

**CUBA AND THE CONSTRUCTION OF
ALTERNATIVE GLOBAL TRADE SYSTEMS:
ALBA AND FREE TRADE IN THE AMERICAS**

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ABSTRACT

The ALBA (Alternativa Bolivariana para los Pueblos de Nuestra América) (Bolivarian Alternative for The People of Our America), the command economy alternative to the free trade model of globalization, is one of the greatest and least understood contributions of Cuba to the current conversation about globalization and economic harmonization. Originally conceived as a means for forging a unified front against the United States by Cuba and Venezuela, the organization now includes Nicaragua, Honduras, Dominica, and Bolivia. ALBA is grounded in the notion that globalization cannot be left to the private sector but must be overseen by the state in order to maximize the welfare of its citizens. The purpose of this Article is to carefully examine ALBA as both a system of free trade and as a nexus point for legal and political resistance to economic globalization and legal internationalism sponsored by developed states. The Article starts with an examination of ALBA's ideology and institutionalization. It then examines ALBA as both a trade organization and as a political vehicle for confronting the power of developed states in the trade context within which it operates. ALBA remains

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embedded in a large web of trade arrangements among its member states that bind them in different ways under different arrangements. That context highlights differences, especially in relation to MERCOSUR and the abandoned FTAA. It also produces both cooperation and challenge. This is most acutely felt in ALBA's relationships with CARICOM and in the rising network of bilateral investment treaties among regional states. Taken together, for the moment at least, ALBA's greatest contribution might well be its ideology. Its mere existence serves as a basis for challenging assumptions in the creation and implementation of methods of integration. It provides a base through which this distinctive ideological voice can be leveraged by its state parties in hemispheric integration debates. It seeks to balance the tensions between post-colonial nationalism, internationalism and state sector dominance by substituting private markets and private actors with state actors and tightly controlled markets. It is no longer focused on *eliminating borders* for the production and management of private capital; instead, it is focused on *using borders* as a site for the assertion of public authority to control all aspects of social, political, cultural, and economic activity. Understood as an ideological joint venture among its participants, ALBA represents a space within which a consensus on alternatives to the existing preeminent economic model of globalization might be constructed. As such, it may represent one of Cuba's greatest triumphs and also its greatest challenge to the normative tenets of the current framework of economic globalization. Thus contextualized, ALBA serves as a nexus for six great points of tension and connection within both modern trade theory practice and the construction of state system frameworks in Latin America. ALBA implicates tensions between integration and nationalism, between public and private models of integration, and between internal and external regional trade norms. It also highlights connections between the current form of trade frameworks and the construction of alternative forms of trade arrangements, between anti-Americanism and integration, and between conventional frameworks of Latin American trade and its challengers. These are summarized in the conclusion.

1. INTRODUCTION

ALBA (Alternativa Bolivariana para los Pueblos de Nuestra América) (Bolivarian Alternative for The People of Our America),¹ the command economy alternative to the free trade model of globalization,² is one of the greatest and least understood contributions of Cuba to the current conversation about globalization and economic harmonization. Originally conceived as a means for forging a unified front against the United States by Cuba and Venezuela,³ ALBA has grown to include Nicaragua, Honduras,⁴ and Bolivia.⁵ It has also grown to include a number of Caribbean states, including Dominica in 2008,⁶ and St. Vincent and the Grenadines in 2009.⁷ It has the support of other states, including Ecuador and Haiti.⁸ ALBA is meant to provide an

¹ See ALBA, *Qué es el ALBA?* [*What is ALBA?*], Apr. 28, 2004, <http://www.alternativabolivariana.org/modules.php?name=Content&pa=showpage&pid=1> [hereinafter ALBA, *What is ALBA?*] (this and all subsequent translations provided by the authors).

² For a discussion of the contemporary model of trade and trade regulation, see FRANK J. GARCIA, *TRADE, INEQUALITY, AND JUSTICE: TOWARDS A LIBERAL THEORY OF JUST TRADE* 1 (2003).

³ ALBA, *What is Alba?*, *supra* note 1.

⁴ ALBA, *Declaración de Adhesión de la República de Honduras al ALBA* [*Declaration of Adherence to ALBA of the Honduran Republic*], Aug. 25, 2008, <http://www.alternativabolivariana.org/modules.php?name=Content&pa=showpage&pid=1969>.

⁵ ALBA, *Contribución y suscripción de la República de Bolivia a la declaración conjunta firmada en la Habana el 14 de diciembre del 2004, entre los presidentes del consejo de estado de la República de Cuba y de la República Bolivariana de Venezuela* [*Contribution and Subscription of the Republic of Bolivia to the Joint Declaration Signed in Havana on December 14, 2004, Among the Presidents of the State Council of the Republic of Cuba and the Bolivarian Republic of Venezuela*], Apr. 29, 2006, <http://www.alternativabolivariana.org/modules.php?name=Content&pa=showpage&pid=514> [hereinafter ALBA, *Contribution and Subscription of the Republic of Bolivia*].

⁶ ALBA, *Adhesión del gobierno de la Mancomunidad de Dominica al ALBA* [*Adherence of the Government of the Commonwealth of Dominica to ALBA*], Jan. 26, 2008, http://www.alternativabolivariana.org/pdf/adhesion_mancomunidad_de_domin.pdf [hereinafter ALBA, *Adherence of Dominica*].

⁷ See *St. Vincent to Join ALBA*, TRINIDAD & TOBAGO'S NEWSDAY, Apr. 23, 2009, available at <http://www.newsdaily.co.tt/news/0,98923.html> ("St Vincent and the Grenadines was accepted as the seventh ALBA member.").

⁸ See ALBA, *V Cumbre del ALBA – Convenio marco de cooperación ALBA-Haiti Bolívar, Petión, Martí* [*Fifth ALBA Summit, Co-operational Framework of Haiti*], Apr. 30, 2007, <http://www.alternativabolivariana.org/modules.php?name=News&file=article&sid=1806>; see also Rafael Correa, *Firma de Convenios Energéticos entre la República de Ecuador y la República Bolivariana de Venezuela* [*Energy Agreements*

alternative to the conventional trade models of privatization and globalization that are assumed to be bad for people, especially for those who live in developing states.⁹

ALBA is critically grounded on the idea that internationalization must be effected through states and public action rather than individuals and private markets. ALBA is not necessarily opposed to all private activity, just those activities that have become liberated from precise control by the state. ALBA is thus founded on the notion that traditional divisions between public and private sectors remains valuable and important, and that certain sectors, traditionally overseen by the state as agent for territorially based communities, are essential for the maximization of the welfare of people organized into states.¹⁰ To this is added a fundamental distrust of private markets—markets that are not strictly controlled and managed by the state.¹¹ In a sense, ALBA is compelling for those who control the apparatus of states now overwhelmed by new sorts of governance power—private, multinational and governance based. Equally important, ALBA now serves as a means of aggregating and institutionalizing responses to and challenges of American power in the Western Hemisphere.¹² ALBA also institutionalizes opposition to the

between the Republic of Ecuador and the Bolivarian Republic of Venezuela], Jan. 16, 2007, <http://www.alternativabolivariana.org/modules.php?name=Content&pa=showpage&pid=1412> (relaunching bilateral ties between Ecuador and Venezuela through adherence to the ALBA Framework); Jorge G. Castañeda, *Latin America's Left Turn*, 85 FOREIGN AFF. 28 (2006) (arguing that despite two years of economic growth, Latin American politics are leaning towards the left).

⁹ For a discussion, see Larry Catá Backer, *Economic Globalization Ascendant and the Crisis of the State: Four Perspectives on the Emerging Ideology of the State in the New Global Order*, 17 BERKELEY LA RAZA L.J. 141, 142 (2006) (describing the crisis of state systems and states as “the foundational form of global political organization.”).

¹⁰ See ALBA, *What is Alba?*, *supra* note 1 (describing the founding principles of ALBA).

¹¹ See ALBA, *Fifth Extraordinary Summit of the ALBA Final Declaration*, Apr. 17, 2009, <http://www.alternativabolivariana.org/modules.php?name=Content&pa=showpage&pid=1982> (refusing to approve the agreement produced at the Fifth Summit of the Americas and proposing intense debate on the problem of capitalism's exhaustion of the planet and mankind).

¹² Fidel Castro, for example, has been quite vocal about this since the 1980s. See, e.g., Fidel Castro Ruz, President, Council of State, Republic of Cuba, Address at the Central University of Venezuela, *Una Revolución solo puede ser hija de la cultura y law ideas*, Discurso pronunciado por el Presidente del Consejo de Estado de la República de Cuba [A Revolution Can Only be the Child of Culture and Ideas] (Feb. 3, 1999) (transcript available at <http://www.cuba.cu/gobierno>).

current framework of economic globalization and attempts to challenge the hegemony of the current framework for constituting trade among states¹³ – grounded in private economic activity and a passive state regulatory role.¹⁴

There is little consensus on the nature and value of ALBA, even within the Western Hemispheric community of public and private actors. Some view ALBA as a great threat to the current economic order and the political order of states.¹⁵ Others view ALBA as little

/discursos/1999/esp/f030299e.html). These are views refined by the Venezuelan leader, Hugo Chavez:

Nobody can deny that! Now, I am sure that it was the intent of North American imperialism to cause us to fight with our Caribbean brothers; we will not fight with Caribbean people, amongst other things, we already have Petrocaribe and we are moving towards integration with the Caribbean . . . so that we can only move forward always thinking and acting according to our strategic and geopolitical plans for the integration of South American and Caribbean governments. This is our path! Nobody will lead us astray . . . ALBA will continue moving forward. ALBA is not just a proposal, ALBA is a proposal that has already begun to take effect.

Hugo Chavez, President, Bolivarian Republic of Venezuela, Discurso al finalizar la marcha en apoyo a la política latinoamericana y caribeña y contra el imperialismo [Speech at the End of the March Against Imperialism in Support of Latin American and Caribbean Politics] (Nov. 19, 2005) (transcript available at http://www.alternativabolivariana.org/pdf/discurso_chavez.pdf).

¹³ For a general discussion of the challenges of sovereign debt from a Cuban perspective, see Larry Catá Backer, *Ideologies of Globalization and Sovereign Debt: Cuba and the IMF*, 24 PENN ST. INT'L L. REV. 497, 497 (2006).

¹⁴ This describes, in general terms, the so-called “Washington consensus” – a consensus between the IMF, the World Bank, and the U.S. Treasury about the ‘right’ policies for developing countries” on which much current global trading frameworks are based. See JOSEPH E. STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* 16 (2002). “According to the Washington Consensus, growth occurs through liberalization, ‘freeing up’ markets. Privatization, liberalization, and macrostability are supposed to create a climate to attract investment, including from abroad. This investment creates growth.” *Id.* at 67. See also Michael Mussa, Speech Presented in Jackson Hole, Wyoming, Factors Driving Global Economic Integration (Aug. 25, 2000) (transcript available at <http://www.imf.org/external/np/speeches/2000/082500.htm> (describing the fundamental factors that drive economic integration)).

¹⁵ Most prominent among these is the United States:

The gradual consolidation of democracy remained the dominant trend over the last year in Latin America, but a small group of radical populist governments continues to project a competing vision that appeals to many of the region’s poor. Indeed, the persistence of high levels of poverty and striking income inequalities will continue to create a potentially receptive audience for radical populism’s message, especially in the less developed areas of Latin America.

more than an ideologically curious variation on the large number of partial preference free trade agreements that have proliferated in Latin America since the 1980s under the Latin American Association for Integration (Asociación Latinoamericana de Integración, or "ALADI") framework.¹⁶ Still others have suggested that there is little, either institutionally or programmatically, that distinguishes ALBA from the machinations of the nation states that comprise its various disconnected programs.¹⁷ ALBA member states, of course, view the enterprise as the greatest innovation in hemispheric integration since the Soviet Revolution of 1917 by combining European Marxism, Latin American nationalist anti-

Inspired and supported by Venezuela and Cuba, leaders in Bolivia, Nicaragua, and—more tentatively—in Ecuador are pursuing agendas that undercut checks and balances on presidential power, seek lengthy presidential terms, weaken media and civil liberties, and emphasize economic nationalism at the expense of market-based approaches. Moreover, each of these governments, to varying degrees, has engaged in sharply anti-U.S. rhetoric, aligned with Venezuela and Cuba . . . and advocated measures that directly clash with U.S. initiatives.

Annual Threat Assessment of the Intelligence Community for the Senate Armed Services Committee 110th Cong. 33 (2008) (statement by J. Michael McConnell, Director of National Intelligence).

¹⁶ For a discussion of ALADI, see *infra* Section 2. The representative of Venezuela to ALADI, in 2004, emphasized this view of ALADI as a forum within which distinct measures for integration could find a space for debate and incorporation. See ALADI, *Incorporación al Comité de Representantes de la señora Embajadora María Lourdes Urbaneja Durant* [*Incorporation of the Committee of Representatives the Amabador María Lourdes Urbaneja Durant*], Mar. 24, 2004, <http://www.aladi.org/nsfaladi/discursos.nsf/vwdiscursosweb/FC5DFABFF7E415F403256E6200492A95>.

ALADI is an organization that groups South American countries together that is able to and should play a fundamental role in the deepening and advancement of this debate in the region. To promote a discussion to refresh the models in order to escape the old model and create a new model for integration based on economic development that intends to promote real development by addressing social exclusion, inequality gaps, and strengthening the region's international presence.

Id.

¹⁷ See, e.g., Norman Girvan, *ALBA, PetroCaribe and CARICOM: Issues in a New Dynamic*, at 9 (2008), <http://www.normangirvan.info/wp-content/uploads/2009/03/alba-petrocaribe-and-caricom.pdf> ("ALBA does not take the form of an international or inter-governmental organisation, treaty or integration scheme in the normal sense.").

colonialism, and the vision of integration that has haunted Latin America since the nineteenth century wars of liberation.¹⁸

There is a little bit of truth in each of these views. The purpose of this Article is to carefully examine ALBA as both a system of free trade and as a nexus point for legal and political resistance to economic globalization and legal internationalism sponsored by developed states. Following this Introduction, I undertake an examination of ALBA, focusing on its history, its conceptual basis, and its institutionalization. This Section considers the importance of the evolution of Bolivarism in the globalist ideology of Fidel Castro and its contribution to the governing ideology of ALBA, and its strongly anti-capitalist foundations. It then considers the way in which this governing ideology is institutionalized within ALBA. From the organization of its institutions, the Section turns to implementation, considering the way in which ALBA worked so far, especially in its economic context. The Section then examines the work of ALBA to date, both as trade organization and as political vehicle for confronting the power of developed states, and especially that of the United States.

Section 3 of the Article then contextualizes ALBA within the dense network of trade and investment treaties that mark the realities of economic relations between Latin American states.¹⁹ The object is twofold; first to examine the extent that ALBA in form represents something new, and second to suggest the extent to

¹⁸ “Ricardo Alarcón, president of Cuba’s national assembly, has called ALBA the best guarantee for the consolidation of an anti-imperialist front. Addressing an international forum in Caracas January 25, Alarcón asked, why waste time in looking for answers ‘in the air,’ since ALBA ‘is the answer.’” Sabrina Johnson, *Cuban People Demonstrate Power of Internationalism*, SOCIALIST VOICE, July 17, 2006, <http://www.socialistvoice.ca/?p=114> (explaining that ALBA represents “a threat of a different kind for the U.S. imperialist agenda”). For a sympathetic application of these notions from a Western perspective, see Ugo Mattei, *The Peruvian Civil Code, Property and Plunder. Time for a Latin American Alliance to Resist the Neo-Liberal Order*, 5 GLOBAL JURIST TOPICS 1, 2 (2005) (“In Latin America as elsewhere, legal institutions imported from the capitalistic center have legitimized and covered up a process of economic and political domination.”).

¹⁹ For a discussion, see VICTOR BULMER-THOMAS, *THE ECONOMIC HISTORY OF LATIN AMERICA SINCE INDEPENDENCE* 1 (2003) (presenting an overview of economic development in Latin America). These trade webs are not unique to Latin America. For a sense of the complexity of these arrangements, all grounded in the current framework of probate markets oriented trade, see Kevin C. Kennedy, *The Incoherence of Agricultural, Trade, and Development Policy for Sub-Saharan Africa: Sowing the Seeds of False Hopes for Sub-Saharan Africa’s Cotton Farmers?*, 14 KAN. J. L. & PUB. POL’Y 307 (2005) (discussing injurious impact of the lack of coherence in the development, trade, and agricultural policies of the United States).

which ALBA in fact provides something different in a field with many players. For that purpose, this Section first contextualizes ALBA within conventional trade association organization and operation. That examination reveals organizational differences beyond the ideological differences that mark ALBA as distinct from conventional trade associations. However, ALBA's difference, its heavy emphasis on intergovernmentalism, and its avoidance of supranational organization, is only a more extreme form of the tendencies toward intergovernmentalism that mark conventional trade arrangements in Latin America. Yet differences do produce cooperation and challenge. This is most acutely felt in ALBA's relationship with the Caribbean Community and Common Market ("CARICOM"),²⁰ which is examined next. Lastly, ALBA is considered within the networks of bilateral trade agreements and partial preference trade agreements that mark the landscape of Latin American trade relations.²¹

ALBA presents an ideological and functional alternative and challenge to transnational institutions built on the operating assumptions of economic globalization and the developing convergence of public and private law. Originally it was viewed as interesting but benign: "ALBA, a proposed alternative to the controversial U.S.-sponsored Free Trade Area of the Americas ("FTAA"), presents a socialist vision for regional commercial cooperation, although at this point its value is largely political, symbolic and somewhat short on economic specifics."²² Today, the

²⁰ CARICOM, the Caribbean Community and Common Market "was established by the Treaty of Chaguaramas, which was signed by Barbados, Jamaica, Guyana and Trinidad & Tobago and came into effect on August 1, 1973. Subsequently the other eight Caribbean territories joined CARICOM. The Bahamas became the 13th Member State of the Community on July 4, 1983, but not a member of the Common Market." See Caribbean Community ("CARICOM") Secretariat, History of the Caribbean Community (CARICOM), <http://www.caricom.org/jsp/community/history.jsp?menu=community> (last visited Feb. 20, 2010). For a discussion of the obstacles to swift implementation of CARICOM, see Norman Girvan, *Towards a Single Development Vision and the Role of the Single Economy*, at 8 (2007), http://www.caricom.org/jsp/single_market/single_economy_girvan.pdf.

²¹ See *infra* Section 3.2.

²² Council on Hemispheric Affairs, *The Economic Rise of Cuba thanks to China, Venezuela and Latin Left America*, HAVANA JOURNAL, July 31, 2006, available at <http://havanajournal.com/business/entry/the-economic-rise-of-cuba-thanks-to-china-venezuela-and-latin-left-america/>. The Free Trade Area of the Americas ("FTAA") or the Área de Libre Comercio de las Américas ("ALCA") represents a long, drawn-out, and still unsuccessful effort to create a hemisphere-wide plan for

institution of a number of programs aimed at aiding particularly poor states and regions has begun to have effects beyond the symbolic.²³ ALBA's potential to provide a public sector variant on private sector globalization should not be underestimated. It is no longer focused on *eliminating borders* for the production and management of private capital; instead, it is focused on *using borders* as a site for the assertion of public authority to control all aspects of social, political, cultural, and economic activity. Yet it is also deeply embedded in the great web of partial economic associations that characterize economic governance in Latin America. ALBA focuses on changing the terms of debate about trade, the role of states, and the place of private economic activity across borders. In this respect, certainly, ALBA may represent one of Cuba's greatest triumphs, and also its greatest challenge to the normative tenets of the current framework of economic globalization. But the framework within which ALBA can grow also sets the limits of its influence. It is not clear that within a deep system of webs of relationships, one variant—a decidedly socialist and state-centered one—will change not merely the framework of discussion about trade but also the economic philosophy of more than a few states in Latin America.

Thus contextualized, ALBA serves as a nexus for six great points of tension and connection within both modern trade theory practice and the construction of state system frameworks in Latin America. ALBA implicates tensions between integration and nationalism, between public and private models of integration, and between internal and external regional trade norms. It also highlights connections between the current form of trade

economic integration in which barriers to trade and investment would be gradually eliminated. Negotiations were formally launched in 1998 and remain incomplete. See Free Trade Area of the Americas, Third Draft FTAA Agreement, Doc. No. FTAA.TNC/w/133/Rev.3 (Nov. 21, 2003), available at http://www.ftaa-alca.org/FTAADraft03/Index_e.asp; Free Trade Area of the Americas, Antecedents of the FTAA Process, available at http://www.ftaa-alca.org/View_e.asp (last visited Feb. 20, 2010) (detailing the antecedents of the FTAA process); see also *infra* Section 3.1. (discussing the FTAA in greater detail).

²³ See, e.g., *ALBA Seen as Avenue to Economic Aid for Small CARICOM States* – Prof. Vaughn Lewis, STABROEK NEWS, Feb. 3, 2008, available at <http://www.stabroeknews.com/2008/news/local/02/03/alba-seen-as-avenue-to-economic-aid-for-small-caricom-states-prof-vaughan-lewis/> (arguing the accession of Dominica, a CARICOM member, to ALBA was a means of gaining economic aid under conditions less rigorous than those available from other sources, including the International Monetary Fund).

frameworks and the construction of alternative forms of trade arrangements, between anti-Americanism and integration, and between conventional frameworks of Latin American trade and its challengers. These are examined in the concluding Section of the Article.

2. WHAT IS ALBA?

ALBA is an alternative approach to economic, social, cultural, and political integration that aims to foster trade, development, and unity among the nations of Latin America and the Caribbean on the basis of a set of principles distinct from those underlying conventional integration efforts.²⁴ To the authors of ALBA, traditional agreements, such as the FTAA,²⁵ have focused on the interests of transnational corporations and capital without taking into account the social and economic needs of the people of Latin America.²⁶ In contrast, ALBA focuses its emphasis on eliminating the social and economic disparities that exist among Latin American nations, by creating mechanisms that use cooperative advantages that a nation may possess, as a tool to compensate for existing disparities among other nations in the region.²⁷ ALBA's primary emphasis is to create a sub-regional bloc built on a number of strategic agreements grounded in the founding

²⁴ See ALBA, *What is ALBA?*, *supra* note 1.

²⁵ See Denise Balgobin, *FTAA vs ALBA – Choosing Trade Routes*, TRINIDAD & TOBAGO'S NEWSDAY, June 19, 2008, available at <http://www.newspday.co.tt/businessday/0,81035.html>.

At a recent luncheon, outgoing Venezuelan Ambassador Christy Gonzalez stated that she believed the FTAA formula was oppressive for smaller economies, while ALBA or Bolivarian Alternative for Latin America and the Caribbean was a more favorable initiative for countries in the region. "ALBA represents the first attempt at regional integration based on solidarity, non-interference and complementing, instead of competing," she said.

Id.

²⁶ "By employing more effective mechanisms to eradicate poverty, ALBA—as proposed by the Venezuelan government—provides a counterweight to the policies and goals of the FTAA. This alternative model also identifies the most crucial impediments to achieve a genuine regional integration that transcends the prerogatives of the transnational corporations." Teresa Arreaza, *ALBA: Bolivarian Alternative for Latin America and the Caribbean*, VENEZUELA ANALYSIS, Jan. 30, 2004, <http://www.venezuelanalysis.com/analysis/339>. See also ALBA, *What is ALBA?*, *supra* note 1 (detailing the process of ALBA).

²⁷ ALBA, *What is ALBA?*, *supra* note 1 (detailing the process of ALBA).

ideology of ALBA—socialist and public law-oriented—for the betterment of the peoples in the member states and to serve as protection against other states or economic blocs.²⁸ The challenge is to provide a space for unified action that can help smaller states resist the conventional private enterprise-oriented systems represented by conventional trade and integration agreements.²⁹

This Section first examines the history of ALBA in its regional and ideological context. It starts with the long efforts to find methods of integration in a climate in which nationalism is privileged. It then briefly describes the genesis of ALBA as an organizational reality formed out of ideological opposition to market-oriented globalization.

2.1. History

The history of ALBA is in essence a continuation of the history of integration in Latin America. This is a history of tensions and interventions. Integration pits the post-colonial project of state building against the internationalist project that aims to reduce the sovereign authority of states, both against each other and in their relations with private power. Integration can also serve as a proxy for strong state interventions under the cover of private market internationalism, and in this way also subvert the post-colonial projects of national liberation. But it can also serve to liberate individuals from the oppression of cliques and ideologies that hijack the apparatus of states by posing supranational norms against narrow assertions of state power. This Section will begin by exploring in greater detail the conflation of these tendencies, focusing on the role of Cuba generally, and Fidel Castro specifically, in the construction of a novel form of sovereign internationalism, producing ALBA. It then briefly explores the efforts that ultimately produced ALBA itself.

²⁸ “For this reason the ALBA proposal gives priority to the integration of Latin America and to negotiations of sub-regional blocks, opening new spaces to further enhance our understanding of our positions and identify mutual interests that permit us to construct strategic alliances and present common grounds in the process of negotiation.” *Id.*

²⁹ “The challenge is to prevent dispersion in negotiations, preventing sister nations from breaking apart and becoming absorbed in the turmoil that arises from the pressure of making quick decisions in accordance with the FTAA.” *Id.*

2.1.1. *Modern Bolivarianism: From Conventional Integration to ALBA*

The integration of Latin America and the Caribbean is not a novel idea. This goal, and the ideals guiding it, traces its roots to Simon Bolívar's vision for the newly freed states that had fought for their independence from Spanish rule in the first quarter of the nineteenth century. The expression of these ideas can be found in his "Letter from Jamaica."³⁰ The desire of ALBA to integrate Latin America independent of colonial or neo-colonial powers is an attempt to make Simón Bolívar's dream of a united confederation of American states a reality.³¹ This is a sentiment that was also echoed in the writings of Jose Martí.³² It is the antithesis and response to the Monroe Doctrine, and presents an age-old confrontation between the people of Latin American and imperialism.³³ Bolívar's vision was abandoned in the South, but was cemented in the North, and led to the strengthening and rise of the union of states that became the United States.³⁴ ALBA, then, is meant to ally like-minded states committed to promoting their sense of the Bolivarian ideals.

Modern regional integration in Latin America is commonly traced to the period immediately after World War II and the work

³⁰ Simón Bolívar, Carta de Jamaica [Letter to Jamaica] (Sept. 6, 1815), available at <http://www.analitica.com/bitbliblioteca/bolivar/jamaica.asp>.

³¹ Fernando Ramón Bossi, Sec'y of Org. of the Bolivarian Cong. of the People, Address at the Fourth Summit of the Americas in Mar de Plata, Diez Puntos para Conocer el ALBA: Construyendo el ALBA desde los pueblos [Ten Points to Know of ALBA: Constructing ALBA from the People] (Nov. 3, 2005), available at <http://www.alternativabolivariana.org/modules.php?name=Content&pa=showpage&pid=1980> [hereinafter Bossi, Ten Points to Know of ALBA].

³² Jose Martí, *Nuestra América* [Our America] (Jan. 10, 1897), reprinted in ALBA, Jose Martí la Revista Ilustrada de Nueva York, 10 de enero de 1891, <http://www.alternativabolivariana.org/modules.php?name=Content&pa=showpage&pid=9> (last visited Feb. 27, 2010).

³³ "ALBA responds to an old and permanent confrontation between the Latin American and Caribbean peoples and imperialism. Perhaps a better way of presenting the conflicting projects is by contrasting Monroeism and Bolivarianism, perhaps this is the best way to put the conflicting projects." Bossi, *supra* note 31.

³⁴ Rafael Correa Flores, Parlamento Latinoamericano [Latin American Parliament], *Construyendo el ALBA: "Nuestro Norte es el Sur"* [Building ALBA: "Our North is the South"], at 7 (2005), available at <http://www.alternativabolivariana.org/pdf/libroalba.pdf>.

of the United Nations Commission for Latin America.³⁵ By 1960, the work of integration produced the Latin American Free Trade Association (“LAFTA”), which had as its objective the elimination of duties between states.³⁶ Other efforts followed. The Latin American Parliament (“Parlatino”), created in 1964, acknowledged from its inception the need for regional integration as indispensable for ensuring the freedom and development of Latin American nations.³⁷ This desire for integration was again manifested in 1987, when a new international treaty was signed by eighteen Latin American nations committed to achieving the goals laid out in the original Parlatino founding document.³⁸ Its object was the eventual Community of Latin American Nations (“CLAN”).³⁹ The Parlatino has been restructured in its functions and political application, with the hopes of having it play a central role in aiding the creation of a strategy for regional integration.⁴⁰

With regional integration on the agendas of most Latin American states for much of their modern history, it is no surprise that a number of supranational institutions have been created to attempt to effect integration of one kind or another. But all of them

³⁵ See U.N. ECON. COMM’N FOR LATIN AM., THE ECONOMIC DEVELOPMENT OF LATIN AMERICA AND ITS PRINCIPAL PROBLEMS, U.N. Sales No. 1950.II.G.2 (1950) (discussing the relevant integration of Latin America).

³⁶ Treaty Establishing a Free-Trade Area and Instituting the Latin American Free Trade Association, Feb. 18, 1960, 1484 U.N.T.S. 25392 [hereinafter *Montevideo Treaty*].

³⁷ El Parlamento Latinoamericano y la Comunidad Latinoamericana de Naciones (“CLAN”) [The Latin American Parliament and the Latin American Community of Nations] (1999), <http://www.parlatino.org/web2/es/temas-especiales/comunidad-lat-de-naciones/el-parlamento-latinoamericano-y-clan.html>.

³⁸ Parlamento Latinoamericano, Tratado de Institucionalización del Parlamento Latinoamericano [Latin American Parliament, The Treaty of Institutionalization of The Latin American Parliament], Nov. 16, 1987, *available at* <http://www.parlatino.org/web2/documentos/doc/88.html>. Member nations include: Argentina, Bolivia, Brazil, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Honduras, México, Nicaragua, Panamá, Paraguay, Perú, the Dominican Republic, Uruguay and Venezuela. *Id.*

³⁹ El Parlamento Latinoamericano y la Comunidad Latinoamericana de Naciones [The Latin American Parliament and the Latin American Community of Nations], *supra* note 37.

⁴⁰ La Comunidad Latinoamericana de Naciones [The Latin American Community of Nations] (1978), <http://www.parlatino.org/web2/es/temas-especiales/comunidad-lat-de-naciones/la-comunidad-latinoamericana-de-naciones.html>.

are iterations of the standard model of regional trade association.⁴¹ There are various Latin American and Caribbean organizations that have sought to promote the solidarity and unity that ALBA wishes to achieve. ALBA, in this manner, can be seen as another mechanism through which the attempts can be solidified into an action plan actively taking steps to make the aspiration of unification a reality.

As noted, the idea of a unified Latin America is not novel. Nor is the institution of integration in Latin America linear. It is a thick process in which many smaller efforts at partial integration are considered parts of what will eventually produce an integrated economic area within Latin America. Complexity and multiplicity of arrangements and institutions, then, are the order of the day. But that complexity and thickness is also marked by a profound sameness. What distinguishes most partial integration efforts are the details—ALBA attempts to add a very different flavor to the patchwork of arrangements that in the aggregate will define Latin American integration.

Part of the opposition to the traditional trade and investment agreements, like what would become the FTAA proposal of the 1990s, was grounded in a well developed worldview that sought to synthesize strong elements of Soviet style Marxist-Leninist theory, post-colonial theories, especially those coming out of African liberation movements, nineteenth century ethnonationalism, and twentieth century socialist internationalism. Basic to these ideas was the positing of the great oppositional forces of the state as a representative of popular will, and transnational corporations, as representatives of private uncontrolled economic power inimical to the interests individuals, states and society.⁴² To the promoters of ALBA, the neoliberal view of granting access to markets through the elimination of tariffs or regulation of commerce and foreign investment has predominantly served the interests of large and

⁴¹ For a discussion of the standard model of regional trade association, see, e.g., JEFFREY A. FRANKEL, *REGIONAL TRADING BLOCS IN THE WORLD ECONOMIC SYSTEM* 1–17 (Instit. for Int'l Econ. 1997); KERRY A. CHASE, *TRADING BLOCS: STATES, FIRMS, & REGIONS IN THE WORLD ECONOMY* (2005) (suggesting that private enterprises will seek to encourage trading blocs to maximize their economic interests, from gaining economies of scale to moving stages of production abroad, and consequently regional trading arrangements tend to promote liberalization rather than either state intervention or protectionism).

⁴² ALBA, *What is ALBA?*, *supra* note 1.

developed nations.⁴³ Numerous scientific studies can attest to the fact that the application of current globalization practices, such as the FTAA, have not and will not produce a desired level of development that can guarantee a greater quality of life and living for the people of developing nations.⁴⁴

Agreements like the FTAA would be beneficial to both sides if they brought similar bargaining power to the negotiations. However, when the bargaining power is one-sided, as in the case of the FTAA, the negotiations fail to consider the disparity and in some instances even impose a double standard. This is particularly true when it comes to state assistance in the area of agriculture.⁴⁵ In addition to trying to correct the disparities and unfair practices, the governing principles of ALBA place the focus of fighting poverty and social exclusion above those of expanded free trade and commerce.⁴⁶ This is an important step in the greater goal ALBA has of integrating and uniting the people and nations of Latin America.⁴⁷ To achieve this goal, the root causes preventing this integration must be addressed. They include: (a) poverty that affects a majority of the population; (b) huge inequalities and asymmetries that exist between the countries; (c) unequal exchange and conditions that exist in international relations; (d) the burden of an unpayable debt; and (e) the imposition of structural adjustment policies by the International Monetary Fund ("IMF") and World Bank ("WB"), or the rigid rules imposed by the World Trade Organization ("WTO"), which erode the social and political bases of support.⁴⁸

The burden of an unpayable debt and the imposition of structural policies upon sovereign states as a contributing factor to the poverty that affects Latin America and third world countries, in general, are not novel. Fidel Castro also publicly denounced these same concepts during his address to the United Nations General

⁴³ ALBA, *What is ALBA?*, *supra* note 1, at 6 ("Free trade understood in these terms only benefits countries that are highly industrialized and developed.").

⁴⁴ *Id.* ("In fact, scientific studies irrefutably demonstrate that the application of the current standards of globalization and its hemispheric or regional expressions have ruined the aspirations of a true endogenous development in any of the countries on the continent.")

⁴⁵ *Id.* at 9–11.

⁴⁶ *Id.* at 20–21.

⁴⁷ *Id.* at 21 (concerning ALBA's goals).

⁴⁸ *Id.*

Assembly in 1979.⁴⁹ In the speech, Castro laid out critical points that now form central guiding principles in the formation of ALBA. As a precursor to ALBA, Castro cited a need to change the current system of international relations, which he labeled as being plagued with inequality, injustice and oppression.⁵⁰ In addition, Castro called for mutual respect for the sovereignty of nations, as well as their right to end any form of foreign occupation and their right to decide what their social, political and economic orientation should be.⁵¹ In Castro's view, peaceful coexistence can only be achieved if this principle of respect for the rights of others is respected.⁵²

Furthermore, only by eliminating the constant threat posed by international financial institutions through economic or financial impositions, or the controlling of their natural resources by foreign companies, will the people truly be able to call themselves independent, sovereign, and free.⁵³ The concepts that Castro made reference to, with regard to the meddling of foreign powers in the domestic affairs of third world countries in general, and Latin American nations in particular, have found a new impetus within the ideological foundations of ALBA.

Castro reiterated similar concerns about the strangling effects the foreign debt has on small, impoverished countries in his address to the Fourth Congress of the Latin American Journalists' Federation.⁵⁴ Castro called for all third-world countries to stand

⁴⁹ Fidel Castro Ruz, President, Council of State, Republic of Cuba, Discurso pronunciado ante la XXXIV Asamblea General de las Naciones Unidas [Address given before the 34th U.N. General Assembly] (Oct. 12, 1979) (transcript available at <http://www.cuba.cu/gobierno/discursos/1979/esp/f121079e.html>).

⁵⁰ *Id.* ("We aspire to a new world order, based on justice, equality, and peace, which would substitute the unjust and unequal system that prevails today.").

⁵¹ *Id.* ("These principles of peaceful coexistence also include the right of people under foreign and colonial domination to self-determination, independence, sovereignty, territorial integrity of the states, the right of every country to end foreign occupation, the acquisition of territory by force and to choose their own social, political, and economic system.").

⁵² *Id.*

⁵³ *Id.* ("Because the independence, the sovereignty, and the liberty of our people, apparently free, are continually threatened by the external control of their natural resources through the financial imposition of official international organizations and because of the precarious situation of their economies, which undermines their sovereign plenitude.").

⁵⁴ Fidel Castro Ruz, President, Council of State, Republic of Cuba, Discurso pronunciado en el IV Congreso de la FELAP [Address Given During the Fourth

united in calling for an end to the continued demand that the debt be repaid, and for a reordering of the international economic world order to counter what he deems a world filled with avarice, egoism, and insatiable desires.⁵⁵ Castro went on to call for the economic integration of Latin American countries as a necessary step for the development of the region, citing that even England, the birthplace of industrialization, found it necessary to become part of the European Common Market in order to continue its development.⁵⁶

Castro, as a precursor to ALBA, believes that Latin American unity can only occur through the education and participation of the masses in the process.⁵⁷ Castro also attempts to draw parallels between the economic struggles of Latin America and the need to create a more peaceful new world order.⁵⁸ He emphasizes how the interest generated from the loans of third-world countries, money that could be used to feed, medicate or shelter their people, is instead paid to, and used by, developed nations to invest in weapons and military build-ups.⁵⁹ Furthermore, the unequal international economic order continues to add to the debt total and, rather than do something to curtail it, international finance organizations and private banks increase their interest rates while decreasing the loan payment periods.⁶⁰ These actions result in a coercive system that allows these organizations to continue obtaining economic and political advantages at the expense of Latin American nations.⁶¹

Congress of the Latin American Journalists' Federation] (July 7, 1985) (transcript available at <http://www.cuba.cu/gobierno/discursos/1985/esp/f070785e.html>).

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Fidel Castro Ruz, First Secretary of Central Committee of the Communist Party of Cuba and President of the State Council and the Ministers, Discurso pronunciado a Delegados a la Conferencia Sindical de Los Trabajadores de América Latina y el Caribe sobre la Deuda Externa [Address Given During the Latin American and Caribbean Syndicated Workers' Conference on External Debt] (July 18, 1985), <http://www.cuba.cu/gobierno/discursos/1985/esp/f180785e.html>.

⁶¹ *Id.*

2.1.2. *From Internationalism to ALBA*

The idea for ALBA first appeared in 2001 proposals advanced by Hugo Chavez in response to the FTAA.⁶² It was developed in a series of speeches and dialogues among Cuba and Venezuela.⁶³ The idea was to reconstruct and reapply the ideals represented by Bolivar, as understood by the leaders of Cuba and Venezuela.⁶⁴ The original signatory nations, Cuba and Venezuela, also symbolically represent the home nations of José Martí and Simon Bolivar, respectively.⁶⁵ The ideas and calls for unity in achieving reformation advanced by Castro were given new impetus after the election of Hugo Chavez in Venezuela. During an address given in Venezuela to commemorate the 40th anniversary of the Cuban Revolution, Castro again mentioned the need for Latin Americans to work together to achieve cooperation, integration, and unity in order to survive in a world where regional and sub-regional blocs

⁶² ALBA, *VI Cumbre del ALBA, Conceptualización de proyecto y empresa grannacional en el marco del ALBA* [Sixth ALBA Summit, Project Conceptualization and National Business Within the ALBA Framework], Jan. 24-26, 2008, <http://www.alternativabolivariana.org/modules.php?name=News&file=article&sid=2668#5>

⁶³ *Id.*

⁶⁴ Bossi, Ten Points to Know of ALBA, *supra* note 31; ALBA, *Acuerdo entre el presidente de la República Bolivariana de Venezuela y el presidente del consejo de estado de Cuba para la aplicación de la Alternativa Bolivariana para las Americas* [Agreement between the President of the Bolivarian Republic of Venezuela and the President of the State Council of Cuba for the Application of Bolivarian Alternative for the Americas], Dec. 14, 2004, <http://www.alternativabolivariana.org/modules.php?name=News&file=article&sid=81> [hereinafter ALBA, *Agreement for the Application of Bolivarian Alternative for the Americas*].

⁶⁵ Isagleidy Quintero, *José Martí en La Revolución Bolivariana*, APORREA.ORG, Jan. 1, 2008, <http://www.aporrea.org/ideologia/a49521.html> (discussing Martí's connection with both Venezuela and Cuba). This connection was used to symbolize the nature of the union contemplated between the two states, and has been generally invoked against efforts of the United States to push the FTAA.

In 2005, Chávez began to talk about the “death” of the FTAA and about his plans to go the Mar del Plata summit to “bury” the FTAA. At the Third Summit of the Peoples, held concurrently in Mar del Plata with the fourth presidential Summit of the Americas, Chávez told those in attendance, “With banners held high in honor of Martí, San Martín, and Bolívar [the principal heroes of the Cuban, Argentine, and Venezuelan independence movements, respectively] we are going to bury capitalism in order to give birth to twenty-first-century socialism.”

Charles H. Blake, *The Dynamics of Economic Integration in Venezuela and Their Implications for the FTAA Process*, 15 *LAW & BUS. REV. AM.* 81, 82 (2009).

have become the norm.⁶⁶ Castro also points to the disastrous consequences that have resulted when the neo-liberal policies of the IMF are applied to any country, calling their help a “kiss from the devil.”⁶⁷ For Castro, it is not globalization per se that is the problem, but rather the ideology that is the current driving force behind it.⁶⁸ Under the current system, countries with varying degrees of development and needs are all treated with the same fix-all formulas that serve to benefit the wealthy and powerful, such as the IMF and WTO.⁶⁹

Thus, according to Castro, the need for Latin America to join forces in creating a regional entity, with a shared culture and language, is indispensable in order to prevent their division through mechanisms such as the FTAA.⁷⁰ Latin American nations need to unite in order to have enough strength to prevent the loss of their independence and annexation by the United States.⁷¹ Citing statistics provided by the Central Bank of Venezuela, Castro used examples to demonstrate how the economic output and outlook of Venezuela continued to decline despite being the nation with the most natural resources in America.⁷² However, Castro sees a resurgence of hope and opportunity, not only in Venezuela, but in Latin Americans and other people around the world, that the world will move forward towards a globalization for all; there are no alternatives and no way around it.⁷³ What was to become ALBA emerged from the notion that something different was needed from the trade associations and trade structuring that had been created before, both as an oppositional force to market based globalization and as a site for aggregating state opposition to the United States. ALBA, in this sense, was to serve as a concrete step toward the elaboration of a *public* markets and *public* economics

⁶⁶ Fidel Castro Ruz, President, Council of State, Republic of Cuba, *Una Revolución solo puede ser hija de la cultura y las ideas*, Discurso pronunciado por el Presidente del Consejo de Estado de la República de Cuba [A revolution can only be the child of culture and ideas], Address at the Central University of Venezuela (Feb. 3, 1999) (transcript available at <http://www.cuba.cu/gobierno/discursos/1999/esp/f030299e.html>)

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

regime. It was to elaborate a socialist vision of globalization as a successor to the now no longer fashionable socialist internationalism of the first half of the twentieth century.⁷⁴

The first concrete steps taken to create ALBA as an instrument to achieve the dreams of Bolivar and Marti, as interpreted and refashioned by Caribbean leaders in the late twentieth century, occurred after Hugo Chavez's success in the 2004 Venezuelan referendum.⁷⁵ After initial meetings ALBA emerged from a bilateral agreement between Cuba and Venezuela.⁷⁶ This agreement was to structure the relation between the two states on principles of solidarity and the exchange of goods and services, at the state to state level, in a manner mutually beneficial to the parties.⁷⁷ This produced a formal agreement that was executed at a ceremony held on December 14, 2004 in Havana, Cuba.⁷⁸ The original agreement called for solidarity among the nations as well as for the exchange of goods and services in a manner that maximizes the economic and social benefits to each nation.⁷⁹ The agreement also called on the parties to develop a strategic plan under which the most beneficial and complimentary production base can be established taking into account existing industrial advantages, the preservation of resources, increase in the number of employment positions, and access to markets.⁸⁰ The document committed the parties to make a concerted effort to eliminate illiteracy in third world nations,⁸¹ make investments that are

⁷⁴ This was made clear in speeches by Fidel Castro in the late 1990s. *See, e.g.,* Fidel Castro Ruz, Speech given by Commander-in-Chief Fidel Castro Ruz, First Secretary of the Communist Party of Cuba Central Committee and President of the Council of State and Council of Ministers, in the closing ceremony of the first International Congress on Culture and Development (June 11, 1999), available at <http://www.cuba.cu/gobierno/discursos/1999/ing/f110699i.html>. *See generally,* Larry Catá Backer, *Ideologies of Globalization and Sovereign Debt: Cuba and the IMF*, 24 PENN. ST. INT'L L. REV. 497 (2006); Fidel Castro Ruz, *supra* note 66.

⁷⁵ ALBA, *Agreement for the Application of Bolivarian Alternative for the Americas*, *supra* note 64.

⁷⁶ *Id.*

⁷⁷ *Id.* ("From this date, our cooperation will be based not only on principles of solidarity, that will always be present, but also, to the greatest extent possible, on the exchange of goods and services that provide the most benefits for the economic and social needs of both countries").

⁷⁸ *Id.*

⁷⁹ *Id.* art. 2.

⁸⁰ *Id.* art. 3.

⁸¹ *Id.* art. 5.

mutually beneficial,⁸² and establish a reciprocal credit system.⁸³ The parties also commit to establish joint cultural exchanges that take into account the respective differences between the people of each nation.⁸⁴ Of note are articles 11 and 12, in which consideration is given to the asymmetrical social, economic, juridical and political positions of each nation and how, given these asymmetries, steps were to be taken to ensure that integration and mutual cooperation can indeed be achieved.⁸⁵

Cuba—for its part—agreed: to eliminate all tariffs with respect to Venezuelan goods, to not tax any investments made by the Venezuelan government within Cuba, to grant all Venezuelan marine and air vessels the same treatment as if they were Cuban vessels, to offer 2,000 scholarships for Venezuelan students to study science-related careers in Cuba, to offer the services of over 15,000 medical professionals to carry out health-related missions within Venezuela, and to initiate an educational exchange program.⁸⁶ Venezuela—for its part—agreed: to exchange technological information in the area of energy production, to offer as many scholarships as are needed to Cuban students in the area of energy production, not to tax any investments made by the Cuban government within Venezuela, to help finance infrastructure projects within Cuba, to grant all Cuban marine and air vessels the same treatment as if they were Venezuelan vessels, and to put all Venezuelan vessels and infrastructure equipment at the service of Cuba to assist in the social and economic development of Cuba.⁸⁷

Negotiations for the construction of ALBA continued on April 27–28, 2005⁸⁸ and involved the governments of Venezuela and Cuba.⁸⁹ These have been followed by a large number of agreements, declarations, and actions meant to develop the

⁸² *Id.* art. 6.

⁸³ *Id.* art. 7.

⁸⁴ *Id.* art. 10.

⁸⁵ *Id.* arts. 11–12.

⁸⁶ *Id.* art. 12.

⁸⁷ *Id.* art. 13.

⁸⁸ ALBA, *Final Declaration of the First Meeting Between Cuba and Venezuela for the Application of the Bolivarian Alternative to the Americas*, Apr. 28, 2005, <http://www.alternativabolivariana.org/modules.php?name=Content&pa=showpage&pid=231>.

⁸⁹ *Id.*

conceptual framework of ALBA and to construct a number of projects that are supposed to apply those principles in specific sectors and among a variety of shifting groups of ALBA members. And the organization has grown. Since its inception in December of 2004, ALBA has increased its membership to include Bolivia, Nicaragua, Honduras, Dominica, St. Vincent, and the Grenadines.⁹⁰ The addition of these members changed the agreement in a number of ways but did not affect the fundamental character of the association.

2.2. *Conceptual and Institutional Basis: Structure and Ideology of ALBA*

At the heart of ALBA is its ideology. ALBA's framework most distinguishes it from other efforts at integration. Indeed, ideology is the critical first product of this form of integration. Integration requires harmonization of an ideological base for action. Recently, Raul Castro made this clear when he noted:

The countries that belong to ALBA have the privilege of having a modest integration scheme, constructed on the basis and principles of equality, whose nature denies the practices that created this crisis. Our nations do not have the capacity, by themselves, to structurally transform the international economic order, but they do have the power to create new foundations and construct their own economic relations.⁹¹

This Section starts with a consideration of that ideology in order to extract its underlying substance. It then considers the bases on which it has sought to distinguish itself ideologically from the growth models that gave rise to the United States and European Union, for example. The section concludes by examining the way that ideological distinctions are realized in organizational differences from standard free trade arrangements.

⁹⁰ See ALBA, *Contribution and Subscription of the Republic of Bolivia*, *supra* note 5; ALBA, *Adherence of Dominica*, *supra* note 6; *St. Vincent to Join ALBA*, *supra* note 7.

⁹¹ Raúl Castro Ruz, President of the State Council, Republic of Cuba, Speech in the Public Segment of the Fifth Summit of ALBA in Cumaná, Venezuela: Cuba ratifies the Solidarity Vocation of the People of America (Apr. 16, 2009), available at <http://www.alternativabolivariana.org/modules.php?name=Content&pa=showpage&pid=1978>.

2.2.1. *The Ideology of ALBA*

ALBA is built on the idea of the inherent potential for Latin America's development independent of the United States and Europe, a development that has thus far failed to materialize.⁹² Latin America is a region rich in natural resources, biodiversity, land and culture, and a history that predates the European invasion and conquest.⁹³ Although prior attempts at unity have been unsuccessful, globalization presents a new opportunity for Latin America to join forces in dealing with the challenges and demands associated with this phenomenon.⁹⁴ The power and advantages of integration—and the resulting economies of scale—which are best observed in the creation and unification of the United States, serve as an example of how economic prosperity is best achieved.⁹⁵ Therefore, in the eyes of the founders and members, it has become a necessity to develop integrated regional trade blocs in order to be better positioned to deal with transnational powers that would otherwise swallow small and isolated countries.⁹⁶

The development of ALBA, however, is and shall be different from that of the United States, because the founding members do not seek to follow the same path of warfare, genocide and pillaging that the United States undertook in achieving unity.⁹⁷ The founders of ALBA also do not wish to follow the European Union

⁹² Bossi, Ten Points to Know of ALBA, *supra* note 31 (praising the potential of the region) (third point).

⁹³ *Id.*

⁹⁴ Correa Flores, *supra* note 34, at 7 (“The actual dilemma: how to cope with Globalization, perhaps a process more complex . . . but equally vital to the future of the Latin American People.”).

⁹⁵ *Id.* at 7–8 (“We observed the obvious advantages of integration in the development of the United States. . . . This indicates to us that the economies of scale and critical mass of an integrated entity like the North American colonies, are determining factors of economic progress.”).

⁹⁶ *Id.* at 8 (“Integration in regional blocks, emerges as an appropriate response to indiscriminate globalization. She can sufficiently unite an economic and political entity to face the transnational forces that can overwhelm any of our countries when they remain isolated.”).

⁹⁷ See Bossi, Ten Points to Know of ALBA, *supra* note 31 (“The example set by the European Union is not valid for us. The way in which the United States achieved its independence cannot help us either in our struggle. The latter only became united at the expense of extensive looting, invasions and genocide against the indigenous population. The European Union in turn, is united defensively, under the dictates of capitalism and only exists in order to compete against the United States and Japan.”) (second point).

("EU") model, because, in the eyes of ALBA, the unity of the EU was built under capitalistic parameters of amassing strength, and as a defense mechanism to counter and compete with the strong economies of the United States and Japan.⁹⁸ ALBA instead hopes to build an integration model that is unique and responsive to the needs, hopes, and aspirations of Latin American countries and their people.⁹⁹

ALBA is grounded on an opposition to capitalism as an economic and political ideology.¹⁰⁰ ALBA member states have taken the position that "[c]apitalism is exhausting mankind and the planet. The crisis we are experiencing is a global, systemic and structural crisis that cannot be considered just one more cyclic crisis. Those who believe that a fiscal injection and regulatory measures alone will resolve the crisis are mistaken."¹⁰¹ ALBA member states also believe that "[c]apitalism has caused an ecological crisis, by subordinating the conditions necessary to support life in the planet to the demands of markets and profitability."¹⁰²

Consequently, ALBA bases its actions on four anti-capitalistic values: complementary action (based on the strengths that each country may possess), mutual cooperation, solidarity, and respect for the national sovereignty of each country.¹⁰³ These actions stand in stark opposition to the "transnational, imperialist, and capitalist strategy" that, under the guise of the market, aims to impose the rights of capital above the social, political, cultural and human rights that states have achieved for their citizens through centuries of struggle.¹⁰⁴ Hence the participation and incorporation of the

⁹⁸ *Id.*

⁹⁹ *Id.* ("This is why [South Americans] will have to invent a new model . . . that covers our peoples' needs and represents their interests.").

¹⁰⁰ See ALBA, *Fifth Extraordinary Summit of the ALBA Final Declaration, Cumaná*, Apr. 17, 2009, <http://www.alternativabolivariana.org/modules.php?name=Content&pa=showpage&pid=1982>.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Bossi, *Ten Points to Know of ALBA*, *supra* note 31 (fourth point).

¹⁰⁴ Judith Valencia, *El ALBA dibuja un amplio trecho por andar* [ALBA Illustrates a Wide Path to Walk], *QUESTIONS*, July 8, 2005, available at <http://alainet.org/active/8532&lang=es>. ("From cry to cry a body was massing in conflict with the counter-revolutionary strategy of imperial transnational capitalism. A military strategy that seeks to impose itself; concealing itself behind the mercantile norms and disciplines, super-imposing the rights of capital over human rights: cultural,

masses in building the framework for integration is vital to the success of ALBA.¹⁰⁵ However, the task is enormous because Latin American unity is not deemed enough; the process of creating a new non-capitalist world-order, in which people and nations can peacefully co-exist with one another, nature and the environment, must also be something the people struggle to achieve.¹⁰⁶

ALBA's first step in achieving the new process of integration embodied in its ideals is to break the capitalist logic of lucrative gains, competition and of viewing the economy as chrematistic.¹⁰⁷ Other steps have taken form through massive programs in literacy, education, health care (such as vaccination campaigns), labor unions, workshops, and other measures that educate and mobilize the masses into becoming informed participants in the democratic process.¹⁰⁸ In this context, ALBA then becomes a political tool as well.¹⁰⁹ If ALBA is successfully carried to fruition, it would embody a reaction to the FTAA,¹¹⁰ and simultaneously serve the function of preventing the *divide et impera* of Latin American nations that has traditionally been achieved with the use of bilateral free trade agreements.¹¹¹

Opposition to the FTAA was a primary reason for attempting to create the alternative system of commercial trade embodied in the ALBA agreements.¹¹² However, the movement has transformed into a rallying flag and hope for a common and prosperous future for Latin America that is possible through the betterment of the social, political, economic, environmental, and

social, political of states achieved in the course of humanity's centuries-long battles.").

¹⁰⁵ Bossi, Ten Points to Know of ALBA, *supra* note 31 ("The ALBA is a popular construction.") (fifth point).

¹⁰⁶ *Id.* ("This unity of our America will not be sufficient unless we achieve a new world order, non-capitalist, that achieves a harmony between nations, a peaceful coexistence between human beings and a new relation with the environment and nature.") (sixth point).

¹⁰⁷ *Id.* ("The first thing that needs to be done in the new proposal of integration is to break the capitalist logic, the logic of profit and gains, the logic of competition, the logic of the economy as chrematistic.") (seventh point).

¹⁰⁸ *See id.* (updating the original vision of ALBA).

¹⁰⁹ *See id.* ("ALBA should be a political tool for liberation.") (eight point).

¹¹⁰ Correa Flores, *supra* note 34, at 4.

¹¹¹ *See id.* at 13.

¹¹² *See id.* at 4 ("ALBA was initially born as a reaction to the FTAA, and thus, as a commercial alternative.").

cultural areas of the region.¹¹³ ALBA thus marks a strategic shift in the actions of Latin American and Caribbean people because it encompasses a proposal created by these nations while simultaneously serving as a protest against the imposing of agreements by external powers. It is an offensive act, rather than a defensive response, that rests on three major pillars of action:¹¹⁴ education to inform others about the necessity of ALBA, expanding the distribution of informational material among the masses about the benefits of ALBA, and mobilizing and organizing concrete steps that will foster the integration of Latin American people.¹¹⁵

As noted in the founding document of ALBA, both Castro and Chavez were motivated by the Peruvian triumphs in Ayacucho¹¹⁶ and the address given by Simón Bolívar to the Panamanian Anfictionic Congress in 1824,¹¹⁷ calling for the creation of a Hispano-American country under which all Latin American nations would unite.¹¹⁸ This goal was reiterated over a hundred years later by Augusto Cesar Sandino, a Nicaraguan national, who again called for a united Latin America in his plan to realize Bolívar's ultimate dream and used it as a rallying cry in leading the

¹¹³ See *id.* ("ALBA . . . has transformed itself into a Latin American flag, a flag of hope that evokes emotion about a possible future and the pride of participating in its construction.").

¹¹⁴ See Bossi, Ten Points to Know of ALBA, *supra* note 31 ("We must go from the protest stage . . . to the stage of proposals. Resistance is necessary, but it is time to take action.") (ninth point).

¹¹⁵ See *id.* (discussing the future of ALBA).

¹¹⁶ See *Battle of Ayacucho*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/46399/Battle-of-Ayacucho> (last visited Feb. 3, 2010) (discussing a revolutionary victory in the Latin American wars for independence). The victory freed Peru and ensured the independence of the nascent South American republics from Spain. The revolutionary forces, among them Venezuelans, Colombians, Argentines, and Chileans, as well as Peruvians were under the leadership of Simón Bolívar's outstanding lieutenant, the Venezuelan Antonio José de Sucre. The victory is credited as ensuring the subsequent independence of other Latin American nations from Spanish rule. *Id.*

¹¹⁷ See Simón Bolívar, Speech in Lima, *Invitación a los Gobiernos de Colombia, México, Río de la Plata, Chile y Guatemala, a formar el congreso de Panamá* [Invitation to the Governments of Colombia, Mexico, the "River of Silver," Chile and Guatemala to form the Congress of Panama] (Dec. 7, 1824), available at http://www.alternativabolivariana.org/modules.php?name=Content&pa=show_page&pid=7.

¹¹⁸ See ALBA, *Agreement for the Application of the Bolivarian Alternative for the Americas*, *supra* note 64 (presenting an agreement between the president of Venezuela and the State Council of Cuba).

movement to end the U.S. Marine occupation of Nicaragua.¹¹⁹ His writings served as a basis for the establishment of ALBA.¹²⁰ Concrete steps which might achieve these ambitions were created in the agreement reached between Cuba, Venezuela, and Bolivia on how to implement ALBA and the Treaty of Commerce of the People between these nations.¹²¹

2.2.2. *Ideological Praxis*

The general conceptual basis of ALBA outlined above is more specifically elaborated in the development of: (1) the four anti-capitalist values of ALBA, (2) the three pillars of ALBA, and (3) the goals of ALBA. ALBA articulates four so-called anti-capitalist values around which ALBA interventions are built. These include: (1) complementary action based on the strengths that each country may possess, (2) mutual cooperation, (3) solidarity among the member nations, and (4) respect for the national sovereignty of each country.¹²² It is not clear whether these are anti-capitalist or anti-colonialist values, and, more particularly, whether the solidarity and action suggested is meant to be reactive—that is, deployed against the policies and interests of the United States. Thus, for example, it has become understood that the “ethos of the trade system has gradually shifted from a relatively pure focus on the elimination of protectionism and barriers to trade among the World War II victors to encompass the global lifting of standards of living.”¹²³ Indeed, except for the oppositional stance within

¹¹⁹ See Augusto Cesar Sandino, Plan de realizacion del supremo sueño de Bolívar [Plan to realize the ultimate dream of Bolívar] (Mar. 20, 1929), available at <http://www.alternativabolivariana.org/modules.php?name=Content&pa=showpage&pid=10&page=1> (presenting the “plan of accomplishment of the supreme dream of Bolívar”).

¹²⁰ See Bossi, Ten Points to Know of ALBA, *supra* note 31 (presenting ALBA as a response to conflicts between Monroism and Bolivarism) (first point).

¹²¹ See ALBA, Acuerdo para la aplicacion de la Alternativa Bolivariana para los pueblos de nuestra America y el tratado de comercio de los pueblos [Agreement for the application of the Bolivarian Alternative for the People of Our America and the Treaty of Commerce of the People] (Apr. 28–29, 2006), available at <http://www.alternativabolivariana.org/modules.php?name=Content&pa=showpage&pid=516> (addressing Boliva and Cuba’s agreement to join ALBA).

¹²² See Bossi, Ten Points to Know of ALBA, *supra* note 31 (describing how anti-capitalist values form the support for ALBA) (fourth point).

¹²³ See DENNIS PATTERSON & ARI AFILALO, THE NEW GLOBAL TRADING ORDER: THE EVOLVING STATE AND THE FUTURE OF TRADE 204–05 (2008). This change applies not only to bilateral engagement but also to the construction of the global trading system itself. Patterson and Afilalo note that “in the footsteps of the European

which ALBA is situated, it would be difficult to suggest that these values are not amenable to capitalist systems.

The difference comes from the application of these values—targeting not markets and private activities, but mass social movement programs and state action. These are articulated through the development of a theory of stages of development to which ALBA states are committed: (1) education to inform others about the necessity for an ALBA, (2) expanding the distribution of informational material among the masses about the benefits of ALBA, and (3) to mobilize and organize concrete steps that will foster the integration of Latin American people.¹²⁴ These were elaborated through the announcement of twelve goals to be achieved in the service of ALBA values and to foster progress through the stages of ALBA socio-political development.¹²⁵ The goals are both programmatic and ideological. They are grounded both in the value of political expression and in the construction of a framework for implementation of specific activities to be undertaken by ALBA member states. It is not clear, though, that

commitment to a social and not merely economic union, Doha recognized the need for all people ‘to benefit from the increased opportunities and welfare gains that the multilateral trading system generates.’” *Id.* (quoting World Trade Organization, Ministerial Declaration of 14 November 2001, para. 2, WT/MIN(01).DEC/1, 41 I.L.M. 746 (2002)).

¹²⁴ See Bossi, Ten Points to Know of ALBA, *supra* note 31 (“Resistance is necessary, but it is time to take action.”) (ninth point).

¹²⁵ In 2003, during an intervention at an ALADI Conference, Hugo Chavez announced twelve goals that ALBA would subscribe to and work diligently to achieve. The goals are as follows: (i) promote the fight against poverty, (ii) preserve the identity and autonomy of Latin America, (iii) provide for the transfer of technology and technical assistance, (iv) develop the human resources of the people, (v) prevent any agreement from becoming an obstacle to the sharing of scientific and technological advances, (vi) stop the abuse created by monopolies or oligopolies through the creation of efficient mechanisms that guarantee fair competition, (vii) prevent foreign investors from making demands to a state that they be given control over state monopolies of public interest, (viii) provide special and differential treatment to states with small economies in order to provide them with opportunities for growth, (ix) promote a process of wide social participation that can be described as democratic, (x) guarantee that the economic, social, cultural and civil rights be treated as interdependent, indivisible and cannot be renounced, (xi) ensure that commercial interests or the interests of investors are never given supremacy over human rights or the sovereignty of a state, (xii) subject the Free Trade of the Americas Agreement to adhere to the agreements protecting human rights, the environment and existing genres, and (xiii) promote the creation of Structural Convergence Funds to correct any asymmetries that may exist between states.

the goals, singly or in the aggregate, are more valuable for their ideological power or for their effect on the ground.

In addition to these goals, ALBA also has four major objectives that seek to blend values and concerns over practical implementation. The first is to promote the integration and development of Latin America through cooperation, solidarity, and unity in an effort to place the interests of the people above those of transnational capital.¹²⁶ The second aims to promote integration agreements that develop the industrial and social infrastructures of a nation, and the region, with the goal of eliminating poverty, social exclusion and to assure better living conditions for all the inhabitants of Latin American nations.¹²⁷ The third is to counter Neo-Liberal policies, particularly the attempt by the United States to create a Free Trade of the Americas, which traditionally benefit developed nations at the expense of other developing nations.¹²⁸ The fourth is to use complementary action based on the strengths that each country may possess, mutual cooperation, solidarity, and respect for the national sovereignty of each country.¹²⁹

Together, these values, objectives, and goals present a unified ideological position. This position serves as a basis for approaching all issues of transnational arrangements. It privileges the state against private actors. It suggests a tighter control of individuals and their arrangements by the state, and also suggests that private interests must be subordinated to the needs of the state (as understood by those in control of the apparatus of state governance). Private markets are incidental to the development of large sectors of state control. Because neither politics nor economics can be left to the private sector, and because the private sector might well serve as proxy for the interests of states where those private activities originate, the state-to-state arrangements must be the basis of any movement of people, capital, goods, or services. Lastly, the ideological position combines a long tradition of anti-colonialism with anti-Americanism to produce an ideological system in which states are essential to combat the direct and indirect interventions of the United States (and to a lesser

¹²⁶ See ALBA, *What is ALBA?*, *supra* note 1.

¹²⁷ See *id.*

¹²⁸ Bossi, *Ten Points to Know of ALBA*, *supra* note 31.

¹²⁹ *Id.*

extent the old European colonial powers) in the development of adhering states. For many states in Latin America, this is an intoxicating mix. It serves to legitimate stronger state control over a private sector that had been relying on the development of global markets to liberate itself from local barriers to development. It shifts the power to direct markets from the private to the public sector. It provides an avenue for transferring blame to a demonized "other" against which state activity is directed. It provides a basis for the maintenance of control through the form of democratic mass movements by linking state action to the maintenance of the masses, and by so doing, marginalizing the relationship between the masses and other institutional or civil society elements.

Most importantly, this ideology preserves for states control over the nature and extent of actual arrangements with entities beyond its borders. Packaged in this form, the ideology of ALBA has become its most critically successful product. We next turn to the institutional manifestation of the ALBA ideology and its implementation.

2.3. Institutionalizing and Implementing ALBA: Ideology in Action

2.3.1. The Institutional Organization of ALBA

ALBA is comprised of seven Commissions, each dealing with a separate area: Political, Social, Economic, Investment and Finance, Energy, Environment, and Youth. The Commissions report to the Council of ALBA Ministers and Council of ALBA Social Movements, who in turn must report to the Council of ALBA Presidents.¹³⁰ The Commissions are headed by the national Ministers of the respective areas of each of the member nations and together form the Council of ALBA Ministers. The Council of ALBA Presidents is made up of the respective presidents of each ALBA member nation.¹³¹ Because ALBA seeks to respect the national sovereignty of member nations, by nature the interaction among member states takes the form of agreements that must be accepted by the national legislative bodies of the member

¹³⁰ ALBA, Organizational Structure of ALBA, Annex 1, <http://www.alternativabolivariana.org/modules.php?name=News&file=article&sid=1817> (last visited Feb. 27, 2010).

¹³¹ *Id.*

nations.¹³² There are calls, however, for the creation of an ALBA Constitution, with supranational authority to coordinate and delegate ALBA policies that can better achieve the social and political integration of Latin American nations.¹³³

ALBA, then, is organized more as a space through which mutual cooperation on the basis of ALBA principles can be effected, rather than a more conventionally constituted international organization; it has been criticized as such.¹³⁴ Yet this institutional organization reflects the objectives of the organization. The first,¹³⁵ second,¹³⁶ third,¹³⁷ and fourth¹³⁸ objectives each carry an institutional component that is reflected in the institutions of the ALBA and their relationships to the member states of the organization. The result is substantially less autonomy for the institution at the supra-national level, and more control at the member state level. The supra-national element of ALBA serves more as a pass-through and reflection of member state consensus than as the locus of an autonomous aggregate power reflecting a ceding of sovereignty up to the supra-national level. It emphasizes the central position of the state in the construction of internationalist frameworks. This state-centering integration project critically affects the implementation of the system, a subject considered next.

¹³² *Id.*

¹³³ See Enrique Antonio Acuña Mendoza, *La Constitución Bolivariana en el marco del ALBA: La firma de los acuerdos de la iniciativa ALBA, sustentados en los preceptos de la Constitución Bolivariana* [The Bolivarian Constitution in the ALBA Framework: The Signature of Agreements of the ALBA Initiative, Supported in the Precepts of the Bolivarian Constitution] (Mar. 20–22, 2007) (discussing the Bolivarian constitution in relation to ALBA).

¹³⁴ “When ALBA was conceived, it was not a treaty organization and its principles resided in economic cooperation arrangements which appeared to benefit countries that joined it with Venezuela being the principal donor. As Professor Norman Girvan argued in a May 2008 paper, ‘ALBA does not take the form of an international or intergovernmental organisation, treaty or integration scheme in the normal sense.’” Sir Ronald Sanders, *Time to Care Again for CARICOM*, BBC NEWS, Apr. 27, 2009, available at http://www.bbc.co.uk/caribbean/news/story/2009/04/printable/090424_sanders2404.shtml (the author is a consultant and former Caribbean diplomat).

¹³⁵ See *supra* note 126 and accompanying text.

¹³⁶ See *supra* note 127 and accompanying text.

¹³⁷ See *supra* note 128 and accompanying text.

¹³⁸ See *supra* note 129 and accompanying text.

2.3.2. *Implementation – Economic Agenda*

Conception, ideology, and organization can only take a supra-national organization so far. The real value of an organization beyond its ideological purpose is measured by its implementation. ALBA is a young organization. Still, it has begun to elaborate a series of programs to provide a basis for understanding how the member states intend to translate ideology and concept to reality on the ground. The principal effect of ALBA has been an increase in state-to-state trade, especially among the ALBA founders.¹³⁹

ALBA's most important efforts have centered on the establishment of PETROCARIBE, an energy cooperation agreement proposed by Venezuela to Caribbean nations¹⁴⁰ that aims to resolve the asymmetries that said nations have in accessing energy resources.¹⁴¹ It aims to create a new order that is more equitable and just.¹⁴² Its objective is to contribute to the transformation of Latin American and Caribbean societies into more just, cultured, participatory, and solid-minded societies by removing social inequalities and promoting an improved quality of life through the effective participation of the people in the determination of the affairs of their respective states.¹⁴³ Signatory nations include: Cuba, Venezuela, Antigua and Barbados, Bahamas, Belize, Dominica, Grenada, Guyana, Jamaica, the Dominican Republic, Saint Vincent and the Grenadines, Saint Lucia, Suriname, Saint Kitts and Neves, Haití, and Nicaragua.¹⁴⁴ The program has produced a number of trade agreements that

¹³⁹ The volume of commercial trade between Venezuela and Cuba went from \$973 million (U.S.) in 2001 to \$2.4 billion (U.S.) in 2005. Martha Lomas Morales, Foreign Investment and Economic Collaboration Minister for the Republic of Cuba, Remarks at the Signing of Agreements of the ALBA Framework between Bolivia, Cuba, and Venezuela 7 (Apr. 29, 2006).

¹⁴⁰ ALBA, *Petrocaribe: Energía para la union* [*Petrocaribe: Energy for the Union*], <http://www.alternativabolivariana.org/modules.php?name=Content&pa=showpage&pid=1961> (last visited Feb. 27, 2010) ("Petrocaribe is an energy cooperation agreement proposed by the Bolivarian Government of Venezuela, in order to address the issues regarding asymmetrical access to energy resources, through a new favorable exchange plan, equitable and fair to the Caribbean countries, the majority of them without state control over the supply of these resources.").

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

represent state-to-state barter relations centered on the provision of Venezuelan petroleum.

The most interesting development has been the efforts to build the Banco de ALBA (Bank of ALBA).¹⁴⁵ Its founders hope that it will serve as the blueprint for the future financial system through which ALBA's social, cooperative, and Grandnational Projects are to be funded.¹⁴⁶ The primary purpose of the Bank of ALBA is to provide the economic and financial credit needs of ALBA member countries in financing and completing the thirty-two Grandnational Projects agreed to during the fifth ALBA Summit.¹⁴⁷ The Bank of ALBA, like ALBA itself, is founded on the principles of solidarity and mutual cooperation, and it extends those ideals into the banking sector.¹⁴⁸ The host country for the Bank as well as the operating aspects related to its functioning are currently under negotiation by the four ALBA member states. The framework for the Bank's operation was discussed and approved during a meeting of the Bank of ALBA Commission held on July 30, 2007. To date the details of the arrangement have not been made public. In the area of finance, however, Banco del Sur (Bank of the South) has emerged as another project that, although not within the framework of ALBA, is also being promoted in an effort to create a wholly South American source of funding and economic solidarity.¹⁴⁹ Argentina, Bolivia, Ecuador and Venezuela are

¹⁴⁵ ALBA, Acta fundacional del Banco del ALBA [Foundational Act of the Bank of ALBA] (Jan. 26, 2008), available at <http://www.alternativabolivariana.org/modules.php?name=News&file=article&sid=2668>.

¹⁴⁶ ALBA, Declaracion politica de la VI Cumbre de la Alternativa Bolivariana para los pueblos de nuestra America [Political Declaration of the VI Summit of the Bolivarian Alternative for the People of Our America] (Jan. 24-26, 2008), available at <http://www.alternativabolivariana.org/modules.php?name=News&file=article&sid=2668#5>.

¹⁴⁷ ALBA, *Grandnational Projects Agreed to During the Fifth ALBA Summit by Bolivia, Cuba, Nicaragua and Venezuela*, May 29, 2007, <http://www.alternativabolivariana.org/modules.php?name=News&file=article&sid=1802> [hereinafter ALBA, *Grandnational Projects*].

¹⁴⁸ Memorandum de Entendimiento entre la República de Bolivia, La República de Cuba, La República de Nicaragua y La República Bolivariana de Venezuela para la Creacion del Banco del ALBA [Memorandum of Understanding between the Republic of Bolivia, the Republic of Cuba, the Republic of Nicaragua, and the Bolivarian Republic of Venezuela for the creation of the Bank of ALBA] (June 6, 2007), available at <http://www.alternativabolivariana.org/modules.php?name=Content&pa=showpage&pid=1606>.

¹⁴⁹ Ricardo Angel Cardona, *Banco Sur Financiará Desarrollo Integral Soberano y digno de Continente Americano* [Bank of the South and the Sovereign Integral

founding members of the banking entity.¹⁵⁰ It is also likely that Brazil will join.¹⁵¹ In addition, MERCOSUR members have agreed to participate in the creation of the Bank.¹⁵² To date, Argentina, Bolivia, Brazil, Ecuador, Paraguay, Uruguay and Venezuela have agreed to work together in establishing the framework under which this entity will operate.¹⁵³

In addition to serving as the financial center for ALBA, the members have also begun talks to create a national currency of the south, to be known as the "sucre."¹⁵⁴ The object is to aid efforts at integration in a way that avoids the incidental and perceived detrimental effects of national economies bound by connections to the U.S. dollar.¹⁵⁵

Other regional organizations, including ALADI, have taken this seriously.¹⁵⁶ The Bank hopes to deliver better financing options for completing the Grandnational Projects by combining the economic forces of each nation to achieve a greater economy of scale that counts on a greater economic base on which to build.¹⁵⁷

Development will fund South Americas], available at <http://www.alternativabolivariana.org/modules.php?name=News&file=article&sid=2402>.

¹⁵⁰ ALBA, *En breve, Banco del Sur [Bank of the South in Short]*, May 10, 2007, <http://www.alternativabolivariana.org/modules.php?name=News&file=article&sid=2361>.

¹⁵¹ *Id.*

¹⁵² Press Release, Prensa Web RNV, Mercosur Aprueba Creacion del Banco del Sur [Mercosur Approves the Creations of Bank of the South] (May 25, 2007), available at <http://www.alternativabolivariana.org/modules.php?name=News&file=article&sid=1921#1> (last visited Apr. 10, 2009).

¹⁵³ *Id.*

¹⁵⁴ ALBA impulsa lanzamiento del sucre como nueva moneda del sur [ALBA's Drive to Launch the Sucre as the New Currency of the South], VENEZOLANA DE TELEVISION, Mar. 1, 2009, <http://www.vtv.gov.ve/noticias-nacionales/15100>.

¹⁵⁵ "Viceminister Arias Cárdenas explained 'it is not easy in a strained economy, like those of some of our countries, to move to a common currency, a full integration for preservation while facing an international financial crisis; but contrary to what is expected we will have good news within the next few days about the advancement and strengthening of the Sucre (common currency) as well as the compensation fund.'" *Id.* (translation by Author).

¹⁵⁶ See ALADI Talks Global Economic Crisis, ESCAMBRAY (Sancti Spiritus, Cuba), Apr. 29, 2009, available at <http://www.escambray.cu/Eng/news/Waladi090429309.htm> ("The global economic and financial crisis is Wednesday on the table at the 15th Meeting of the Council of Foreign Affairs Ministers of the Latin American Integration Association ("ALADI"). . . . The Council of Ministers will analyze the characteristics and scopes of the Payment System on Local Currencies ("SML") of the MERCOSUR and the Unitary System of Regional Compensation ("SUCRE"), that ALBA member countries plan to activate.").

¹⁵⁷ See ALBA, *Grandnational Projects*, *supra* note 147.

Grandnational Projects are newly developed and present one of the most interesting features of ALBA applied ideological work. During the Fifth ALBA summit, the members expanded their programs to include “Grandnational” aspirations in the areas of education, culture, fair trade, finance, nutrition, health, telecommunications, transportation, tourism, mining, industry, and energy.¹⁵⁸ The first is to focus on the production and distribution of certain agricultural products within ALBA.¹⁵⁹ These grandnational enterprises that would work in the same manner that a multinational company would, except that it is run by the state in accordance with the goals and objectives of ALBA.¹⁶⁰ Grannacional (Grandnational) enterprises are structured both to invert traditional private enterprises as well as to ground them in a socialist form of corporate social responsibility regime. Thus, for example, “The concept of Grandnational businesses emerges in opposition to the traditional transnational enterprises, thus its economic dynamics will set the businesses up to favor the production of goods and services to satisfy basic human needs ensuring their continuity and breaking the logic of reproducing and accumulating capital.”¹⁶¹ These enterprises can be state owned or mixed.¹⁶² They are transnational in the sense that they may be owned and operated by more than one ALBA state,¹⁶³ and are

¹⁵⁸ ALBA, *V Cumbre del ALBA—Proyecto Grannacional [V Summit of ALBA – Grandnational Project]*, May 29, 2007, <http://www.alternativabolivariana.org/modules.php?name=News&file=article&sid=1802> (last visited Apr. 15, 2009).

¹⁵⁹ ALBA, *ALBA Impulsa lanzamiento del sucre como nueva moneda del sur [The Impulse to Launch the Sucre as the New Currency of the South]*, Mar. 3, 2009, <http://www.alternativabolivariana.org/modules.php?name=News&file=article&sid=4077> (according to Viceminister for the Latin America and Caribbean, Francisco Arias Cárdenas of Venezuela, “ALBA’s proposal is to create a new business that permits increased productivity of soy in Bolivia, to accelerate and drive the nascent seed of this item in Venezuela and Nicaragua and through this facilitate the marketing of the company through itself”).

¹⁶⁰ ALBA, *Conceptualización de proyecto y empresa grannacional en el marco del ALBA [Project Conceptualization and Grandnational Business in the ALBA Framework]*, Jan. 24–26, 2008, <http://www.alternativabolivariana.org/modules.php?name=News&file=article&sid=2668>.

¹⁶¹ ALBA, *Conceptualización de proyecto y empresa grannacional en el marco del ALBA [Project Conceptualization and Grandnational Business in the ALBA Framework]*, at 5, Jan. 24–26, 2008, available at http://www.minci.gob.ve/doc/conceptualizacion_de_proyectos.pdf.

¹⁶² *Id.* at 8 (“The grandnational business will be the absolute property of the states and will be associated with businesses in the private sector for the development of specific activities.”).

¹⁶³ *Id.* at 7.

meant to operate across borders, though principally in the ALBA zone alone.¹⁶⁴ The corporate social responsibility of these enterprises are said to be essentially the same as those that drive ALBA itself.¹⁶⁵ It is not clear what the model will be for their operation. However, it would not be unreasonable to assume that the model of the enterprises currently run through the Fuerzas Armadas Revolucionarias ("FAR") (Revolutionary Armed Forces) might not provide the prototype.¹⁶⁶

Lastly, since the close of an Extraordinary Summit in April 2008, ALBA has created the ALBA Network of Food Trade and the ALBA Food Security Fund, funded initially with \$100 million.¹⁶⁷ In February 2009 it was announced that "Venezuela, Nicaragua, Ecuador, Bolivia, Honduras, and Dominica created a joint food production company and laid out plans to guarantee food security in the Caribbean, Central, and South American regions during an extraordinary summit of the regional trade bloc known as the ALBA in Caracas."¹⁶⁸ It is to be funded from out of the \$100 million fund created in April of 2008.¹⁶⁹

¹⁶⁴ *Id.* at 8 ("Thus we have grandnational businesses that will be businesses of the ALBA countries that will be productively integrated, whose production will primarily take place in the intra-alba market (fair-trade zone), and whose operations will be efficiently performed.").

¹⁶⁵ *See id.* at 6-7.

¹⁶⁶ On the entrepreneurial activities of the FAR, see, e.g., Frank O. Mora & Quintan Wiktorowicz, *Economic Reform and the Military: China, Cuba, and Syria in Comparative Perspective*, 44 INT'L J. COMP. SOC. 87, 104 (2003) (describing how political leadership looked to the military to restructure the economy in the early 1990s).

¹⁶⁷ *See* ALBA, *Presidential Summit of Managua, Sovereignty and Food Safety: Food For Life*, May 7, 2008, <http://www.alternativabolivariana.org/modules.php?name=News&file=article&sid=2962> (discussing the ALBA network of food and trade).

¹⁶⁸ James Suggett, *ALBA Trade Bloc Forms Joint Food Company at Summit in Venezuela*, VENEZUELANALYSIS.COM, Feb. 3, 2009, <http://www.venezuelanalysis.com/news/4165> ("We are going to create a supranational company, like a transnational company, but in this case with the concept of a great nation, to produce food with the goal of guaranteeing food sovereignty to our people," declared Venezuelan President Hugo Chávez.").

¹⁶⁹ *See id.* ("The new ALBA company will receive an initial investment of \$49 million drawn from the \$100 million food security fund that ALBA member nations created during the height of the world food crisis last April.").

2.3.3. Implementation – Social Agenda

Despite the prominence of the ideological element, ALBA has managed to initiate a number of programs. Though all are in the initial stages of development, they suggest the ways in which ALBA may be implemented. One group of programs is focused on education. *Mision Robinson* was a program to reduce illiteracy with a focus on the illiteracy of indigenous people.¹⁷⁰ Phase II of the project is intended to guarantee at least a sixth grade level education for all.¹⁷¹ Another program, *Mision Ribas*, extends Robinson's goal in its attempt to guarantee high school education and diploma to all those who lack this basic education.¹⁷² In addition, another program, *Mision Sucre* (Mission Sugar), sought to give thousands of Venezuelans access to university education with an emphasis on graduates in much needed specialties.¹⁷³

Implementation has also focused on programs of delivery of medical care. One, *Mission Barrio Adentro* (Mission Inside the Neighborhood), brought Cuban health care workers to Venezuela.¹⁷⁴ A large number of Venezuelan students were also admitted to Cuba to study health related professions.¹⁷⁵ Another

¹⁷⁰ See Lomas Morales, *supra* note 139, at 4 (discussing Mission Robinson). The program, Mission Robinson, used the "Yo sí puedo" ("Yes I Can") method. *Id.* 1,482,543 illiterates were alphabetized, of which 76,369 were native Indians, during phase I of the program. See *id.*

¹⁷¹ See *id.* (explaining that the second phase of Mission Robinson was scheduled to begin in October of 2003).

¹⁷² See *id.* (describing Mission Ribas). There are currently 601,004 students attending classes and 168,137 graduates from the program since its inception in November 2003.

¹⁷³ *Id.*

¹⁷⁴ See *id.* at 3 (discussing the stages of Barrio Adentro). Under phase I of the program, 23,601 Cuban health workers rendered health related services to a population of over 17 million Venezuelans. *Id.* Under phase II, 133 Integral Diagnostic Centers were built, as were 171 Integral Rehabilitation Wards and 5 High Tech Diagnostic Centers, all distributed throughout Venezuela's territory. *Id.* In addition, another 300 centers are near completion. *Id.* In total, 1,235 projects are being carried out that upon successful completion will transform Venezuela's health care system into a modern and efficient system without social barriers to accessing the services offered. *Id.* at 3-4.

¹⁷⁵ See *id.* at 4 (explaining that 6,525 Cuban specialists are working on Barrio Adentro). In addition to the services and facilities that Venezuela is receiving, there are 3,328 Venezuelan students studying General Medicine in Cuba. *Id.* There are also 12,940 Venezuelans in Venezuela pursuing a career in Social Health who are being trained by 6,525 Cuban specialists who work as part of Barrio Adentro. *Id.*

program, *Mission Milagro* (Mission Miracle), resulted in the provision of medical care for Venezuela in exchange for Venezuelan goods for Cuba.¹⁷⁶

The implementation of the ideological component of ALBA is also well tended in a series of programs designed to reshape the political and economic culture of the masses. These programs are tied to notions of mass social mobilizations in the service of social justice ideals as conceived by the directing states. One such program, *Mission Vuelvan Caracas* (Mission Return Caracas), seeks to train and educate the Venezuelan people so that they may work alongside the government in transforming the social and economic landscape of the country.¹⁷⁷ In a sense, trade cooperation at the supranational level is meant to transform the ideological basis of society at the grassroots level. The government uses the supranational apparatus of the ALBA organization to effect large social changes that might have been impossible if undertaken as a domestic matter.

But ALBA has also begun to assert its influence within the Caribbean in increasingly powerful ways. It is also becoming an important force within regional organizations, like the Organization of American States. For doubters, the influential role played by ALBA and its member states in the international reaction to the aborted constitutional coup of Honduras' former President Zelaya and his removal by the legislative and executive branches of that country should serve as a reminder that ALBA is starting to be a force to be reckoned with, at least in the Caribbean.¹⁷⁸ ALBA's position and characterization of the events in Honduras quickly became the standard version of reality.

¹⁷⁶ *Id.* at 4. As of April 2006, in Venezuela 220,571 surgical procedures had been performed, of which 188,389 were done to Venezuelan patients. *Id.* 15,500 patients have also been flown to Cuba to receive medical care. Press release, ALBA, Destacan Desarrollo de Programas Del ALBA [Highlights of the Development of ALBA Programs] (Jun. 28, 2007), available at <http://www.alternativabolivariana.org/modules.php?name=News&file=article&sid=2060>.

¹⁷⁷ See Lomas Morales, *supra* note 139, at 4-5 (describing the Mission Vuelvan Caras). Since its inception in March of 2004, 264,720 people have graduated and gone on to establish 7,000 cooperatives and businesses. *Id.*

¹⁷⁸ See Reflections on the Declaration of Independence: From a Crisis of U.K. Constitutionalism in the Americas to a Global Constitutional Crisis in Honduras, <http://lbackerblog.blogspot.com/2009/07/reflection-on-american-independence-in.html> (Jul. 4, 2009) (describing how the declaration of independence can illustrate ideas surrounding Honduran revolutions).

The regional bloc of the Bolivarian Alternative for the Americas (“ALBA”) condemned the coup in Honduras that ousted President Manuel Zelaya Sunday. A statement issued after a special meeting of foreign ministers urged the reinstatement of Zelaya, and said the ALBA member countries will not recognize any government or person rising from the coup.¹⁷⁹

ALBA has been instrumental in staging the events in Honduras to great effect.

On the basis of their joint efforts, the imperfect impeachment of former President Zelaya has been reconstituted as a coup and produced significant diplomatic victories for the revolutionary efforts of former President Zelaya amongst foreigners, especially in Europe. Most spectacularly, perhaps, was the recent announcement by the European Union that it would suspend \$90 million in aid to Honduras until Honduras agrees to take Mr. Zelaya back. The EU External Relations Commissioner Benita Ferrero-Waldner issued the following statement: “In view of the circumstances, I have taken the difficult decision to suspend all budgetary support payments. I strongly appeal to both parties to refrain from any action or declaration which might further escalate tension, thus making the prospect of a solution more difficult.”¹⁸⁰

This sort of political solidarity within the ALBA member states suggests the strength of the political privilege of the organization.

3. ALBA WITHIN THE WEB OF TRADE AND INVESTMENT ARRANGEMENTS IN LATIN AMERICA

For all of its purported uniqueness, ALBA operates in a regional context rich with traditional trade arrangements that are layered on each other. This section seeks to contextualize the similarities and differences of ALBA, not on its own terms—the object of Part I of this essay—but in terms of the construction of traditional trade associations in the Western Hemisphere. For that purpose, ALBA will be compared to Mercado Común del Sur (Common Market of the South, or “MERCOSUR”) and the Free

¹⁷⁹ ALBA Condemns Honduran Coup, Zelaya Participates Meeting, PEOPLE'S DAILY ONLINE, June 29, 2009, <http://english.peopledaily.com.cn/90001/90777/90852/6688633.html>.

¹⁸⁰ EU Suspends \$90m Aid to Honduras, BBC NEWS ONLINE, July 20, 2009, <http://news.bbc.co.uk/2/hi/americas/8159986.stm>.

Trade Area of the Americas. The comparison will show that ALBA is the only agreement that explicitly mentions as a goal the elimination of poverty and social exclusion for all the inhabitants of Latin America. ALBA is also unique in its calling for solidarity and cooperation in order to place the interests of the people above those of transnational capital. The other agreements focus the bulk of their attention to the establishment or augmentation of markets through the exchange of goods and capital. ALBA and MERCOSUR do, however, make reference to the goal of attaining Latin American unity. Yet ALBA remains embedded in a large web of trade arrangements among its member states that bind them in different ways under different arrangements. That produces cooperation, but is a challenge. This is most acutely felt in ALBA's relationships with CARICOM.

Lastly, the ideological framework of trade relations is not merely the subject of customs and trade unions; it is especially telling in the context of bilateral trade agreements. These arrangements suggest the limits of the social justice and state-to-state focus of ALBA within a trade environment in which even the most committed states engage with the private-markets-oriented global economic system on its own terms. Latin American unity can be as easily expressed in conventional free trade and economic cooperation agreements targeting private markets, as they can be expressed in inter governmental arrangements, like ALBA. It is those similarities, tensions, and connections that are explored here.

3.1. Regional Trade Arrangements

Regional trade agreements form the basis of much of the efforts toward economic integration within Latin America, and between the region and its neighbors in the Hemisphere. There are a number of these arrangements that bind some but not all of the states of the region. The only effort to effect such a unitary arrangement, the FTAA, has stalled. This section examines these forms of trade arrangements to suggest the way in which their ideology and objectives are institutionalized. The object of this examination is to draw out similarities and tensions with ALBA.

There are useful examples of other state-to-state organizations that seek to achieve some form of Latin American or South American unity. The first is the Comunidad Andina de Naciones (Andean Community of Nations, or "CAN"), comprised of Bolivia, Colombia, Ecuador, and Peru, which was created with the purpose

of obtaining a faster, more equitable and autonomous development among the four member nations.¹⁸¹ It aims to deepen the process of integral integration of Andean, South American, and Latin American nations and to contribute to equitable and sustainable human development that respects the diversity and asymmetries existent in each nation.¹⁸² This organization is implemented through a series of weak supranational organs whose operation is strictly controlled by the state organs of the member states. To date, the Andean Community has served as a basis for political solidarity and small efforts to reduce customs and tariff barriers to trade. Inter-governmentalist approaches to the facilitation of private economic activity, harmonization of legal regimes to the extent necessary to effect those more integrated markets combined with a suspicion of devolution of power to effect these changes in institutions other than the political organs of each member state marks the ideology and organization of this institution.

The second is the Asociación Latinoamericana de Integración (Latin American Association for Integration, or "ALADI"), created in 1980 through the Treaty of Montevideo, which has, as a primary objective, the creation of a common Latin American market.¹⁸³ The common market is to be created through the use of preferential tariff treatment among member nations, as well as through the signing of regional and bilateral agreements.¹⁸⁴ The scope of proposed agreements can include financial cooperation,

¹⁸¹ See Comunidad Andina de Naciones, About Us, <http://www.comunidadandina.org/ingles/who.htm> (last visited Apr. 10, 2009) (discussing the membership and purpose of CAN).

¹⁸² *Id.*

¹⁸³ See Treaty of Montevideo Establishing the Latin American Integration Association, art. 2, Aug. 12, 1980, 20 I.L.M. 672 [hereinafter ALADI Treaty] (discussing the objective of establishing a common market among member countries). ALADI might be usefully understood as a successor to the Latin American Free Trade Association. See Montevideo Treaty, *supra* note 37, art. 1 (establishing a free trade area and institution). LAFTA was generally regarded as a failure. See RAFAEL A. PORRATA-DORIA, JR., MERCOSUR: THE COMMON MARKET OF THE SOUTHERN CONE 14 (2005) (discussing how the treaty was "unworkable").

¹⁸⁴ See Asociación Latinoamericana de Integración, *Presentación* [Latin American Association of Integration, *Presentation*], <http://www.aladi.org/nsfaladi/perfil.nsf/vsitioweb/introduccion> (last visited Apr. 14, 2009). See also Servicio De Información Agropecuaria Del Ministerio De Agricultura Y Ganadería Del Ecuador [Agricultural Information Service of the Ministry of Agriculture and Livestock of Ecuador], <http://www.sica.gov.ec/ingles/comercio/docs/aladi/principios.html> (last visited Jan. 28, 2010) (breaking down tariff preference levels according to the economic development of each country).

complementary economic action, exchanges of scientific and technological information, and preservation of the environment.¹⁸⁵ ALADI's membership currently includes Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Paraguay, Peru, Uruguay, and Venezuela.¹⁸⁶ Under ALADI, a large number of partial trade agreements, customs, and free trade areas have sprung up among widely varying groupings of ALADI members. "In short, ALADI seems to be primarily a framework within which member states can negotiate and enter into economic integration agreements with each other and a 'keeper of the flame' for the ideal of integration in Latin America."¹⁸⁷ ALADI has set the conceptual stage for the proliferation of a wide variety of arrangements among its members. It, in a sense, made ALBA possible.

The third is Union de Naciones del Sur (South American Community of Nations, or UNASUR), formed through the Declaration of Cusco in 2004. It aims to promote a South America that approaches the political, social, economic, environmental, and structural sectors with an integrated approach that promotes the development of South America, Latin America and the Caribbean region in general.¹⁸⁸ UNASUR aims to unite the Andean Community of Nations and the Common Market of the South as part of a single economic, social, and developmental trade bloc in accordance with ALADI.¹⁸⁹ All twelve sovereign nations of South America are members of this community.

The last, and perhaps most important, is MERCOSUR, discussed in greater detail in the next section. It also has as its objective the creation of a common market among its member

¹⁸⁵ See *Asociacion Latinoamericana de Integracion, Presentacion supra* note 183.

¹⁸⁶ See ALADI Treaty, *supra* note 183, at 672.

¹⁸⁷ See PORRATA-DORIA, JR., *supra* note 183, at 16.

¹⁸⁸ See Union de Naciones Suramericanas, Declaración del Cusco sobre la Comunidad Sudamericana de Naciones, III Cumbre Presidencial Sudamericana [Union of South American Nations, Declaration of Cusco about the South American Community of Nations, III South American Presidential Summit] (Dec. 8, 2004), http://www.comunidadandina.org/documentos/dec_int/cusco_sudamerica.htm (explaining how an integrated South America will be developed and refined).

¹⁸⁹ See South American Community of Nations, Declaration on the Convergence of Integration Processes in South America (Sept. 30, 2007), http://www.comunidadandina.org/ingles/documentos/documents/casa_2005_1.htm (requesting Secretariats of ALADI, CAN, MERCOSUR, and CARICOM to study convergence of economic agreements in South America).

states.¹⁹⁰ However, it also aims to achieve economic development and social justice through integration in order to secure its members a proper place in the international economy.¹⁹¹ In addition, the founding document of MERCOSUR specifies that the organization should serve as a step in the greater process of achieving Latin American integration as envisioned in ALADI.¹⁹²

MERCOSUR was established in 1990 among Brazil, Argentina, Uruguay and Paraguay to promote trade among its members.¹⁹³ Through MERCOSUR, these states sought to establish a common market that permits more unimpeded movement of goods, services, and modes of production through the elimination of customs duties and non-tariff restrictions on goods of the member states.¹⁹⁴ It was also meant to expand the domestic market of each member state, through integration, in order to achieve economic development with social justice, so as to secure the member countries their place in the international economy.¹⁹⁵ Additionally, MERCOSUR serves as a site for the coordination of the macroeconomic policies of the member states in a way that optimizes the use and mobility of modes of production to achieve greater and more efficient operations.¹⁹⁶ Lastly, it serves as a step in the greater process of achieving Latin American integration, as envisioned in the Latin American Integration Association.¹⁹⁷

MERCOSUR is organized like many organizations of this type, framed around a governing institution composed of representatives of all member states and a secretariat to keep

¹⁹⁰ Treaty Establishing a Common Market between the Argentine Republic, the Federal Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay, art. 1, Mar. 26, 1991, 2140 U.N.T.S. 319 [hereinafter Treaty of Asunción].

¹⁹¹ See *id.* pmbl. (explaining in the Preamble that economic development is necessary for social justice and economic development).

¹⁹² See *id.*

¹⁹³ For a history of MERCOSUR, see generally PORRATA-DORIA, JR., *supra* note 183, at 7-21.

¹⁹⁴ See Treaty of Asunción, *supra* note 190, art. 1 (discussing the purpose and details of the common market).

¹⁹⁵ See Treaty of Asunción, *supra* note 190, pmbl. (“[The parties are] [c]onvinced of the need to promote the scientific and technological development of the States Parties and to modernize their economies in order to expand the supply and improve the quality of available goods and services, with a view to enhancing the living conditions of their populations”).

¹⁹⁶ *Id.* art 1.

¹⁹⁷ See *id.* art. 8 (referencing prior commitments made under ALADI).

operations running. In the case of MERCOSUR, the following inter-governmental organs have decision-making power: the Council of the Common Market, the Common Market Group and the MERCOSUR Trade Commission.¹⁹⁸ The Council of the Common Market is the highest organ and it is responsible for decision-making. It consists of the Ministers of Foreign Affairs and Economy of each of the member states. Its decisions are binding upon the member states.¹⁹⁹ The Common Market Group acts as the executive organ and is coordinated by the Ministries of Foreign Affairs. Its responsibilities include monitoring compliance, enforcing decisions, proposing measures for the execution of agreements, and drawing up programs of work to ensure progress towards the formation of a common market.²⁰⁰ The Common Market Group must include representatives from the Ministries of Foreign Affairs and of the Economy and the Central Bank of each State and a fourth member.²⁰¹ Decisions of the Common Market Group take the form of Resolutions that are binding upon the member states.²⁰² The MERCOSUR Trade Commission assists the Common Market Group in monitoring and ensuring that the common trade policy agreements between the states are applied.²⁰³ Its decisions are given in the form of Directives or Proposals and are also binding on the member states.²⁰⁴ The Joint Parliamentary Commission is another structural organ of MERCOSUR comprised of members of parliament from each of the respective member nations, whose primary purpose is to ensure that decisions made through MERCOSUR are given priority and appropriate legislative approval, at the national level, in their respective legislative bodies.²⁰⁵ The Secretariat provides support for the operations of MERCOSUR. It is based in Montevideo and has a small permanent staff. Its mandate is modest, though efforts have been made to

¹⁹⁸ Additional Protocol to the Treaty of Asunción on the Institutional Structure of MERCOSUR, art. 1, Dec. 17, 1994, 2145 U.N.T.S. 346 [hereinafter Protocol of Ouro Preto].

¹⁹⁹ Protocol of Ouro Preto, *supra* note 198, art. 9.

²⁰⁰ *See id.* § 2 (describing the formation of the Common Market Group).

²⁰¹ *Id.* art. 11.

²⁰² *Id.* art. 15.

²⁰³ *See id.* art. 16.

²⁰⁴ *Id.* art. 20.

²⁰⁵ *See id.* art. 25 (“The Joint Parliamentary Commission shall endeavour to speed up the corresponding internal procedures.”).

broaden its scope by permitting it to provide technical assistance and to monitor compliance with regional integration objectives.²⁰⁶

This framework suggests a level of centralization beyond mere inter-governmentalism. MERCOSUR exists more than as a nexus point for individual action by its member states. It appears to stand halfway between the construction of an autonomous supra state apparatus, like the European Union,²⁰⁷ and ALBA's much more decentralized organization. Yet, MERCOSUR has proven to be more impressive in theory than in practice, at least beyond the most basic level of integration.²⁰⁸ Some have concluded that it has been reduced to its symbolic value: "[n]otwithstanding the loss of political and economic relevance in recent years, Mercosur is still a mandatory topic of regional discourse, and the presidents of the four countries reinforce, from time to time, their commitment to the development of regional integration."²⁰⁹ The focus is on opening trade between private enterprises. Additionally, there is a focus on minimizing traditional state barriers to entry in the territory of other state participants. The difficulties arise from tensions between the desire to integrate and the need to protect local enterprises from competition. There is also little appetite for vesting supranational entities with substantial autonomy or direct regulatory power.²¹⁰ Rule by consensus, inter-governmentalism, and protection against short term or local economic pain have limited the expansion of MERCOSUR as an autonomous regional authority.

A similar model, with similar limitations, was proposed for the now dormant FTAA.²¹¹ Like MERCOSUR, the FTAA seeks to

²⁰⁶ See PORRATA-DORIA, JR., *supra* note 183, at 32-33) (describing additional efforts by the Secretariat in recent years).

²⁰⁷ On the organization of the European Union as an autonomous entity, see Larry Catá Backer, *The Extra-National State: American Confederate Federalism and the European Union*, 7 COLUM. J. EUR. L. 173 (2001).

²⁰⁸ See, e.g., Michael Mecham, *Mercosur: A Failing Development Project?*, 79 INT'L AFF. 369, 372 (2003) (suggesting that South American nations are realizing that MERCOSUR and other regional integration projects are too strictly focused on economics and economic theory, but not on political realities).

²⁰⁹ Welber Barral, *Dispute Settlement and Legal Harmonization, in Mercosur, in HARMONIZING LAW IN AN ERA OF GLOBALIZATION: CONVERGENCE, DIVERGENCE AND RESISTANCE* 129, 131 (Larry Catá Backer ed., 2007).

²¹⁰ *Id.* at 137-39.

²¹¹ For a history of the efforts to build a Free Trade Area of the Americas, see, e.g., Nicola Phillips, *U.S. Power and the Politics of Economic Governance in the Americas*, 47 LATIN AM. POL. & SOC'Y 1 (2005); Eric Dannenmaier, *Trade,*

establish a free-trade area with a view to generating economic growth and prosperity, through market liberalization and expansion that result in contributing to the expansion of world trade,²¹² enhancing competition and improving market access conditions for goods and services among the Parties,²¹³ eliminating barriers to the movement of capital and business persons among the Parties,²¹⁴ and fostering the development of a hemispheric infrastructure.²¹⁵ Like MERCOSUR, FTAA is administered through an organizational structure that is essentially inter-governmental in character, and grounded in consensus and state party prerogative. To this end, it is to be governed as a Council, Executive Committee, Civil Society Consultative Committee, Committee on the Differences in Levels of Development and Sizes of the Economies, a Secretariat, and other content-specific committees.²¹⁶ The Council is composed of the ministers in charge of trade for each nation, and its duties are to periodically evaluate the implementation and the outcomes of the Agreement, to hear any other matter that could adversely affect the functioning of the Agreement, and to modify it in pursuance [of the objectives] of the Agreement.²¹⁷ Decisions by the Council are supposed to be implemented by the member nations in accordance with their respective national legislations.²¹⁸ The Executive Committee is composed of the vice ministers, or officials of an equivalent rank of each member nation. Its duties include ensuring the fulfillment

Democracy and the FTAA: Public Access to the Process of Constructing a Free Trade Area of the Americas, 27 *FORDHAM INT'L L.J.* 1066, 1069-73 (2004). The FTAA website includes a history of the effort that ends in 2004. See Free Trade Area of the Americas, Antecedents of the FTAA Process, http://www.ftaa-alca.org/View_e.asp (last visited Feb. 21, 2010).

²¹² Free Trade Area of the Americas Draft Agreement, ch. II, art. 2, Nov. 21, 2003, http://www.ftaa-alca.org/FTAADraft03/Index_e.asp [hereinafter FTAA Draft Agreement] (listing as an objective "trade liberalization with a view to generate economic growth and prosperity, contributing to the expansion of world trade").

²¹³ *Id.* (listing the enhancement of market conditions, "including in the area of government procurement").

²¹⁴ *Id.*

²¹⁵ This latter goal is targeted to the facilitation of the circulation of goods, services, and investments; and to establish mechanisms that guarantee greater access to technology, through economic cooperation and technical assistance. *Id.*

²¹⁶ *Id.* ch. XXI (outlining the institutional framework of the different bodies).

²¹⁷ *Id.* ch. XXI, art. 1 (detailing the composition and duties of the Council).

²¹⁸ *Id.* ch. XXIV, art. 2 (describing changes in Chapter XXI, article 1).

and enforcement of FTAA provisions, acting as a forum for negotiations, adopting decisions, establishing technical committees, and deciding on financial and managerial matters.²¹⁹ The Civil Society Consultative Committee is in charge of developing information systems for Civil Society on matters related to the FTAA. It is also in charge of facilitating the formulation of positions, suggestions, contributions, and recommendations by civil society for the consideration of government.²²⁰

Both models, in turn, reflect the inter-governmental, passive and consensus framework that has characterized the creation of supra-national organs to supervise economic integration in Latin America since ALADI.²²¹ ALBA follows the same model, even as it furthers an ideological framework inimical to those of these other entities. It has developed a similar set of institutions—all tightly dependent on the will of, and serving the interests of, the member states. There is no autonomy in the supranational bodies that constitute ALBA. The focus remains on state sovereign rights, and tight control of integration. There is little in the construction of these organizations that suggest any move toward the development of autonomous supranational governance institutions with any sort of independent regulatory power. These are passive, flow-through organizations. They are more joint venture than integrative body. In that respect, ALBA evidences similarities in its institutionalization to MERCOSUR, ALADI, and even its ideological nemesis, the FTAA. That constitution of institutional presence reflects the primitive state of integration in Latin

²¹⁹ *Id.* ch. XXI, art. 2 (detailing the composition and duties of the Executive Committee).

²²⁰ *Id.* art. 4. (detailing the composition and duties of the Civil Society Consultative Committee).

²²¹ ALADI itself is institutionalized through a Council of Foreign Ministers, a Conference of Evaluation and Convergence, and a Committee of Representatives. ALADI Treaty, *supra* note 183, art. 28. The General Secretariat provides limited technical and administrative support. *Id.* art. 29 (technical organ of the association [órgano técnico de la Asociación]). The inter-governmental nature of ALADI is grounded in the character of its highest institutional body, the Council, which is to be made up of foreign ministers of member states and which has overall authority to direct the work of ALADI. *Id.* arts. 30–31. This intergovernmental body is convoked only at the instance of the Committee of Representatives, which constitutes the permanent body of the ALADI, *id.* art. 35, and is made up of representatives of each of the member states, *id.* art. 36. The consensus aspect of the character of ALADI is assured by the imposition of a high vote requirement. *Id.* art. 37 (requiring a two thirds vote of all member states).

America. It suggests that integration is better understood at the level of state-to-state relations—aggregated—than in grander organizations.

But there are important differences as well. MERCOSUR has embraced a greater willingness to construct a supra-national organizational apparatus under which integration efforts are overseen. These include primitive dispute resolution provisions, that though essentially inter-governmental in character, suggest mechanisms beyond the state and mere political consultation.²²² On the other hand, ALBA suggests the possibility of building a framework of sector-driven integration through the work of its commissions—producing knowledge and suggestions, but leaving the actual construction and implementation of any recommendations to willing member states. However, in each case, the supra-national element of these organizations tends to give way to its inter-governmental character. As a consequence, there is a weak relationship between the goals of integration and institutional apparatus created to further that goal. Sovereignty concerns and an unwillingness to trust a supra-national apparatus with its exercise, even in a tightly controlled delegated form, tend to reduce the efficacy of these systems as vehicles for integration. Instead, they serve as portals through which integration efforts can be undertaken directly between willing member states.

3.2. *ALBA and Trade Networks in the Caribbean – The CARICOM Connection*

In addition to its own programs, ALBA, especially through its member states, has also sought to reach out to other trade associations. From these, it appears, that ALBA seeks both to engage globally, at least within the region inhabited by ALBA states, and also to use the connection to influence the way in which other regional trade associations function. This is evident in the development of a relationship between ALBA and CARICOM. The relationship of CARICOM, a conventionally structured private markets oriented regional trade zone, with ALBA may provide insights into the compatibility and tensions between the ideological frameworks and implementations of these systems especially when they collide. This section describes the evolution

²²² For a discussion and critique, see Barral, *supra* note 209.

of that relationship and the current status of the partnerships between CARICOM and ALBA member states, especially Cuba.

What became CARICOM was founded in July of 1973 with the purpose of “establishing and utilizing institutions designed to enhance the economic, social and cultural development of their peoples.”²²³ The Treaty of Chaguaramas was amended by a Protocol in 2002 by which the Caribbean Community and Common Market were succeeded by the Caribbean Community including the CARICOM Single Market and Economy, which shall assume the rights and obligations of the Caribbean Community and Common Market.²²⁴ The CARICOM agreement (treaty) aimed its efforts at establishing a “Common Market” whose aims are to: strengthen, coordinate, and regulate the economic and trade relations among member states in order to promote their accelerated, harmonious, and balanced development; to achieve the sustained expansion and continuing integration of economic activities, the benefits of which shall be equitably shared, taking into account the need to provide special opportunities for less developed countries; and to achieve a greater measure of economic independence and effectiveness of its member states in dealing with states, groups of states, and entities of whatever description.²²⁵ In order to achieve this economic development, the member nations are urged to harmonize their laws in a large number of areas, but this is to be achieved by individual action of assenting member states.²²⁶ In addition, under the CARICOM agreement, member states also pledge to establish a common external tariff²²⁷ as well as a common internal customs market in which the goods produced by the member states receive preferential treatments because no customs import duties can be

²²³ Treaty Establishing the Caribbean Community, Pmbl., July 4, 1973, 946 U.N.T. 17 [hereinafter Treaty of Chaguaramas].

²²⁴ Protocol on the Revision of the Treaty of Chaguaramas, art. I, Feb. 4, 2002, 2260 U.N.T.S. 47 (“The Caribbean Community and Common Market shall be succeeded by the Caribbean Community including the CARICOM Single Market and Economy, which shall assume the rights and obligations of the Caribbean Community and Common Market.”).

²²⁵ Treaty of Chaguaramas, *supra* note 223, Annex art. 4 (placing obligations on member states to implement and follow decisions of the CARICOM organs).

²²⁶ *Id.* art. 42.

²²⁷ *Id.* arts. 18, 31.

placed on goods whose origins lie within the Common Market area.²²⁸

In December of 1993, Cuba and the members of CARICOM established a joint commission "to promote co-operative relations between the Caribbean Community and Cuba in economic, social, cultural, and technological fields."²²⁹ In addition, the agreement calls on the parties to "seek a greater understanding of each other's views and positions on issues which may arise in the various regional and international forums, in an effort to promote closer relations in economic, social, cultural, and technological fields."²³⁰ The agreement incorporates the Charter of Economic Rights and Duties of States,²³¹ which was adopted in 1979 at the Thirty-Fourth Session of the General Assembly of the United Nations.²³² The U.N. Charter urges nations to "commit themselves effectively to achieving, through international negotiations and other concerted action, the restructuring of international economic relations on the basis of the principles of justice and equality in order to provide for steady economic development, with due regard to the development potential of developing countries."²³³

In July 2000, CARICOM and Cuba entered into a trade and economic cooperation agreement whose objectives included the promotion of trade in goods and services,²³⁴ and the cooperation by

²²⁸ *Id.* arts. 17, 19. Common Market Origin is defined in Article 14 of the Annex. *Id.* art. 14. The agreement also restricts a government's ability to provide aid to certain domestic industries. *Id.* art. 25. Conversely, the agreement also strives to promote the industrial development of the less developed member nations, *id.* art. 56, and for the provision of financial assistance by the more developed to the less developed nations. *Id.* art. 89.

²²⁹ Agreement Establishing the Caribbean Community ("CARICOM")-Cuba Joint Commission, art. 3, Dec. 13, 1993, available at http://www.caricom.org/jsp/secretariat/legal_instruments/agreement_caricom_cuba_jointcommission.jsp?menu=secretariat.

²³⁰ *Id.*

²³¹ *Id.* p.mbl.

²³² Global Negotiations Relating to International Economic Co-operation for Development, G.A. Res. 34/138, U.N. Doc. A/RES/34/138 (Dec. 14, 1979).

²³³ *Id.*

²³⁴ Trade and Economic Co-operation Agreement between Caribbean Community (CARICOM) and Cuba, art. 2, July 5, 2000, available at http://www.caricom.org/jsp/secretariat/legal_instruments/agreement_caricom_cuba_2000.pdf. This provides:

- (i) the promotion and expansion of trade in goods and services originating in the territories of the Parties by means of, *inter alia*, free access to the markets of the Parties, elimination of non-tariff barriers to

the parties to become more efficient players in global markets.²³⁵ This agreement also calls on the parties to grant greater and easier market access to each other's respective markets,²³⁶ as well as economic cooperation²³⁷ and trade promotion among the signatory parties.²³⁸ The agreement also mentions a need to create better trade in services and tourism.²³⁹ Lastly, the agreement specifies with detail what is exempt and in what manner specific goods or services are to be implemented among the respective parties.²⁴⁰

At first glance, the Cuba-CARICOM agreement appears to be a precursor to the framework that ALBA would later adopt. For

trade, the establishment of a system of rules of origin, and harmonization of technical, sanitary and phyto-sanitary measures;

(ii) the establishment of financial arrangements to facilitate the progressive development of two-way trade between the Parties;

(iii) the progressive liberalization of trade in services.

Id.

²³⁵ *Id.* This sets out a number of related objectives:

(iv) the encouragement of one Party in the market of the other Party so as to enhance the competitiveness of the Parties in the world market;

(v) the provision of facilities for the establishment and operation of joint ventures and other forms of economic co-operation activities;

(vi) the development of mechanisms that promote and protect the investments made by nationals of the Parties;

(vii) the promotion and development of co-operative activities;

(viii) the promotion of an ongoing system of consultation and coordination for the exchange of information and views on economic and social matters of mutual interest and, where feasible, for the adoption of common positions at international forums and vis-a-vis third countries and groups of countries;

(ix) the discouragement of anti-competitive business practices between the Parties;

(x) the continuity and progress of work initiated within the CARICOM-Cuba Joint Commission (the Joint Commission) established by both Parties for the development of mutual relations.

Id.

²³⁶ *Id.* art. 5.

²³⁷ *Id.* art. 10.

²³⁸ *Id.* art. 12.

²³⁹ *Id.* arts. 15-16.

²⁴⁰ *Id.* Annexes I-V.

instance, both agreements call for developmental assistance by the wealthier to the less wealthy. Similarly, both agreements, at least on paper, seem to focus the bulk of their emphasis on promoting greater welfare for the majority of a member nation's population. However, the means by which this is accomplished varies. CARICOM, I would argue, falls more in line with regional trade agreements such as the FTAA or MERCOSUR. To CARICOM's credit, the emphasis of their agreement is mutual cooperation, growth, and prosperity for all members. These goals, although spelled out in the text of both the FTAA and MERCOSUR, do not apply, in practice, as much as they do with CARICOM. ALBA, in contrast, is based more on a barter system, in which the specialty of one nation (i.e., Cuban doctors) is exchanged for what is abundant in another (i.e., Venezuelan petroleum).

Conversely, an increasing number of CARICOM member states have sought to remain within CARICOM and also join ALBA. Dominica is one state with membership in both organizations. Other states have sought to adhere to the ideological principles of ALBA, but not join it.²⁴¹ This has caused some controversy within CARICOM. The sentiment in early 2009 appears to favor that ALBA member states enter into agreements with CARICOM, similar to that entered into with Cuba, rather than encouraging CARICOM states to join ALBA.²⁴² Still, those CARICOM member states seeking entry into ALBA have done so precisely because they believe that ALBA is "just another avenue for obtaining economic aid which is not available in Caricom."²⁴³ While there is concern that ALBA might undermine the integration efforts represented by CARICOM, others have suggested that the

²⁴¹ For example, in February 2007, Antigua and Barbuda, Dominica, and St. Vincent and the Grenadines signed a statement expressing support for the ALBA principles and committing themselves to working towards creating collaboration between ALBA and CARICOM. See *St. Vincent Treading Cautiously with Chavez's ALBA Deal*, CANA NEWS, Jan. 30, 2008, <http://www.cananews.net/news/131/ARTICLE/20927/2008-01-30.html>. Other countries have worried that joining ALBA might somehow impact on their CARICOM obligations. *Id.*

²⁴² However, Prime Minister Gonsalves has stated that it would be "ideal if like Cuba, all the other member countries of ALBA pursue trade agreement with CARICOM." *Id.*

²⁴³ Vaughn Lewis, *ALBA Seen as Avenue to Economic Aid for Small CARICOM States*, STABROEK NEWS, Feb. 3, 2008, <http://www.stabroeknews.com/2008/news/local/02/03/alba-seen-as-avenue-to-economic-aid-for-small-caricom-states-prof-vaughan-lewis/>.

proliferation of trade powers is a sign of the waning of American power in the region.²⁴⁴

But the real lesson in Cuba-ALBA-CARICOM relations is the multiple vectors of that framework. The issues arising among the states with connections to both trade groups exist precisely because the web of trade relationships is both complex and dense. But, it is denser than suggested merely by looking at trade relationships. Movements of capital as well as goods are key to understanding the nature of economic integration among states. The investment practices provide another test of the distinctiveness of trade and investment regimes where interactions are ideologically tinged by groups grounded in incompatible ideological framework. For that purpose, it is worth looking briefly at the construction of webs of investment relationships through bilateral investment treaties, a subject taken up in the next Section.

3.3. ALBA in a Region of Bilateral Investment Treaties and Partial Preference Trade Agreements

In some ways more important to regional trade than these multilateral trade arrangements, bi-lateral trade agreements (“BITs”) among Latin American States have become more important over the last thirty years.²⁴⁵ It is true that BITs do not cover the same ground as many trade agreements, but there is enough of an overlap to suggest an approach to an important sector of trade relations between states, one that focuses on investment and services. For this purpose, this Article considers three categories of BITs. The first include those between the United States and ALBA member states.²⁴⁶ The second group

²⁴⁴ See generally Norman Girvan, *ALBA, Petocaribe and CARICOM: Issues in a New Dynamic*, Oct. 23, 2008, <http://alainet.org/images/Girvan%20ALBA%20PETROCARIBE%20AND%20CARICOM.pdf> (suggesting that CARICOM coordinate its relations with ALBA).

²⁴⁵ For a history, see United Nations Conference on Trade and Development, *Bilateral Investment Treaties 1959-1999*, UNCTAD/ITE/ILA/2 (2000).

²⁴⁶ Those considered include: Treaty Between the Government of the United States of America and the Government of the Republic of Nicaragua Concerning the Encouragement and Reciprocal Protection of Investment, U.S.-Nicar, July 1, 1995, S. TREATY DOC. NO. 106-33, available at http://www.sice.oas.org/BITS/usanic_e.asp [hereinafter U.S.-Nicar. BIT]; Treaty Between the Government of the United States of America and the Government of the Republic of Bolivia Concerning the Encouragement and Reciprocal Protection of Investment, U.S.-Bol., Apr. 17, 1998, S. TREATY DOC. NO. 106-26, available at http://www.unctad.org/sections/dite/ia/docs/bits/us_bolivia.pdf [hereinafter U.S.-Bol. BIT].

considered is between ALBA member states other than Cuba.²⁴⁷ The last group to be considered consists of BITs between Cuba and ALBA and non-ALBA member states.²⁴⁸ All of these BITs share a common set of objectives—to promote economic cooperation, protect investors and safeguard their investment activities, and provide a framework for the regulation of those relations to increase mutual economic activity and prosperity. Beyond this, the similarities and differences among these groups of BITs might better suggest the larger differences in trade philosophy and approaches that find their way into multilateral arrangements like ALBA, MERCOSUR, and FTAA. Indeed, together these arrangements provide a comprehensive window on state-to-state trade and investment relations that might be overlooked in examining the grander projects of ALBA, MERCOSUR and FTAA.

The American BITs can serve as a benchmark of sorts. They come closest to the private global market ethos of modern economic globalization.²⁴⁹ These BITs are variations on the standard form of bilateral investment treaty that the United States uses as a basis for its BITs.²⁵⁰ The U.S.-Nicaragua BIT and the U.S.-Bolivia BIT conform generally to the model U.S. BIT. In both cases, the respective BITs cover a large class of investments made, owned, or controlled directly or indirectly by a nation or company of the other state, including intellectual property.²⁵¹ Provision is

²⁴⁷ Those considered include: *Negociaciones Entre el Gobierno de la República de Bolivia y el Gobierno de la República Bolivariana de Venezuela para un Acuerdo Sobre Promoción y Protección recíproca de inversiones* [Negotiations between the Government of the Republic of Bolivia and the Government of the Bolivarian Republic of Venezuela for an Agreement on the Reciprocal Promotion and Protection of Investments], Bol.-Venez., Mar. 31, 2000, available at http://www.unctad.org/sections/dite/ia/docs/bits/bolivia_venezuela_sp.pdf [hereinafter Bol.-Venez. BIT].

²⁴⁸ Those considered include: *Acuerdo entre la República de Bolivia y la República de Cuba para la promoción y protección de inversiones* [Agreement between the Republic of Bolivia and the Republic of Cuba for the promotion and protection of investments], May 6, 1995, available at http://www.unctad.org/sections/dite/ia/docs/bits/cuba_bolivia_sp.pdf [hereinafter Bol.-Cuba BIT].

²⁴⁹ For a discussion of that system, see, e.g., Catá Backer, *supra* note 9.

²⁵⁰ Treaty Between the Government of the United States of America and the Government of [Country] Concerning the Encouragement and Reciprocal Protection Of Investment, 2004, available at http://www.ustr.gov/assets/Trade_Sectors/Investment/Model_BIT/asset_upload_file847_6897.pdf [hereinafter 2004 Model BIT].

²⁵¹ U.S.-Nicar. BIT, *supra* note 246, art. I, § 1(d); U.S.-Boliv. BIT, *supra* note 246, art. 1, § 1.

made for the equal treatment of investors and investments in the host state, protection against expropriation and compensation therefrom,²⁵² most favored nation treatment,²⁵³ free movement of capital in and out of host states,²⁵⁴ protection of loss from war or other civil disturbances,²⁵⁵ prohibitions from host state enactment of a number of provisions affecting the manner in which investments are carried out within its territory,²⁵⁶ movements of investors in and out of the host state,²⁵⁷ and dispute resolution provisions, including the provision of arbitration for disputes among the state parties or between a state-party and an investor.²⁵⁸ The U.S. BITs also include provisions peculiar to its embargo against Cuba.²⁵⁹

One would expect to see the trade philosophy of ALBA reflected to some extent in the way in which BITs between ALBA members, and especially in BITs with Cuba, are structured. Yet, on examination, it is clear that whatever differences exist between these investor arrangements and the U.S. BIT model are subtle. The most prominent difference is with respect to conditions to investment. The provisions in U.S. BITs with Nicaragua and Bolivia limiting host state power to legislate rules burdening inbound investment with respect to labor, investment, and other factors in operation²⁶⁰ are absent in the BITs among ALBA states, including those with Cuba. The effect can be substantial.

²⁵² See U.S.-Nicar. BIT, *supra* note 246, art. III.

²⁵³ See *id.* art. II.

²⁵⁴ See *id.* art. V.

²⁵⁵ See *id.* art. IV.

²⁵⁶ In the U.S.-Nicar. BIT, for example, the treaty prohibits national legislation, applicable to covered investments, prohibitions against host country investments that mandate particular levels of local content, purchases or preferences to local goods or services, limitations on the import of products or services, the export of services, limits on sales in the host state territory, mandatory rules for transfers of technology, and mandatory local investments in research and development. *Id.* art. VI, §§ a-f. These limits are reproduced, in substantial respect in the U.S.-Boliv. BIT. See U.S.-Boliv. BIT, *supra* note 246, art. VI, §§ a-f.

²⁵⁷ See U.S.-Nicar. BIT, *supra* note 246, art. VII.

²⁵⁸ See *id.* arts. IX-X; U.S.-Boliv. BIT, *supra* note 246, arts. IX-X.

²⁵⁹ See, e.g., U.S.-Nicar. BIT, *supra* note 246, art. XII (benefits of the BIT not available "if nationals of a third country own or control the company and . . . the denying party does not maintain normal economic relations with the third country").

²⁶⁰ See discussion, *supra* note 256, listing prohibitions limiting host state power in U.S.-Nicar. BIT.

Moreover, the BITs among ALBA members include a "shut down" clause, permitting a host state to suspend free movement of investments during times of exceptional economic difficulties.²⁶¹ Indeed, in the Bolivia-Cuba BIT, all investments are made subject to local law without limit.²⁶² The idea is that Cuba and its investment partner will promote and create unspecified conditions favorable to investment in their respective territories, and on that basis authorize investment in conformity with its laws.²⁶³ The Bolivia-Cuba BIT also exempts from its most favored nation provisions the benefits of any arrangements effected through free trade agreements or customs unions.²⁶⁴

This discussion of BITs highlights certain tensions and incongruities. First, ALBA member states have not deepened their trade arrangements with each other through bilateral investment treaties to any great extent. This is curious, given the importance of control and coordination implicit as an ALBA ideal. Thus, for example, Nicaragua has no bilateral investment treaty arrangements with Cuba, Venezuela, Bolivia or Dominica; however, it has entered into such arrangements with the United States, a number of European states, China, Korea, Chile, and El Salvador.²⁶⁵ Likewise, Venezuela has no bilateral investment arrangements with the United States, China, or other ALBA states.²⁶⁶ It is possible to rationalize that omission by reference to ALBA's principles privileging trade at the state-to-state level. But, Venezuela is not consistent in this regard, maintaining private sector investment treaties with a number of European and Latin American States.²⁶⁷ Bolivia, on the other hand, has entered into such arrangements with Cuba and Venezuela, but not with

²⁶¹ See, e.g., Bol.-Venez. BIT, *supra* note 247, art. 6 ("[i]n case of the existence of exceptional difficulties or the balance of payments is severely unequal").

²⁶² See Bol.-Cuba BIT, *supra* note 248, art. II.2.

²⁶³ See *id.* art. II.1 ("Each contracting party will promote and create favorable conditions in their territory for investments and investors of the other contracting party will authorize such investments in accordance with their laws.").

²⁶⁴ See *id.* art. III.3.

²⁶⁵ SICE: Foreign Trade Information System, Information on Nicaragua: Bilateral Investment Treaties, http://www.sice.oas.org/ctyindex/NIC/NICBits_e.asp (last visited Feb. 21, 2010).

²⁶⁶ SICE: Foreign Trade Information System, Information on Venezuela: Bilateral Investment Treaties, http://www.sice.oas.org/ctyindex/VEN/VENBits_e.asp (last visited Feb. 21, 2010).

²⁶⁷ *Id.*

Nicaragua or Dominica.²⁶⁸ And it has arrangements with the United States, Chile, and Argentina, but not Brazil. Second, those BITs entered into by ALBA state parties tend to reflect the same private market orientation one encounters in BITs with the United States. There are notable exceptions—and principally focused on the extent of the application of local law to require local participation in inbound investments. But otherwise, the form is similar.²⁶⁹

The incongruities become larger when understood in the context of the networks of private sector-oriented free trade arrangements in which ALBA member states also participate, in addition to the great organizations like MERCOSUR and the Andean Community. In some respects, these arrangements seem to mimic the networks of investment arrangements that are formed by the large number of crisscrossing bilateral investment treaties among these states.²⁷⁰ Nicaragua, for example, participates in free trade arrangements with Mexico and the Dominican Republic, and has entered into partial preferential agreements with Venezuela, Columbia, and Panama.²⁷¹ The Nicaragua-Venezuela partial preference agreement is particularly interesting.²⁷² It focuses on

²⁶⁸ SICE: Foreign Trade Information System, Information on Bolivia: Bilateral Investment Treaties, http://www.sice.oas.org/ctyindex/BOL/BOLBITS_e.asp (last visited Feb. 21, 2010).

²⁶⁹ This is not to suggest that the substantive differences in implementation may not be significant. Because of the conformity with local laws provisions in the Cuba BITs, for example, it may be more difficult to obtain the necessary permits to invest in Cuba than in more private market oriented states. That is the intended result. *See, e.g.*, Bol.-Cuba BIT, *supra* note 248, art. I.1 (defining investment by reference to conformity to the laws of the host state by stipulating “as long as it was made in accordance with the laws and regulations of the contracting party in whose territory the investment was made”).

²⁷⁰ Indeed, ALADI describes these arrangements as the instrument most often used to effect steps toward integration, noting both the flexibility of this form of trade arrangement and the variety of forms that they may take, producing a great dynamism within integration efforts. ALADI, *Acuerdos de Alcance Parcial* [Partially Reached Agreements], http://www.aladi.org/nsfaladi/arquitec.nsf/VSTITOWEB/Inf_acuerdos_de_alcance_parcial_acdos (last visited Feb. 21, 2010) (“Due to their flexibility, these agreements are the most used instruments in regional integration, such that the business negotiated in this type of agreement has shown greater dynamism throughout the intra-regional trade group.”).

²⁷¹ SICE: Foreign Trade Information System, Information on Nicaragua: Trade Agreements in Force, http://www.sice.oas.org/ctyindex/NIC/NICAgreements_e.asp (last visited Feb. 21, 2010).

²⁷² *Acuerdo de Alcance Parcial entre la República de Nicaragua y la República de Venezuela* [Partially Reached Agreement Between the Republic of

economic integration of the private sectors of their respective economies through the usual form—reductions to barriers to entry maintained by the state parties. Venezuela maintains similar partial preferential agreements with Argentina, Brazil, Chile, CARICOM, Cuba, Trinidad and Tobago, Costa Rica, El Salvador, Honduras, Guatemala, and Guyana.²⁷³ Though several predate the current Chavez regime's focus on state control of the economy, it remains in force. And indeed, in light of ALBA, the Venezuela-Cuba partial preference arrangement might raise ideological eyebrows.²⁷⁴

All of these treaties, perhaps in the aggregate, are meant to advance the project of Latin American economic integration—a project also near to the core of ALBA values. And, indeed, many fall within the free ranging framework of ALADI²⁷⁵ and article 14

Nicaragua and the Republic of Venezuela], Aug. 15, 1986, AAP. T.S. No. 25 available at http://www.sice.oas.org/Trade/vennic/vennic1.asp#CAP%C3%8DTULO_I_.

²⁷³ SICE: Foreign Trade Information System, Information on Venezuela: Trade Agreements in Force, http://www.sice.oas.org/ctyindex/VEN/VENAgreements_e.asp (last visited Feb. 21, 2010).

²⁷⁴ However, this agreement must be considered in the context of a number of others between Cuban and various Latin American states, each of which (and all together) were designed to attempt Cuba's reintegration into the ALADI system. Asociación Latinamericana de Integración [Latin American Association of Integration], Acuerdos de Alcance Parcial: Acuerdo de Preferencias Fijas [Partially Reached Agreements: Fixed Preferences Agreement], http://www.aladi.org/nfsaladi/arquitec.nsf/VSITIOWEB/Inf_acuerdos_de_alcance_parcial_acdos (last visited February 27, 2010) ("In the first place the agreements were derived from the incorporation of Cuba into the Association: ACE 40 (Cuba—Venezuela), ACE 42 (Cuba—Chile), ACE 46 (Cuba—Ecuador), ACE 47 (Cuba—Bolivia), ACE 49 (Cuba—Colombia), ACE 50 (Cuba—Perú), ACE 51 (Cuba—México) and ACE 62 (Cuba—MERCOSUR).") (translation by author).

²⁷⁵ ALADI, the Latin American Integration Association (Asociación Latinamericana de Integración) was established by the Treaty of Montevideo in 1980 by twelve states: Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Paraguay, Peru, Uruguay, and Venezuela. ALADI, Acerca de ALADI: ¿Quiénes somos? [About ALADI: Who are we?], http://www.aladi.org/nfsaladi/arquitec.nsf/VSITIOWEB/quienes_somos (last visited Feb. 21, 2010). It is meant to serve as the umbrella organization through which webs of trade and investment relationships among the members may ultimately produce, in the aggregate, an economically unified Latin America.

[ALADI] considers the horizontal cooperation with other integration movements around the world and partial actions with developing states in development of their respective areas of integration (Article 27). The judicial structure of ALADI is one of the most vigorous sub-regional agreements, plurilateral and bilateral integrations are increasingly emerging on the continent (Andean Community of Nations,

of the Treaty of Montevideo.²⁷⁶ Thus: “These agreements could be commercial, economic complementation, agricultural, promotion of trade, or adopt other modalities in accordance with the 14th article of the Treaty of Montevideo 1980. The basic norms and procedures that regulate these agreements are contained in the ALAC/CM/Resolution 2 on August 12, 1980 by the cabinet.”²⁷⁷ Certainly, from the Cuban perspective, ALBA has been offered as an important form of integration that might be privileged within the ALADI framework.²⁷⁸

3.4. *So, What Makes ALBA Different?*

The description of the conventional forms of regional trade and bilateral investment agreements suggests the contours of the differences between the approach of ALBA—in theory and operation—and traditional approaches to these relationships. This section first highlights those differences and then analyses whether those differences matter.

MERCOSUR, etc.). Consequently, it is up to the Association—as an institutional and normative framework or ‘umbrella’ for regional integration—to develop actions designed to help and promote these efforts in order to make them gradually converge to create a common economic space.

Id. Within the context of ALADI, ALBA is both unconventional but simultaneously an integral step toward integration.

²⁷⁶ ALADI Treaty, *supra* note 183. ALALC/CM/Resolution 2 imposes a number of substantive and procedural rules for the creation of these partial scope agreements among ALADI member states. These are designed to help bring a small amount of order and impose a similar direction of what is contemplated to be a thick network of individual and partial arrangements that will vary among different clusters of states over different aspects of economic life. *See id.* resolution 2 (providing for the conclusion of partial scope agreements and prescribing substantive and procedural rules).

²⁷⁷ ALADI, Partially Reached Agreements, *supra* note 270.

²⁷⁸ *See Necesitamos Procesos Integradores, Afirma Cuba en ALADI* [Cuba Affirms ALADI], CMKX RADIO BAYAMO, Mar. 13, 2008, <http://www.radiobayamo.icrt.cu/pdf.php?id=1838> (noting that Cuba affirms the need for the integrated process in ALADI). Ricardo Cabrisas, the Cuban minister noted this explicitly stating:

[w]e share the aspiration of improving the lives of our people and we have a way to integrate the project, which is the Treaty of Montevideo 1980. Within the Treaty, and respecting its principles . . . we have to look at other approaches and experiments that would permit the acceleration of a truly integrated process within ALADI.

Id.

3.4.1. *Differences in Theory*

The difference that stands out the most when comparing these two systems is the fundamental focus of these arrangements. Conventional agreements relating to trade and investment are focused on private and market activity. To the extent that states are involved, it is as guarantors of that private activity under sets of identifiable rules. States may participate in these efforts, but only as private parties.²⁷⁹ ALBA represents a significant effort to reorient private markets to public purpose, and to transfer authority from the private to the state sector. But, ALBA does not represent the only current attempt through which states have sought to intervene in global private markets. Sovereign wealth funds represent another potent vector of that activity, though in that case, states seek to enter markets as private rather than public actors.²⁸⁰

Indeed, the ALBA system, presents almost the inverse proposition: the principal focus is on the public activities of states. Where private activity is an issue, it is deemed to exist to serve the greater interests of public policy represented solely by and through the state. The foundation is socialist, but in the Stalinist tradition rather than in its modern Chinese form. Supranational interaction must be controlled by the state, serve the interests of states, and focus on public policy. Trade and investment are instruments of public policy, as are the economic activities of non-state actors within and between ALBA states. Private capital and its creation, exchange and accumulation is viewed as incidental to a primary focus grounded in political assessments of actions constituting advances in the general welfare of all the inhabitants of the nations

²⁷⁹ The essence of these notions is well articulated in efforts directed at states seeking to intervene in private global financial markets as participants rather than as regulators. See INT'L WORKING GROUP OF SOVEREIGN WEALTH FUNDS, SOVEREIGN WEALTH FUNDS: GENERALLY ACCEPTED PRINCIPLES AND PRACTICE: "SANTIAGO PRINCIPLES" 3-5 (2008), available at <http://www.iwg-swf.org/pubs/eng/santiagoprinciples.pdf> (recognizing the growing number of sovereign wealth funds, investment funds owned by general governments, and seeking to establish principles to describe their practices). On the public-in-form but private-in-function approach to state participation in financial markets, see Larry Catá Backer, *The Norwegian Sovereign Wealth Fund: Between Private and Public*, 40 GEO. J. INT'L L. 1271 (2009).

²⁸⁰ See Backer, *supra* note 279, at 1272 (noting that sovereign wealth funds allow states to participate in markets as private actors).

involved.²⁸¹ That is not to say that capital is not important or necessary, but rather, that the character of arrangements between states has changed. It is no longer focused on *eliminating borders* for the production and management of private capital; instead it is focused on *using borders* as a site for the assertion of public authority to control all aspects of social, political, cultural, and economic activity.

These ideological foundations produce second-order effects as well. First, they serve as a vehicle for the transfer of power from non-state to state actors. The object is not to clear a space for private activity; rather it is to enlarge the space for state action and control over the means of the production of political, social, and economic power. This is a necessary consequence of ideologies based on mass social political movements. Furthermore, ALBA calls on its members to mutually cooperate with one another in ensuring that complementary actions are taken in order to improve efficiency and promote the ultimate goal of integration. The BITS and other regional trade agreements discussed, with the exception of MERCOSUR, do not have integration as a goal. Rather, their focus is on establishing a mechanism that facilitates the exchange of goods and capital between nations. In many instances though, the exchange of goods and capital tends to be more one-sided, a complaint that is echoed in ALBA's calls for a movement away from the status quo Neo-liberal method of market and capital creation and exchange.

3.4.2. *Differences in Organizational Operation*

ALBA and the F.T.A.A. have much more in common when it comes to the area of operation than one would suspect. Unlike MERFCOSUR, where supranational decisions can be made and

²⁸¹ Charles H. Blake, *The Dynamics of Economic Integration in Venezuela and Their Implications for the FTAA Process*, 15 LAW & BUS. REV. AM. 81, 82 (2009).

[Venezuela's Hugo] Chávez spoke increasingly of a transition in Venezuela toward 'twenty-first century socialism' and of a [Bolivarian Alternative for the Peoples of Our America] in which like-minded countries could join Venezuela in refusing to participate in the FTAA process. Chávez asserted that the FTAA was an extension of the U.S. empire in the Americas.

Id.

See also *id.* at 98 ("As an alternative to the FTAA, Chávez promoted ALBA as a model centered on social welfare and mutual assistance rather than on free trade.").

enforced through the Common Market Group, ALBA and the FTAA rely on each respective nation to adopt any policy decisions or changes made at the regional level. This could be interpreted as being a weakness in the ability to enforce said decisions or changes. Conversely though, it could be argued that this method allows a nation and its people a greater say in what its country will and will not do. The main difference, ALBA proponents would argue, is that under ALBA it is indeed the people who make the decisions, and not multinational corporations, as would be the case under the FTAA. Along these lines, another noteworthy operational difference between ALBA and the FTAA involves the beneficiaries of the policies enacted.

3.4.3. *Do the Differences Matter?*

The differences between the ALBA approach and the FTAA approach are revolutionary in the sense that, under ALBA, the state is attempting to become the main player within the traditional capitalist system. Yet that revolutionary approach is, in a sense, a reaction as well. ALBA seeks to invert the vectors of social and political movements back to a framework that privileged the state over all other institutions, and that sought to invest the state, and its apparatus, with a monopoly of authority over politics, society and economics. The now ancient, and from a Chinese perspective, anachronistic, framework is heavily grounded on traditional Marxist-Leninist notions from the first half of the twentieth century.²⁸² Rather than continue with the existing process of transnational integration within which private multinational corporations are the main players and main beneficiaries of bilateral and multinational trade agreements, ALBA aims to construct both public markets and public multinational enterprises. ALBA would use the government apparatus as a public leveraging mechanism that can compete with and against these corporations within markets that are grounded in public rather than private incentive structures. Yet this difference is also embedded in larger global systems that remain firmly framed within dominant private

²⁸² See generally Larry Catá Backer, *Cuban Corporate Governance at the Crossroads: Cuban Marxism, Private Economic Collectives, and Free Market Globalism*, 14 *TRANSNAT'L L. & CONTEMP. PROBS.* 337 (2004) (discussing the possibility of Cuba's adoption of the Chinese model to engaging globalization in order to remain consistent with its Marxist-Leninist principles).

and stateless system of global intercourse. That has consequences that remain to be worked through.

Among the more interesting consequences are those attached to the new state multinational enterprise program. The power and ability of ALBA's grannational enterprises to compete will depend on the size and success of ALBA and its members. But it may also entangle these enterprises within the matrix of global soft regulation of multinational enterprises,²⁸³ among the more important of which are the OECD's Guidelines for Multinational Corporations²⁸⁴ and the United Nations Global Compact.²⁸⁵ The Organization for Economic Cooperation and Development ("OECD") is comprised of a number of democratic, market economy governments focused on regulating and harmonizing development around the world.²⁸⁶ The Guidelines for Multinational Corporations represent the joint efforts of these countries to provide a normative framework for enterprise operation. It has already begun to produce regulatory activity,

²⁸³ See, e.g., Peter Muchlinski, *Corporate Social Responsibility and International Law: The Case of Human Rights and Multinational Enterprises*, in THE NEW CORPORATE ACCOUNTABILITY: CORPORATE SOCIAL RESPONSIBILITY AND THE LAW 431, 431-39 (Doreen McBarnet, et al. eds., 2007) (discussing examples of the entanglement of grannational and multinational enterprises).

²⁸⁴ ORG. FOR ECON. COOPERATION AND DEV. [OECD] DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS, OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES (2000), available at <http://www.oecd.org/dataoecd/56/36/1922428.pdf>.

The OECD Guidelines for Multinational Enterprises are the most comprehensive instrument in existence today for corporate responsibility multilaterally agreed by governments. Adhering governments—representing all regions of the world and accounting for 85 per cent of foreign direct investment—are committed to encouraging enterprises operating in their territory to observe a set of widely recognised principles and standards for responsible business conduct wherever they operate.

Id.

²⁸⁵ See generally Human Rights Council, *Protect, Respect and Remedy: A Framework for Business and Human Rights*, U.N. Doc. A/HRC/8/5 (Apr. 7, 2008) (prepared by John Ruggie) (discussing the development of these programs). See also ANDREW CLAPHAM, HUMAN RIGHTS OBLIGATIONS OF NON-STATE ACTORS, 218-24 (2006) (discussing the genesis of the *Global Compact*).

²⁸⁶ See OECD, About OECD, http://www.oecd.org/pages/0,3417,en_36734052_36734103_1_1_1_1_1,00.html (describing the organization of the OECD).

especially in Europe.²⁸⁷ One proceeding touched on the behavior of a multinational corporation operating within a conflict zone.²⁸⁸ The other touched on similar issues but for a situation in which the entity operated through supply chain relationships.²⁸⁹ In both cases, the companies were required to conform to international standards through the soft law system in which their home states adhered. Cuban corporations operating within the jurisdictions within which these regulatory regimes are strong would have to reconcile their own ALBA norms with those of the OECD.²⁹⁰

Similarly, the object of the Global Compact is to 'mainstream' the principles by encouraging behaviors consistent with the underlying principles.²⁹¹ The U.N. has described its Global Compact as "a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labor, environment and anti-corruption."²⁹² The Global Compact project has seen the establishment of a large network of actors charged with producing systems that might enhance the success of this mainstreaming in aid of the overall objectives of the U.N. This mainstreaming in turn embraced the idea that "international political authority derives not only from rules and procedures, but also from the principles that establish the normative framework for

²⁸⁷ See generally Larry Catá Backer, *Rights And Accountability In Development 'Raid' v. Das Air And Global Witness v. Afrimex; Small Steps Towards an Autonomous Transnational Legal System for the Regulation of Multinational Corporations*, 10 MELB. J. INT'L L., 258 (2009) (recounting these efforts).

²⁸⁸ See generally United Kingdom National Contact Point, *Statement By The United Kingdom National Contact Point (NCP) For OECD Guidelines For Multinational Enterprises (NCP): Das Air* (Jul. 21, 2008), available at <http://www.berr.gov.uk/files/file47346.doc> (discussing the operation of Das Air in a conflict zone).

²⁸⁹ See generally United Kingdom National Contact Point, *Final Statement by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises: Afrimex (UK) Ltd.* (Aug. 28, 2008), available at <http://www.berr.gov.uk/files/file47555.doc> (discussing the operation of Afrimex through supply relationships).

²⁹⁰ See Jean d'Aspremont, *Softness in International Law: A Self-Serving Quest for New Legal Materials*, 19 EUR. J. INT'L L. 1075, 1077-81 (2008) (providing a discussion of the dangers and a critique of such systems for soft law).

²⁹¹ U.N. Global Compact, *Overview of the U.N. Global Compact*, <http://www.unglobalcompact.org/AboutTheGC/> (last visited February, 27, 2010) (giving a general description of the U.N. Global Compact organization).

²⁹² *Id.*

multilateral agreements.”²⁹³ Like the OECD system, this soft law system is aimed to buttress a private market driven system in which the state plays a subordinate role, the inverse of the ALBA project. Apposite is the understanding that “many people who use the term ‘soft law’ pejoratively often are concerned less with the alleged fictitious character of certain prescriptions that purport to be law . . . and much more with the redistribution of political power in certain arenas of international lawmaking.”²⁹⁴ The political dimensions of these efforts are well known and inimical to the project ALBA states seek to effect; conflict is likely.

It is not clear that ALBA’s grannacional (grandnational) principles are compatible with those of the OECD or the Global Compact. It is possible that they might overlap, but they are distinct in several respects. Within ALBA, that may make no difference. However, outside of ALBA, and especially within Global Compact or OECD adhering jurisdictions, the potential for conflict intensifies. Moreover, operating in the form of grannacional (grandnational) enterprises may also affect the extent and nature of sovereign immunity as these enterprises seek to project their activities beyond ALBA.

The grannacional enterprise, like the ALBA food bank and the ALBA emphasis on asymmetrical trade arrangements grounded on public needs as determined by states, deepens the conclusion that ALBA represents a substantially distinct conception of regional trade associations. In place of a model grounded in an active role of private economic actors and a passive regulatory role for states, ALBA posits an active role for states in trade as principals, as well as a regulatory role in that trade. In effect, it suggests that states remain sovereign entities and economic bodies simultaneously. This suggests an amalgamation of the public and private spheres, which is almost the inverse of what is developing in the United

²⁹³ Georg Kell & David Levin, *The Evolution of the Global Compact Network: An Historic Experiment in Learning and Action 4* (Aug. 11-14, 2002) (unpublished paper presented at the Academy of Management Annual Conference: “Building Effective Networks”), http://www.unglobalcompact.org/docs/news_events/9.5/denver.pdf. See also JOHN RUGGIE, *WINNING THE PEACE: AMERICA AND WORLD ORDER IN THE NEW ERA* (1996) (discussing the multilateral framework needed for establishing a new world order).

²⁹⁴ G.F. Handl et al., *A Hard Look at Soft Law*, in *TRANSNATIONAL CORPORATIONS: THE INTERNATIONAL LEGAL FRAMEWORK* 333, 337 (A.A. Fatouros ed., 1994) (quoting W. Michael Reisman).

States and Europe.²⁹⁵ This is effected, however, through an organizational structure that remains heavily dependent on the state, tightly controls the ability of ALBA to evolve into an autonomous organization furthering its own ideological basis, and mimics, in substantial respect the outward forms of traditional approaches to integration in Latin America. That mixed message helps ALBA by emphasizing its attachment to conventional forms of organization and implementation, but it also hurts ALBA by appearing to reduce it to just another variation in traditional approaches to integration well understood within the ALADI umbrella. That mixed message is ultimately confusing, both internally and externally to the construction of the sort of institution implied by its organizing ideology.

Yet the differences between ALBA and conventional free trade arrangements ought not to be completely dismissed. Those differences extend beyond its ideological basis to its implementation. Though the organization is still quite young, it has been active enough to give us a sense of its operation. It commodifies public as well as private goods—from teachers to doctors, along with goods and services—the usual subject of trade and trade regulation. In this sense, at least, ALBA represents, in part, a return to a command economy basis of economic organization—and an extension of command economy principles to economic relations among states. Whether plural systems—combinations of command and private economy—can co-exist in a way that is efficient or stable, however, has yet to be seen. ALBA will serve as a great experiment in this respect. Its outcome is by no means certain.

For the moment, however, ALBA's greatest contribution might well be its ideology.²⁹⁶ Its mere existence serves as a basis for challenging assumptions in the creation and implementation of methods of integration. It provides a base through which this distinctive ideological voice can be leveraged. Understood as an ideological joint venture among its participants, ALBA represents a

²⁹⁵ See generally Larry Catá Backer, *The Private Law of Public Law: Public Authorities as Shareholders, Golden Shares, Sovereign Wealth Funds, and the Public Law Element in Private Choice of Law*, 82 TUL. L. REV. 1801 (2008) (examining the development of a European framework for the law applicable to state private interventions in which private and public law are not separable and in conflict but in which states substitute actions in the private law realm for sovereign activity).

²⁹⁶ This has been particularly acute within CARICOM states. See discussion *supra* Section 3.2.

space within which a consensus on alternatives to the existing preeminent economic model of globalization might be constructed. For that purpose it provides a safe space, not within the territory of any of the state participants, and detached from the governments of each of them. In this aspect, ALBA may make its most potent contribution to current debates about the form and principles of economic integration grounded in trade relations among states and their populations. This is a potent weapon in states with large classes of poor people—people who vote. Even the smallest implementation of the ideological framework of ALBA has the potential to change the political dialog in many states in Latin America. This may represent Cuba's most imposing challenge to the developed world. If successful, ALBA could reign in a new era of trade and commerce whose primary interest is the welfare of all people, and not merely just profits, as the standard mode of operation. Still, whether Bolivar's dream can indeed become a reality remains to be seen. In the face of a flexible and resourceful opponent, one that can embrace ALBA's core ideology without its politics, that challenge will not go unmet.

4. TENSIONS AND CONNECTIONS

This article has suggested both the singularity of ALBA and its connection with the now almost ancient tradition of trade integration that has also marked Latin American interstate economic relations. In lieu of a conclusion—for a conclusion is premature with respect to an entity that is so young and unformed—this section will suggest the six great points of tension and connection that ALBA represents within traditional models of trade and investment and among the state system in Latin America.

First, ALBA implicates the tension between integration and nationalism. This tension implicates the construction of hierarchies between states. It also implicates hierarchy between national and supranational governance organs. ALBA tilts heavily toward the ALADI model of partial integration. The great innovation of ALBA is that partial integration under its model is heavily controlled by states, rather than by individuals acting through private markets that cross state borders. But ALBA is more leery of the use of integration as a doorway for the creation of autonomous supranational organs. The Model of European Union integration, and even of the much milder form of MERCOSUR integration, is

rejected in favor of substantial “inter-governmentalism.” ALBA provides an ideological space through which *states* can trade at the *public level* among each other and with everyone else. Beyond that lies the great unknown.

Second, ALBA implicates the tension between integration that is controlled or directed by or for the *private sector* and that controlled or directed for the *public sector*. This tension implicates the understanding of the fundamental nature of trade and investment policy, or at least, of the fundamental driving force of trade. It suggests a tension in the understanding of borders—either as the marker of the limits of state economic power to be deployed by with or against other states, or as a porous barrier to certain activities (population movements and the provision of social welfare benefits) but not to others (economic activities) which respect to which borders essentially disappear. It thus also suggests the limits of state power over economic activity both as a physical reality and as a substantive policy value.²⁹⁷ ALBA tilts heavily toward a public market model. This model appears to manifest a traditional socialist internationalism. However, it is more than that: it is socialist internationalism updated by the incorporation of the symbols and institutions of modern private markets economic globalization but now turned to use by states as primary economic actors. The grannacional enterprises present a stark model of that updating and the embrace of modern forms of economic activity, but so does the ALBA bank. ALBA suggests that private markets ought to be incidental to and fill in gaps in public market activity. The engine that drives the economy is the state. Integration under ALBA is merely another aspect of sovereign relations. It should be directed to enhance rather than reduce national power over its internal and external economic policies and the production of economic activity. But this presents a fundamental assumption completely incompatible with those on which the last half-century of economic integration has been based.

Third, ALBA implicates the connections between the fight against the form of the current international system of economic regulation and the construction of trade frameworks. Ideology matters; fundamentals and grounding assumptions about the operation of state and non-state actors, and their powers and

²⁹⁷ See DENNIS PATTERSON & ARI AFILALO, *THE NEW GLOBAL TRADING ORDER: THE EVOLVING STATE AND THE FUTURE OF TRADE* 204–07 (2008) (discussing some of the restrictions on state power over economic activity).

prerogatives, matter.²⁹⁸ Indeed, ideology has been the principal motivator of much of what has been developed by the Cuban state apparatus. Ideology drives implementation. If one can control the ideological basis for the approach to an issue—like trade and investment—one can effectively control the parameters through which the issue is understood and systems constructed. Ideology and ideological education may well be the principal aim of ALBA, at least in its initial stages of development.²⁹⁹ Ideology may well be its most important product—to the extent that through ALBA, the consensus assumptions about trade and investment might be modified. ALBA represents a practical implementation of the ideological framework for the state system and the relationship of that system to economic regulation that the Cuban state has been developing since the 1970s.³⁰⁰ That framework emphasizes a focus on public commerce, on inter-governmentalism as the basis for integration, on attacking the private markets system and the privileging of private actors as controllers of economic decision-making and on a shift back to public control over the economy at the state level. It suggests that the basis for such activity is public rather than investor welfare, as determined by the state, and that all economic activity is tinged with a primary social rather than a more narrow economic purpose. ALBA expresses these views in its four anti-capitalist values, in its schedule of objectives, in the corporate social responsibility framework of the grandnational (grandnational) enterprises and in the unequal barter arrangements at the heart of PetroCaribe.

Intimately related to this is the conflation of economic and political goals inherent in ALBA. This represents an inversion of the regulatory model that is fundamental for economic globalization. Under that model, the clear divisions between public and private space is reflected in the separation between the political and economic spheres. When states participate in markets, the expectation is that such participation is legitimate

²⁹⁸ See *The Battle for Latin America's Soul*, THE ECONOMIST, May 20, 2006, at 11 (discussing the attention that Latin Americans have received for transforming their governments from liberal democracies into leftist nationalistic governments).

²⁹⁹ See Max Azicri, *ALBA y el Renacimiento de la Izquierda en la América Latina*, DIÁLOGO, Summer 2008, at 3.

³⁰⁰ See generally Backer, *Ideologies of Globalization and Sovereign Debt*, *supra* note 13 (comparing the two opposing ideological perspectives for nation-states' actions as creditors and debtors).

only when states act like an “idealized private investor.”³⁰¹ Likewise, when states operate through state owned enterprises, they are expected to organize in a way in which management is separated from political control.³⁰² Conversely, private actors are supposed to exercise no significant political power. ALBA presents a model grounded in the political use of economic power. More specifically, it represents an attempt to conflate the economic and political at the state level and, eventually, to unify public and private markets under the direction of the state.³⁰³

Fourth, ALBA implicates the connections between anti-Americanism and integration. One of the great tragedies of Latin American integration has been its conflation, sometimes more, sometimes less powerfully, with a fear or loathing of the United States or its actions and policies. It also reflects a related connection held by many of these states—that private markets based integration is a cover for western, and particularly American, neo-colonialist aggression, the object of which is to subordinate and exploit Latin American states indirectly to the same effect as under the old more direct colonial system.³⁰⁴ Challenging the model of private markets based globalization is a way of challenging American power under the cover of the same issues that the Americans have been using to assert that power. The ferocious attack on the FTAA at the heart of the early ALBA

³⁰¹ See generally Backer, *Sovereign Wealth Funds*, *supra* note 279, at 1271 (providing a general discussion of participation of states in markets).

³⁰² See OECD, *OECD GUIDELINES ON CORPORATE GOVERNANCE OF STATE-OWNED ENTERPRISES* (2005), <http://www.oecd.org/dataoecd/46/51/34803211.pdf>.

³⁰³ See Larry Catá Backer, *Sovereign Investing in Times of Crisis: Global Regulation of Sovereign Wealth Funds, State Owned Enterprises and the Chinese Experience*, 19 *TRANSNAT'L L. & CONTEMP. PROBS.* (forthcoming 2010) (discussing one version of this model closer to the current framework for economic development).

³⁰⁴ On notions of neo-colonialism in general, see José E. Alvarez, *Do States Socialize?*, 54 *DUKE L.J.* 961 (2005); Enrique R. Carrasco, *Law, Hierarchy, and Vulnerable Groups in Latin America: Towards a Communal Model of Development in a Neoliberal World*, 30 *STAN. J. INT'L L.* 221 (1994) (discussing its application to Latin American-U.S. relations); Ruth L. Gana, *The Myth of Development, The Progress of Rights: Human Rights to Intellectual Property and Development*, 18 *LAW & POL'Y* 315 (1996) (discussing notions of American neo-colonialism and private markets based globalization); Ibrahim J. Gassama, *Africa and the Politics of Destruction: A Critical Re-Examination of Neocolonialism and Its Consequences*, 10 *OR. REV. INT'L L.* 327, 359 (2008) (arguing that neocolonialism promoted “the interests of domestic political elites while suppressing the emergence of truly emancipatory politics and progressive governance”).

efforts reflects this quite starkly. The conflation of the FTAA and the United States provided a vehicle for the conflation of ideological and political opposition to a global set of factors tied to perceived American aspirations in the region the United States, the United States itself, private markets based globalization as an indirect challenge to assertions of American national power, and private markets as an attack by the United States on the power of newly decolonized states to direct and protect their internal economic life and set the policies thereof.

Fifth, ALBA implicates the close connection between traditional models of Latin American integration and its challengers. This connection implicates the importance of institutionalization models for the allocation of power even among state and supranational organizational actors and for the way those allocations of power among supranational endeavors cannot be avoided. The traditional models, from that of the European Union to those of NAFTA and MERCOSUR, represent, to varying degrees, efforts to institutionalize power within a supranational entity and, consequentially, to remove discretionary power over economic issues from states. Clearly, the extent of that divergence of institutional governance power varies greatly, from the almost negligible shift in MERCOSUR to the substantial divestment of power among the member states of the European Union over those economic affairs set out in their respective organizational instruments. ALADI, on the other hand, represents a different model—one that sacrifices virtually any framework for consolidating power in a supranational administrative or governance entity in favor of inter-governmentalism that is limited only by the values represented by the parties to the agreement. ALADI's focus on partial trade agreements among diverse parties (for these agreements need not include all ALADI member states) finds its investment analogue in the growing number of bilateral investment treaties between ALADI member states and others. But each of these is grounded in a consistent set of trade and investment assumptions. ALBA presents a conscious *inversion* of the dominant private markets model on which contemporary trade and investment agreements are framed. However, that inversion is grounded precisely in the forms adopted for the implementation of that model and its ultimate integrationist aspirations. Both ALBA and ALADI present trade frameworks that serve as umbrellas for regional integration grounded in sector and nation specific layers of agreement that in the aggregate will achieve the desired

integrative result.³⁰⁵ Indeed, the partial trade agreements for which ALADI is famous is nicely mimicked by the current crop of ALBA projects—from the Bank of ALBA to the grannacional (grandnational) enterprises and efforts at monetary union. Likewise, the form of investment treaty finds echoes in PetroCaribe and even in the model of asymmetrical trading between different groups of ALBA states. The inter-governmentalism of ALBA is the hallmark of ALADI.

Sixth, ALBA implicates the tension between internal and external trade and investment frameworks. This tension implicates the goals of solidarity among states, and the consequences of integration grounded in partial arrangements that distinguish among states, and groups of states. This tension also implicates the tensions between mutual advantage and competition among states. Borders, even the borders of trade and investment arrangements include those within it and exclude those outside. Those effects are sharply drawn within traditional private markets oriented trade and investment regimes, but they cannot be avoided under ALBA's framework of multiple joint venture arrangements. Indeed, the tension is quite acute in the construction of ALBA simultaneously as an internal mechanism for trade among ALBA members and ALBA as an aggregation of trade with non-ALBA states. These tensions are quite visible in relation to CARICOM, where there is ambiguity in ALBA's position as either partner to, or a competitive and destabilizing force that would threaten CARICOM's cohesion.³⁰⁶ But they are also visible within American

³⁰⁵ ALADI, About ALADA: Who Are We, *supra* note 275.

The judicial structure of ALADI is one of the most vigorous sub-regional agreements, plurilateral and bilateral integrations are increasingly emerging on the continent (Andean Community of Nations). Consequently, it is up to the Association—as an institutional and normative framework or “umbrella” for regional integration—to develop actions designed to help and promote these efforts in order to make them gradually converge to create a common economic space.

Id.

³⁰⁶ Vaughan A. Lewis, Professor of the Int'l Relations of the Caribbean, Third Sir Arthur Lewis Lecture in the University of the West Indies, St. Augustine's 2008 Nobel Laureate Celebrations, What Purposes for CARICOM Integration Today? 31-32 (Apr. 15, 2008), (transcript available at http://sta.uwi.edu/nlc/2008/documents/Lewis_Lecture_full.pdf).

I have suggested in this lecture that the region is now due for a more deliberate and open discussion, initiated at the level of Heads of Government, of new purposes of integration in the new environment

policy grounded in free trade in the Americas except with Cuba.³⁰⁷ Moreover, the relationship of ALBA's state trade vehicles to outside markets may produce differences in outcome and operation from their internal constitution. This will become particularly evident in coming years with respect to issues of sovereign immunity, conformity to foreign law, disclosure and transparency requirements beyond ALBA states, and the form and implementation of global corporate social responsibility rules that may be different from those developed within ALBA.

Ultimately, all of these tensions and connections revolve can be reduced to a single issue—the character, effect and purpose of borders. ALBA reminds us that these issues and connections are not limited to political borders—ideological, cultural, economic, class, gender, race, and ethnic borders can be as important, and as immersed in dialogues of integration, solidarity and respect. They all play a critical role in the ways in which integration is understood and practiced. But they also play an equally important role in the construction of hierarchy and in the subordination and exploitation of all such relationships. ALBA represents another way of advancing the former and resisting the latter; but the borders that have confronted other efforts at integration within Latin America will also confront ALBA.

5. CONCLUSION

Several insights emerge strongly from this examination of ALBA. ALBA is not merely a rhetorical device used for the internal consumption of the masses within the ALBA states. Nor is it merely a propaganda construct for the projection of power

which has come upon our countries and which I have sought to outline .

..

All this is required to take place at a time when, unlike the period of 1973 and the commitment to the Treaty of Chaguaramas, the national realities are of differing levels of attributes and assets possessed or available to the particular states, and therefore of differing senses of strengths and weaknesses governing the options that they have at their disposal. The muted debate about this or that country's attraction to Petrocaribe, or to the Bolivarian Alternative (ALBA), to the perceived detriment of existing regional commitments, is simply about that.

Id.

³⁰⁷ See generally David P. Fidler, *LIBERTAD v. Liberalism: An Analysis of the Helms-Burton Act from within Liberal International Relations Theory*, 4 IND. J. GLOBAL LEGAL STUD. 297 (1997).

beyond the borders of the ALBA states. ALBA represents a conceptual space within which a group of states have been attempting to inject command economy concepts into the construction of a multilateral trade sphere. It represents a sustained and potentially significant effort to find a principled basis for challenging the model of global economic governance that has served as the foundation of modern systems of trade. ALBA also represents an effort to blend political and economic concerns on a conventional Marxist Leninist model. ALBA's substantially successful efforts to manage the Honduran constitutional crisis, provides a window on the character of those efforts. But ALBA's successes have been limited. While it has built up its conceptual framework and been successful in exporting its ideas, at least regionally, it has had substantially less success in implementing its model on the ground. That ALBA has been successful enough is due in large measure to the willingness of Venezuela to employ its petroleum resources. But it has also succeeded because it provides a coherent foundation for a number of small states to band together against what they might perceive as a set of asymmetric power relations with other states. Whether ALBA succeeds in the long run remains to be seen. ALBA is critically important for states overwhelmed not only by other, more powerful states, but also states threatened by powerful private actors—from multinational corporations, to global civil society actors and international organizations. That ALBA has the potential to disrupt the otherwise unimpeded development of privatized global governance frameworks is already a reality, and one that larger and influential states, like the United States, ignores at its long term peril.