

Compatibility

When analyzing the Blue Mingo Agreement on Climate Change, a person may be prompted to raise the question as to whether the entire society is being considered. The members of this team are of the belief that the answer to this question is yes; society as a whole has been considered when drafting this treaty. There are approximately seventeen sustainable development goals, the Blue Mingo Treaty was specifically designed to meet almost if not all of these goals. The United Nations initially set out eight goals in 2000, Millennium Development Goals, in an attempt to eradicate many of the social issues that society may face. These development goals included eradicating poverty and hunger, achieving universal primary education, promote gender equality and empowering women, reducing child mortality, improve maternal health, combat HIV/AIDS, malaria and other diseases, ensure environmental sustainability and global partnership for development. Yes, these narrow goals aimed to combat the innumerable amount of social issues, but still neglected many of the areas that were equally important throughout the world today; hence the development of the seventeen Sustainable Development Goals in the year 2015. These goals include no poverty, zero hunger, good health and well-being, quality education, gender equality, clean water and sanitation, affordable and clean energy, decent work and economic growth, industry, innovation and infrastructure, reduced inequalities, sustainable cities and communities, responsible consumption and production, climate action, life below water, life on land and partnership for the goals. The goals that are most relevant to the Blue Mingo Treaty include clean water and sanitation, affordable and clean energy, sustainable cities and communities, climate action, economic growth, and partnership for the goals.

The term climate action refers precisely to climate change. Abrupt climate changes to the various climate systems has forced climate change to be one of the most acute issues in society today. Climate change is not to be ignored as our document encourages cohesion amongst nations in combating or eliminating this irreversible plague. The Blue Mingo treaty views climate change as a threat towards mankind and suggests ways in which international bodies and countries can participate in effective, sustainable and suitable measures to combat climate change in the various countries. The Paris Agreement, signed by 196 countries on April 22nd, 2016 has set an aim for there to be a hold on the increase on global temperature of well below 2°C and pursue efforts to limit increase to 1.5°C. The international document, the Paris Agreement encourages long-term growth toward climate goals, but will not enter into force until 2020. The Blue Mingo Treaty, similar to the Paris Agreement, has long-term climate goals.

It has been established that climate change does affect the world at large. With reference to the treaty presented by this team, the preamble speaks to the preservation of mankind and the planet's ability to sustain itself by means of producing crops, oxygen and preserving the animal and plant kingdom. This displays that this treaty not only takes into consideration human beings, but also animals and food consumption of the earth. Additionally, despite it's unenforceability, the preamble recognizes that climate change represents an urgent and potentially irreversible threat to human societies and the planet, and thus requires that this is urgently addressed by all nations. It also reaffirms the principle of sovereignty of States in international cooperation to address climate change. This aspect of the treaty demonstrates our agreement that the issue of climate change is pre-eminent and shows that in order to combat this problem, there is a need for States to have global support.

Additionally, after thorough examination of the Blue Mingo treaty one can gather that the international document aims to encourage clean water and sanitation. Its focus is for every

being to receive clean, safe and affordable drinking water. The treaty fosters the conservation of water as well as other natural resources that may be valuable to human use in the future. This international document encourages the wise and sustainable use of water to preserve and protect against a drought. The agreement promotes energy efficiency as well as renewable energy. The treaty encourages developed and as well as under-developed countries to embrace opportunities to invest in clean renewable energy. Suggestions were made as to how countries can assist in the effectively producing and preserving clean renewable energy; the document encouraged to the use of windmills and solar panels to assist in creating clean green energy.

Furthermore, when examining whether or not the proposed treaty is compatible, one should note that the Blue Mingoes Agreement on Climate Change encourages environmental friendly and efficient methods of conservation. For example, reducing greenhouse gas emissions has been recommended in the Blue Mingoes Agreement on Climate Change. The agreement also articulates in article 16 that parties have recognized respective environmental laws and policies, and multilateral environmental agreements to which they are both a party to and plays an important role in protecting the environment. Therefore, the domestic laws and regulations of States in relation to climate change are not ignored.

Moreover, this proposal seeks to encourage investors and other persons who are captivated with preserving human life, marine life and mankind as we know it, through climate change. For example, article 5 encourages fair and equitable treatment and full security to all contracting parties. This would mean that every person subject to this treaty will be treated in a fair and just manner with a right to express one's view freely without prejudice. This treaty also authorizes investors to make amendments under article 14. Here, contracting states are free to propose new innovative ideas to enhance and improve the treaty in accordance to the guidelines outlined. In our view, this is a fundamental criteria, under the Sustainable Development Goals, which seeks to encourage partnership for the same goals, that is, to preserve the planet earth.

Also article 18 proposes that each party to the treaty must encourage the incorporation of international standards in their practices and in their internal policies. Hence, we are not only of the belief that this agreement focuses on both national and international climate change and investment because it integrates international custom without neglecting domestic law, but also shows that climate change is a worldwide obstacle.

In addition to the aforementioned points, the provisions of this treaty particularly supports developing and vulnerable countries around the world who are heavily and adversely impacted by the effects of global warming. Interestingly, this treaty and its purpose is of great interest to the Bahamas and its neighboring Caribbean States throughout the Greater and Lesser Antilles because they are particularly vulnerable to hurricanes that are formed and which travel through the Atlantic Ocean. Recent hurricanes and the study thereof suggest that hurricanes will surpass the category 5 scale due to the increased warming of the Atlantic Ocean. Thus, it is imperative that this treaty promotes and encourages greenhouse investments. Additionally, the Caribbean, particularly the Bahamas, is a heavy commercial center, filled with natural resources that attract not only tourists, but foreign investors alike. The business opportunities that have been and are still available will undoubtedly continue to attract foreign investment to our country; however, through the provisions of this treaty, foreign investors will be required to develop and operate their companies through the use of the best environmentally sound practices in conformity with municipal and international environmental law. This treaty helps to facilitate this transition by ensuring that the investments are secured and profits are maximized while at the same time advancing initiatives on environmental and climate change goals. The Blue Mingoes Treaty

ultimately facilitates the protection of the environment and avoiding negative impacts to it in a manner prescribed by the Paris Agreement and provides for progressive measures that will help to sustain the global temperature.

The Blue Mingo Agreement also seeks to promote just, peaceful and inclusive societies. In our opinion, another critical Sustainable Development Goal is goal 16. This goal seeks to promote the rule of law at the national and international levels and ensure equal access to justice for all, along with reducing corruption and bribery in all their forms and developing effective, accountable and transparent institutions at all levels. As seen in the treaty established by this team, article 19 specifically speaks to the aspect of corruption. This article ensures that contracting parties take proper measures and ensure that sufficient efforts are undertaken to prevent and combat corruption regarding matters concerning our agreement. Additionally, article 20 explains that there will be no lowering of standards established in this agreement. This displays that we believe in promoting fairness and equality to all parties concerned, and the lowering of these standards would affect that fairness and equality. Articles 41-44 also displays our concern for effective, accountable and transparent institutions. These articles provide for proper overseeing mechanisms to be in place along with the formation of sub-committees where every contracting state will be afforded a representative so that every party is allowed adequate transparency to keep track of their investment. Furthermore, the treaty drafted by this team makes it a goal to ensure that any and all disagreements are solved by peaceful means. The treaty explains that matters are to be settled through arbitration, mediation, conciliation, judicial settlement and administrative tribunals.

Further, sustainability of cities through socio-economic, political and environmental efficiency were put forward in the potential international document. The aim in the construction of this document was to promote and protect green investments, to foster partnerships to achieve the goals outlined under the sustainable development goals. The Blue Mingo treaty strives to improve laws and policies and provide underlying levels of protection for society and investors as a whole through sustainability. Our treaty suggests that a tribunal or an assembly be appointed to provide advisory opinions and recommendations as to how sustainability can be achieved within any given country. The party would consist of independent representative organizations of civil society in a balanced representation of economic, social, and environmental stakeholders, including, among others, employers and workers organizations, non-governmental organizations, business groups, as well as other relevant stakeholders. The document provides encouragement for the establishment, acquisition, expansion, or retention of investments in any territory. Economic growth and partnerships are encouraged within the potential international agreement as it aims for each party to trade and invest in environmental goods and services. It encourages the production of environmental technologies that would benefit all individuals within the global sphere.

The Blue Mingo Agreement on Climate Change is compatible with every aspect of the criteria for a bilateral investment treaty. It promotes investment by encouraging investors to invest in climate growth and well as providing assistance to countries. The potential international agreement provides remedies in sections such as investor dispute settlement, state dispute settlement as well as dispute settlement. The remedies provided begin at but is not limited to amicable settlement, but also includes negotiation, arbitration, joinder, appointment of an expert, consultation, domestic remedies, appointment of an administrative tribunal, mediation, conciliation and judicial settlement. The document fosters good governance and rule of law with

no political interference. The Association Council, as suggested in the international document is designed to ensure that the treaty is implemented and applied effectively. The Association Council would act as the controller of the treaty as it would ensure that the document is interpreted in good faith by those that are party to the document. The Association Council should handle all matters with the utmost confidentiality and in an amicable and professional manner.

The compatibility of the Blue Mingo Treaty to the Paris Agreement and other environmental requirements is also highlighted by the emphasis on infrastructure. The treaty prohibits old or traditional methods of infrastructure which tend to incorporate environmentally hazardous methods. These old systems will defeat the purpose of the treaty and Paris Agreement as it can have catastrophic consequences such as causing respiratory illness among people, promoting unclean water and land/soil, and virtually destroying natural resources that ought to be sustain for future generations. Thus, the treaty promotes nothing but sustainable infrastructure which will be compatible with social, economic and environmental goals. In conjunction with the Paris Agreement and Sustainable Development Goals, Blue Mingo Agreement on Climate Change, through the promotion of sustainable infrastructure, will seek to limit air and water pollution, incorporate urban development, support the conservation and sustainable use of natural resources and ensure the access of low carbon energy to limit the emission of greenhouse gases. To this end, the treaty encourages this form of investment as it will not only help to preserve the global environment, but it will also help to reduce fuel expenditure over a long period of time which would equal to more profits for the investor.

In relation to the Paris Agreement, one factor that this team critically examined was what are the fundamental elements of the Paris Agreement with which our treaty must be compatible? We believe that the Blue Mingo agreement on climate change perfectly conforms to the contents within this agreement. The Paris Agreement's preamble recognizes the importance of the engagements of all levels of government and various actors, in accordance with respective national legislation of Parties. Additionally, the Blue Mingo Treaty under article 16 (4) (a) seeks to further address methods similar to the Paris Agreement that would maintain a global climate change by maintaining a climate rise below 2 degrees Celsius. Ultimately, it is the goal of both treaties to limit the temperature increase further by 1.5 degrees Celsius through the control of environmentally hazardous or toxic chemicals, substances, materials, and wastes emitted into the atmosphere.

Similar to article 2(1)(c) of the Paris agreement, making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development is one of this team's major focus. Therefore, we believe it is important to obtain the assistance of non-state actors more specifically investors. Non- state actors are commonly seen as individuals and groups that hold influence and which are wholly or partly independent of state governments. Furthermore, as established in article 7(9)(e) each party shall, as appropriate, engage in adaptation planning processes and the implementation of actions, including the development or enhancement of relevant plans, policies and/or contributions, which may include: building the resilience of socioeconomic and ecological systems, including through economic diversification and sustainable management of natural resources. This was proposed in article 17 of the Blue Mingo Treaty where we seek to embody the provisions made within the Paris agreement to amend laws making them enforceable to provide a higher level of environment protection.

Conclusively, the Blue Minoges Treaty can be seen as compatible with various international agreements and criteria set forward by the sustainable development goals as well as the bilateral investment treaty. The potential international document aims to force cohesion amongst countries or parties to the treaty through sustainability, clean energy, good governance, rule of law, economic growth and investment and climate action. It is for these reasons, we stand by our conclusion that the treaty does incorporate society as a whole and it is compatible with the regulations and goals of environmental laws that would provide sustainable climate growth to preserve our planet for a better and longer period.

Efficacy

The Blue Mingo Agreement on Climate Change fully outlines protection for investors concerning the realm of discrimination. The major concerns of potential investors are the risks associated as a foreigner who invests in another country, which often leaves them unprotected and vulnerable to mistreatment due to the favoring of the countries nationals. Article 3 provides that investors under this treaty would be protected from less favorable treatment as they endeavor to invest in sustainable energy. This is further outlined in the treaty to protect against any kind of discrimination which includes discrimination based on nationality, sex, gender, religion, disability, sexual orientation, or political affiliation. Also, local laws cannot be seen as superseding laws to this treaty, which will solidify investor protection. Our treaty, while aimed to protect the investor proposes to also protect the country as well. While the benefits of national and international investment in green energy within a particular country is obvious, our treaty proposes to support local inclusion. The Blue Mingo Agreement requires that local professionals and technologies be exhausted first before the acquisition and entry of foreign personnel. This will support the idea that the country and the investor must work together and formulate common goals which is ultimately world preservation. The idea is that both investor and state feel both protected and comfortable so as to conduct business for the greater good seamlessly.

This treaty proposes a new and innovative incentive that will provide international recognition for both the country and investor who commits to renewable energy investment. The Blue Mingo Agreement proposes to introduce a “Green List”, that will highlight each of the parties as entities that are leading internationally in the area of Energy Sustainability, Land Use, Green Infrastructure and Renewable energy development. This recognition will serve as a healthy incentive that will highlight the countries willingness to participate in world sustainability, and the investors willingness to lend aid in the process of world sustainability. The idea is to encourage an international association with sustainable development and international prestige and acknowledgement, that will serve established states, where the effect of sustainability can be felt and also allow for smaller state participation. This list will serve the smaller country demographics as it would highlight countries no matter the population size and encourage their participation in sustainable energy. Climate change affects the entire world and its population, and our treaty is geared to encourage both larger scale and small scale green investment. We propose that a place on the “Green List” also be secured through other means outside of green investment. In accordance with the Kyoto Protocol and the Paris Agreement, countries who annually are seen to have lowered their oil emissions, or have made any considerable stride towards energy efficiency and sustainability nationally, will also be recognized on the “Green List”.

In the event of an indirect expropriation stipulated in the Agreement for the sole protection of the investor our treaty offers full compensation to be paid without delay, of the fair market value of the expropriated investment immediately before the expropriation took place. It ensures that the investor does not incur any additional unforeseen costs as a result of such expropriation. The host country is expected to pay such costs and interest where applicable or necessary at a reasonable rate. It also ensures that there is no change in the value. The clause on Dispute Settlement of The Blue Mingo Agreement, is an extension of the process of expropriation in the event that an investor is not pleased with the amount they have been compensated. This is an extended form of protection. In addition, as apart of protection measures, the Corruption clause is an incentive that demonstrates the protection of the investor, by giving the investor the right to fair and equitable treatment. In the agreement it is provided that, if breached by either investor or investment, the act is considered a breach of domestic law of the Host State Party with regards to the establishment and operation of the investment. As further insurance, the umbrella clause of the Blue Mingo Agreement stipulated in also protects investors against breach of contractual obligations.

Research by Columbia Center on Sustainable Investment shows that Economic Consideration is crucial and essential in the investment decision making process. In fact, it is often said that investors invest on the basis of economic consideration rather than legal consideration. To this regard, our treaty displays the following economic considerations in regard to profit margins. The Investor will receive 60% of the profit from the green products and the country/ state will receive 40% of the profit as an incentive regulation where the investors would feel safe in their investment and country would also be gaining a profit from the investment. The Investor Promotion clause of the treaty stipulates that the host country agrees to promote the investor's investment which will not only create favorable conditions for the investor but also provide adequate publicity for the investor. Further, our treaty provides the investor(s) with the right to repatriate profits and property. This translates to the investor being able to transfer capital in the host state and profits out of the host states. This is of fundamental importance in purporting to convince investors to sign. Therefore, we saw it necessary to include a clause that would allow investors to transfer profits out of the host state. Of course, large transfers in and out of the host state are stipulated to be monitored and controlled to avoid breaches of domestic policies.

Conclusively, after analyzing the Blue Mingo Agreement on Climate Change, it is safe to admit that it is an agreement if adopted by states, it will lead to a significant increase in green investments related to climate change mitigation and adaptation. Our treaty proposes incentives and protections that serves not only foreign investors' needs and interests but also the state or country that is being invested in.

Viability

The Blue Mingo Agreement on Climate Change 'Green Change' Treaty model seeks to facilitate, promote and incentivize green foreign direct investments (FDI) and propelled by national and international attention and advocates. Its feasibility of adoption is relatively high and mainly attributed to favorable economic and social outlook and environmental improvements. Overarching initiatives influencing positive growth in these areas are directly associated with 'Sustainable Development Goals' (SDG's) and The Paris Agreement on Climate Change.

Realizing cultural and fundamental shifts requires adopting an investment policy framework that promotes FDI while simultaneously meeting the needs and protecting the interests of Contracting States. Attaining the needs and interest are vital to the process of short and long-term goals and development. Several of the priorities outlined by the model treaty includes but not limited to financial integrity and soundness, corporate social responsibility, labor and environmental protection and thresholds for standard treatment.

The Blue Mingo Agreement on Climate Change ‘Green Change’ Treaty model facilitates the achievement of Climate Change goals as it includes various articles that encourage environmental responsibility. Namely, the clause on Health and Environment which speaks to the requirement of investors to act in accordance with local and international environmental laws that would prohibit such actions that would affect climate change and help achieve the goals of climate change. More specifically, section 4 of that clause which expressly states prohibitions such as the release, discharge, or emission of pollutants or environmental contaminants, control of environmentally hazardous or toxic chemicals, substances, materials, and wastes, and the protection or conservation of wild flora or fauna in the Party’s territory. This would assist in ensuring each investor does not contribute to the harmful contaminants that affect climate change globally.

Further the Corporate Social Responsibility clause establishes Corporate Social Responsibility in which parties of the Treaty recognize that enhanced cooperation is an important element to advance the objectives of Climate Change Goals in areas such as engaging in ways to prevent negative environmental impact. Utilizing such tools as implementing and the follow-up of internationally recognized environmental guidelines, the current international climate change regime, including issues relating to carbon markets, promoting the use of energy efficient devices and technology and the development and deployment of low-carbon and other climate-friendly technologies. Other suggestions are given such as the trade and investment into environmental goods and services, green technology, renewable energy, and water use conservation.

These suggestions have been included to help the achievement of the said climate change goals therefore making this treaty viable for State to adopt.

The Blue Mingo Treaty on Climate Change does not restrict the State’s ability to legislate and regulate. This can be seen in the Right to Regulate clause which states parties to the Treaty has the right to set its environmental priorities, to establish its levels of environmental protection, and to adopt or modify its laws and policies accordingly and in a manner consistent with the multilateral environmental agreements, including the Paris Agreement and the Sustainable Development Goals. However, the Treaty need to include more on human rights, environmental protection, the ability to increase cross border investment flow and the ability for government agencies to work together and ensure that policies are aligned across them. In this vain the sustainable development goals need to be interwoven into the treaty, looking at a human rights and mechanisms for the same, and establishing an investment court to look at investments generally, and determine a way to strengthen the state domestic legal systems.

The main reason for attracting investors is not spoken to in the treaty. These reasons are, to increase jobs, increase revenue in the country and transfer of skills and knowledge locally. On the other hand, one must look at the negative side of foreign direct investment as well such as damage to the environment, and violations of human rights. This ties in with the rule of law and

the treaty must ensure that workers will have fair hearings through a very clear procedure spelt out in the treaty, that there are good labor laws available to provide protection for workers.

There must also be an area in the treaty that deals with compensation if states are found to be in violation of labour laws etc.

Also, the political influence of the various states is critical to be spelt out as well. As we well know politics will influence treaties and relations between states. However, the dispute settlement in the treaty allows for an impartial expert to be selected and to deal with disputes. However, a cost factor must be written into the treaty for the financial aspect of the treaty such as the negotiation process, ratification process, legal costs, liabilities, etc. As this treaty is to deal with the environment there must be laws and policies in place for the same in the host country.

Universality

Universality is the quality of involving or sharing, by all people or things in the world or in a particular group. We aim to generalize green FDI universally to showcase its character and the range of knowledge along with interests it possesses to encourage investments in climate change, mitigation adaptation.

To do this, appeals can be made to diverging interests of states and investors as well as include alternate provisions that countries can choose from:

1. Universality is one of the core principles of human rights first set out in the UDHR.

However, Fulfilling the promises in the Paris Agreement will require investments amounting to trillions of dollars across the globe. To invest in solar power and the likes. What if there was a framework of policy-oriented treaties specifically aimed at encouraging green investments – treaties that could be enforced using international arbitration?

According to The National Congress of American Indians Resolution #PSP-09- 021, scientists around the world have recognized the detrimental health and environmental effects of substances which are toxic. Arctic Indigenous Peoples suffer levels of POPs contamination in blood and breast milk that are among the highest of any population on earth, even though these chemicals have never been produced in the Arctic; This recognition inspired the negotiations of the United Nations Stockholm Convention on Persistent Organic Pollutants. However, universality failed in a sense whereas the United states is one of the few countries which have not yet ratified this Convention, which can help to safeguard the health and well-being of the global environment and of Indigenous Peoples of the Arctic and other regions.

2. A framework shall be established for equally beneficial cooperation that could provide support to exporting States to realize their permanent sovereignty over natural resources and on the other hand encourages supply of security of importing States, i.e. long-term trade agreement.

- a) Would their permanent sovereignty cause issues for other states though? Could that possible issue hinder the treaty from being effective?

The United Nations Declaration on the Rights of Indigenous Peoples (Article 29, Paragraph 2) declares that hazardous materials are disposed of and the health of its nationals are ensured. The NCAI called upon the United States Senate to swiftly ratify the Stockholm Convention and to fully support implementation language that advances elimination (without exemptions) of additional bio-accumulative and toxic POPs chemicals that pose a threat to Indigenous Peoples' subsistence and health, as well to as the global environment;

For further resolution, according to resolution 1515 (XV) of 15 December 1960, in which it recommended that the sovereign right of every State to dispose of its wealth and its natural resources should be respected. Noting that the creation and strengthening of the inalienable sovereignty of States over their natural wealth and resources reinforces their economic independence. Article 47 of the covenant on Civil and Political Rights and Article 25 of the Covenant on Economic, Social and Cultural Rights. However, paragraph 2 of Article 1 of the covenant can be read as limiting a state's ability to arbitrarily and without compensation nationalize or confiscate foreign property in its effort to freely dispose of its natural resources and wealth. Articles 47 and 25 intended to strike a balance by ensuring that states did not invoke paragraph 2 to impose or support "imperialist policies" and practices tending to control the economy of developing countries such and the Arctic and thereby impair their political independence.

3. A framework promoting an open, predictable, rule-based, non-discriminatory trading and economic system must be established.

In response to the above mentioned, EU was formed as a leading partner in providing development assistance with the development policy being one of the numerous community policies. According to the WTO, Article 1 (c) (ii), this corresponds to the effort in working towards non-discrimination and the right to development. Article 1 also overviews the development as a necessary element of the work of the organization and stating the recognition of the different levels of economic progress as paramount criteria for resources.

Universal participation is analyzed in 2(d)(ii), Article IX of the agreement establishes the one-country-one-vote principle. In the preamble, there is acknowledgement of the need to ensure that under-developed countries receive a share in growth corresponding to their wants, especially as it pertains to health concerns.

4. Each Party shall permit all transfers relating to a covered investment to be made freely, and without delay, into and out of its region. Those transfers include:
profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees, returns-in-kind and other amounts derived from the covered investment;

- a) proceeds from the sale of all or part of the covered investment or from the partial or complete liquidation of the covered investment;

- b) payments made under a contract entered into by the investor of the other Party or the covered investment, including payments made pursuant to a loan agreement;
- c) earnings and remuneration of a national of a Party who works in connection with a covered investment in the territory of the other Party.
- d) payments arising under Settlement of Disputes between an Investor and the Host Party.

This provision is considered important in giving the treaty a universality aspect as investments must be made in accordance with the treaty in order to achieve the objective of preventing the issue of Global Warming. This provision also provides alternatives as to how to what kinds of payment can be transferred to a covered investment.

- 5. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

Before I can state my critique and give the advantages and disadvantages, one aspect must be clarified which is a covered investment. This is when an investment is made by another Party of the treaty in the territory of another Party to the treaty. With that being said, this provision is considered to be important because exchange rate for currency are frequent to change as stated by financial markets worldwide. The value of a currency of a country is susceptible to a decrease or an increase in value especially on the foreign exchange market, where trading is continuous. An example of this would be the exchange rate of 114 [Japanese yen](#) to the United States dollar means that ¥114 will be exchanged for each US\$1 or that US\$1 will be exchanged for each ¥114.

As a result, to provide an investment in accordance with the market rate of exchange at the time of the transfer can be seen as a double-edged sword for some countries. The exchange rate of a country' currency may not have the same value as another. However, this was covered with the input of the words "freely usable currency". This means that each Party to the treaty is to make the investment in the agreed currency to avoid this problem.

- 6. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

To clarify the meaning of this paragraph, it outlines the minimum standard of treatment in accordance with customary international law to be afforded to Foreign Party members of the treaty concerning covered investments. The customary international rules to be followed would be to ensure "fair and equitable treatment" and "full protection and security". "Fair and equitable treatment" would mean that there exists an obligation to not deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process of law. Furthermore, in regard to the phrase "full protection and security" would require each Party to provide the level of police protection required under customary international law. These rules do not guarantee additional or greater treatment than necessary.

7. Each Party shall accord to investors of the other Party, and to covered investments, non-discriminatory treatment with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to war or other armed conflict, or revolt, insurrection, riot, or other civil strife.

This paragraph deals more with Parties to the treaty that are undergoing “war or other armed conflict, or revolt, insurrection, riot, or other civil strife.” Not all countries are in a time of peace and thus, such considerations must be taken into account. Especially if the issue of conflict in the country is presently ongoing or had ended recently and the country has not recovered from the ordeal and financial matters may be in disarray and resources may be scarce. Further, it is risky making agreements with countries who have political instability which is basically frequent government changes. This will eventually lease to a country’s development as well as economic growth being stunted, as evident with the situation in Nepal.

8. Notwithstanding paragraphs 4 and 5, a Party may prevent or delay a transfer through the equitable, non-discriminatory and good faith application of its law relating to:
 - a) bankruptcy, insolvency or the protection of the rights of a creditor;
 - b) issuing, trading or dealing in securities, futures, options, or derivatives;
 - c) a criminal or penal offence
 - d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;
 - e) ensuring compliance with an order or judgment in judicial or administrative proceedings

Countries or investors may enter or find themselves in situations where they either earnestly are facing bankruptcy or insolvency and are unable to provide investment to a covered investment, or facing prosecution where their assets may be frozen and untouchable due to a judge’s order, or other legal or administrative matters. This paragraph may be difficult in its application because it may be hard to determine if a Party has prevented or delay the transfer by apply their law in good faith and in a nondiscriminatory and equitable way.

Enforceability

The purpose of the Blue Mingo Agreement as a whole is to create an agreement captivating enough to attract investors to The Bahamas so that they are willing to fund environmentally friendly projects that will reduce the effects of climate change in the long term. This goal can only be accomplished if the Treaty itself is enforceable. Furthermore, the enforceability of this present document is evident from the negotiation clause of the agreement which is a civilized way of resolving any potential disagreements that could potentially arise between the parties. Moreover, the Treaty will become ineffective if the dispute settlement clause calls the good faith of the agreement into question therefore State representatives such as diplomats meet to discuss discrepancies face to face. Also, the aforementioned Clause requires the State that has a contentious issue with the other party to communicate this matter to them. This would be a more logical alternative to simply allowing the Agreement to come to an end without valid reasoning. Another civil method of ending disagreements between the investor and other parties is by arbitration which is court appointed according to the arbitration clause of the Blue Mingo Agreement. Equally, arbitration is beneficial because it provides all parties with

the opportunity explain the situation from opposing sides. In like manner, the term joinder mentioned in the joinder clause catalyzes the enforceability of the Treaty by bringing any similar problems to the forefront so they may be addressed simultaneously. Also, the performance clause seeks to disrupt the trend of having a backlog of matters to attend to by following the matter in due diligence until the matter has reached a satisfactory result. These Clauses along with others that will be mentioned in greater detail will further serve to emphasize the enforceability of this Treaty.

Dispute resolution outlines various ways in which state investors can legally resolve issues that may arise after they have signed on to the treaty. One of the proposed ways in which this section suggests resolving disputes is by negotiation. Negotiation is a great method to resolve dispute between states. The Blue Mingo Agreement particularly under dispute resolution speaks about how Representatives of each state has the option to utilize negotiation as a method of dispute resolution to end a disagreement once notice has been issued to each state.

Unless it is an issue of interpretation, implementation or good faith of an application under the Institutional clause. This clause provides investors with the option of sending a formal written letter to the offending State as well as the Association Council for the matter be resolved. After which the Association Council will address the dispute between both parties once each have agreed to enter good faith consultation with the aim of reaching a mutually acceptable solution. This clause essentially ensures that grievance that are bound to arise between states are addressed properly with a formal letter of notice being sent to the offending State as to ensure they also have an opportunity to address the allegations put forth within a reasonable amount of the time. Instead of allowing a state to merely terminate or withdraw from a treaty without any sound legal reasoning. In addition, interpretation and application tend to be a common issue that persist in treaties so the fact that there is a Council to combat this issue is progressive thinking to aid in a mutually beneficial conclusion.

Another method offered to parties within a disagreement is Arbitration found within the dispute resolution clause. This type of peacemaking provision would server States and investors alike well in that instead of disputes being continued they can be quelled and a resolution for the matter can be made. This method seeks to be unbiased in that it ensures that if a matter over interpretation or performance of a treaty is called into question the matter shall be resolved by three arbitrators, one being from each disputing side and the third selected by the two appointed arbitrators. This ensures that transparency, fair treatment and justice is served in all matters. Furthermore, there is provisions for a joinder which enables two or more legal issue to be put together and heard as one issue. This provision will prevent matters that overlap from being addressed at a hearing or trial multiple times, which also ensure efficiency in matter before the court or Association Council. This measure also allows parties to call on expert witness from the financial sector to advise the court in the matter.

Additionally, performance call for all transaction made between the states to continue until the matter is resolved unless the payment is subject of the dispute. This article along with the others aforementioned show why the dates for notifying, selecting and filing documents are so fast. It is to ensure that the matter is resolved as efficient and quickly as possible in order that the offending state can be reprimanded and there is no backlog of cases before the court.

As it relates to investor- state dispute settlement, this section of the treaty suggest ways in which it outlines how investors should resolve their disputes. First and foremost, the treaty points out that dispute between investors should be settled by peaceful means. For instance, one of the articles states that investors must first attempt to resolve their disputes by way of

consultation and negotiation. If such means are not exhausted, investors will not be able to pursue arbitrational measures. In the event that disputes cannot be settled by way of consultation and negotiation within three months from the date of the party requesting the dispute settlement, other provision provides additional means in which investors can settle disputes peacefully.

These alternatives include:

- a) administrative tribunals or courts of the Contracting State;
- b) mediation;
- c) conciliation;
- d) arbitration; and;
- e) judicial settlement.

However, it is important to note that this section also states that that an investor cannot make a claim to a breach if three (3) years have elapsed prior to the date of the alleged breach. This illustrates enforceability in the aspect that a specified time-period is required within certain provisions of the treaty.

Furthermore, this section specifies a time period of three (3) months to submit a notice in writing to Contracting Parties of the treaty prior to intention of a claim for arbitration. It also enforces that a notice must include the name and address of the disputing investors; the alleged breached claimed; the legal and factual basis of each claim; the relief sought; and the amount of damages claimed.

Moreover, Contracting Parties are required to give unconditional consent for dispute settlements to be heard by way of international arbitration or conciliation. This section also calls for investor's consent which, must be in written form for the dispute to be submitted for arbitration and accompanied by a notice to arbitration. It also requires that the grounds to which a claim of arbitration can be brought. They are:

- a) a breach of the object and purpose of the treaty by a contracting party,
- b) if an investor has suffered actual and non-speculative damages by such breach entailed in (a).

For this matter to be presided over the matter demands that three (3) arbitrators are required to oversee an international dispute. Both disputing parties is entitled to choose one arbitrator each and the third arbitrator is to be chosen on agreement by both parties.

The arbitral tribunal is required to reach its decision by a majority of votes which becomes binding on both parties to the arbitration. Also, such decision is required to outline the legal basis and reasons for its decision. This displays enforceability as there are certain criteria that must be met as it pertains to arbitration of dispute settlements. However, Article 40(3) points out that a remedy granted under Article 40(2) has no binding effect except between the disputing parties.

Enforceability continues under Institutional set-up and overseeing issues where the Association Council is entrusted with the authority to supervise and monitor the application and implantations of this Agreement. In addition, the Council periodically review and assess, if the goals are being meet on a state by state basis, offer advice to maintain the goal from experts and ensure that objectives are not being undermined by any state signed on to the treaty. This Council is required to meet yearly to assess the treaty purpose and objectives and ensure all states are adhering to them based on reports provided.

Finally, allows states to have other option of who presides over their matter as long as the disputing parties are in agreement. The court can be used as an alternative to the Associate

Council. The court also acts as a protector of each state investment interest by not disclosing their cases. This measure is viewed as an act of good faith that the court's decision will not interfere in future ventures of the investors.

Upon further analysis The Blue Mingo Treaty, duration is precise in outlining the time frame in which a treaty shall enter into force, termination, and amendment of the treaty. Section 1 states that the agreement shall enter into force one month from the date in which the Contracting Parties have notified each other and after which the agreement shall be forwarded to the Secretary General for approval. This article enforces the requirement for treaty duration and the procedures in which contracting parties should follow. The enforceability principle is also displayed in section 3 of this article as it gives parties the right to amend or terminate the treaty in whole or in part during the validity period.

According to this section Contracting Parties seeking to amend any provision within the treaty shall inform the other party in writing of their intention and outline the provisions to be amended. Further, section 4 states that any amendments made must be consistent with the provisions of the treaty. After review of the suggested amendments by both the Contracting Parties and the Secretary General, a signature is required once approved.

In addition, if performance becomes impossible or where there is a violation that defeats the objective and purpose of the treaty that this grounds for termination of the said treaty. Additionally, six (6) months' notice must be given to the other Contracting Parties as well as the Secretary General in writing. It also provides mechanism that allows signatories of a treaty to allow the treaty to remain in force for a period of five (5) years; after which an extension of ten (10) years may be granted so long as the treaty has not been denounced in writing six (6) months prior to the date of expiration.

Given these points, the UB Mingo Treaty appears to meet the checkmarks as it relates to dispute settlement in an investment agreement because it seeks to protect the hard-earned funds of investors as well as providing a neutral platform to voice grievances. In an idealistic setting the aggrieved parties would meet in person via international representatives to quash the dispute in a civil manner. Overall, this present Treaty through its enforceability seeks to encourage foreign investors no matter how small their contribution is.