclusive to BITs. The World Trade Organization's (WTO) agreements on Trade-Related Investment Measures (TRIMs) prohibit performance requirements which are inconsistent with certain GATT obligations such as the national treatment for investors (UNCTAD, 2007b). However, unlike BITs, the TRIM agreement's Article 4 allows certain LDCs to be temporarily exempted from these prohibitions (Agreement of Trade related Investment Measures, 1995).

The final, and perhaps most important clause of BITs, relates to the settlement of investment disputes. Given the significance of this mechanism, a separate analysis of its contents and implications is provided in the section below.

Dispute Settlement Mechanism in BITs

One of the most notable aspects of a BITs' dispute settlement mechanism is that foreign investors are invested with direct legal personality under international law (Peterson, 2005: 8). This means that MNCs share the same legal rights as democratic states do under international law, but not the same responsibilities such as the adherence to human rights and environmental standards (Monshipouri et al., 2003; Peterson 2005). Consequently, the actions of MNCs in these areas are not subjected to scrutiny from an international body. The sole mechanism, therefore, to render MNCs accountable for their behavior in their host states is domestic (that is, by institutions of the host state) institutions. However, BITs undermine the regulatory capacity of domestic institutions by investing MNCs with the ability to bring developing states to arbitration processes.

According to UNCTAD (2005: 23), BITs and disputes continue to emerge covering "all sectors and crucial issues" such as, "privatization contracts, state concessions, emergency laws, value-added taxes, re-zoning of land from agricultural use to commercial use, measures on hazardous waste facilities, issues related to the intent to divest shareholdings of public enterprises to a foreign investor, treatment at the hands of media regulators, etc." Furthermore,

> the economic sectors that have seen treaty-based disputes include construction, water and sewage services, brewing, telecommunications concessions, banking and financial services, hotel management, television and radio broadcasting, hazardous waste management, textile production, gas and oil production, and various forms of mining (UNCTAD, 2004: 3).

Moreover, the depth and pervasiveness of this form of dispute settlement mechanism has created a process of "reverse-regulation," due to what Peterson terms the

"across-the-board" reach of settlement disputes (Peterson, 2005: 14). In other words, the far-reaching nature of the dispute settling mechanism has created a process whereby MNCs "scrutinize actions taken by national, provincial and local governments, including tax measures, administrative and licensing processes, health and environmental regulations, and even emergency measures taken in a financial crisis" (Peterson, 2005: 14). At this juncture it would be worth noting that one of the reasons which prompted developed states to reject the Multilateral Agreement on Investment (MAI) agreement was that such an agreement would limit the ability of governments to act effectively in cases of, for example, financial crises. By contrast BITs include these types of constraints in their provisions. In Argentina, for instance, this type of dispute settlement mechanism resulted in the filing of 36 claims by MNCs directly related to the country's financial collapse in 2001 (ICSID, 2006). It must be remembered, however, that the claims against Argentina have emerged in the context of a financial crisis which was not a consequence of actions taken against MNCs.

In a different case, the oil MNC Occidental Petroleum (OXY) initiated litigation against Ecuador as a result of an increment in a value-added tax rate which the country enacted after the signing its BIT with the United States. According to BIT expert Augusto Tandazo (2007b) this case represents another failure of the BIT regime. First, as Tandazo (2007a) points out, taxation, according to international and Ecuadorian law, is the exclusive jurisdiction of sovereign domestic institutions and cannot, therefore, be an issue eligible for international arbitration. In addition, Tandazo (2007b) reveals that OXY violated the principle of *litis pendencia*; that is, presenting two separate cases of identical content (asking a devolution of taxes charged to Oxy by the governments of

Ecuador) in two different tribunals. Despite knowing this, the World Bank's International Centre for the Settlement of Investment Disputes (ICSID)[2] proceeded to attend to OXY's demand. The ICSID judged in favour of the firm, obliging the Ecuadorian state to compensate the firm with $75 million plus interest (Tandazo, 2007b).

A similar case can be found in Bolivia. In the late 1990s the Bolivian government privatized the water supplies in the Cochabamba region, an area of the country heavily stricken by poverty, especially among its indigenous peoples. The privatization of the water supplies in Bolivia included water reserves which had been traditionally used by Bolivian indigenous communities for generations to irrigate self-sustainable fields. The extent of the privatization went so far as to include rain waters (Peterson and Gray, 2003). In charge of the new water system was a consortium led by US-based Betchel Corporation. From its outset, the private water system of Cochabamaba faced fierce opposition from local groups. As time progressed the degree of discontent was such that the Bolivian authorities declared martial law and were no longer able to guarantee the safety of the MNCs' personnel leading them to abandon the project's installations and management. For this reason, Aguas del Tunari, the firm formed by the Betchel Consortium to operate the water supplies in Bolivia, initiated an arbitration process against the Bolivian Republic at the ICSID. The Bolivian case is striking because it reveals a critical contradiction between the contents of its BITs and the rights conferred to individuals and communities under international law. Thus, because the dispute in Bolivia is partly over water access the dispute between Bolivia and Aguas del Tunari

[2] The ICSID is a multilateral body that was created to treat investments disputes between member states. The ICSID is part of the World Bank system.

may have implications for Bolivia's compromises under international human rights law as (Peterson and Gray, 2003: 12).

Another issue of concern in the dispute settlement mechanism of BITs is the confidentiality clause that BITs contain. This clause, present in many BITs, allows investors not to disclose the details of their claims against host governments (Peterson, 2005: 9). A growing number of disputes occurring outside the ICSID remain hidden from public scrutiny. According to UNCTAD (2000), other arbitration tribunals such as the Stockholm Chamber of Commerce and the United Nations UNCITRAL have experienced an increase in the number of solicited arbitrations. According to Howard Mann et al. (2004), despite efforts at estimating the amount of cases being brought to arbitration, the exact number of initiated cases to date remains unknown, even in cases in which decisions have already been reached. The lack of transparency in the way in which dispute settlements are carried increases the difficulty in keeping track of MNCs record in developing states. As such, the IISD concludes:

> one cannot say for sure how many cases have been initiated to date should be understood as a stinging indictment of the failure of the broader investor-state arbitration system (encompassing various non-ICSID rules of arbitration) to meet even the most basic of good governance principles: transparency (Mann et al., 2004: 15).

It should also be noted that the lack of public involvement in arbitration processes due to the secrecy with which proceedings are carried out is troublesome in that it worsens the accountability deficit present in the BIT-based regime. This prompted C.P. Chandrasekhar and Jayati Ghosh to call the system of BITs one of the "better kept secrets of the international economic regime in the recent past" (Chandrasekhar and Ghosh, 2007: 1) because as these treaties expand across the developing world, they

remain "largely outside the domain of public discussion" (Chandrasekhar and Ghosh, 2007: 1). Partly this is due to the fact that the BIT-based regime contains no organizational bodies devoted to attending complaints from civil society, no organization devoted to monitoring the actions of investors and to the fact that its provisions enable MNCs to demand investment disputes not be disclosed to the public (Peterson, 2005). Moreover, this not only means that arbitrations are carried out in secret but that arbitration processes stand in isolation from other areas such as respect for the environment and human rights. As Luke Eric Peterson and Kevin R. Gray (2003) point out, MNCs can bring states to court regardless of what their public record is. Thus, the right conferred to MNCs to bring states to arbitration is not accompanied by a corresponding set of duties. In other words, MNCs can enjoy their right to arbitration regardless of whether these firms comply with international human rights, labor or environmental standards. According to Peterson and Gray (2003: 18), there is no indication that Tribunals are empowered to curtail the rights of investors depending upon whether an investor has contributed to the suppression of certain human rights. Furthermore,

> if the host state has imposed performance requirements on an investor (for e.g. to hire a certain percentage of locals) in contravention of the BIT, it is unclear what legal grounds there would be for investor rights to be nullified or circumscribed by virtue of the investor's (and the host state's) poor human rights record. There is one important exception here. It might be the case that certain egregious human rights violations would preclude a Tribunal from finding jurisdiction in an investment treaty dispute or from finding for an investor on the substance of a dispute (Peterson and Gray, 2003: 18).

Hence, the lack of the institutional capacity of the BIT-based regime to, at least verify MNCs records in host states, implies a corresponding deficit of democratic

accountability of the regime and a source of concern in areas of broader public interest such as human rights or environmental performance (Peterson and Gray, 2003).

The weaknesses in the arbitration process mentioned above would not be as problematic if the penalties imposed over host states by arbitration tribunals were not as potentially severe. Ecuador's three processes with OXY, Texaco and Duke, for example, could amount to penalties exceeding the $3 billion mark (*El Universo*, May 08)—a sum equivalent to approximately 20% of the government's general budget in 2006 ($13,935,655,688.39) (Ecuadorian Ministry of Economics and Finance, 2006). In addition, losing states must consider costs related to the litigation process such as lawyers, travel expenses of public officials and so on. It must also be remembered that the decisions of arbitration tribunals are definitive given that the BIT regime lacks an appellation system. The potential cost of arbitration processes must be analyzed, however, beyond its pecuniary dimension. Costs of arbitration can also be regarded as the potential costs of enforcing economic and/or environmental regulations. Given the faculty conferred to MNCs by BITs to take host states to arbitration processes for a wide range of reasons, the consequence of implementing government regulations can be an arbitration process and its ensuing penalties. In this sense, the dispute settlement mechanism of BITs acts as a disincentive for regulation.

In addition to what is noted above, the limited organizational and institutional capabilities of ICSID itself prevents it from providing consistency and accountability to the arbitrations process. The ICSID does not count with a roster of permanent judges or a permanent court system. Rather, the litigant (the MNC) chooses the first of three arbitrators and influences the choice of third. For this reason this system cannot fully

dispel fears of partiality and biases (Mann, Cosbey, Peterson and Moltke, 2004: 8). From an administrative perspective, judges share no direct relationship with the ICSID which means that their probity and performance requirements cannot be evaluated by the parties in litigation. By contrast, the International Criminal Court of Justice (ICC), for example, counts with a roster of full time judges who are elected by secret ballot and on the basis of an "equitable geographical representation" (ICC Statute, 2002: Article 36, numerals 6 and 8). In addition the ICC counts with an established registry, a pre-trial and a trial division, an appeals division and an Office of the Prosecutor (ICC Statute, 2002: Articles 34, 35 and 36). The ICSID lacks most of these instances, including an appeals division, and a forum to receive complaints from other actors such as NGOs. In addition, the ICSID lacks the institutional capacity to review the laws which emerge from the arbitral processes, a feature which is considered essential to any judicial system. According to Howard Mann et al. (2004: 5), "accountability requires the institutional capacity to review and respond to the evolution of the law that dispute settlement processes inevitably produce." However, the ICSID structure lacks the organizational capabilities which would allow it to synthesize a body of legal precedents that can serve as references for future legal interpretation.

Besides lacking the organizational/institutional framework to deal with broader public policy and law-making demands, BITs simply have failed to include in their texts policy objectives such as sustainability. The mention in the Preamble of BITs of developmental objectives denotes a discursive expression which purports the contingency of development to the protection investors (Chapter Three and Four provide a detail analysis of this assertion). The ability of investors to accede to international arbitration

regardless of their human rights and/or environmental records denotes the presence of a clearly defined hierarchy of priorities, one in which human rights and environmental standards, for example, remain secondary to the desire to maintain and/or attract investment. For this reason, as Peterson notes, the overarching principle which guides the judgment of arbitration judges is based on the "object and purpose" of a BIT, which is to "create favorable conditions for investments and to stimulate private initiative" (Peterson, 2005: 17) not issues of broader concern in relation to the country's development.

Moreover, it must be remembered that, like developed states, LDCs' legal and institutional frameworks are often modified to better respond to environmental needs and the evolution of social practices. This means that as LDCs seek to update regulatory systems they may find themselves conflicting with the interests of MNCs in avoiding new regulatory structures. For example, many LDCs, such as Ecuador, still lack the regulatory systems required to deal with the challenges brought upon the country by climate change. Ecuadorian environmentalists have pointed out that efforts at new regulatory measures could encounter opposition from MNCs who, invested with the right to seek international arbitration, feel entitled to challenge the development and improvement of local regulatory systems (El Comercio, 2006). It must be remembered that BITs' arbitration system does not require investors to exhaust domestic legal mechanisms before elevating their claims to an international tribunal. By contrast, the ICC and international human rights treaties often require, prior to the involvement of an international tribunal, that diplomatic measures and domestic legal channels be exhausted by both parties of a legal dispute (ICC Statute, 2002; Peterson and Gray, 2003).

Conclusion

This chapter has attempted to illustrate some important historical as well as contextual factors that have accompanied the application of BITs. In addition, it has shown many of the fundamental weaknesses that characterize the BIT regime. Before ending this chapter, however, it would be worth asking, notwithstanding the shortcomings of the BIT regime, whether or not BITs have, at least, helped boost FDI levels in the developing world. According to the World Development Report of 2005, for example, "empirical studies have not found a strong link between the conclusion of a BIT and subsequent FDI inflows" (World Development Report, 2005). In sum, the current system of BITs in LDCs represents a system that curtails the policy choices of host governments, "offers more protection and bargaining leverage to multinationals" (Eden and Molot, 2002: 366) without helping to increase FDI levels in LDCs. Not surprisingly, Chandrasekhar and Ghosh refer to the emergence of the BIT-based regime simply as the "privatization of commercial justice" (Chandrasekhar and Ghosh, 2004: 1).

In view of these shortcomings, it would be worth asking: how do IR theories account for developments such as this one? In order to answer this question, the following chapter reviews the most important theoretical perspectives developed by IR scholars in relation to the formation of international regimes and systems of cooperation between states.

CHAPTER TWO

THEORETICAL REVIEW: THEORIES OF INTERNATIONAL COOPERATION

Introduction

This chapter reviews the most relevant literature in international relations relative to the formation of international regimes and inter-state cooperation. This review is divided into two broad categories: interest-based, power-based and knowledge-based approaches[3] of international relations. Interest based approaches groups the most important aspects of IR liberal theories of international regimes and international cooperation. The second broad category, power-based approaches, encompasses the ideas developed by neorealist theorists.

As in most aspects of social science theorizing, there is an inescapable difficulty in categorizing theoretical approaches. Nonetheless, the categories chosen here are apt in the sense that they by-pass the limiting boundaries of traditional categories such as "liberal" or "realist." This allows this chapter to classify people like Stephen Kraser as power-based without referring to him as a "neorealist." This entails associating scholars and their theories according to their most prominent intellectual focus, rather than with that of a "school of thought" as such. Finally, it would be useful to point out that this

[3] The taxonomy of conceptual approaches presented in this chapter is partly based on the work of Andreas Hasenclever, Peter Mayer and Volker Rittberger (1994).

literature review has given relative importance to prevailing theoretical approaches to IR rather than contributions by individual scholars.

Interest-Based Approaches

Regime Theory

Interest-based approaches are rooted in IR liberal thinking (Dougherty and Platzgraff, 2002). In IR liberal thinking the individual contribution of Robert Keohane has defined regime theory. In a seminal work on the process of regime formation Robert Keohane (1982) laid out a theoretical framework for what is variously known as the neoliberal-institutional or functional brand of the interest-based approaches to regime analysis. Keohane's (1982, 1984, 1989) theoretical work on international regimes has been partially shaped by the issue of whether regimes mattered or not in an anarchical international system. Other regime theorists such as Robert Axelrod (1982), Stephen Krasner (1982, 2004) and Oran Young (1982, 1999) have also been concerned with this question. All of them agree that the importance of regimes lies in that regimes affect both the interests and priorities of states even if the system of anarchy determines that power concerns are a primordial interest of states.

Utilizing the precepts of rational choice and social contract theories, Keohane challenges some of the theoretical foundations of realism and neorealism which deemphasize cooperation in international relations. Keohane (1984: 4), following Krasner (1982) initially defined regimes as:

> sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations. Principles are beliefs of fact, causation, and rectitude. Norms are standards of behavior defined in terms of rights and obligations.

> Rules are specific prescriptions or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice.

In the "Demand for International Regimes" Keohane (1982) begins his theoretical analysis by explaining that his theory is systemic in nature. That is to say, the characteristics of actors are assumed and are not, therefore, treated as variables (Keohane, 1982). Changes in outcomes are, therefore, explained by changes "in the attributes of the system itself" (Keohane, 1982: 326). According to Keohane, the "attributes of the system" relate to whether it is anarchic or not. In this sense, Keohane's theory can be thought of as "structurally-based" in the same way neo-realism is a structurally-based theoretical approach. However, Keohane differs from many neo-realists in that he believes that power relations do not always produce zero-sum outcomes but, in some instances, an anarchic system fails to produce public goods for states (market failure hypothesis) leading states, as rational, utility maximizers, to engage in cooperation. By cooperating, states cede aspects of their sovereignty and relinquish power interests (that is, their interest to gain more power at the expense of others). In this context international regimes and regional arrangements lead to the production of Pareto improvements at the international level. Before continuing, it should be noted that power, in the Keohanean sense, is defined in the same terms as it is defined in neorealism. That is to say, as the ability of an actor to get another to do something she would not otherwise do (Dahl, 1957).

The idea about Pareto optimality and utility maximization was borrowed from microeconomic theory. The basic precept behind microeconomic theorizing is that actors, as *rational* beings, will always seek to maximize their "utility" by establishing

comparative analyses of options available to them given their budgetary limitations. Rationality, then, is defined on the basis of the assumption that actors can and will know what option is "best" for them and that they will, consequently, pursue that option. In economic theory "market failure" means that when left to its own devices, the market fails to produce socially desirable outcomes as a result of externalities. Translated to international relations language, "market failure" means that the international system of rational but egoistic, self-interested actors fails to produce satisfactory outcomes for states (Dougherty and Platzgraff, 2002).

From this perspective, it can be said that one of the primary functions of regimes is to reach beneficial arrangements "so that the structural condition of anarchy does not lead to a complete 'war of all against all' (Keohane, 1982: 332). This responds, as mentioned above, to a "rational" desire of actors to maximize their own utility. Rationality, in this respect, implies that actors decide to demand regimes because in a system of anarchy it is rational to cooperate and regimes diminish the costs attached to anarchy. In this sense, the formation of regimes does not require that actor's interests be identical. According to Robert Axelrod and Keohane (1986: 22),

> Harmony requires complete identity of interest, but cooperation can take place in situations that contain a mixture of conflicting can complementary interests. In such situations, cooperation occurs when actors adjust their behavior to the actual or anticipated preferences of others (Axelrod and Keohane, 1986: 22).

Cooperation then, can take place within a framework of varying and/or even competing sets of interests. Thus, the basic purpose of a regime from this perspective is to provide a framework of "norms, principles and procedures for negotiation" (Keohane 1984: 86) so that agreements can be reached. One of the core assertions of this approach

is the idea that a certain level of common interests is necessary for regimes to emerge. In the case of the BIT-based regime, the promotion of FDI can be regarded as a shared interest between developed and developing states. In sum, it can be said, following Axelrod and Keohane, that if developed states had no interest in protecting their FDI and LDC no interest in attracting it, no BIT would exist.

A Functional Understanding of Regime Formation

At this juncture it would be useful to further develop an understanding of how interest-based approaches conceptualize the emergence of regimes. Keohane's (1982, 1986, 1988), as well as Arthur Stein's (1983) and Robert Axelrod's (1982) approaches, in addition to being systemic, are premised under the framework of functional explanations, or an approach which "accounts for causes in terms of their effects" (Hasenclever, Mayer and Rittberger, 1997: 36). Functional arguments contend that institutions (including international regimes), can be understood by examining the incentives facing the actors who create and maintain them. Functional arguments do not have to show that a specific institution is uniquely well adapted to its environment in order to make a causal argument. What matters for functional arguments is to "provide good reasons to believe in a causal connection between the functions that an institution performs and its existence on the other" (Keohane, 1984: 81). Regimes are "created by states as instruments to achieve certain (selfish) goals" (Hasenclever et al. 1997: 37). Thus, international regimes are considered purposeful institutions whose emergence can be explained by the functions they are *expected* to perform by their creators.[4] Similarly, functional arguments

[4] It should be noted that actors' expectations about their own behavior and the behavior of institutions is crucial for, as Keohane (1980: 82) points out, if actors cannot be assumed to "anticipate the effects of their

explain the *maintenance* of regimes by looking at the same functional causes that led to their *emergence*. In other words, regimes are maintained as long as they perform a desired function. Hence, "institutions and practices that fail to fulfill specified functional requirements will disappear as a result" (Keohane, 1986: 82). As can be noted, functional arguments use the same conceptual tools to explain the emergence and the maintenance of regimes.

Oran Young and Variation in Regimes

An alternative interest-based approach has been developed by Oran Young (1998). Young, like Keohane, focuses on regime functionality to account for their emergence. Unlike Keohane, however, Young does not see regimes as ontologically homogenous, nor does he seek to provide sweeping generalizations about state about regime outcomes through an understanding of their function. According to Oran Young, regimes are "sets of rules, decision-making procedures and/or programs that give rise to social practices, assign roles to the participants in these practices and govern their interactions" (Young, 1999: 5). Furthermore, the first fundamental step to understanding regimes and/or institutional arrangements internationally is to differentiate between their functions and tasks. That is to say, in order to understand how regimes form and perform, one must understand the type of functions that they will serve (Young, 1999). For Young, unlike Keohane, regimes can be differentiated in more ways than in what functions they perform. For Young, Keohanian functional arguments are in this sense fundamentally incomplete. Young argues that regime formation and performance can be better

---

of their behavior, effects cannot possibly explain causes and understanding the functions of international regimes will not help explain their occurrence."

understood by differentiating among four *generic* categories of regimes: regulatory; procedural; programmatic and generative regimes. This typology is not, however, a mechanism designed to classify regimes exclusively in terms of a singular category. Rather, Young notes, regimes often overlap in their function and always share important aspects of their design and objectives (Young, 1999).

Regime Typologies

As mentioned above, Young's typology is composed of four regimes. Each of these has a distinct set of implications in reference to theory building.

Regulatory regimes are those whose principal objective is to regulate behaviour, prescribe and define the limits of actor's actions. These regulations can be applied to states, MNCs, NGOs, and other non-state actors. The nuclear test-ban treaty is an example of a regulatory regime applied to the behaviour of states, while the prohibition to produce chlofuorocarbons is one that is applied to the behaviour of MNCs (Young, 1999). Perhaps the most important aspect of a regulatory regime is that it requires authoritative action on a continuous basis. Thus, the emergence of a regulatory regime may be likely if a powerful actor or hegemon plays a leading role in its development.

Procedural regimes provide actors with mechanisms to achieve collective solutions to problems in issue areas covered by agreements. In other words, procedural regimes allow regulations to be applied. In this sense, procedural regimes are different from regulatory ones in that they focus on "making collective choices that arise in connection with the operation of regimes in contrast to administering the sets of rules or prescriptions" (Young 1999: 28). Procedural regimes are more closely related to the type

of regime which is explained by liberal theories of regime formation such as those developed by Stein (1983), Axelrod (1983) or Keohane (1982, 1986).

Programmatic regimes on the other hand differ from the other two in that these regimes are designed with a narrower purpose within the context of an overall strategy or course of cooperation between states. This not to say that regulatory or procedural regimes lack specificity; rather, it means that programmatic regimes focus exclusively on specific purposes such as the creation of a fund for the development of specific projects that cannot be carried out unilaterally. At the Andean level, for instance, the creation of the fund for the development of frontier regions (Ecuadorian Ministry of Foreign Affairs, 2007) exemplifies a procedural regime. Young cites the Environmental Monitoring and Evaluation Programme (EMEP) which operated under the Long range Trans-boundary Air Pollution regime in Europe (Young 1999: 30). This type of regime also includes schemes for the transfer of technology, compensation funds and other types of resource transfers.

The final category in Young's typology of regimes is the "generative" regime. Generative regimes center around the creation of social practices were none existed before hand. This often involves the development of constituencies around problem-driven activities. More recent literature refers to these communities as "epistemic" (see below) because of their contribution to the dissemination of ideas and the creation of new standards of behaviour.

Implications about Regime Formation

The implications of Young's typology about regime formation are not few. Young contends that the formation of all types of regimes necessarily involves a bargaining stage in which actors' interests dominate the agenda. In other words, the focus on regime formation (except for generative regimes) is on processes where actors' interests dominate the agenda. In the case of regulatory regimes, like the BIT-based regime, bargaining processes are considered relatively more important that in other regimes because distributive factors dominate the concerns of actors. In this respect, states and are considered important variables and their material endowments and capabilities are considered as having a decisive effect on the bargaining leverage that each state is able to exercise. This, as Young points out, does not mean that stronger states invariably get a better deal, but it is often the case that they do. In other words, "the central role of bargaining leverage stands out in efforts to understand the formation of regulatory regimes" (Young, 1999: 36) as does the relative status of states.

For procedural regimes, formative stages are centered on the development of collective-choice mechanisms in order to deal with issues that are not foreseen or anticipated during the bargaining process of the regulatory regime (Young, 1999). According to Young, the higher the level of uncertainty that actors face, the higher is the incentive to craft unbiased regimes which do not favour the interest of a particular actor. From this it is concluded that the outcomes of regime formation in the case of procedural regimes will be markedly different from those of regulatory regimes. Implicit in Young's argument is the notion that power considerations are less prevalent and so is the presence of a powerful actor for this regime to emerge.

Forming programmatic regimes on the other hand, remains largely an issue of forming a limited partnership in order to tackle a specific issue or problem. This may involve partnerships that are expected to accrue joint economic gains to its partners, but whose final distribution will be uncertain. This type of regime resembles quite closely substantive agreements. These may include joint development zones, such as the Ecuadorian-Peruvian Technical Committee on Bilateral Development or joint international enterprises such as deep seabed mining. The formative process of this type of regime will involve more elements of a "productive bargaining" than in the case of regulatory regimes. This type of bargain becomes "hardened" as the programmatic arrangements deal with the development of public goods as opposed to private ones. In other words, Young argues that when programmatic regimes are concerned with the creation of public goods, liberal concerns about free-rider problems and nonexcludability will dominate the agenda and thus, under these circumstances, Young concludes that bargaining will be defined by considerations about *cost-sharing* agreements. Aspects of the Kyoto regime are a good example of this.

Lastly, forming generative regimes is noticeably different from the other three. The formative process of generative regimes is, for one, much more subjective and involves more variables than the others; as such it is much harder to interpret it, as Young notes, as a "matter of conscious design" and therefore more difficult to theorize about it (Young 1999: 40). As noted earlier, ideas are of much importance here. Generative regimes generate discourses which tend to define the ways in which the problems and/or issues which a regime is designed to confront are perceived or understood. In that sense social and cognitive processes are crucial as are non-state actors. As Young points out,

social movements and interest groups "work hard to control the characterization of problems and to set the terms in which solutions to relevant problems are discussed" thereby influencing the formation of generative regimes (Young 1999: 40).

One of the underlying implications of Young's approach is that unlike Keohane and others, he does not seek to develop through his understanding of regimes a meta-theoretical approach to explain cooperation as such. In fact Young (1999) is quick to note that he is conscious of the limits of how far regime theorizing can go. For Young (1999), cooperation is fundamentally interest-based but, unlike Keohane, he does not see in this a sufficiently revealing factor so as to elaborate a general theory about international cooperation and international regimes. Moreover, Young, like Krasner (1982) (see below), believes that at times, power-based approaches are best suited to explain processes of regime formation (like in the case of regulatory regimes); other times, interest-based approaches are better suited for the task. Similarly, he finds that in some instances such as in the case of generative regimes knowledge-based approaches seem more appropriate for the purposes of theorizing. In this sense, it should be noted that Young's typology is very useful in that it escapes the limiting divisions between realists and IR liberals. His typology opens the door for a more dynamic, multi-theoretical understanding of regimes.

At the same time, however, Young's approach suffers from some of the same weaknesses as that of Keohane's and/or Krasner's in that his typology does not clearly tackle the issue of identity formation and relies heavily on a conception of power that equates power with capabilities. Likewise and notwithstanding his consideration of generative regimes, he has yet to fully respond to criticisms made by knowledge-based

theorists (see below) in reference to the fact that every regime can be considered formative because ideas and knowledge are crucial in every aspect and level of regime formation.

Power-Based Approaches

Neorealism

The essential tenet of power-based theories is that international regimes and cooperative operations between states reflect the interests of particular actors—powerful actors. As such, the emergence, maintenance and functions of a regime, or any international system of cooperation for that matter, are contingent upon the distribution of power among actors within an anarchic international system. Power and systemic order are, therefore, the most important conceptual building blocks behind power-based approaches. According to this approach, power is understood as an instrument that states, as unitary actors, can possess and utilize to advance their interests (Waltz, 1979). Power, thus, affects actors in similar ways independently of their background and or identity. Of course, this does not imply that the effects of power are felt equally among all actors. Weak actors are considered more vulnerable to the effects of power than stronger ones. The argument made by neorealists is that power has a particular effect over actors and that variations in the intensity with which its effects are felt does not fundamentally alter the nature of the effect which power has. Power as a variable therefore, can be utilized to formulate generalizations about the international system of nation-states and their desire to engage in cooperation or not.

In the case of regimes, power-based approaches focus on the relative capabilities of actors. As such, the question of whether states adhere or not to a regime becomes a question of whether or not "powerful states are willing to enforce the principles and norms of a regime" (Krasner 1993a: 141). Simply put, power relations determine the emergence as well as the failure or success of a regime. Before proceeding any further it would be worth reviewing some of the most important contributions to regime analysis from a power-based perspective.

Susan Strange, Structural Power and Futility of Regime Theory

Susan Strange never developed a theory of regimes; instead, she made some of the most ardent criticisms of the conceptual viability and usefulness of theorizing about regimes. One of Strange's (1982) main points was that regimes could not be regarded as autonomous variables. Regimes could not thus constitute an apt field for theorizing. The study of regimes as an autonomous variables, she argues, "obscures basic power and economic relations" that are more relevant to an understanding of international relations (Kranser 1983: 185). In a nutshell, Strange (1982, 1996) argues that the fundamental forces enabling or disabling regimes can be narrowed down to the presence of a dominant leader. Cooperation is therefore a function of power and regimes in themselves are causally of little importance. As a result, Strange devoted little time to developing a theoretical understanding of the processes which led to the emergence, perdurance and demise of regimes. Likewise, Strange devoted little attention to the question of whether regimes could have an effect on structure (see, for example, Strange 1983, 1996).

One of Strange's most frequent scholarly contributions was in the area of international economic relations. According to Strange (1982), like in the political realm, international economic outcomes are also deeply connected to power and leadership. The world economic order is a reflection of the interests of a hegemonic power and its ability to provide leadership to maintain that order (Strange, 1982, 1996). Structural power defined as the capacity of an actor to determine the structure of the system through the use of its capabilities is, thus, crucial in the determination of economic outcomes. Although Strange never conducted an in-depth analysis of BITs,[5] it is safe to conclude that through her theories, BITs can be regarded as the product of power relations and structural conditions. From this perspective BITs can be understood as an imposition of a specific economic arrangement that reflects the structural realities of the world economic order and the distribution of power among its actors. Thus, BITs are signed by weak developing states, whose desire to attract FDI, in addition to their systemic weakness leads them to engage in agreements that they would not have otherwise signed.

Although not based in Strange's work in particular, Stephen Haggard and Beth A. Simmons (1987) provide a neat example of how mainstream IR theorists explain FDI arrangements. According to Haggard and Simmons (1987: 494-495), national policies towards FDI (like, for example, Ecuador's decision to join the BIT regime) can be explained in terms of "the investing country's relative power and the hosts' regulatory capability." Extrapolating this idea to the example of BITs, what this argument states is that developed countries (that is, capital exporting countries) employ their power resources to reach agreements that protect their investments abroad. Power, according to

[5] This thesis reviewed many of Strange's publications between 1983 until 1996 (see reference list). None of these works conduct an in depth analysis of BITs. This does not mean however, that Strange never conducted such an analysis elsewhere.

this view, is possessed by developed states and used, instrumentally, to attain an agreement that LDCs would, presumably, not have signed otherwise (it must be remembered that power is regarded in terms of one's capacity to get another actor to do something he would not otherwise do).

The reason Strange's work has been criticized by regime theorists, is for not being able to account for intervening factors in international political outcomes. Specifically, Strange's strong emphasis on the role of a dominant leader seems unable to account for "intervening" factors that get in between political outcomes and the structure of the international system (Ghering, 1994). The presence of "intervening factors" has given fertile soil for criticisms to Strange's conviction about the effects of structural power and hegemonic leadership. For this reason IR scholars focus on regimes as factors that establish themselves between structure and outcomes. In this sense the concept of regimes provides an interesting explanation that accounts for the "gaps" between outcomes and structure. This led Keohane (1982), Stein (1982) and others to focus on regimes as independent variables of study. In fact, even power-based theorists and scholars of similar intellectual persuasion, such as Stephen Krasner (1982, 1993) have argued that although the effects of power determine the emergence of regimes, regimes after a while acquired a life of their own—a degree of autonomy which translates into transformations in power relations themselves.

Stephen D. Krasner: Structural Causes and Regime Consequences

For Krasner, the emergence of regimes ought to be understood from a power – based perspective. The emergence of regimes can be explained by looking at the interests

of powerful actors. That is, power determines whether regimes emerge in the first place or not. However, Krasner diverges from Strange and other power-based approaches in his understanding of why regimes perdure and about whether or not regimes can become autonomous from power.

In a piece named "Regimes and the Limits of Realism" published alongside Keohane's "Demand for International Regimes" by *International Organization* in 1982, Stephen D. Krasner provided the most commonly-used definition of regimes and initiated his analysis of regimes by noting that the autonomy of regimes as theoretical variables pointed at the "limits of realism" and explained why changes in structure alone cannot account for changes in political economic outcomes at the international level. Like Keohane, Krasner (1982) accepts the premise of anarchism as a defining and important feature of the international system of nation-states. One of Krasner's first attempts at theorizing about regimes was centered on the issues of when and how regimes become autonomous "actors" possessing the ability to affect power relations among states. Krasner (1982) argues that under certain circumstances regimes acquire a "life of their own" and can be used therefore as autonomous variables in analyses of international relations.

The theoretical implication of Krasner's point is that regimes can become causally detached from the power structures that led to their creation. The reasons to believe that regimes can acquire an autonomous status are found in lags and feedback effects. Specifically,

> Lags refer to situations in which the relationship between basic causal variables and regimes becomes attenuated. Regimes come to have an independent impact on outcomes and related behavior. The most common formulation refers to a situation in which power and interests change, but regimes do not. Feedback

> refers to processes by which established regimes alter power and interests. Both lags and feedback present serious Kuhnian puzzles for conventional theoretical orientations (Krasener, 1982: 501).

Lags can be expected to emerge as a result of custom and usage, uncertainty, and cognitive failing.

Custom and usage refer to the effects of habit. According to this idea, the maintenance of a regime may have little to do with its functional properties and more to do with the simple fact that actors (that is, states) have become accustomed to its presence. In other words, adherents to a particular regime remain as participants simply because they have done so in the past and have become accustomed to it.

Uncertainty implies doubts about the future. In this context actors may continue to participate in a regime as a result of uncertainty—uncertainty about the direction of changes in their environment. Uncertainty is also associated with "predictions about the consequences of any new regime" (Krasner 1982: 502).

Finally, cognitive failing can also lead to lags. According to Krasner,

> [i]n the international system, stable regimes are likely to be based on consensual knowledge. Such knowledge can provide the basis for agreement on principles, norms, rules, and decision-making structures. In the absence of such shared cognitive orientations it may be impossible to conceive of an alternative regime (Krasner 1982: 503).

Feedback, as noted earlier, is the other factor which suggests that regimes can become autonomous variables. Simply put, feedback effects refer to the process by which norms, rules and decision-making procedures alter "the egoistic interests and power configurations that led to their creation." Feedback effects may occur because regimes may change actor's calculations about interest maximization and because regimes may

alter a state's interests. Furthermore, regimes can become a source of power which actors seek to control and finally because regimes may alter the power capabilities of states and other actors (Krasner 1982: 503-509).

From this analysis it should become clear that for Krasner regime autonomy does not imply a secondary position for power. While Krasner views regimes as capable of affecting or modifying power relations, power is the crucial and most important determinant of regime creation. This means that any analysis of regime creation will have to be made on the basis of an analysis of power relations. Whereas Stein (1982) and/or Keohane (1982, 1986) believe that states engaged in a cooperative system restructure their interests (therein lies the definition of "cooperation" for IR liberals), power-based approaches view "cooperation" as involving not mutual adjustment of interest but one partner adjusting to the interests of another (Hasenclever et al., 1997: 106). In this process, power is of crucial importance because more powerful states are likely to "manipulate the other's preference ordering such that the game is effectively transformed into one in which there is only one Pareto-efficient equilibrium solution left: the one favoured by the more powerful actors" (Hasenclever et al.,1997: 106).

It should be noted that although Krasner adopts a power-based approach he does not regard outcomes internationally as necessarily zero-sum in nature. He concedes that regimes can approximate states to a Pareto Fortier,[6] the question for Krasner is not how states arrive at the Pareto frontier but what position in it states achieve (Krasner, 1993a: 140). At the same time, however, he believes that power-based approaches, while always important, often fail to capture the dynamic variations which neoliberal or interest-based

[6] This refers to a process through which states approach an arrangement which benefits at least one actor without making others worse off; crossing the Pareto frontier, thus, means arriving to such an arrangement.

approaches do account for. In certain instances, such as world trade, where market failure predominates, functional and IR liberal explanations are more suited to explaining outcomes pertaining to the success or failure of trading regimes. In the case of human rights regimes, for example, Krasner finds that power-based approaches are in a better position to account for their emergence as well as their failure or success. Krasner attributes this to the fact that human rights regimes involve a restructuring of power relations within polities. As such only when powerful states enforce principles and norms have human rights regimes, according to Krasner, been "consequential" (Kranser, 1991: 141). Following Krasner's statement of trade regimes, it can be induced that investment regimes like the BIT-based regime can be best explained by IR liberal perspectives. This contention will be put to scrutiny in Chapter Three.

Conclusion

Before devoting attention to a knowledge-based approach to international regimes and cooperation, a few comments are in due order. First, it should be emphasized that traditional approaches to regime theory and international cooperation, while different in a number of important elements, share a similar "analytical structure" of scientific inquiry. As will become clear in the following section, this is not an insignificant point in terms of their theoretical validity. Concretely, traditional approaches share an epistemological approach to the analysis of regimes. This approach is based on an undeniable commitment to a positivist, deductive-nomological approach (Hasenclever, 1994; Ruggie, 1998). Additionally, these approaches are similar in their rationalist approach to understanding behavior. That is, both conceive states as self-interested, goal-seeking

rational actors whose central goal is to maximize their utilities (wealth and/or power). These assumptions are consistent in most traditional approaches. Rationality, preferences and identities are therefore taken as given by their models. States, therefore, are assumed to be rational, always goal-oriented and always seeking to improve their material situations. As will be shown below, these ideas are problematic insofar as they, among other things, obviate in their analysis actor's flexible and varying identities, acquired knowledge, learning, socialization, self-knowledge and other fundamental elements which are crucial to *determining* actor's behavior. Likewise, some of these approaches have been accused of being overly state-centric (for example, Levy and Prakash, 2003; Liftin, 1994).

Knowledge-Based Approaches

A Variety of Contributions

Like Michel Foucault (for example, 1977, 1980a), John Gerard Ruggie (1986, 1998), Friedrich Kratochwil (1986, 1993), Ernst Haas (1979, 1990), Peter Haas (1993), Alexander Wendt (1994) and Karen Liftin (1994) among others, have developed alternative (that is, alternative to traditional approaches) theoretical frameworks for the analysis and understanding of international regimes and institutions more generally. The approaches embraced by Ruggie (1982, 1986, 1998), Kratochwil (1986, 1993) and E. Haas (1979, 1990) for example, though different in their detail, share an emphasis on the importance given to intersubjectivity, knowledge, meaning and learning in the development of regimes. This type of approach has a number of analytical sub-fields such

as "Constructivism" and "New Institutionalism" (Rittberger 1993; Gehring 1994; Young 1999).

Knowledge-based approaches diverge from traditional theories in that they consider subjective processes as a central component of regime formation. To understand how, it would be useful to point at the fact that the traditional definition of regimes mentioned above (that is, Krasner's definition of regimes), although filled with subjective concepts is dealt by interest-based theorists from a positivist perspective. Knowledge-based theorists (for example, Ruggie and Kratochwil, 1986) find this approach problematic insofar as central concepts in regime theory such as "converging expectations" are not understood from a multidimensional perspective. "Expectations" belong to the realm of the subjective and consequently to the sphere of meaning, interpretations and knowledge and cannot be understood in isolation from a social environment.

More generally, knowledge-based approaches reject "objectively" given issues and their "automatic combination in issue-areas" (Gehring 1994: 55). Actors within and outside regimes form their preferences not on the basis of relative capabilities[7] but their interaction between changing knowledge and changing social goals (Haas 1979: 361). In this sense, perceptions become important because the "existence, scope and quality" of a problem will be determined by how actors perceive this problem. Perceptions, in turn, depend on the availability and quality of knowledge (Haas, 1979). Likewise, knowledge is related to learning and learning to social interaction. Following these premises, knowledge-based approaches conclude that the formation or operation of an international regime depends on the perceptions that actors have of a particular problem and how

[7] By "relative capabilities" it is meant "power" in the sense traditional IR theories conceive power.

actors classify, categorize, combine and organize information about that problem along specific issue-areas (Gehring 1994).

Regime formation thus, is influenced by learning processes. The learning that takes place during the process of regime formation is considered particularly important. Bargaining processes are considered to be learning processes which continuously shape and *modify* actor's perceptions (and preferences) about the purpose and usefulness of the regime in question. Bargaining and learning processes also lead, according to this approach, to a recasting of actors identities within the regime and *outside* of it (Gehring 1994). This focus contrasts deeply with the notion that an actor's identity is shaped prior to the bargaining processes which form a regime.

It should be noted that the importance of learning is not refuted by traditional theorists: for neo-realists, learning processes take place as responses to structural changes whereas for IR liberals learning emerges as a response to fluctuations or changes in game-theoretical pay-off matrices (Hasenclever et al. 1994). Structure-based and knowledge-based theories differ in that structure-based ones believe that by knowing changes in power or a set of finite possibilities in a pay-off matrix, one can predict the direction of changes in actor's preferences. From a theoretical perspective this means that although learning is recognized as important it does not affect one way or another, predictions about preferences and behaviour—structure does. For knowledge-based theorists, on the other hand, changes in perception through learning can determine changes in behaviour without any changes in either the structure of the system, the balance of power and/or the distribution wealth (Wendt, 1994).

Finally, knowledge-based theorists argue that regimes and the bargaining processes from which they emerge cannot be understood from a positivist perspective because the very essence of cooperation is about *trust*, a concept which belongs primarily to the realm of the intersubjective. Christer Jönsson (1993), for example, correctly points out that international cooperation either in the form of regimes or in any other form rarely emerges out of harmony or identity of interests. Cooperation emerges out of bargaining situations in which conflictual elements generally take the upper-hand (Jönsson, 1993). How is it, Jönsson asks, that cooperative aspects of a bargain situation come to prevail over conlfictual aspects? The answer not only according to Jönsson, but also to E. Haas, (1990) Diego Gambetta (1990) and others, seems to rest on the fact that actors decide to *trust* each other (Jönsson, 1993). Trust is defined as an "agents' theory of how another agent or group of agents will behave in the future, based on the target's agents current or previous claims, either implicit or explicit, about future behaviour" (Gambetta, as cited in Jönsson, 1993: 206). According to knowledge-based theories, trust, like knowledge, cannot be simply taken as given because it is formed through social interactions and is based on social structures and discourse (see, for example, Liftin, 1994). This idea not only applies to international regimes but to domestic institutions as well. Legal theorist Ian McNeill, for example, points out that contracts without a social structure are "rationally unthinkable," or, "how else could *promises* be projected effectively into the future?" (McNeill, as cited in Lipson, 1985: 3). In sum, social structures, and intersubjective relationships can determine an actor's preferences and are crucial therefore in understanding how regimes form and why.

For Friedrich Kratochwil and John Gerard Ruggie (1986) as well as Wendt (1994), the arguments presented above have a further analytical implication in terms of the validity of traditional theories. Traditional theories define regimes and institutions as norms, rules and principles around which expectations converge. In their analysis of regimes, moreover, these theories (interest and power-based alike) employ a deductive-nomological approach to regime theorizing. In other words, the "traditional" approach to the study of regimes rests upon an ideal of scientific enquiry based on notions of observable facts and establishing causal relationships. Nonetheless, the concept of regimes and the processes which lead to their formation are shaped by intersubjective forces. The very idea of "convergent expectations," as mentioned earlier, provides regimes with an "inescapable intersubjective quality" (Ruggie, 1998: 89). This means that the ontology of international regimes "rests upon a core element of intersubjectivity" (Ruggie 1998: 95). However, epistemologically, traditional approaches rely upon a positivist core. Therefore, Ruggie concludes:

> Before it does anything else positivism posits a separation between subject and object. It focuses on the "objective" forces that move actors in their social interactions: regimes become internal constraints on actors, not intersubjective frameworks of meaning ... Here then, we have the most debilitating problem in regime analysis: epistemology contradicts ontology (Ruggie, 1998: 95).

Conclusion

This chapter has reviewed some of the most important theoretical approaches to International Relations theorizing. It has paid special attention to interest- and power-based approaches. It has also introduced knowledge –based approaches to the study of international regimes and international cooperation. Michel Foucault can also be

considered a "knowledge-based" theorist. Unlike many of the knowledge-based theorists presented above, however, Foucault (for example, 1972, 1980a, 1994c, 1995) has paid particular attention to the link between power and knowledge. According to Foucault, this link is fundamental and ought to be adequately analyzed. The following chapter develops a more concise explanation of how Foucault regards power and knowledge and their connection to another crucial variable to the study of power relations: discourse. Before doing so, however, the following chapter provides a brief critique of interest-based and power-based theories of International Relations in order to make clear the need to reconsider some of their most elemental assumptions and conceptual approaches.

CHAPTER THREE

ANALYTICAL FRAMEWORK: A DISCOURSE ANALYSIS OF REGIMES

Introduction

The following two chapters are constructed on the basis of one important premise: without analyzing the dominant discourses of which BITs are a part, it would be difficult to develop a comprehensive understanding of the system of rationality that constructed BITs. Thus, the following chapters will develop a discursive analysis of BITs by placing their emergence within the context of a hegemonic/dominant discourse. In particular, this thesis places BITs within two complementary discourses: the neoliberal discourse about progress/modernization and the development discourse. In order to develop this analysis, a reconceptualization of power will be required—one which expands the concept of power beyond notions of coercion and the ability of an actor to modify another's behavior through the instrumental use of its "capabilities." By moving away from this conception of power this chapter hopes to illustrate, first, that a different conception of power is necessary in order to form a comprehensive analysis of BITs and regimes; and second, that the limited and restrictive conception of power embraced by traditional IR theories (by both, interest-based IR liberals and power-based neorealists) is fundamentally flawed. Finally, the analytical approach adopted by this thesis intends to

develop an understanding of how knowledge and power, joined in discourse, are essential elements of any understanding of regimes/systems of cooperation such as BITs.

Discourse and the "Developing" World

According to Artutro Escobar (1984), during the 1980s, when the spread of neoliberal development began to gain strength, it was accompanied by the deployment of new forms of power and knowledge in the developing world. These types of knowledge and power attempted to ensure the "conformity of its peoples to a certain type of economic and cultural behavior." In the economic sphere, the most prominent type of discourse emerging in the 1980s was neoliberal development.

As noted in Chapter One, the international political economy of the 1980s and early 1990s was characterized by a number of elements, most of which were related to the emergence of a new economic order. For LDCs, changes in the international political economy of the late 1970s and 1980s had a series of important consequences. In Latin America in particular, the 1980s witnessed the end of militarism, the evolution of the debt crisis and the arrival of neoliberal development.

Typically, economic and political reform in Latin America has been linked to the interventions of the IMF, WB and US. The intervention of these actors in Latin America has prompted a number of IR analysts (see for example, Simmons and Haggard, 1987) to conclude that the oppressive power of these actors was responsible for Latin America's shift to neoliberal reform. It is in this context of reform and foreign intervention that BITs emerged in most developing states, including those in the Andean region and Ecuador in particular.

As mentioned before, according IR liberals, cooperation among states in the form of regimes and/or widespread agreements results from structural causes (such as power) and market failures which prompt the need for inter-state coordination. Rational actors will bring themselves together after considering the cost and benefits of cooperation. Some IR liberal scholars have attempted to explain the emergence of BITs as the result of the poor regulatory environment of developing states and their desire to import capital from developed states which forces them to compete with other developing states for foreign capital (Elkins, Guzman and Simmons, 2006).

Neorealists, on the other hand, analyze cooperation by looking at power, national interests and systemic order. As mentioned in Chapter Two, the theoretical foundation of neorealism is based on systemic order, the unity of the state as an actor and the importance of power (Dougherty and Platzgraff, 2002). From this perspective, there are a number ways of interpreting the emergence BITs. One way is to portray BITs as the outcome of power relations in which the interests of the strong prevail over the interests of the weak. In other words, BITs result from the imposition of the economic interests of powerful actors, like the United States, over weak actors like Ecuador. This occurs in part because the systemic position of smaller/developing states, whose negotiating leverage depends largely on their limited capabilities, determines the economic arrangements that they obtain vis-à-vis their developed country counterparts.

International Relations Theories Revisited

A Spontaneous Regime?

In the case of BITs, the first and perhaps most obvious challenge to the explanatory capability of traditional theories is that these theories do not account for those regimes which form, spontaneously, in a decentralized fashion, outside the context of multilateral negotiations. BITs were negotiated gradually in a decentralized and deconcentrated fashion. That is, there was no physical or institutional centre where negotiations took place and participants multilaterally coordinated the establishment of a regime. The interesting aspect of the BIT regime is that it is in practice a regime, but was not negotiated as most regimes are. Notwithstanding this difference, traditional definitions of regimes, like Stephen Krasner's do apply to BITs. As such, it would be fair to test the saliency of cooperation/regime theories through an analysis of BITs. After all, the whole body of BITs constitutes a set of "implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations" (Krasner, 1982: 185). Thus, while the process of BIT formation contrasts with the traditional conception of centrally negotiated and managed regimes, it still operates as a regime, especially considering that disputes among members of the regime are solved "collectively" through the ICSID.

Besides failing to account for decentralized regimes there are other limitations associated with power-based and interest-based theories like their treatment of regime functionality as an explanatory variable and, more importantly, their limited understanding and usage of power as a concept and oblivion to the importance of processes of identity and preference formation. These theoretical shortcomings establish

the need to look beyond traditional IR theories to account for the emergence of BITs. Before turning into the central question of this thesis, namely, the formation of the BIT system, the following section provides a brief critique of IR theories.

Interest-Based Approaches Revisited

As mentioned in Chapter Two, interest-based ideas about regimes are defined in terms of economic possibilities, market failure, rational calculations, and choice. From this perspective, BITs are the result of the incapacity of the international political economic system to generate public goods such as the ICSID. Zachary Elkins, Andrew T. Guzman and Beth A. Simmons (2006), for example, argue that the incidence of BITs can be explained by three factors: the coercive effect of power over LDCs, the economic competition between LDCs to attract FDI, and regulatory deficiencies of LDCs. Broadly speaking, this view of BITs responds to the "functional" perspective within IR theorizing. There are, however, a few of problems with this idea and the functional/interest-based approach in general. According to this type of analysis, BITs and other regimes are expected to last over time as long as they fulfill the purpose for which they were created. The BIT regime was created with the purpose of protecting and fomenting FDI. The question of whether BITs and the increasingly influential ICSID have in fact fulfilled their functional objectives is, thus, pertinent here.

There are two conceptual problems in answering this question. On the one hand, the BIT system serves, in practice, different purposes for different actors. For developing states, the nominal purpose of BITs is to attract investment, while for developed ones it is to "protect" their investment. The reference to "in practice" responds to the fact that

developing countries, do not export capital to developed countries; they are, by the very structure of their economies, net capital importers. In this respect, a more appropriate definition of the purpose of a BIT would be to protect FDI from developed states in the hope that by doing so, FDI inflows would increase in LDCs.

On the other hand, the two purposes of BITs to attract and to protect FDI are at odds with each other in relation to the supposition that FDI is a "good" thing for the host-country. This is significant because a contradictory understanding of the purpose of BITs has welfare implications for developing states. The liberalization and the deployment of MNCs, while generally beneficial to capital exporters, is often not beneficial to capital importing ones, especially countries such as Ecuador, where most of FDI inflows take place in resource-extracting sectors (Banco Central del Ecuador, 2006). In this sense, it is difficult to evaluate the extent to which BITs fulfill a specific purpose. Rather, an evaluation of that sort would require determining the fulfillment of different purposes over time. Consequently, it would be nearly impossible to establish with clarity whether or not the regime is fulfilling the purpose for which it was created.

Additionally, if one observes the Latin American experience, it is clear that the emergence of the BIT regime has no unequivocal correlation with FDI growth. For example, Ecuador, one of the lowest receptors of FDI, has signed and ratified 26 BITs, one of the highest rates in the region (ICSID, 2008). As Mary Hallward-Driemeier (2003) points out in a study conducted for the World Bank, there is no conclusive evidence linking the application of BITs to an improvement in FDI levels in the developing world. Hence, even though BITs have failed to achieve the objective of attracting more FDI to LDCs, (that is, they have failed to serve the function for which they were created), many

developing nations continue to actively support BITs (as shown by the 2200 BITs currently functioning in LDCs).

Ernst Haas (1990) as well as James Keeley (1990) have alluded to this problem of interest-based theories. Haas (1990) points out, for example, to the problems in using the same theoretical formula to explain the emergence, maintenance, and demise of a regime. In the case of BITs, as shown above, "purpose" and "functionality" fare poorly as explanatory variables when it comes to accounting for the emergence and the maintenance of the regime. Along similar lines, James Keeley (1990: 90) notes that IR liberal approaches based on assumptions about rationality and functionality to explain the emergence and maintenance of regimes "provide only a weak and mercenary legitimacy in which payoffs to individual actors are the determinant of their support for or opposition to a regime. Even if a regime delivers desired goods, actors may still reject it if they think they could do better under other arrangements." Or, alternatively, even if the regime does not deliver desired goods actors may still choose to maintain it (as in the case of BITs).

There are further problems with functional explanations to regime (and institutional) formation and maintenance. The application of functional explanations to regime/institutional formation and maintenance raises doubts about the ability of these theories to avoid committing a *post hoc ergo propter hoc* fallacy. Not unlike power-based approaches, interest-based ones tend to construct theories in a *post hoc* fashion. That is, by looking at causes in terms of their effects. In this sense Hasenclever et al. note that:

> Could it be that falling prey to this fallacy is the epistemological risk, as it were, that is inherent in functional explanations?...What one must demand of a

> functional theory of regimes is then that it only adequately describe the effect of regimes on the welfare (or security) of states and show that indeed they are beneficial for them...We should be concerned not with the effects of regimes, but with the beliefs that actors hold about these effects (Hasenclever et al. 1997: 41).

A second important conceptual shortcoming in interest-based (and power-based) approaches is that interests and rationality are assumed but never explained. Both traditional approaches to IR theorizing are committed to rationalist explanations of interstate cooperation and international relations in general. For rationalist explanations to work, the expectations, beliefs and preferences and identities of states must be relatively stable overtime. In addition, these elements of state behavior must be theoretically circumscribed in a set of assumptions that regard states as goal-seeking, self-interested actors who are aware of their own best interests and are able to evaluate the real advantages of different options and pursuit them (Hasenclever et al., 1997).

The problems with this conception of rationality are many. To begin with, under rationalist approaches any attempt at understanding the true complexity of "rationality" is sacrificed in the hope of gaining theoretical rigor (Topper, 1998). This is puzzling given that the purpose of theory building is not the construction of theories for their own sake. A second problem is related to the logocentric association between rationality with self-interest and egoism. In other words, theorists like Keohane (1984) and Waltz (1979), assert that acting rationally is pursuing one's self-interest (Hasenclever et al. 1997). In this respect, (and herein lies the logocentric practice), it would be worth asking, what constitutes an act of irrationality? At the very least, there is enough reason to suspect that, according to Keohane, not pursuing one's self interest is an act of irrationality.

This association of concepts is not epistemologically justified by interest-based theories. Instead, explanations with respect to the validity of these conceptual associations lie in the need to adhere to certain scientific principles of theory building (Hasenclever et al. 1997; Topper, 1998). The effort of IR theorists to build theories that adhere to scientific principles not only produces theoretical constructs in which ontology and epistemology contradict each other (Ruggie, 1998), but denotes, once again, a possible *post hoc ergo propter hoc* fallacy. Simply put, interest-based theorists, after looking at the behavior of states, conclude that the observed behavior was rational because it is assumed to have been the result of the purposeful pursuit of self-interest. This, however, amounts to a *post hoc* rationalization of the actions of states in terms of a concept that, at the very least, is epistemologically hazy. There are in fact, enough reasons to believe, from an argumentative point of view, that state behavior is not inspired by a conscious effort to pursuit an intelligible goal as there is to think that the behavior of states is fully motivated by conscious effort to pursuit an intelligible goal. This is not to say that policy makers are not goal oriented, rather, it is to say that goals are hazy and perceptions about objectives are dynamic. In other words, the pursuit of goals is not a linear evolution from perceptions about one's goals, to a decision to purse them, to actions taken to achieve them. There are, in fact, a number of intervening variables between perception, decisions and actions. Defining rationality in terms of an actor's purposeful pursuit of a goal says little about the fact that the pursuit of goals itself is defined by the type of interest being pursued and that the way in which actors go about pursuing their goals is partly determined by their identities. In this respect, limiting

rationality to actor's pursuing self-interest without looking at other intervening variables provides little in the way of explanatory strength.

These shortcomings suggest the necessity to step away from the self-imposed methodological restrictions of interest-based (and power-based) approaches. In other words, a more nuanced understanding of regimes and international cooperation requires that rationality, as well as identity, preferences and interests be treated not as mere assumptions but as core explanatory variables of outcomes at the international level.

The second important theoretical approach to the study of international relations, as noted in Chapter Two, is power-based. While neorealism and other power-based approaches do not formulate theories about regimes as such, it does "explain" cooperation through its analysis of systemic structures and power. For that reason it would be worth revisiting power-based approaches and critically evaluate some of its most important conceptual underpinnings, especially the concept of power.

Power-Based Approaches Revisited: Neorealism and Structural Power

As mentioned elsewhere in this thesis, when one talks about regime theory as such, one is talking about interest-based approaches based on the precepts of IR liberalism. As Chapter Two noted, neorealists and other power-based approaches criticize regime theory for failing to see that the fundamental determinants in processes of international cooperation, as in all processes in international relations, are power and systemic order. As Kenneth Waltz puts it, it is "the structure of the international system [that] shapes both the most significant aspects of nations' interests and outcomes of their interactions" (Waltz, as cited in Liftin, 1994: 178); "when the crunch comes, state

sovereignty will prevail and cooperation will be prevented" (Waltz, 1979: 96). Briefly, the importance of power for regimes lies in leadership, in particular, in the leadership of powerful actors. Leadership, like anarchy, interests, and most of the conceptual underpinnings of neorealism are embedded in a particular conception of power which is related to the capabilities of states (Waltz, 1979; Dougherty and Platzgraff, 2002). Neorealists, as well as IR liberals, regard power as a force that works through coercion or outright repression. This is understandable from the point of view their own theoretical objectives given the importance that neorealists assign to anarchy. Power is associated with the ability to transform someone else's behavior to be more amenable to one's own interests through the instrumental use of one's capabilities, mainly, military capabilities (Topper, 1998). One of the most widely used definitions of power in IR theorizing is the one provided by Robert Dahl in 1957 (Dahl, 1957: 202-203). According to Dahl, power is measured according to the ability of an actor, say actor A, to modify the behavior of another, actor B, in a direction contrary to B's original preferences. Similarly, Kenneth Waltz sees power as being able to "apply one's capabilities to change someone else's behavior in certain ways" (Waltz, 1979: 191). These views of power, however, are problematic in a number of ways.

The definitions of power presented above lead to a conceptual overemphasis on one dimension of power, namely, its capacity to control through oppression, prohibition and/or coercion. If an actor, say actor A, is powerful to the extent that it can get actor B to do what B does not want, it is safe to assume that the more A can get B to behave in a way which is furthest away from B's original intentions, the more powerful A is. Since the epitome of getting another actor to do something it does not want, or preventing it

from doing something it wants is through physical domination, then it is possible to state that an actor is most powerful when it can physically dominate other actors. This notion allows neorealists to conclude actors with the strongest military might are the most powerful actors in the international system (Topper, 1998).

If power is related to material capabilities, it means that power can be quantified and possessed; it also means that power emanates from a central point, the state. If power, as neorealists contend, can be measured in terms of a given quantity, extent or endowment of material resources such as population, territory, natural resources and military arsenal, then it follows that the accumulation of these factors constitutes an accumulation of power. This means that if A is militarily stronger and larger geographically than B, A is more powerful than B. Essentially, this means that power operates through force, coercion, prohibition, intimidation, threats, negation and so on. The neorealist view of power allows no space for power to operate in other ways than these because the focus of power is to modify behavior at times when the interests of others are not in accordance to our own. Power is "powerful" insofar as it is able to perform this function. The real power of states lies, therefore, in their ability to dominate other states through the use of their capabilities, especially force.

Problems arise when power is regarded in this "instrumental, behavioral and one-dimensional" (Paolini, 1993: 103) fashion. First, the notion of changing someone else's preferences is embedded in the assumption that states are unitary and possess a set of clearly defined interests. This raises the question: how is one to assess an actor's ability to change the behavior of others at times when the others have no clearly defined interests or when they have shifting identities and preferences? Also, what about the

influence of new available knowledge or information in changing the nature of interests? How can power be measured (as neorealists believe it can) then? As Karen Liftin notes:

> In this view, interests are surmised by observing the behavior of states. But instrumental action implies goal-oriented behavior, and only a contextual analysis can reveal what goals are being pursued and why. Realists neither explain adequately how interests are formulated nor provide a method for determining when states pursue long-term rather than short-term interests (Liftin, 1994: 18).

Second, the validity of the concept of power remains largely attached to the centrality of the state as the source of power. This means that power is not understood as occurring within the social body, or, at the subnational level. It assumes that the state is able to occupy all fields of power relations without explaining how this can be possible (Paolini, 1993). Are there no power relations at the local level that are more complex and multidimensional than simple relations of physical domination? Do these not affect the state and its institutions? The failure to address these concerns compromises a sound understanding of power by misconstruing the state as a source of power rather than an effect of power (Foucault, 1980).

Third, equating power with military capabilities is problematic insofar as does not allow for the possibility that power is also a productive/positive force. In this respect, one could ask, how can domination (conceived as getting actors to do something they would otherwise not do) be so pervasive as to operate on an ongoing, permanent basis at all levels of society? What about the power of persuasion? Can weaker actors not get stronger ones to do something they would not have anticipated through the power of persuasion? In addition, one could also ask: what about the power of charisma? Does the power of charismatic authority lie in the leader's capacity to get people to do what they

do not want? Can we say that the relationship of influence between a charismatic leader and her audience is not reciprocal and positive? In sum, these questions make evident the failure of neorealism to recognize that power is not only coercive, that it cannot be conceived as instrumental, unidirectional force that is expressed through the use of coercion.

Perhaps a more simple observation about the weakness of the neorealist view of power is that it is oblivious to the very historical cases that it claims to understand: that of the "superpowers." As Keith Topper explains:

> Indeed, in the several years before and the short time since the fall of the USSR, American ability to translate its enormous military power into effective control or influence of international events and issues has been manifestly limited: the situation in the ex-USSR and much of Eastern Europe is at the very least disquieting, with widespread crime, poverty, ecological despoliation, and political instability being perhaps the most likely scenarios in some states during the immediate future; various forms of nationalism and religious fundamentalism continue to spread across the North African littoral, Eastern and Central Europe, and other parts of the world as well; and American ability to sustain a leadership position in the international economy remains a highly precarious affair. Even in the Persian Gulf War, where superior military power unquestionably influenced events and outcomes, the use of that power was both predicated upon and constrained by an international consensus regarding its legitimate ends and scope (Topper, 1998: 174).

Finally, as is apparent, nowhere in the conventional IR conception of power does one observe the connection between power and other elements which are relevant to decision-making processes such as knowledge, believes and/or identities. Does this mean that no relationship exists between power and these elements? According to Karen Liftin (1994), the conventional conception of power utilized by traditional IR theories differs from the kind of power most relevant to postindustrial societies in three respects. First, power, because of its entrenched connection to scientific and technical knowledge,

cannot be reduced to material capabilities only (population, geographical size, GDP or military strength). Second, uncertainty, which is as prevalent a condition of the international system as anarchy is, means that states' interest are not always known. This phenomenon makes knowledge a resource of power.[8] Third, states' interests are partially defined in subnational processes. This means that theoretical approaches that "black-box the state are rendered woefully inadequate in the face of challenges raised by new issues" (Liftin, 1994: 2).

The preceding critique can be summarized by noting that traditional theories of international relations do not account for the non-material nature of power, in particular, knowledge-based power. As Liftin notes, they fail to "dig beneath the surface to explore the issue of interest formation" (Liftin, 1994: 177). Moreover, the focus on structure and unitary actors of neorealism and IR liberal institutionalism, as William Zimmerman notes, works only when the vital interests of states are threatened and/or when issues have major impacts on domestic bureaucracies and interest groups; however, as Liftin further notes, relatively few issues in international relations fall into one of those two categories (Zimmerman, as cited in Liftin, 1994: 181).

In sum, as the critique provided here shows, stepping beyond neorealist analyses of power is real and necessary. In particular, as Topper notes,

> the idea that power can be designated in terms of objective capability – an idea that is foundational to the neorealist conception of power – must be substantially reformulated if it is to reflect accurately the multiplicitous ways in which power shapes outcomes in international affairs (Topper, 1998:180).

[8] It should be noted that both Krasner and Keohane in their theoretical constructs about regime point to the nexus between uncertainity and the need for cooperation. In fact the question of uncertainty is crucial for both. The problem with both Krasner's and Keohane's analysis is that although they acknowledge the importance of knowledge no link is made between knowledge and power and knowledge, power and regime formation.

Conclusion

Having pointed out the limitations of traditional IR theories in explaining processes of international cooperation, this thesis will now focus on developing its theoretical framework. In particular this thesis will employ Michel Foucault's discourse analysis to uncover the importance of identities and "discursive" rationality in processes of regime formation and international cooperation. In addition, and although this thesis is careful not to appropriate Foucault's discourse analysis in its entirety, it utilizes it to show that power is productive, that it is present beyond the limits of the state and its institutions and that it is not a possession but a consequence of a multiplicity of relations that take place at the local level. More importantly, however, this thesis employs Foucaultian thought to show that power is inseparable from knowledge and discourse.

Analytical Approach

Introduction

The analytical approach of this thesis is, in general, based on the writings and concepts developed by Michel Foucault. The basic elements of Foucaultian thought used in this thesis are related to the nexus between power and knowledge and discourse and their importance for the study of international relations. The general approach adopted by this thesis is not postmodern as such, although it accepts many of postmodernism's criticisms regarding positivism in the social sciences. Instead, the analytical framework of this thesis shares a close resemblance to a constructivist analysis of international cooperation in that it emphasizes how ideas, preferences and identities are constructed in processes of inter-state cooperation. The analysis provided by this thesis embraces an

interpretive approach to the study of IR; specifically, it "embraces a logic of interpretation that acknowledges the improbability of cataloguing ... and specifying the 'real causes'" (Campbell as cited in Ruggie, 1998: 35). The methodology for the application of its analytical framework departs, thus, from the positivist tradition of theory building typically associated with neorealism and IR liberalism.

The objective of this theoretical approach is to overcome liberalism's and/or realism's failure to account for processes through which ideas, identities and perceptions about issues pertaining to international affairs are constructed. It seeks, moreover, to overcome the undertheorizing that takes place in relation to the close link between power and knowledge and the influence of discourse in decision-making processes at the interstate level.

In order to develop its theoretical framework, the following sections will proceed by developing an understanding of the nexus between power and knowledge and how it relates to discourse. Additionally, the question of discourse itself and how a Foucaultian approach to discourse analysis sheds light into processes of international cooperation will be discussed. Besides Foucault, the theoretical framework will rely on the ideas developed by other scholars such as Arturo Escobar (1984, 2004), James Keeley (1990), James Ferguson (1994) Marc DuBois (1991), Karen Liftin (1994), among others.

An Introduction to Foucaultian Analysis

As mentioned in the introduction to this thesis, the objective of its main argument is to show the need to stress the fundamental role of discourse in processes of international cooperation. Theories of international relations tend to view knowledge,

preferences and identities as divorced from power (DuBois, 1991; Ruggie, 1998). Realists as well as IR liberals often situate knowledge outside the realm of politics. They consider knowledge as subservient to power. Foucault, on the other hand, shows that knowledge and power imply one another and that both knowledge and power are inseparable from politics nationally and internationally (Foucault, 1994).

Before proceeding any further it would be useful to note that Foucault, as a social philosopher, never intended to develop theories in the sense neorealists and liberal-institutionalists do; that is, from a positivist perspective. Instead, his work was based on analytical tools and interpretations stemming from historically interpretive analyses. His approach is about posing questions rather than offering answers and suggests that any given set of answers are only temporary and local. For this reason, a Foucaultian analysis of international economic cooperation contrasts sharply with the positivist tradition of IR liberals or neorealists and thus avoids the epistemology-contradicts-ontology problem found in these approaches (Ruggie 1998). As James Keeley (1990), Arturo Escobar (1984) and Marc DuBois (1991) note, his ideas about order, communities, power/knowledge, discourse and development offer a revealing spectrum of ideas from which to analyze international affairs. A crucial analytical formulation that is emphasized by a Foucaultian perspective is that discourse is where power and knowledge share a common space. Discourse defines important aspects of policy making that affect processes of regime formation such as establishing the limits of power relations, the relevance of certain knowledges over others, and a disciplinary structure based on notions of normality/abnormality and self-understanding. Before exploring these ideas further, it

is first necessary to develop an understanding of "Foucaultian" power and its linkages to knowledge.

Foucault and Power

Foucault's and conventional IR views about power share a common space in that both understand power as a force which contains disciplinary qualities. The fundamental difference, however, lies in *how* power operates. Unlike conventional IR theories, Foucault never attempted to give a specific definition of power (Al Amoudi, 2007: 15). As Liftin (1994) notes, the effects of power, like those of gravity, are tangible in a way that power itself is not. Thus, Foucault, found little use in providing, as Ismael Al Almoudi (2007) puts it, an "impossible" definition of power. At best, Al Amoudi notes, Foucault gave the following definition of the exercise of power:

> The exercise of power is not simply a relationship between partners, individual or collective; it is a way in which certain actions modify others. Which is to say, of course, that something called Power, with or without a capital letter, which is assumed to exist universally in a concentrated or diffused form, does not exist. (Foucault, as cited in Al Amoudi, 2007: 15)

For Foucault, power is characterized by at least three important interrelated elements: first, power is exercised, not possessed; second, it is productive and positive as well as negative and coercive; and finally, it is inseparable from knowledge and discourse.

According to Foucault (1980a,b) power is a force which expresses itself through relations at all levels of society. For this reason, an entity like a state cannot simply possess power in an absolute sense, independently of other substate relationships. Power comes to life in relationships; it is not a commodity-like substance that can be

accumulated by a state, much less to constitute an objective of state behavior. Power occurs at the local level through and among individuals and groups. As Topper notes in reference to Foucault's analysis of power:

> power relations are indeed constituted by intentional, volitional activity ... individual and collective subjects make decisions, shape agendas, plot strategies, and pursue goals, oftentimes in a palpably conscious and transparent manner. At the same time, however, these disparate localized "strategies" produce broader patterns and consequences which are not, and often cannot be anticipated, willed, or otherwise coordinated in a conscious, systematic fashion. In these "strategies without a strategist" Foucault holds that it is a mistake to think that power emanates from some central point – be it the state, the ruling class, the legal code, or elsewhere (Topper, 1998: 177).

Moreover, power relations are not unidirectional. According to Foucault, relations of power affect and are constructed and enabled by all participants of a relationship. Thus, to understand the effects of power, one must focus on all ends of a relationship, not just the actor which presumably "applies" his power over others (or the state with more "capabilities"). Simply put, it can be said that "power is a strategy in which the dominated are as much a part of the network of power relations as the dominating" (Foucault, as cited in Paolini, 1993: 107). These characteristics and effects of power challenge the notion that power resides in the hands of a particular actor and/or that powerful actors are more important than non powerful ones in analyses of power. Foucault thus rejects a state-centric vision of power. As Foucault notes, an analysis of power "must not assume that the sovereignty of the state, the form of the law, or the over-all unity of a domination are given at the outset; rather, these are only the terminal forms power takes" (Foucault, 1994c: 92-93). This entails that state power depends on a series of other power relations which go beyond the juridical power of the state and its institutions and its monopoly over the use of force. In other words, state power is enabled

and sustained by the presence of other power relations that take place below and through its government and institutions. As noted above, power is constituted when individuals and groups of individuals "make decisions, shape agendas, plot strategies, and pursue goals" (Topper, 1998: 177). Power emerges when an action "influences another action by determining a field of possibility for it" (Al Amoudi, 2007: 18). Consequently, as Foucault concludes,

> Relations of power, and hence the analysis that must be made of them, necessarily extends beyond the limits of the state—in two senses. First of all, because the state, for all the "omnipotence" of its apparatuses, is far from being able to occupy the whole field of actual power relations; and, further, because the state can only operate on the basis of other, already-existing power relations. The state is superstructural in relation to a whole series of power networks that invest the body, sexuality, the family, kinship, knowledge, technology and so forth (Foucault, 1994c: 122-123).

A Foucaultian analysis of power shows, therefore, that the state cannot be regarded as a unitary actor if one seeks to understand how power relations actually take place. The relevance of Foucault's views of power for IR is that state power and state behavior cannot be understood by attributing to the state the conceptual quality of being a *source* of power. States and institutions are effects of power, not its sources.

The second dimension of power highlighted by Foucault relevant to this thesis is that power is not only repressive, negative and coercive; it is also positive and productive. For Foucault, this is a fundamental characteristic of power relations. An important implication of this idea is that any analysis of the influence of developed countries over developing countries and of IFIs such as the IMF and the WB over developing states has to extend beyond an analysis of the capacity of developed economies and IFIs to force, or impose their will upon LDCs through coercive means. Focusing on the effects of economic coercion applied by IFIs and developed states, like the United States, over

LDCs, fails to explain the full range of power effects that prompted states like Ecuador to embrace neoliberal development policies and BITs. At this point it should be noted that this idea denies the contention of power-based and interest-based theories that the structure of the international system represents the objective interests of "powerful" states.

The basic contention underlying the productive "theory" of power is that if power were only prohibitive, repressive, coercive, negative and so on, no one would come to obey it (Foucault, 1980a). According to traditional conceptions of power, relations of subordination and/or the behavioral alignment of an actor to another's particular interests, is accomplished through the use of force, through coercion, through threats, intimidation and so on. If this were the case, if power were only repressive, powerful actors would be required to constantly enforce their will, on a daily basis, at all levels of society, not only domestically but internationally as well. This, however, is problematic both conceptually as well a practically given that military resources are limited. For Foucault, power is over actions not over persons. As mentioned earlier, relations of power are ways in which certain actions modify others and determine their field of possibility (Al Amoudi, 2007).

Simply put, relations of subordination and behavioral alignments between actors take place because of the capacity of power to produce and constitute subjects not the capacity of power to prohibit or coerce. Power constitutes subjects through its nexus with knowledge in discourse. Put differently, the effects of power and knowledge in discourse has constitutive effects on identities, interests and preferences (Strega, 2005). In order to gain a greater understanding of how power constitutes subjects, therefore, it is necessary to look at the relationship between power, knowledge and discourse.

Before analyzing the effects of discourse and its connection to power and knowledge, a brief comment about Foucault's notion of the constitution of subjects is necessary. Mainly, it should be pointed out that this thesis is cautious about fully appropriating Foucault's ideas about how subjects and subjectivity are constituted. The objective of this thesis is to show that the effects of neoliberal discourses formed new identities and preferences in policy makers. Foucault goes further than traditional IR theories in developing an understanding of how power, knowledge and discourse work to constitute identities and new individual preferences and parameters of rationality. The Ecuadorian experience with neoliberal restructuring suggests that traditional IR theories fall short in their capacity to account for the importance of identities and knowledge during the process of BIT formation. Notwithstanding the usefulness of Foucaultian thought in this sense, this thesis is not prepared to state, like Foucault does, that the lack of a fundamental essence in humans means that every aspect of subjectivity (that is, the "self") is constituted around and by a discourse. While this thesis does not deny this possibility, it is only prepared to assert, given its objectives and space, that discourses do have a strong effect in shaping identities, meaning, preferences and notions about what is true and what is not. It is in this sense that this thesis talks about the "constitution of subjects." This thesis, therefore, does not assert that discourse is an all-encompassing phenomenon that constitutes subjects and subjectivity in their entirety (that is, that individual agency is completely contingent upon discourse).

Knowledge and Power

Essentially, Foucault proposes that knowledge and power cannot be separated from each other. Concretely, he contends that "there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time power relations" (Foucault 1980b: 27). In this respect, Foucault challenges the conventional understanding of the relationship between power and knowledge in which either "(1) knowledge provides a tool or weapon for those in power or (2) a new form of knowledge propels into power new groups or institutions capable of exploiting it" (Dubois, 1991: 6-7). Simply put, knowledge empowers individuals; it provides individuals with information upon which strategies, which constitute the basis of power relations, are formed. Power, on the other hand, produces knowledge by creating objects and domains of knowledge; it creates knowledge by determining which aspects of social experience enter into what is considered as acceptable knowledge (Strega, 2005). In the 18th century for example, the concept "population" was created as an object of knowledge. That is to say, a new form of inquiry related to birth rates, fertility rates, death rates and changes in population emerged. After the 18th century "population" became something one could become knowledgeable about. Thus, upon the creation of a new field of knowledge, a new discourse about population emerged along with its corresponding language and concepts, experts and so on (Foucault, 1994c: 124-126). It is in this sense that power and knowledge are joined in discourse.

Foucaultian thought, as noted above, suggests ways of understanding knowledge in conjunction to power. As it will be suggested later, the neoliberal penetration and the

emergence of BITs is closely connected to the spread and hegemony of a particular kind of economic knowledge whose discourse became a source of economic transformation. The discourse about development and economic progress brought Ecuador to wholeheartedly embark in a journey of economic reform of which BITs are an integral part. Before looking more closely at the Ecuadorian experience during the early 1990s, the following section analyzes the important issue of discourse and its interaction with power/knowledge and its importance for decision-making at the international level.

Discourse Analysis

One of Foucault's major contributions to social theory is to make evident the profound influence of discourse over societies (Shapiro et al. 1988). Discourse influences people; this fact is accepted by social theory and common sense alike. But as James Ferguson notes, Foucault has shown that "discourse is a practice, it is structured and has real effects which are much more profound than simply 'mystification'" (Ferguson, 2002: 18). Foucault suggests that discourse is more than a rhetorical or a series of rhetorical statements. While a discourse contains such statements, it is not limited to them. Discourse, as Foucault understands it, defines the organizational, conceptual and meaning structures around which rhetorical statements are constructed. As James Keeley notes, a dominant discourse, in the Foucaultian sense, defines a "regime of truth." That is, discourse establishes "a means of assessing not only whether statements are true or false but also whether they have a meaning or are mere nonsense" (Keeley, 1990: 91). Nonetheless, discourses also "deny their own partiality; discourses fail to acknowledge that they are possible versions of meaning rather than 'truth' itself and that they represent particular interests" (Weedon, as cited in Strega, 2005: 219). For example, one could

think "of the way economic practices ... have sought to rationalize and justify their currency in a theory of wealth and production" (Foucault, 1972: 216).

Discourse thus provides a structure to organize statements about issues by defining the "truth" about its constituent elements. A regime of truth, as Keeley puts it,

> goes beyond agenda setting and decisions and non-decisions. It endorses certain language, symbols, modes of reasoning, and conclusions. Those who do not use these may seem unintelligible, mad, or at least beyond the pale of accepted argument. Someone else may have to "speak for" them or "make sense" of what they say, recasting it into accepted terms (Keeley, 1990: 91).

As noted earlier, power and knowledge share a common space in discourse. That is to say, it is through the medium of discourse that power-knowledge relationships are transmitted and produced (DuBois, 1991). It is through discourse that various experiences enter into or are prevented from entering into what counts as knowledge (Strega, 2005). Hence, if one hopes to understand how policy-makers make sense of the policy environments and the international system, one must understand why some concepts, speeches, experts, institutions and knowledges are more valid than others within a specified context and time period. Furthermore, this also points at the fact that foreign policy outcomes such as the BIT-based regime, emerge as a result of the alignment of different actors within a discursive structure which enables them to understand an issue in similar ways. This shows that fields of action with respect to issues, topics, economic and social policy become delineated in a particular forum, such as a regime in a particular time period. This issue is important for the purposes of this thesis because it shows that widespread international agreements such as BITs, especially from the perspective of Ecuador, can be interpreted as an expression of a dominant discourse.

According to James Keeley (1990), Karen Liftin (1994) and Oran Young (1999), understanding the expressions of a dominant discourse is fundamental in any analysis of international instruments of inter-state cooperation. In other words, the presence of a dominant discourse can also help one understand why some policy choices are preferred over others as well as why sometimes policy choices are disconnected from the problems they attempt to solve. As Young (1999: 206) notes, discourses are important because they construct "normative perspectives" about the relevance of particular issues and "appropriate ways to solve them." Consequently, Young concludes, "the emergence and diffusion of a suitable discourse constitutes a critical determinant both of the success and efforts to form a regime" (Young, 1999: 206). Similarly, Marc DuBois (1991) notes that, because dominant discourses define the relevance of certain points of view and of particular knowledges, there are inevitable miss-encounters between policy choices that emanate from a dominant discourse and the material basis of the problems they aim to solve (DuBois, 1991). Neoliberal discourses, for example, created a series of economic regimes in the developing world with the apparent aim of alleviating poverty. For much of the 1980s and 1990s, neoliberal discourse defined a "reality" about the developing world and it was according to this reality a set of policies was created. The end result, however, was that the policy choices applied in the developing world became disassociated with the different realities of particular LDCs. To show this, it would be enough to mention that the same neoliberal economic recipes were applied, indistinctively, in places with completely different historical realities such as Ecuador and Argentina.

As can be seen, a discourse is fundamental in determining the emergence of a regime in more than one way. At one level, a discourse, as noted above, defines normative perspectives about issues and ways to solve them. In this sense discourse has real effects, not only theoretical ones; again, as Ferguson notes, discourse "is a practice ... it has real effects" (Ferguson, 1994: 18). A discourse determines the necessity to address certain issues over others as well as specific ways to tackle them. In the case of Ecuador and the United States, for instance (as will be suggested in more detail later), neoliberal discourses determined normative perspectives regarding the need to establish cooperation in the "promotion and protection of FDI" and that BITs were an "appropriate way" of approaching the issue.

Moreover, discourses help structure the "interest and identities" (and thus the preferences) of actors (Young, 1999: 207). This entails that the negotiating position of the parties during the negotiating stages of a regime is related to the emergence, dissemination and strength of a particular discourse. The issue of identities within a process of regime formation is fundamental for it could have determinant effects over the way in which actors see themselves vis-à-vis other actors. In this respect, as will be argued later, Ecuadorian decision makers reached an agreement, namely a BIT, with the US under very defined assumptions about Ecuador's identity as an underdeveloped country. In other words, Ecuador's identity as an *underdeveloped* state, whose corrupt and incompetent institutions put at risk the property of foreign investors, determined the need of a system which "protected" US FDI in Ecuador, notwithstanding the high degree of local legal mechanisms to safeguard US property in Ecuador.

Foucault, Discourse and the Subject: A Note of Caution

The primary interest of this thesis is the political/policy applications of discourse. Consequently, its discussion of discourse is circumscribed by the objective of analyzing international regimes/cooperation. To develop such a discussion this thesis looks at the possible effects that discourses has in shaping ideas, preferences, identities and the constitution of meaning in the context of foreign policy. One of the important philosophical implications of Foucault's understanding of discourse is that there is no individual agency which can be separated from discourse. In other words, agency is contingent upon discourse—subjectivity is constructed through discourses. This is one the fundamental splits between Foucault and Noam Chomsky, for instance (Chomsky and Foucault, 2006). For Foucault, there is no fundamental innate structure shared proper to humans (Chomsky and Foucault, 2006); that is why Foucault is able to conceive the constitution of the self as contingent upon discourse. For Foucault, truth and justice cannot be separated from discourse (and therefore power/knowledge) and no political system based on these values can be justified on the basis of any set of qualities intrinsic to humans.

While this thesis does not deny Foucault's claim about the lack of a fundamental essence in humans, it recognizes that Foucault cannot disprove it either. Consequently, this thesis endorses Foucault's vision regarding discourse to the extent that it applies to identity formation and to the formation of systems of meaning (and reason) in the context of public policy. Thus, this thesis accepts that discourse constitutes subjects without asserting that discourse and the *entire* system of human subjectivity are inseparable.

Having said this, it would be useful to conclude by reiterating the importance of discourse analysis. As Ferguson points out,

> The thoughts and actions of ... bureaucrats are powerfully shaped by the world of acceptable statements and utterances within which they live; and what they do and do not do is a product not only of the interests of various nations, classes, or international agencies, but also, and at the same time, of a working out of this complex structure of knowledge (Ferguson, 1994: 18).

CHAPTER FOUR

APPLICATION OF ANALYTICAL FRAMEWORK: DISCOURSE AND THE EMERGENCE OF BILATERAL INVESTMENT TREATIES

Introduction

The central objectives of this section are twofold: The first is to link the emergence of the BIT regime to the hegemonic status of the neoliberal development discourse. The second is to analyze the role of power beyond its coercive capacity in the process of BIT formation. In particular, this chapter seeks to apply Foucault's understanding of discourse and power to the case of BITs. It hopes to show that outcomes of international economic cooperation and socio-economic intervention in developing states can often lead to relations of control that may or may not have been intended and recognized but were very effective for being "subjectless." As Ferguson notes, this analytical approach "makes possible a different way of connecting outcomes with power, one that avoids giving central place to any actor or entity conceived as a 'powerful' subject" (Ferguson, 2002: 19) such as the US, the IMF or World Bank.

This section will look at BITs from a discursive perspective based mainly on Michel Foucault's understanding of discourse. Thus, the type of discursive analysis employed here goes beyond an analysis of rhetorical statements. It focuses instead on: 1) the rules which prescribe certain ways of discussing a topic which exclude others; that is, parameters of inclusion and exclusion. This involves looking at how specific types of

knowledge come to embodying the 'truth' about an issue; 2) The identification of the institutional apparatus which disseminates and legitimizes the dominant discourse including practices within those institutions for dealing with the subjects of the discourse; 3) The effects of power over actors (what mechanisms of power affected Ecuadorian decision makers); 4) The emergence of a resistance, a counter-discourse and the possible decline of the old one (Foucault 1980; Fa Ju University, 2008; Escobar, 1984).

Neoliberalism as Discourse

The BIT system began to develop in the 1980s. By 2006, there were over 2200 of these agreements in existence, constituting a de facto investment regime in the developing world (Peterson, 2005). In the particular case of Ecuador, the country has negotiated 26 BITs, 16 of which were signed and ratified in the 1990s (ICSID, 2008). As mentioned above the BIT regime began to acquire force precisely when neoliberal development strategies became the policy of choice among developing-country governments. In order to place BITs as embedded in a neoliberal development discourse, it is necessary to develop an understanding of the discursive structure of neoliberalism and the type of knowledge that it legitimized. In this sense, a crucial development of the late 1990s and early 1980s was the re-emergence of neoclassical economic theory as a self-portrayed, technical, objective type knowledge, whose theoretical precepts were divorced from political and power considerations (Bordieu, 1998) due to their scientific "purity." The basic components of this economic "knowledge" were discursively imprinted in the developing world and Ecuador in particular, through the policy recommendations of the Washington Consensus (Acosta, 2006).

As mentioned earlier, the first element in the formation of discursive structures is the rules which prescribe certain ways of discussing certain issues. That is, the parameters of inclusion and exclusion of acceptable statements within a specific field of knowledge. At the time BITs multiplied in Ecuador (that is, in the 1990s), the "rules" and parameters regarding acceptable economic language, ideas and statements were largely defined by the Washington Consensus (WC) and its policy recommendations (Hurtado, 2005; Acosta, 2006). In particular, the WC established the following parameters of "appropriate" economic governance:

1. Fiscal discipline, or the idea that governments should not run budgetary deficits.
2. Reordering public expenditure priorities. This suggested reorienting expenditures away from subsidies and governmental programs (not including education and health).
3. Tax reform: this included increasing the tax base and diminishing marginal tax rates.
4. Liberalizing interest rates, that is, letting the market determine movements of the interest rate.
5. A competitive exchange rate: mainly this involved the devaluation of currencies.
6. Trade liberalization: lowering tariffs and eliminating quota restrictions to trade, among other things.
7. Liberalization of inward foreign direct investment, which included the idea of providing confidence to investors by offering good conditions for investment.
8. Privatization: the selling off of public enterprises, and natural resource exploitation to the private sector.
9. Deregulation: this involved easing barriers to entry and exit, but in actuality, it implied the easing of labour, social and environmental standards;
10. Guarantee to protect property rights. BITs can be placed under the precepts of this item (Williamson, 2004: 3; Acosta, 2006).

Specifically, the items of the WC are concepts and statements clearly delineated by the prevalence of a specific "knowledge" and validated by a specific discourse. The WC implicitly defines parameters regarding "progress" and "development"; it creates

rules of inclusion and exclusion about economic development objectives, in addition to ways of talking about and defining them. For example, it determines that progress ought to be associated with the liberalization of FDI in LDCs. It determines the ways in which a developing state can aspire to attain the level of "development" of Western societies. Its discursive effects can be observed, for example, in the way in which Ecuadorian policy makers talked about progress during the early 1990s. According Edgar Terán, Ecuador's former Foreign Affairs Ministers (the same Foreign Minister that signed and negotiated the Ecuador–US BIT), for instance, applying WC-type policy recommendations would lead Latin America to "join the exclusive club of First World countries" (Terán, as cited in Hey and Klak, 1999).

In the late 1980s/early 1990s in Ecuador, a specific way of thinking and talking about economic progress and development emerged. The specific development in question, neoliberal development, was partially characterized by a particular speech and conceptual structure which separated it from other development strategies. Before analyzing some discursive manifestations of this sort in Ecuador, it would be worth pointing out that the type of neoliberalism to which this thesis is referring is mainly the type which Sean Phelan terms "transparent neoliberalism" (Phelan, 2004: 30). Transparent neoliberalism is constituted by a number of hegemonic signifiers articulated by a number of "linked equivalences and antitheses." As Phelan puts it:

> The market is equivalenced as the sphere of economic freedom, while the state is signified as the embodiment of illusory, and ultimately coercive, political freedom. The notion of a self-contained individual subject is privileged, ontologically and epistemologically, while invocations of a collective subject (the 'social', the 'public good', etc) are regarded with suspicion. The market is valorized as the means of individualized ends, while the misplaced – however well intentioned – politics of social purpose or collective ends is equivalenced

> with rationalistic, statist fallacies. This neoliberal identity is then skilfully equivalenced, rhetorically, with the identity of the common man/woman (as opposed to a more accurate identification with the powerful elites that have most to gain from the expansion of market freedoms), while statism or socialism is equivalenced with the identity of elitist, unrepresentative, and 'know all' intellectuals (Phelan, 2007: 34)

The remainder of this section will point to how the economic transformation which brought about the conditions for the formation of BITs can be shown to be embedded within a neoliberal development discourse. To do so, this section will focus on one rhetorical strategy fundamental to the structuring of the neoliberal discursive apparatus: the modernization of the state.

In Ecuador in particular, prior to the spread of neoliberalism, the term "modernization" was used in two general ways: to refer to the process of attaining industrialization, and to the process of ridding itself of its indigenous identity. In the 1990s the term "modernization" became an empty signifier of neoliberal discourse (Phelan, 2007). In other words, "modernization" can be viewed as serving a "quasi-universalizing" function in the construction of "a logic of equivalence" between the rhetorical statements about neoliberal development (Phelan, 2007: 36).

The rhetorical authority of modernization stems from Ecuador's perceived necessity to break with its economic and political past. It can also be thought as a strategy to insulate the speaker "from the charge that his or her stance is, in some confrontational sense, ideological" (Phelan, 2007: 36) and that the modernizing task is a compelling necessity that goes beyond classes, and political orientation; that it is an unavoidable, pragmatic choice made to bring the country out of underdevelopment. "Modernization" is part of a power structure that works to subjugate Ecuador to a particular economic order.

In the Foucaultian sense, it serves a "normalizing" function. It seeks to instill a divide between the modern and the old, where the modern is equivalenced with neoliberal progress and the old with poverty underdevelopment embodied in ISI, Keynesian and other economic development strategies. In 1993, for example, a notable Ecuadorian editorialist stated that,

> It is indisputable that at this stage of the [20th] century the modernization of the state cannot be postponed in new societies. This has been expressed by the experts who coincide that it is necessary to reduce the size of the state apparatus (Flores y Flores, 1993: 1).

In the early 1990s, such statements were not uncommon. According to one of Ecuador's policy makers, for example:

> ...per capita income has decreased from $ 2.400 in 1982 to $1.500 in 1992...in 1982 water reached 47% of the population whereas in 1992 it only reaches 52%, of which only 40% is transported through pipes and is potable...this situation is what brought President Sixto Durán Ballén to make the decision to modernize the state (Peñaherrera, 1993: 1).

These statements confirm the implications of not modernizing. The second statement, for instance, asserts that the necessity to modernize is based on authentic needs such as access to water and/or food. Modernization signifies, therefore, a rupture with the non-neoliberal past which failed to bring Ecuadorians out of poverty. This type of statement is embedded in what Phelan (2007: 35) terms "euphemized neoliberalism"; that is, a type of neoliberalism which imagines itself as a "pragmatic appropriation of the commonsense elements of a more ideologically self-contained and dogmatic transparent neoliberalism." In other words, the self-representation of modernizing neoliberals as pragmatic, non-ideological, non-dogmatic technocrats whose interest is to bring Ecuador out of poverty through reliable technical knowledge is also embedded in a neoliberal discourse, albeit of

a "euphemized" kind. As mentioned earlier, discourses "deny their own partiality [and] fail to acknowledge that they are possible versions of meaning rather than 'truth' itself and that they represent particular interests" (Weedon, as cited in Strega, 2005: 219).

The first statement, on the other hand, reveals a widespread notion that "new societies," as opposed to "old" ones (denoting an implicit reference to Ecuador's past), must modernize the state. But how does one modernize? The "experts," through their *knowledge*, have determined that it is through the shrinking of the state apparatus. Once again the prevalence and readily acceptance of a particular type of knowledge is clear. It should be noted, however, that the non-ideological way in which these statements are presented denote a conviction in the profound validity of the economic knowledge that informs neoliberlism and in the, supposedly irrefutable claim, as exemplified by "new" societies (that is, developed states) that by shrinking the state apparatus (that is, by modernizing) one develops (that is, attains Western levels of economic development). Consequently, in the Ecuador of the early 1990s, debate about economic policy alternatives revolved around a set of limited issues like the modernization of the state, as conceived by transparent neoliberals, privatization, and the liberalization of the economy (Hurtado, 2005). In order to talk about economic progress, one had talk about FDI as an unambiguously positive force which ought not to be interfered with. One of Ecuador's former Foreign Minister, for example, described the pre-BIT FDI regime as a system "akin to Moscow under the Soviet Rule, overburdened with restrictions and bureaucratic obstacles" (Hey and Klak, 1994: 86). However, the widespread and largely uncontrolled presence of MNCs, mainly of US origin, in the Ecuadorian Amazon prior to 1990 (Center

for Economic and Social Rights, 1994; Korovkin, 2002) can hardly be considered akin to Moscow under Soviet rule.

Additional rules of inclusion/exclusion were determined by the definition of who was professional enough to participate in the national debate about development. Professionals were epitomized by international experts whose widespread presence in Ecuador was felt in the policy initiatives put forward by the government (Guerra Bravo, 1993; Ponce Cevallos, 1993). International experts, as Samuel Guerra Bravo (1993) noted, were IMF experts who professed an unrestricted sympathy for the incursion of foreign capital in Ecuador. The prevalence of the type of knowledge which informed these experts and the policies implemented in the 1990s, including BITs, had the further characteristic of secluding or devaluating other forms of knowledge. Local indigenous knowledge, in the case of Ecuador at least, did not conform to the structure of the hegemonic discourse (Sawyer, 2004) and thus became discredited. This created a disassociation between problems of a culturally and historically specific place (Ecuador's indigenous communities) and the policies taken to solve its problems (that is, WC policies and BITs).

Not only indigenous peoples suffered the consequences of the disassociation between policy and problems. BITs, for example, were completely de-linked with the specific experience of Ecuador as a whole with MNCs and the environmental and social problems which these firms and the deficient regulatory capacity of the state had created. However, its adoption fitted the reality created by neoliberal development discourse regarding the need to "protect" FDI. According to Foucault (1980a), once again, this can be the resulting effect of the prevalence of a strong discourse and the status of superiority

which it confers to certain forms of knowledge at the expense of others. As Marc DuBois notes in reference to the effects of discourse:

> Certain ... bodies of knowledge are admitted into the category of 'true knowledge.' In this process, a whole set of knowledges is rendered suspect, discredited, excluded, and 'disqualified' while another ... becomes the basis for policy formation. Hence, 'le savoir des gens' –local, popular knowledge– has been assigned to categories in the hierarchizations of knowledge 'beneath the required level of cognition or scientificity. One can see that truth, just as knowledge, support and constitute power relations, such as those between the development expert and peasant farmer in rural Mali, allowing the discourse of the former to take precedence over the discourse of the latter, even in the realm of the affairs of the latter (DuBois, 1991: 7).

Indeed, as Alberto Acosta (2006) confirms, in Ecuador during the early 1990s, non-neoliberal economic knowledge was relegated to a position of clear inferiority. The dominance of neoliberal discourses leads to the putting aside of valuable local insights regarding Ecuador' social, political, cultural and economic history (like, for example, the failing to recognize that oil MNCs in the Ecuadorian Amazon were the cause of much environmental damage and social distress and needed to be more effectively regulated). Not only were WC policies, as they were applied to Ecuador, culturally and historically insensitive, they had, in general, no precedent in terms of bringing developing states out of economic hardship. Even the historical example of Western development refutes the relevance of WC-type reforms as precursors of development. As Ha-Joon Chang (2002) reveals, the economic development of the West was formed on the basis of precisely the opposite set of policies which the IMF attempted to implement in Ecuador in the 1990s. For example, there is the widespread notion that Britain became a superpower as a result of *laissez-faire* while France fell behind as a result of protectionism; that the US's adoption of the Smoot-Hawley tariff was an act of "anti-trade folly," or that intellectual

property rights in what is now the developed world became one of the most powerful instruments of its economic development. However, as Chang notes, *none* of these believes are historically-rooted facts (Chang, 2002: 1-2). For similar reasons, Piere Bourdieu notes, in regards to the economic "knowledge" that informed WC policies, in the 1990s:

> this "theory" that is desocialised and dehistoricised at its roots has ... the means of *making itself true* and empirically verifiable. In effect, neoliberal development discourse is not just one discourse among many. Rather, it is a "strong discourse" – the way psychiatric discourse is in an asylum ... economists trust models that they almost never have occasion to submit to the test of experimental verification and are led to look down upon the results of the other historical sciences, in which they do not recognise the purity and crystalline transparency of their mathematical games, whose true necessity and profound complexity they are often incapable of understanding (Bourdieu, 1998: 2).

A final effect of the neoliberal discourse and modernization is to instill in the peoples and governments of LDCs a sense of inevitability about its adoption. Discourses create a series of logocentric[9] practices. Discourses create a series of fictitious "opposites," a notion of the "Other," upon which the world is arbitrarily classified and understood (Ashley, 1984). As Phelan (2007) shows, according to neoliberal discourse, the state and its active involvement in the economy are antithetical to modern (affluent) societies, despite the fact that this opposition of concepts is at odds with historical facts (Chang, 2002). In this respect, neoliberal discourse constructs modernization as an

[9] Logocentrism refers to the modern (of modernity) practice of imposing interpretive hierarchies between terms, concepts and practices. Oppositions such as "serious/nonserious, individual/collective, real ideological" represent examples of the logocentric procedure. As Richard Ashley notes,

> logocentrism inclines the participant to identify his voice of interpretation and practice with a subjective standpoint, a sovereign interpretive center, from which one side in such opposition can be conceived as a higher reality, belonging to the domain of logos, or pure and indecomposable presence in need of no explanation. ... What is noteworthy about this logocentric disposition is that it imposes upon modern theory and practice a blindness with respect to the inescapable historicity of subjects, objects and modes of conduct (Ashley, 1984: 261).

imperative whose postponement will inevitably lead to catastrophe. Thus, in the early 1990s expression such as "without neoliberalism Ecuador would be in national economic chaos" (Hey and Klak, 1999: 85) or "without modernization reform Ecuador has no future" (*Diario Hoy*, 1993) permeated Ecuador's policy environment. Albeit through a different approach, Jeann A.K. Hey and Thomas Klak (1999) also contend that the lack of perceived alternatives, that is, a sense of inevitability about the neoliberal project in Ecuador is one of the four most important factors that determined its application in the early 1990s (Hey and Klak, 1999). In this environment of discursive hegemony and perceived lack of alternatives the majority of Ecuador's BITs were "negotiated" and signed.

The Production of BITs

The emergence and wide utilization of BITs can be understood from a discursive perspective for it is discourse as a system of thought that made BITs a relevant forum for the dealing/promoting/protecting FDI. Put differently, BITs were comprehended through the reality that neoliberal development discourses created of the developing world. In the parameters of this discursive "reality," BITs made sense and became a "rational" policy choice for LDCs. In this respect, Young notes that discourses:

> provide a way of framing and addressing problems and the behavioral complexes within which they are embedded but also contain normative perspectives on the importance of the problems and appropriate ways to resolve them. The key idea here is that the emergence and diffusion of a suitable discourse constitutes a critical determinant both of the success in efforts to form regimes in the first place…it is the development of a consensual discourse rather than the emergence of a particular group of disseminators that really energizes the process of regime formation (Young 1999: 206-207).

The case of BITs is not unlike other international regimes or agreements that have emerged in which discursive practices determine its shape. Examples such as the regime to protect stratospheric ozone and/or public health regimes at the end of the nineteenth and beginning of the twentieth century have been shown to represent outcomes of specific discursive formations (Liftin, 1994; Young 1999). Although BITs are different from both, the stratospheric ozone and/or public health regimes, their surfacing and spread can also be attributed, at some level, to the emergence of a dominant discourse. As shown in the previous section, the dominant discourse (neoliberal discourse) at the time BITs began to gain force in LDCs (during the 1990s) contended that: 1) FDI is positive and necessary for development; and 2) FDI needs to be protected from the actions of governments of LDCs and that, 3) before anything else, governments in LDCs must focus on attracting investment and fomenting macroeconomic stability (Williamson, 1990). Derivatives of these discursive expressions can be observed in the content of BITs. For example, the preamble of the Ecuador-US BIT starts by noting that the Treaty will stimulate FDI and *therefore* development (Ministerio de Relaciones Exteriores de la Republica del Ecuador, 1993). This fits the neoliberal contention that FDI fosters "development." Although this idea clearly contrasts with Ecuador's historical experience, it is taken as truth nonetheless. It is important to note, that what is being said here is not that FDI cannot foster economic growth; what it is being said is that its effects are not unambiguously positive, but that according to the neoliberal discursive reality, the effects of FDI outweigh its costs.

Other clauses and articles present in most BITs, like Article 3 of the Ecuador-US BIT, refer indirectly to the "sanctity" of FDI. Specifically, item 1 of Article 3 of the

Ecuador-US BIT defines "investment" in such a manner that it embraces most aspects, tangible and intangible of the activities of MNCs in an LDC (Ministerio de Relaciones Exteriores de la Republica del Ecuador, 1993). It is safe to assume that the desire to protect FDI at all costs produced this definition of investment. This conceptual "innovation" included in many BITs is historically unprecedented. As Charles Lipson (1985) shows, the concept of investment in the 20th century was not as encompassing as the one present in BITs. Placed in the context of the hegemonic status of neoliberal discourse, it is understandable that such conceptual "novelties" be present in instruments of international FDI cooperation. After all, the dominant discourse during the 1990s portrayed foreign capital as the doorstep to development and its unrestricted protection as a priority for LDCs aspiring to emerge out of poverty. In Ecuador the "obsession" with FDI went as far as subsidizing certain MNCs (mainly oil) and guaranteeing them minimum levels of profitability (Acosta, 2006).

A different concept advanced by the spread of BITs is the notion that foreign capital should be protected from the actions of host states. This idea of "protecting" investors, albeit indirectly, can be understood and interpreted as a clear expression of transparent neoliberal discourse. This idea can be understood if first, the unambiguous "goodness" of FDI is established. It must be remembered that FDI is not unambiguously positive. There are at least two important ways in which FDI can bring about "net costs" to a host state: on the one hand, there is the risk that "FDI would disrupt or destroy existing agricultural/ and /or industrial production, but not deliver the promised benefits of sustained economic growth and technology transfer" (Zarsky, 2005: 4). In addition, "FDI inflows [could] overwhelm domestic capacities for environmental and social

oversight" (Zarsky, 2005: 4). This last point is especially important because it is widely accepted that one of the causes of MNC's abuses in developing states is the lack of a proper regulatory system in these states (Braithwaite, 2006). Ironically, however, BITs further debilitate the regulatory capacity of the state by divesting much of its juridical capacity to control the actions of MNCs. Second, the "protection" of investment can be discursively understood as a manifestation of neoliberalism because it responds to its anti-state tendencies. The idea that capital should be protected from the state is not an expression of economic rationality in any absolute sense, or a mechanism to foster "development." Although the expropriation of property is and has been a real phenomenon in Ecuador and in the rest of the developing world, the solution to this issue is not to enact a system through which the developing nation, or, more generally, its state apparatus, is devoid of much of its capacity to regulate MNCs.

The Discourse on Development, Power/Knowledge and the Formation of BITs

As mentioned earlier, according to Foucault, knowledge and power are joined together in discourse. One of the most meaningful connotations of this idea is that relationships of subordination and superordination do not have to respond to coercion. Instead, a Foucaultian analysis suggests that through the production of "subjects" and processes of "normalization," individuals and groups can be controlled more effectively. According to Arturo Escobar (1984), the very idea of a "developed" and an "underdeveloped" world, for example, shows a discursive structure "designed" to maintain control over developing states. Similarly, Marc DuBois (1991) argues that this type of descentralized control represents a Foucaultian mode of subjection in which

discourses about what constitutes "development" create a sense of inferiority in the developing world and, and a predisposition among its inhabitants to accept Western economic values, practices and knowledges. One must be careful not to confuse this form of control with a centralized form of control that is obtained through the accumulation and application of "capabilities" by one state (a developed state) over another (a developing state). It must be remembered that, as mentioned earlier, to exercise control over others through coercion/repression is not the same as to possess power. Relationships of domination and subordination can occur without the need to accumulate capabilities, to exert physical force, threats, repression and so on. As mentioned above, discursive practices alone can create relationship of subordination simply by establishing the superiority of certain forms of knowledges over others. This form of control focuses on individuals rather than on "the earth and its products" (Foucault, 1994a: 126). It is from this perspective that BITs can be regarded as a component of a series of relationships which ensure the domination of LDCs.

Notwithstanding the possible positive intentions that brought policy makers to sign these agreements, it is clear that BITs, in general, have not brought either development or increased FDI to the developing world (Hallward-Driemier, 2003). It has already been argued that the contention that FDI and development are invariably connected stems from the reality created by neoliberal development discourses—not a factual analysis of MNCs and FDI in Ecuador. BITs and FDI are also embedded in a different discourse; one in which connotations about power are more easily observable: the "development" discourse.

The objective of BITs, is, ultimately, to foster economic development. Neoliberal development strategies operate in the developing world under the pretext of fostering development. The application of BITs is made possible in part by developing states' wish to "develop." In this sense, BITs are also a product of this discourse. From a discursive perspective, "development" should be understood as:

> an apparatus (dispositif) that links forms of knowledge about the Third World with the deployment of forms of power and intervention, resulting in the mapping and production of Third World societies. In other words, development is what constructs the contemporary Third World, silently, without our noticing it. By means of this discourse, individuals, governments and communities are seen as "underdeveloped" (or placed under conditions in which they tend to see themselves as such), and are treated accordingly. (Escobar 1992: 23).

How is this discourse disseminated? Like other discourses, it is disseminated through a variety of mechanisms and institutions locally, regionally and globally. Local-level, institutions such as the Ecuadorian Council for the Modernization of the State (CONAM), regional-level organizations such as the Inter-American Development Bank and global-level institutions such as the World Bank and the IMF disseminate the discourse about development and neoliberal reform. These institutions create the developing world as an object of knowledge. They create statistics, and what Escobar calls "abnormalities," such as "the landless" or "the poor" (Escobar 1992: 25). This is not to say that people that do not own land do not exist in these societies, in entails a way of assigning meaning and significance to a specific category, such as "the landless."

Having said this, we may now turn to Foucault in order to appreciate the role of power in the creation of these knowledges and the role of these knowledges in creating new relations of power. It is also here that the failure of international relations theories to

appreciate the many faces of power can be reiterated, for, as it is shown below, their ideas seriously limit a comprehensive understanding of the subjection of the developing world to instruments such as BITs.

In the 1980s and 1990s, neoliberal development, as mentioned above, spread through the developing world with remarkable speed and depth, as did the adoption of BITs. Not surprisingly, Zachary Elkins et al. (2006) find a statistical positive correlation between IMF presence in LDCs and the adoption of BITs. In South America, for example, during the early 1990s nearly every country in the region had dealings with the IMF and was in the process of implementing neoliberal development economic reforms (IMF, 2008). During the same period, there was an explosion of BITs in the region. In Ecuador for instance, there were 5 BITs signed prior to 1990, while by the end of the 1990s, Ecuador had 26 signed and 20 ratified BITs (ICSID, 2008). As mentioned above, the role of the IMF in particular is associated with the enactment of BITs. One prominent understanding of the role of this institution in the region is that,

> powerful countries can explicitly or implicitly influence the probability that weaker nations adopt the policy they prefer by manipulating the opportunities and constraints encountered by target countries, either directly or through the international and nongovernmental organizations (NGO) they influence. Whether direct or mediated, this mechanism may involve the threat or use of physical force ...all with the aim of influencing policy change in other countries. Coercive diffusion involves power asymmetries that the strong exploit to impose their policy preferences on weaker countries (Simmons et al. 2006: 790)

Power here is represented in its traditional form: as an instrumental, behavioral and unidimensional (Paolini, 1993) force which transforms behavior because of its capacity to coerce, negate, prohibit and repress. According to this view of power, one could confidently state that had it not been for the coercive mechanisms at the disposal of

the IMF and World Bank, such as their ability to negate loans and their being backed by powerful developed states, developing states would not have come to apply any of their policy recommendations. Following Foucault's ideas, this section will pose a number of questions about the plausibility of this view and provide a different type of interpretive analysis about this issue.

According to Foucault, if power were anything but repressive, no one would obey it (Foucault, 1980a). Foucault is saying that if power were not also a creative force, it would not produce relatively stable relations of domination and control. One must be careful to note that stating that power is also positive/productive is different from saying that power does not produce relations of domination and control or that power relations may involve the use of physical force. The developing-developed world dichotomy is an example of this. This says that the ability to exercise coercion is not the equivalent as the exercise of power. Exercising coercion does not ensure domination either; the Vietnam War is an example of this. Using Foucault's view about power it can be said that the influence of "development" and "neoliberal" discourses enable the penetration of the developing world with an apparatus of knowledge which produces relations of domination.

The penetration of international "experts" in Ecuador during the early 1990s, for example, illustrates how knowledge-based power can produce relations of domination and subordination. Essentially, the presence of many "international" experts in Ecuador illustrates how "the same people who decide what is knowledge...can easily claim to... know more about us that we do ourselves" (Fillingham, 1993: 9). As a result, exclusionary practices become embedded in processes where "technical" knowledge is

utilized as the basis to create policy alternatives. As Ferguson (2002) points out, exclusionary practices develop through the technification of issues which would otherwise be dealt publicly and politically. That is to say, experts "technify" the treatment of issues so that issues which could be dealt with through political and democratic debate are treated as issues belonging to the realm of scientific knowledge—a realm where only few individual experts have the authority to enter. A good example of this is the treatment given to "economic development" by economists and development "experts." These experts and their knowledge determine the limits of the field at the expense of the knowledge and history of the objects of their study. A similar conclusion can be reached about FDI. The technification of FDI can be interpreted as a ways of turning an otherwise political issue into a technical one thereby preventing widespread deliberation about its overall effects and usefulness. In Ecuador, for example, BITs were signed following exclusionary policies that involved no public participation or any significant degree of public debate about its benefits/costs.[10] Instead, the issues surrounding BITs were dealt like issues belonging to the realm of technical knowledge where only a few privileged experts and diplomats were allowed to enter. In fact, BITs have spread throughout the developing with notable speed, but they have done so extremely secretively; as Chadrasekhar and Gosh point out, BITs can be considered "one the better kept secrets of the international economic regime in the recent past" (Chadrasekhar and Gosh, 2006: 1).

The isolation with which BITs have been signed can be interpreted, as mechanism of exclusion whose legitimizing logic lies in the fact that these treaties belong to the realm of "technical," not popular knowledge. This can be seen as part of the process

[10] Research conducted in the archives of the Ministry of Foreign Affairs and two of the major Ecuadorian newspapers of the years 1993 and 1994 revealed not a single discussion about this issue, nor a discussion about BITs, its merits or its costs.

through which international experts created a view of the developing world and its "reality." As mentioned above, "the poor" "the landless" and so on were classified in accordance to the regime of truth created by neoliberal development discourses. These discourses and their respective "knoweldges," moreover, created ways of dealing with the "landless" or the "poor" that were culturally and historically insensitive. According to Ponce Cevallos, in the early 1990s, international experts began to classify poverty in Ecuador according to categories such as "access to a shower" or "access to garbage collection services" (Ponce Cevallos, 1993) as well as the effects of inflation. As mentioned above, however, these classifications were culturally and historically insensitive. For instance, Cevallos notes, "if inflation did not affect you much because you did not buy enough at the market, because your harvest leaves you enough, but you like to shower in the river instead than in a shower, you are doomed. You are chronically poor and you will be treated as such by the rest of Ecuadorian society" (Ponce Cevallos, 1993). This deployment of "knowledge" about the poor needs no coercion to lead to relations of domination and subordination. The poor, as Escobar (1992) notes, do not want to be poor, not only because of the material problems associated to poverty but because poverty is condemned as "abnormal" by dominant discourses. It is in this way that the IMF and the WB contribute to the establishment of relations of domination without recurring to conditionality. In this respect it must also be remembered that during the early 1990s the IMF and WB classified countries according to how well they performed in their adjustment processes. The classification given by the IMF, although largely unrelated to levels of human well-being, determined the reputation of developing states abroad. In addition to wanting loans (a good standing in the IMF marking system is

a prerequisite to accessing a loan), it is plausible to assume that developing states simply did not want to be considered "less developed" and therefore were more willing to "modernize" by adopting IMF policy recommendations. In this sense, the "coercive" actions taken by the IMF or WB (that is, the application of conditionality) can be interpreted as mechanisms which exacerbated rather than created the subordination of LDCs to their dictums. In sum, real control of developing nations lies beyond the capacity of "powerful" actors to coerce, negate, repress and prohibit, it lies, to a great extent, in the disciplinary effects of discourse.

An important implication of what has been said above is that BITs can also be interpreted as disciplinary instruments—its texts as "sites of disciplinary power" (Polat, 2000: 18). While traditional notions of power fail to identify this, Focuaultian power analyses enables one to see that international legal texts, such as BITs, "operate as a form of representational practice, and such practice is itself an exercise of power. This form of power operates in part through shaping the way in which 'individuals' understand themselves and the world and then regulate their own behaviour in conformity with that image" (Polat, 2000: 18). Indeed, BITs emerge from the notion that capital importing countries, their laws, governments and institutions cannot be trusted. They also conform to the idea that respect for FDI is a precondition for development. Or, that not respecting FDI is a condition of underdevelopment. In this sense, to avoid the sting of viewing oneself as "underdeveloped," it becomes a priority to join "new societies" in protecting FDI. Partly, it is in this discursive sense that BITs "protect" investment in LDCs. The protection given to MNCs under BITs is different, however, from the legitimate aspiration of foreign investors to be given national treatment; that is to say, to be treated

like national firms are treated under domestic law. Protection of FDI means "sweeping protections afforded to investors at the cost of domestic socio-economic rights and environmental standards" (Chandresekhar and Gosh, 2006: 3); it also entails that the condition of underdevelopment of LDCs requires additional interstate "cooperation" in order to protect the investments of capital exporting countries. LDCs' governments, and their individual members, are represented, therefore, as unreliable and unpredictable. In 1993, for example, Peter Romero, former US official envoy to Latin America, commented about the need to provide foreign investors with protection. He did so not by alluding to the need to guarantee fairness and impartiality in the treatment to foreign investors. According to Romero, the need for "protection" stems from the fact that foreign investors could not trust Ecuadorian institutions. In particular, Romero stated that foreign investors could not expect "transparency"; instead they could expect that domestic law is going to be "capricious" and the judicial system fail to "react to promote this kind of investment and not discourage it" (Romero, as cited in Hey and Klak, 1999: 86). One of the implications of this statement is that the US legal system, contrary to Ecuador's, is transparent and not capricious and is able to encourage FDI. Romero's statement could be interpreted discursively as part of the development discourse which portrays the developing world and its peoples as inferior.

The Emergence of Counterdiscourses and the "End" of BITs

According to Foucault, the pervasiveness of power implies the pervasiveness of resistance to power. Foucault saw an ontological connection between power and resistance (Al Amoudi, 2007). This stems from the fact that,

> [a]lthough the exercise of power may need violence or consent, these are not inherent to a power relation. Moreover, one of the consequences of this limit to power ... is that resistance is the *sine qua non* condition for power. Indeed, a power relation, is not an action which determines another action, but an action which influences an other action by determining a field of possibility for it. In this field of possibility, ways of resisting are by definition present (Al Amoudi, 2007: 180).

In Ecuador, as in other Latin American states, social movements, acting at the margins of power structures have embodied the resistance to the hegemonic status of neoliberalism (Escobar, 1992; Sawyer, 2004; Nef, 2003). In Ecuador, like in many other parts of Latin America, challenges to the discursive hegemony of neoliberalism came from social movements. In particular, social movements were characterized by their attempt to generate an image of the developing world which departed from the one engendered by the prevailing neoliberal and development discourses (Escobar, 1992). This entailed constructing an image of the developing world different from that which portrays it as an underdeveloped section of the world aspiring to become like Western societies.

In addition, social movements were crucial in countering the economic rationality which prevailed during "neoliberal times." Particularly, indigenous groups, in the case of Ecuador, have been central in promoting, for instance, a different understanding of FDI and its benefits. Their views went beyond simple opposition to the presence of MNC in their territories. These movements and organizations worked to elicit an understanding of MNCs' presence in Ecuador that went beyond their portrayal as an economic necessity (Sawyer, 2004). Indigenous resistance to MNCs and the open-door policy to FDI suggested ways to transgress the logic of "protection" to investors and the sanctity of

FDI. It also pushed to end the seclusion policies engendered by the neoliberal "technification" and "depolitization" of the FDI debate (Treakle, 1998).

Today, in Ecuador like in many other Latin American countries, the hegemony of the neoliberal development discourses is being challenged. Ecuador's new President Rafael Correa, along with Evo Morales of Bolivia, have appropriated the original discourse of social movements. This represents a break from the neoliberal discourse and suggests a possible reconfiguration of power relations. The new discursive structure is characterized by its rejection, among other things, of neoliberal economic "knowledge." The structure of this new discourse, which is emerging in Ecuador after a profound series of economic and political crises following the application of neoliberal development strategies, has meant the beginning of a restructuring of the conceptual order which dominated economic policy during "neoliberal times."

The type of "knowledge," which informs the new discursive structure rejects the validity of the nexus between modernization and a small state, the sanctity of foreign capital and the necessity to maintain the country's BITs (Alianza PAIS, 2007). The new official stance regarding the BIT regime is to undertake a complete revision of the system (El Comercio, 2007). An essential component of this process is to dismantle the notion that BITs are a necessity and that FDI led by extractive MNCs is always positive.

Notwithstanding this change it remains unclear whether Correa's project represents a genuine and permanent shift in the discursive structure that dominated Ecuadorian development and economic thinking. Despite his proposals for change, Correa's commitment to change remains, thus far, obscured by the ghost of his political

populism and the haziness of many important political and economic objectives that have been characteristic of many governments in the past (see for example, Hurtado, 2005).

CONCLUSION

This thesis has pointed at the shortcomings of conventional IR theories to account for processes of regime formation and the limitations of their treatment of power, rationality, interests, identity and preferences demands a different approach be taken to understand the emergence of BITs. To do so this thesis has relied on the ideas of critical theorist Michel Foucault. Foucaultian thought offers a set of analytical tools geared towards developing a nuanced understanding of power, knowledge and discourse and through these, a more subtle understanding of how certain policy choices are preferred over others and regimes formed. Foucault's insights on "how experience enters into, or is barred from entering into, what counts as knowledge" (Strega, 2005: 218) are crucial in this respect. Unlike IR liberals and neorealists, interests, and identities are treated as contingent upon the prevalence of certain discourses over others. From this perspective, international regimes are shared spaces of meaning whose perceived necessity is driven by the prevalence of a particular discourse.

This thesis has shown that in the case of BITs, the emergence of the regime and its contents can be linked to the dominance of neoliberal and development discourses in LDCs, and Ecuador particularly. While it may appear redundant to show that BITs are a byproduct of neoliberalism, the nuance of the thesis' argument lies in showing how BITs can be seen as a particular interpretation of a reality engendered by a particular discourse.

Thus, neoliberalism as a discursive structure was analyzed in order to fully grasp the dynamics involved in the formation of BITs. As shown above, the prevalence of a certain economic "knowledge" portrays neoliberalism as a sort of technical truth detached from power and politics. By looking at Foucault, it is easy to uncover the nexus between neoliberalism, power and politics beyond traditional interpretations of neoliberalism as the ideology of imperialism, or an instrument of powerful states. Likewise, through Foucault it is possible to reinterpret the traditional account of how developed states and IFIs dominate the developing world. In particular by utilizing Foucault's ideas it is possible to see that true domination does not stem from the use of capabilities. Power is more than repression; it is a force that *creates* attitudes and behavioral tendencies without the need of the use of force.

A useful and practical application of the arguments presented in this is to stress that issues which remain excluded from public debate because of their "technical difficulty" (such as BITs) should be brought back to the political arena. A second important contribution made by this thesis is to expose the difficulties that conventional theories have in justifying the exclusion in their analyses of processes of identity formation and their limited understanding of power. In this sense this thesis suggests that the methodological strictness embedded in the research program of IR theories is limiting rather than enriching. A final contribution of this thesis is to the "developing" world. In particular, it suggests that an analysis of the "developing" world as a discursive formation could be helpful in instilling in its peoples an invigorated impetus for evaluating the validity and implications of portraying of their own societies and countries as

"underdeveloped." Before concluding, it would be useful to provide a brief critique of this thesis methodological approach.

A possible critique that can be made of Foucaultian thought and of this thesis is that it does not establish parameters upon which to evaluate its findings. To a certain degree, this observation is valid. To begin with, for Foucault, discourse reaches the very formative stages of the entire field of subjectivity (Liftin, 1994). Without entering to the deep philosophical implications of this assertion, it is easy to see how this limits any possibility of constructing a methodology upon which to base an empirical evaluation of the claims made by Foucault. Furthermore, this aspect of Foucault's views makes it difficult to determine the limits, gaps and overlaps between different discourses. The methodological challenges facing critical theory, thus, remain an issue for this thesis.

Notwithstanding the validity of these criticisms, this thesis shows that the limitations and contradictions (especially between ontology and epistemology) present in traditional IR approaches and the positivist tradition in the social sciences are too deep to ignore. It finds, furthermore, that interpretive approaches in the tradition of critical theory are better suited to provide an exit from the constraining effects of academic rituals rooted in positivism. Moreover, this thesis finds that the depth of critique and degree of nuance in the analysis provided by critical theory, and Foucault in particular, is too compelling to be ignored. For that reason, and notwithstanding some serious limitations with Foucaultian thought, this thesis has sought to utilize his ideas to interpret the emergence of BITs in the developing world.

REFERENCE LIST

Alianza PAIS (2007) "Plan de Gobierno." Retrieved from http://www.rafaelcorrea.com/plandegobierno.php

Acosta, Alberto (1990) *La Deuda Eterna: Una Historia de la Deuda Ecuatoriana.* Quito: Grupo de Trabajo Sobre Deuda y Desarrollo.

_____. (1993) ¡Bauticen bien al guagua! *Diario Hoy*, Quito, March 09. Retrieved from www.explored.com.ec.

_____. (2006) *Breve Historia Económica del Ecuador.* Quito: Corporación Editora Nacional.

Adoum, Jorge Enrique (2000) *Ecuador, Señas Particulares.* Quito: Editorial Eskeletra.

Al Amoudi, Ismaël (2007) "The economy of power, analytical reading of Michel Foucault." Northridge: California State University, Northridge. Retrieved from http://www.csun.edu/~hfspc002/foucault1.pdf

Ashley, Richard (1984) "The poverty of neorealism." *International Organization*, 38(2): 225-286.

_____.(1989) *Living on Border Lines: Man, Poststructuralism, and War, i*n James Der Derian and Michael Shapiro, eds, International/Intertextual Relations. Lexington: Lexington Books.

Banco Central del Ecuador (2006) "Análisis trimestral de la balanza de pagos." Dirección General de Estudios, Quito. Retrieved from http://www.bce.fin.ec/documentos/Estadisticas/SectorExterno/BalanzaPagos/boletin17/indice.htm

Bevillaqua, Nana (2005) *Los Tratados Bilaterales de Promoción y Protección Reciproca de las Inversiones en el Continente Americano como Alternativa al ALCA.* Bilaterals.org. Retrieved from http://www.bilaterals.org/article-print.php3?id_article=2200

Barnett, Clive (2003) *Culture and Democracy: Media, Space, and Representation.* Tuscaloosa: The University of Alabama Press.

Barry, Andrew Thomas Osborne and Nikolas Rose. (eds) (1996) *Foucault and Political Reason.* Chicago: The University of Chicago Press.

Biglaiser, Glen and Karl DeRouen Jr (2006) "Economic reforms and inflows of foreign direct investment in Latin America." *Latin American Research Review*, 41 (1):

51-75.

Biersteker, Thomas J. (1987) *Multinationals, the State and Control of the Nigerian Economy.* Princeton: Princeton University Press.

_____. (1989) "Critical reflection on post-positivism in international relations." *International Studies Quarterly*, 33(3): 263-267.

Bourdieu, Pierre (1998) "Utopia of endless exploitation." *Le Monde Diplomatique,* December. Retrieved from: http://mondediplo.com/1998/12/08bourdieu.

Braithwaite, John (2006) "Responsive regulation and developing economies." *World Development*, 34 (5): 884-898.

Brigg, Morgan (2002) "Post-development, Foucault and the colonization metaphor." *Third World Quarterly*, 23(3): 421-436.

Brockman, Joan (2003) "The impact of institutional structures on law and society: is it time for reawakeninig?." *Law & Society*, 37(2): 283-294.

Burke, Pamela (1999) "Embedded private authority: multinational enterprise and the Amazonian indigenous peoples movement in Ecuador." *Private Authority and International Affairs*: 223-254.

Chandrasekhar, C.P. and Jayati Gosh (August, 2006) "Protecting foreign investors." Network Ideas. Retreived from: http://www.networkideas.org/news/aug2006/print/prnt110806_Foreign_Investors.htm

Chang, Ha-Joon (2002) *Kicking Away the Ladder: Development Strategy in Historical Perspective.* London: Anthem Press.

Chomsky, Noam and Michel Foucault (2006) *The Chomsky-Foucault Debate: On Human Nature*. New York: New Press

Correa, Carlos M. and Negmash Kumar (2003) *Protecting Foreign Direct Investment: Implications of a WTO Regime and Policy Options.* London: Zed Books.

Dahan, Nicolas, Jonathan Doh and Terrence Guay (2006) "The role of multinational corporations in transnational institution building: a policy network perspective." *Human Relations*, 59 (11): 1571-1600.

Donnelly, Jack (1986) "International human rights: a regime analysis." *International Organization,* 40(3): 599-642.

Dougherty, James and Robert, L. Platzgraff, Jr. (2002) *Contending Theories of International Relations: A Comprehensive Survey*. Fifth edition. New York: Longman

DuBois, Marc (1991) "The governance of the third world: a Foucaultian perspective on power relations in development." *Alternatives*, 16: 1-30.

Dumenil, Gerard and Dominique Levy (2004) "The economics of US imperialism at the turn of the 21st century." *Review of International Political Economy*. 11 (4): 657-676.

Eden, Lorraine and Maureen Appel Molot (2002) "Insiders, outsiders and host country bargains." *Journal of International Management*, 8: 359-388.

El Comercio, online edition (2007) Gobierno analiza conveniencia de tratados de inversión que Ecuador mantiene con 20 países. Quito, May 17. Retrieved from http://www.elcomercio.com/solo_texto_search.asp?id_noticia=72777&anio=2007&mes=5&dia=17

El Universo, online edition (2007) Diplomático de EEUU sorprendido por renuncia de Ecuador a tratado. Guayaquil, May 08. Retrieved from http://archivo.eluniverso.com/2007/05/08/0001/8/C889CA8C81714D029FFB95135263C5E1.aspx

Elkins, Zachary, Adrew T. Guzman and Beth A. Simmons (2006) Competing for capital: the diffusion of Bilateral investment Treaties, 1960-2000. *International Organization,* 60(1): 811-846.

Escobar, Arturo. (1984) "Discourse and power in development: Michel Foucault and the relevance of his work to the Third World. *Alternatives*, X: 377-400.

_____. (1992) "Imagining a post-development era? critical thought, development and social movements." *Social Text*, 31/32: 20-56.

_____. (2004) "Beyond the third world: imperial globality, global coloniality and anti-globalization social movements." *Third World Quarterly*, 25(1): 207-230.

Fawcett, Loiuse and Hurrell Andrew (eds) (1995) *Regionalism in World Politics: Regional Organization and International Order.* Oxford: Oxford University Press.

Ferguson, James (1994) *The Anti-Politics Machine.* Minneapolis: University of Minnesota Press.

Fillingham, Lyidia Alix (1993) *Foucault for Beginners*. New York: Writers and Readers Publishers

Fink-Eitel, Hinrich (1992) *Foucault: An Introduction.* Translated by Edward Nixon. Philadelphia: Pennbridge Books.

Foot, Rosemary, John Lewis Gaddis and Andrew Hurrell (eds) (2003) *Order and Justice in International Relations.* Oxford: Oxford University Press.

Foucault, Michel (1972) *The Archeology of Knowledge and the Discourse on Language.* New York: Pantheon Books.

_____. (1980a). *Power/Knowledge: Selected Interviews and other Writings 1972 -1977.* Colin Gordon (ed). New York: Pantheon Books

_____. (1980b) *The History of Sexuality.* Vol. 1. An *Introduction* New York: Vintage Books.

_____. (1980c) *The History of Sexuality* Vol. 2. *The Use of Pleasure.* New York: Vintage Books.

_____.(1988) *Madness and Civilization: A History of Insanity in the Age of Reason.* New York: Vintage Books.

_____. (1994a) *Ethics Subjectivity and Truth,* in Rabinow, Paul (ed), *The Essential Works of Foucault 1954 – 1984.* Vol 1. New York: The New Press.

_____. (1994b) *Aesthetics, Method and Epistemology*, in Faubion, James D. (ed), Rabinow, Paul (series ed), *The Essential Works of Foucault 1954 – 1984.* Vol 2. New York: The New Press.

_____. (1994c) *Power*, in Faubion, James D.(ed), Rabinow, Paul (series ed), *The Essential Works of Foucault 1954 – 1984.* Vol 3. New York: The New Press.

_____.(1995) *Discipline and Punish – The Birth of the Prison.* New York: Vitage Books.

_____. (2003) *Abnormal: Lectures at the College de France 1974 – 1975.* New York: Picador

Freire, Paulo (2001) *Pedagogy of Freedom – Ethics, Democracy, and Civic Courage.* Maryland: Rowman & Littlefield Publishers, Inc.

Gallagher, Kevin and Lyuba Zarsky (2005) "No Miracle Drug: Foreign Direct Investment and Sustainable Development" in Zarski, Lyuba (ed), *Balancing Rights and Rewards: International Investment for Sustainable Development,* London Earthscan, pp. 1–13.

Gehring, Thomas (1994) *Dynamic International Regimes: Institutions for Environmental Governance.* Frankfurt: Peter Lang

Giplin, Robert (2000) *Global Political Economy: Understanding the International Economic Order.* Princeton: Princeton University Press.

Glade, William P. (1987) "Multinationals and the Third World." *Journal of Economic Issues*, 21 (4): 1889-1920.

Gounari, Panayota (2006) "Contesting the cynicism of neoliberal discourse: moving towards a language of possibility." *Studies in Language & Capitalism*, 1, 77-96. Retrieved from: http://languageandcapitalism.info

Grant, Ruth W. and Robert E. Keohane (2005) "Accountability and abuses of power in world politics." *American Political Science Review*, 99 (1): 29-45.

Guerra Bravo, Samuel (1993) "El dogma de la apertura ilimitada." *Diario Hoy*, Quito, January 26. Retrieved from: www.explored.com.ec.

Gutting, Gary (ed.) (2005) *The Cambridge Companion to Foucault.* Second Edition. Cambridge: Cambridge University Press.

Guzzini, Stefano (1993) "Structural power: the limits of neorealist power analysis." *International Organization*, 47(3): 443-478.

Haas, Ernst B. (1979) "Why collaborate?: Issue-linkage and international regimes." *World Politics*, 32(3): 357-405.

Hallward-Driemeier, Mary (2003) "Do bilateral investment treaties attract foreign direct investment?" World Bank Working Paper No. 3121. Retrieved from http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2003/09/23/000094946_03091104060047/Rendered/PDF/multi0page.pdf

Hämäläinen, Vilpi (2007) "Struggle over "Who we are"– discursive perspective on organizational identity change." Doctoral dissertation, Laboratory of Work Psychology and Leadership, Helsinki University of Technology. Retrieved from http://lib.tkk.fi/Diss/2007/isbn9789512289066/

Haggard Stephan and Beth A. Simmons (1987) "Theories of international regimes." *International Organization,* 41(3): 491-517.

Haas, Ernst B. (1990) *When Knowledge is Power: Three Models of Change in International Organizations.* Berkeley: University of California Press.

Hasenclever, Andreas, Peter Mayer and Volker Rittberger (1996) "Interest, power, knowledge: the study of international regimes. *Mershon International Studies Review*, 40(2): 177-228.

Hasenclever , Peter Mayer and Volker Rittberger (1997) *Theories of International Regimes.* Cambridge: Cambridge University Press.

Hazari, Bharat R. (1982) *Colonialism and Foreign Ownership of Capital.* London: Croom Helm.

Hey Jeanne A.K. and Thomas Klak (1999) "From protectionism towards neoliberalism: Ecuador across four administrations (1981-1996)." *Studies in Comparative Institutional Development*, 34(30): 66-97.

Human Rights Watch (1998) "Mexico's maquiladora's: abuses against women workers." Retrieved from http://hrw.org/english/docs/1996/08/17/mexico4160.htm

Hurrell, Andrew and Ngaire Woods (eds) (1999) *Inequality, Globalization and World Politics.* Oxford: Oxford University Press.

Hillman, Richerd S. (ed) (2005) *Understanding Contemporary Latin America.* Boulder: Lynne Rennier Publishers.

Hoffman, Mark (1987) "Critical theory and the inter-paradigm debate." *Millennium: Journal of International Studies*, 16(2): 231-250.

Hopenhayn, Martín (1993) "Postmodernism and neoliberalism in Latin America." *Boundary 2*, 20(3): 93-109.

Hurtado, Osvaldo (1995) *Los Costos del Populismo*. Quito: CORDES.

International Centre for the Settlement of Investment Disputes (2007) *ICSID Convention Regulation and Rules.* Washington D.C.: International Centre for the Settlement of Investment Disputes. Retrieved from www.worldbank.org/icsid

_____. (2008) *ICSID Database of Bilateral Investment Treaties.* Retrieved from http://icsid.worldbank.org/ICSID/FrontServlet?requestType=ICSIDPublicationsRH&actionVal=ViewBilateral&reqFrom=Main

International Criminal Court (2002) *Rome Statute of the International Criminal Court. Article 36, numerals 6 and 8.* Geneva: International Criminal Court. Retrieved from www.icc-cpi.int/library/about/officialjournal/Rome_Statute_120704-EN.pdf

International Monetary Fund (2008) *Country Information.* Washington D.C.: International Monteray Fund. Retrieved from http://www.imf.org/external/country/index.htm#C

Isaacs, Anita (1993) *Military Rule and Transition in Ecuador, 1972-92.* Pittsburgh: University of Pittsburgh Press.

Christer Jönsson (1993) *Cognitive Factors in Explaining Regime Dynamics.* In *Regime Theory and International Relations*, Rittberger, Volker (ed.). Oxford: Clarendon Press.

Kumar, Nagesh (2002) *Globalization and the Quality of Foreign Direct Investment.* Oxford: Oxford University Press.

Keohane, Robert (1982) "The demand for international regimes." *International Organization,* 36(2): 325-355.

_____. (1984) *After Hegemony - Cooperation and Discord in the World Political Economy.* Princeton: Princeton University Press.

_____. (1989) *International Relations and State Power.* Boulder: Westview Press.

Keohane, Robert, Nye Joseph and Stanley Hoffman (1993) *After the Cold War – International Institutions and State Strategies in Europe, 1989 – 1991.* Cambridge, Massachusetts and London: Harvard University Press.

Keohane, Robert and Marc A. Levy (eds.) (1996) *Institutions for Environmental Aid.* Cambridge: The MIT Press.

Keeley, James (1990) "A Foucaultian analysis of international regimes." *International Organization*, 44(1): 83-105.

Korovkin, Tanya (2002) "In search of dialogue? oil companies and indigenous peoples of the Ecuadorian Amazon." *Canadian Journal of Development Studies*, 23 (4): 633-659.

Kratchotwil, Friedrich and John Gerard Ruggie (1986) "International organization: a state of the art on an art of the state." *International Organization*, 40(4): 753-775.

Krasner, Stephen D. (1982) "Regimes and the limits of realism: regimes as autonomous variables." *International Organization.* 36(2): 497-510.

_____. (1982) "Structural causes and regimes consequence: regimes as intervening variables." *International Organization*, 36(2): 185-205.

_____. (2004) "Sharing sovereignty." *International Security.* 29 (2): 85-120.

Levy, David L. and Aseem Prakash (2003) "Bargains old and new: multinational corporations in global governance." *Business and Politics,* 5 (2): 131-150.

Leys, Colin (2001) *Market-Driven Politics: Neoliberal Democracy and the Public Interest.* London: Verso.

Li, Quan and Dale L. Smith (2002) "The dilemma of financial liberalization: state autonomy and societal demands." *The Journal of Politics*, 64 (3): 764-790.

Liftin, Karen (1994) *Ozone Discourses*. New York: Columbia University Press.

Lipson, Chalres (1985) *Standing Guard: Protecting Foreign Capital in the Nineteenth and Twentieth Centuries*. Berkeley: University of California Press, 1985

Macas, Luis (2001) "The World Bank and the PRODEPINE project: towards an ethnic neoliberalism?" Quito: Institute for Indigenous Sciences and Cultures (IISC). Retrieved from http://icci.nativeweb.org/boletin/25/english.html

Mann, Howard, Aaron Cosbey, Mann, Howard, Peterson Luke and Konrad von Moltke (2004) *Comments on ICSID Discussion Paper, Possible Improvements of the Framework for ICSID Arbitration.* Winnipeg: International Institute for Sustainable Development.

Márquez, Pablo (2007) "Standardization and capture: rise of standardization in international industrial regulation and global administrative law." *Global Jurist*, 7(3): 1-21.

Merlingen, Michael and Rasa Oustrauskaite (2005) "Power/Knowledge in international peace-building: the case of the EU policy mission in Bosnia." *Alternatives*, 30: 297-323.

Ministerio de Economía y Finanzas del Ecuador (2006) "Presupuesto del Estado, resumen agregado – gastos." Quito, Government of Ecuador. Retrieved from http://mef.gov.ec/stgcPortal/inicio.jsp?page=/faces/common/resumenEjecutivoPresupuesto.jsp&id=99

Ministerio de Relaciones Exteriores de la Republica del Ecuador (1993) Tratado entre la República del Ecuador y los Estados Unidos de Norteamérica sobre Promoción y Protección Reciproca de Inversiones. Quito, Gobierno de la Republica del Ecuador.

_____. (1994) Convenio entre el Gobierno de la Republica del Ecuador y el Gobierno de la Republica Francesa para la Promoción y Protección Reciproca de Inversiones. Quito, Gobierno de la República del Ecuador.

_____. (1994) Convenio entre el Gobierno del Reino Unido de Gran Bretaña e Irlanda del Norte y La Republica del Ecuador para la Promoción y Protección Reciproca de Inversiones (1994) Ministerio de Relaciones Exteriores del Ecuador, Quito.

_____. (1996) Acuerdo para la Promoción y Protección Reciproca de Inversiones entre el Reino de España y República del Ecuador. Quito, Gobierno de la Republica del Ecuador.

Mody, Ashoka (2004) *Is FDI Integrating the World Economy?* Washington: International Monetary Fund.

Mohan, Giles (1997) "Developing influences, post-structuralism & political economy in contemporary development studies." *Review of African Political Eocnomy*, 24(73), 311-328.

Monshipouri, Mahmood, Claude E. Welch Jr. and Evan T. Kennedy (2003) "Multinational Corporations and the Ethnics of Global Responsibility: Problems and Possibilities." *Human Rights Quarterly*, 25: 965-989.

Moran , Theodore H. (2006) Harnessing Foreign Direct Investment for Development: Policies for Developing and Developed Nations." Washington D.C.: Center for Global Development.

Mugabe, John (2005) "Governing Foreign Direct Investment in Sub-Saharan Africa: Policies and Practices Reconsidered" in Lyuba, Zarsky (ed), *Balancing Rights and Rewards, International Investment for Sustainable Development*, London: Earthscan, pp.74–96.

Munck, Ronaldo (2000) "Postmodernism, politics and paradigms in Latin America." *Latin American Perspectives*, 27(4):11-26.

_____. (2002) "Globalization: deconstruction and beyond." Latin American Perspectives, 127, 29(6): 24-31.

_____. (2003) "Neoliberalism, necessitarianism, and alternatives in Latin America: there is no alternative (TINA)?" *Third World Quarterly*, 24 (3): 495-511

North, Lisa A. and John D. Cameron (eds) (2003) *Rural Progress, Rural Decay -Neoliberal Adjustment Policies and Local Initiatives.* Bloomfield, CT: Kumarian Press, Inc.

Nef, Jorge (2003) "Globalization and the crisis of sovereignty, legitimacy and democracy." *Latin American Perspectives*, 127, 29(6): 59-69.

Nye, Joseph S. Jr. (2004) *Power in the Global Information Age.* London and New York: Routledge.

Paolini, A.J. (1993) "Foucault, realism and the power discourse in international relations." *Australian Journal of Political Science,* 28: 98-117.

Phelan, Sean (2007) "The discourses of neoliberal hegemony: the case of the Irish republic." *Critical Discourse Studies*, 4(1): 29-48.

Perrault, Thomas (2003) "Changing places: transnational networks, ethnic politics, and community development in the Ecuadorian Amazon." *Political Geography*, 22(1): 61-88

Peters, Michael A. (2007) "Foucault, biopolitics and the birth of neoliberalism." *Critical Studies in Education*, 48(2): 165-178.

Peterson, Luke Eric and Kevin Gray (2003) *International Human Rights in Bilateral Investment Treaties and Investment Treaty Arbitration.* Winnipeg: International Institute for Sustainable Development.

Peterson, Luke Eric (2005) *The Global Governance of Foreign Direct Investment: Madly Off in All Directions.* Geneva: Friedrich Ebert Stiftung, Dialogue on Globalization Papers.

Piccioto, Sol. (2003) "Rights responsibilities and regulation of international business." *Columbia Journal of Transnational Law*, 42 (1): 131-152.

Polat, Necati (2000) "Positivism and the power of international law. Review Essay. Melbourne: Melbourne University Law review. Retrieved from http://www.austlii.edu.au/au/journals/MULR/2000/19.html#fn10#fn10

Ponce Cevallos, Javier (1993) "¿Cuantos pobres hay sin ducha?" *Diario Hoy*, Quito, December 12. Retrieved from www.explored.com.ec

Puchala, Donald and Raymond F. Hopkins (1982) "International regimes a lesson from inductive analysis." *International Organization*, 36(2): 245-275.

Reynolds, Clarke W., Francisco Thoumi and Reihart Wettmann (1993) *A Case for Open Regionalism in the Andes - Policy Implications of Andean Integration in a Period of Hemispheric Liberalization and Structural Adjustment.* Quito: USAID.

Rittberger, Volker (ed) (1993) *Regime Theory and International Relations.* Oxford: Clarendon Press.

Rossi, Benedetta (2004) "Revisiting foucaultian approaches: power dynamics in development projects." *The Journal of Development Studies*, 40(6): 1-29.

Rothgeb, John M. Jr. (1996) *Foreign Direct Investment and Political Conflict in Developing Countries.* Westport: Praeger.

_____. (1995) "The false promise of realism." *International Security*, 20(1): 62-70.

Sachs, Jeffrey (2005) *The End of Poverty: Economic Possibilities for Our Time.* New York: Penguin Press

Saénz, Mario (2002) *Latin American Perspectives on Globalization: Ethics Politics and Alternative Visions.* Lanham: Rowman and Littlefield Publishers.

Salacuse, Jeswald, W. (1990) "Bit by bit: the growth of bilateral investment treaties and their impact on foreign investment in developing countries." *International Lawyer*, 24(3): 655-675.

Sawyer, Suzana (2004) *Crude Chronicles – Indigenous Politics, Multinational Oil, and Neoliberalism in Ecuador.* Durham and London: Duke University Press.

Schlesinger, Stephen E. and Stephen Kinzer (1999) *Bitter Fruit: The Story of the American Coup in Guatemala.* Cambridge, Massachussetts: Harvard University David Rockefeller Center for Latin American Studies.

Sebastian, San Miguel and Anna Karin Hurtig (2005) "Oil development and health in the Amazon basin of Ecuador: the popular epidemiology process." *Social Science and Medicine*, 60 (4): 199-807.

Seto, Betty (2005) *Indigenous Struggles to Benefit from Oil Exports in Ecuador.* Santa Barabara: University of Santa Barbara.

Shapiro, Michael J, G. Mathhew Bonham and Daniel Heradsveit (1988) "A discursive practices approach to collective decision-making." *International Studies Quarterly*, 32(4): 397-419.

Simmons, Beth A., Frank Dobbin and Geoffrey Garrett (2006) "Introduction, the international diffusion of liberalism." *International Organization*, 60(1): 781-810.

Smith, WC, Acuiia, CH & Gamma, E *A* (eds) (1994) *Latin American Political Economy in the Era of Neoliberal Reform.* New Brunswick: Transaction Books.

Spinelli, Claudio (2002) *The Political Economics of Import Substitution Industrialization: Some Reflections on the Political Economics of Liberalization, the Role of External Shocks and of Donor Agencies.* Santiago: Instituto de Economía, Pontificia Universidad Católica de Chile. Retrieved from http://www.gdnet.org/pdf2/gdn_library/awards_medals/2003/r_m/reform_institutions/sapelli_paper.pdf

Stein, Arthur (1982) "Coordination and collaboration: regimes in an anarchic world." *International Organization,* 36(2): 299-324.

Strange, Susan and Roger Tooze (1981) *The International Politics of Surplus Capacity:*

Competition for Market Shares in the World Recession. London: George Allen & UNWIN.

Strange, Susan (1982) "Cave! Hic dragones: a critique of regime analysis." *International Organization*, 36(2): 479-496.

_____. (1986) *Casino Capitalism.* New York: Basil Blackwell.

_____. (1987) "The persistent myth of lost hegemony." *International Organization*, 41(4): 551-574.

_____. (1996) *The Retreat of the State.* Cambridge: Cambridge University Press.

_____. (1998) *Mad money: When Markets Outgrow Governments.* Ann Arbor: The University of Michigan Press.

_____. (1999) *States and Markets.* London: Pinter

Strathern, Paul (2000) *Foucault in 90 Minutes.* Chicago: Ivan R. Dee.

Strega, Susan (2005) "The View from the Post Structural Margins: Epistemology and Methodology Reconsidered" in Brown, Leslie and Susan Strega (eds) *Research as Resistance: Critical, Indigenous and Anti-Opressive Approaches.* Toronto: Canadian Scholars' Press, pp. 199–235.

Stubbs, Richard and Geoffrey R.D. Underhill (eds.) (2006) *Political Economy and the Changing Global Order.* Oxford: Oxford University Press.

Sunkel, Osvaldo (ed) (1993) *Development from Within: Toward a Neostructural Approach for Latin America.* Boulder and London: Lynne Rinnier Publishers.

Tandazo, Augusto (2007a) *La necesaria denuncia del Tratado entre la República del Ecuador y los Estados Unidos de América sobre Promoción y Protección Recíproca de Inversiones y del Convenio del CIADI.*

_____. (2007b) [Augusto Tandazo in interview with Diego Oquendo]. Programa Buenos Días, Radio Vision. Quito, July 10th.

Topper, Keith (1998) "The theory of international politics? An analysis of neorealist theory." *Human Studies*, 21: 157-186.

Tuman, John P. and Craig F. Emmert (2004) "The political economy of US foreign direct investment in Latin America." *Latin American Research Review*, 39 (3): 9-28.

Treakle, Kay (1998) "Ecuador: Structural Adjustment and Indigenous and

Environmental Resistance" in Fox, Johnatan A. and David Brown, *The Struggle for Accountability -The World Bank, NGOs, and Grassroots Movements.* Cambridge and London: MIT Press.

The Center for Economic and Social Rights (1994) *Rights and Violations in the Ecuadorian Amazon: the Human Consequences of Oil Development.* New York: The Center for Economic and Social Rights.

Vandevelde, Kenneth J. (1993) *U.S. Bilateral Investment Treaties: The Second Wave.* Michigan: University of Michigan Law School.

United Nations Conference on Trade and Development (2000) *Bilateral Investment treaties 1959-1999.* New York and Geneva: United Nations Publications. Retrieved from http://www.unctad.org/en/docs/poiteiiad2.en.pdf

_____. (2004) *Investment Disputes on the Rise.* Occasional Note, November 29, UNCTAD. Retrieved from www.unctad.org/sections/dite/iia/docs/webiteiit20042_en.pdf

_____. (2006) *World Investment Report 2006.* New York and Geneva: United Nations Publications.

_____. (2007a) *Bilateral Investment Treaties 1995-2006: Trends in Investment Rulemaking.* New York and Geneva: United Nations Publications.

_____. (2007b) *Foreign Direct Investment Surged Again in 2006." Investment Brief, Issue 1.* New York and Geneva: Investment Issues Analysis Branch, United Nations Publications. Retrieved from: http://www.unctad.org/en/docs/iteiiamisc20072_en.pdf

_____. (2007c) *UNCTAD Manual of Statistics.* New York and Geneva: United Nations Publications.

Uquillas, Jorge E. (2005) *The Indigenous and Afro-Ecuadorian Peoples Development Project (PRODEPINE I).* Washington D.C.: World Bank. Retrieved from http://wbln0018.worldbank.org/LAC/lacinfoclient.nsf/8d6661f6799ea8a48525673900537f95/d0144e3d0eba650385256f6300628b6a/$FILE/JUquillas-6A.pdf

Vallejo, Andres (2007) "De ballenas y tiburones." *Diario Hoy,* Quito, July 23. Retrieved from http://www.hoy.com.ec/NoticiaNue.asp?row_id=273060

Von Moltke, Konrad (2000) *An International Investment Regime? Issues of Sustainability.* Winnipeg: International Institute for Sustainable Development.

Waltz, Kenneth (1979) *Theory of International Politics.* New York: MaGraw-Hill.

Wendt, Alexander (1994) "Collective identity formation and the international state." The *American Political Science Review*, 88(2): 384-396.

Wilkin, Peter (2000) *Solidarity in a Global Age–Seattle and Beyond. Journal of World Systems Research*, 6(1): 19-64.

Williamson, John (2004) *A Short History of the Washington Consensus.* Paper commissioned by Fundación CIDOB for the conference "From the Washington Consensus towards a new Global Governance." Barcelona, September 24–25. Retrieved from: www.iie.com/publications/papers/williamson0904-2.pdf

Whytten, Norman (ed) (2003) *Millennial Ecuador: Critical Essays on Cultural Transformation & Social Dynamics.* Iowa City: University of Iowa Press.

World Trade Organization (1995) *Agreement on Trade Related Investment Measures.* Retrieved from www.wto.org

Young, Oran (1982) "Regime dynamics: the Rise and fall of international regimes." *International Organization.* 36(2): 277-297.

_____. (1999) *Governance in World Affairs.* Ithaca: Cornell University Press

Zarsky, Luba (ed) (2005) *International Investment for Sustainable Development: Balancing Rights and Rewards.* London: Earthscan.