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MIRAGE IN THE GULF?: EXAMINING THE UPSURGE IN FDI IN THE GCC AND ITS LEGAL AND ECONOMIC IMPLICATIONS FOR THE MENA REGION

Jordan E. Toone*

Between 2002 and 2010, foreign direct investment (“FDI”) exploded in the Gulf Cooperation Council (“GCC”). Between 2002 and 2008 alone, FDI in the GCC increased over 3800%, outpacing both the developed and developing world by a significant margin. Although recent data suggests that FDI has declined in the GCC since 2010, scholars have yet to proffer nuanced analyses of the upsurge in FDI between 2002 and 2010. In general, the literature has not adequately examined the relatively dramatic increase in FDI in the GCC insofar as it has focused on pre-2002 data, failed to distinguish between FDI trends in the GCC and those in the wider Middle East and North Africa (“MENA”) region, ascribed the increased levels of FDI in the GCC solely to the rise in the price of crude oil, or examined post-2002 increases and decreases in FDI within unrepresentative contexts. More importantly, scholars have yet to examine whether the increase in FDI has facilitated economic growth in the GCC since 2002.

Relying on information from the United Nations Conference on Trade and Development, the World Bank, and, where available, GCC countries themselves, this Article introduces statistical evidence into the scholarly debate on FDI in the GCC and the broader MENA region, revealing the dramatic upsurge in FDI in the GCC between 2002 and 2010 in comparison to global and regional trends. This Article also examines the general legal frameworks governing FDI regimes in the GCC, demonstrating the unique manner in which GCC states have implemented liberal macroeconomic policies while simultaneously maintaining regulatory control over strategic elements of their FDI regimes. Finally, this Article contributes to the ongoing scholarly debate surrounding the relationship between FDI and economic growth by examining the impact that the increased levels of FDI have had on economic growth in

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GCC economies. Based on the available data, the statistical correlation between the dramatic increases in FDI and short-term economic growth in the GCC is minimal. The data suggests a stronger link between FDI and long-term economic growth in the GCC, although a definitive assessment requires a more nuanced statistical analysis. Thus, even if FDI levels had not declined after 2010, the data suggests that GCC states—and, by implication, other MENA states—ought to exercise restraint in assuming that increased levels of FDI translate into increased economic growth, at least in the short term. The findings herein are timely for other resource-rich, non-GCC states in the MENA region, particularly post-Arab spring democracies, as they reconsider traditional approaches to FDI in their efforts to foster economic development without surrendering regulatory control over strategic elements of state sovereignty.

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INTRODUCTION

Between 2002 and 2010, the Gulf Cooperation Council (“GCC”)¹ experienced a 2533% overall increase in inward foreign direct investment (“FDI”) flows, significantly outpacing global increases (108%) during the same period.² Foreign stock investment³ flows into the GCC increased at high rates during this same period.⁴ Although recent data shows that FDI in the GCC has declined from its peak in 2008,⁵ there is not a substantial volume of scholarly research concerning the reasons behind either the increase in FDI in the GCC or its subsequent decline.⁶ The impact that these fluctuations—particularly the increases—in FDI have had on economic development in the GCC since 2002 is an important question that this Article will examine.

Relying on information from the United Nations Conference on Trade and Development (“UNCTAD”), the World Bank, and, where available, the GCC countries themselves, this Article adumbrates statistical evidence demonstrating the upsurge of FDI in the GCC, which, since 2002, has witnessed a yearly percentage increase in FDI that rivals any economic union, region, or individual state anywhere in the world. Even though FDI levels in the GCC began to decline in 2009, the dramatic increase in FDI in the GCC prior to 2009 provides scholars an excellent case study with which to examine the impact that FDI has on economic growth, thereby contributing to the

¹ Also known as the Cooperation Council for the Arab States of the Gulf. See Cooperation Council for the Arab States Charter, May 25, 1981, 26 I.L.M. 1131 [hereinafter GCC Charter], available at <http://www.gcc-sg.org/eng/indexfc7a.html>. For a discussion of the GCC and its members, see *infra* Part II.

² See U.N. Conference on Trade & Dev. [UNCTAD], *Inward and Outward Foreign Direct Investment Flows, Annual, 1970–2011*, UNCTADSTAT (July 18, 2012), <http://unctadstat.unctad.org/TableView/tableView.aspx?ReportId=88> [hereinafter UNCTAD, *FDI Statistics*].

³ For definitions of “foreign investment” and “foreign stock investment,” see, respectively, *infra* notes 36 and 73 and accompanying text.

⁴ See UNCTAD, *Inward and Outward Foreign Direct Investment Stock, Annual, 1980–2011*, UNCTADSTAT (July 18, 2012), <http://unctadstat.unctad.org/TableView/tableView.aspx?ReportId=89> [hereinafter UNCTAD, *Foreign Stock Statistics*].

⁵ UNCTAD, *FDI Statistics*, *supra* note 2 (showing that in 2009, 2010, and 2011, FDI in the GCC has declined from its peak in 2008); UNCTAD, *WORLD INVESTMENT REPORT 2012*, at 48–50, U.N. Sales No. E.12.II.D.3 (2012), [hereinafter *WORLD INVESTMENT REPORT 2012*] available at <http://www.unctad-docs.org/files/UNCTAD-WIR2012-Full-en.pdf>.

⁶ For an example of scholarship relating to FDI in the GCC, see Wasseem Mina, *Do Bilateral Investment Treaties Encourage FDI in the GCC Countries?*, 2 AFR. REV. ECON. & FIN. 1 (2010), available at [http://african-review.com/Vol.%202%20\(1\)/Bilateral%20Investment%20Treaties%20and%20FDI.pdf](http://african-review.com/Vol.%202%20(1)/Bilateral%20Investment%20Treaties%20and%20FDI.pdf). In 2012 UNCTAD suggested the decline in FDI could be attributed in part to the fact that GCC countries were still recovering from the cancellation of large-scale projects in the wake of the global financial crisis. *WORLD INVESTMENT REPORT 2012*, *supra* note 5, at 49.

ongoing scholarly debate over the relationship between FDI and both short-term and long-term economic growth.⁷

Following a brief overview in Part I of the literature surrounding FDI in the GCC and broader Middle East and North Africa (“MENA”) region, Part II provides statistical evidence from UNCTAD, the World Bank, and the GCC countries themselves outlining the upsurge of FDI in the GCC since 2002, followed by a brief overview of FDI levels since 2010. Part III briefly outlines and examines the legal framework governing the FDI regimes in the GCC states, revealing the unique manner in which the GCC states have promoted liberal economic policies while concomitantly maintaining regulatory control over important elements of their FDI regimes. Part IV then provides a modest contribution to the ongoing debate surrounding the relationship between FDI and economic growth by outlining the statistical impact that the increased levels of FDI have had on short-term economic growth in the GCC since 2002.

I. REVIEW OF LITERATURE

Although scholars, the media, international institutions, and governments or governmental organizations have examined various aspects of FDI in the Gulf, no academic study to date has been conducted which examines the increase of FDI in the GCC since 2002 or comprehensively analyzes the legal framework governing FDI in the GCC. The following is a brief overview of the existing literature on the topic.

To begin with, much of the academic literature on the topic of FDI in the GCC is outdated. The dramatic rise in FDI has only occurred since 2002, making literature even from the late 1990s and early to mid-2000s outdated.⁸ For example, the World Bank’s publication, *Trade, Investment, and Development in the Middle East and North Africa*, examines several key elements of the legal regimes governing FDI in the GCC, but because it was

⁷ For more on the debate, see *infra* Part IV.A.

⁸ See, e.g., E. Mick Riordan et al., *The World Economy and Its Implications for the Middle East and North Africa, 1995–2010*, in PROSPECTS FOR MENA ECONOMIES: FROM BOOM TO BUST AND BACK? 15, 16, 20–21 (Nemat Shafik ed., 1998) (stating that there was “little growth in real oil prices expected through 2010”); Mona S.W. Bseiso, Inter-Arab Inv. Guarantee Corp., *The Role of Government in Promoting FDI in the Gulf Region*, (Jan. 24, 2003) (unpublished conference paper, Eighth Annual WAIPA Conference), available at <http://www.fdi.net/documents/WorldBank/databases/waipa/gulfregion.htm>; M. Kabir Hassan, *FDI, Information Technology and Economic Growth in the MENA Region* (Econ. Research Forum, Conference Paper No. 102003002, 2003), available at http://www.erf.org.eg/CMS/uploads/pdf/1184753796_Kabir_Hassan.pdf.

written in 2003, it could not address the dramatic increase in FDI that has taken place since 2002.⁹ Even later studies conducted in 2007 could not fully examine the trends emerging in FDI flows into the GCC¹⁰ because 2007 and 2008 saw particularly notable increases in FDI flows into the GCC.¹¹ Not surprisingly, studies conducted before the upsurge in FDI into the GCC adopt a very pessimistic view of FDI potential in the GCC and broader MENA region.¹²

While reports written for more business-oriented audiences—such as those written by International Business Publications—examine more recent trends, they take a rather narrow, business-centric approach and fail to examine broader trends regarding FDI within the GCC in comparison to the global

⁹ THE WORLD BANK, REPORT NO. 26761, TRADE, INVESTMENT, AND DEVELOPMENT IN THE MIDDLE EAST AND NORTH AFRICA 2 (2003) [hereinafter WORLD BANK MENA DEVELOPMENT REPORT], available at http://www-wds.worldbank.org/servlet/WDSContentServer/WDS/IB/2003/10/03/000094946_03092504152661/Rendered/PDF/multi0page.pdf (“The 1990s were marked by stagnant or declining trade and private investment—MENA was the only region in the world to experience a reversal. . . . [T]rade and investment reforms have been hesitant and cautious, and outcomes weaker still.”).

¹⁰ E.g., ORG. FOR ECON. CO-OPERATION & DEV. [OECD], MAKING REFORMS SUCCEED: MOVING FORWARD WITH THE MENA INVESTMENT POLICY AGENDA (2008) [hereinafter MENA INVESTMENT POLICY AGENDA]; Muawya Ahmed Hussein, *Impacts of Foreign Direct Investment on Economic Growth in the Gulf Cooperation Council (GCC) Countries*, 5 INT’L REV. BUS. RES. PAPERS 362, 365 (2009) (looking at the FDI effect on economic growth in the GCC between 1999 and 2007); Farrukh Iqbal & Mustapha Kamel Nabli, *Trade, Foreign Direct Investment, and Development in the Middle East and North Africa*, in MUSTAPHA KAMEL NABLI, WORLD BANK, BREAKING THE BARRIERS TO HIGHER ECONOMIC GROWTH 305 (2007) (“Even a casual observer of international development trends cannot fail to notice that, in the last two decades or so, the MENA region has lagged most other regions of the world in both development outcomes (such as growth and employment) and international integration (such as trade and foreign investment).” (footnote omitted)); Wasseem Mina, *The Location Determinants of FDI in the GCC Countries*, 17 J. MULTINATIONAL FIN. MGMT. 336 (2007); Mustapha Sadni Jallab et al., *Foreign Direct Investment, Macroeconomic Instability and Economic Growth in MENA Countries* 4 (Inst. of Econ. Theory & Analysis, Working Paper No. 08-17, 2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1170764 (noting that “[f]rom 2001 to 2003, the UNCTAD inward FDI performance index shows that the MENA is far behind any other developing region except South-Asia” (citation omitted)); Wasseem Mina, *Are the GCC FDI Location Determinants Favorable?*, (Econ. Discussion Papers, No. 2007-23, 2007), available at <http://www.economics-ejournal.org/economics/discussionpapers/2007-23/count>; Press Release, Dubai Chamber of Commerce & Indus., *Foreign Direct Investment and GCC Countries* (Aug. 5, 2007), available at <http://www.zawya.com/story/ZAWYA20070805085717>.

¹¹ UNCTAD, *FDI Statistics*, *supra* note 2.

¹² WORLD BANK MENA DEVELOPMENT REPORT, *supra* note 9, at 1 (“[C]ompared with the rest of the world, trade and investment climate reforms in the region have been decidedly weak.”); Mina, *The Location Determinants of FDI in the GCC Countries*, *supra* note 10, at 337, 345. FDI was comparatively weak in the GCC during the 1980s and 1990s, even with the rise in crude oil prices during the oil crisis of the 1980s. See UNCTAD, *FDI Statistics*, *supra* note 2.

marketplace.¹³ The press and financial institutions are better equipped than academics to respond in a timely fashion to FDI fluctuations,¹⁴ yet they tend to do so devoid of broader academic themes and contexts.

Partly because it is so outdated, much of the literature has been advisory in nature. That is, given the low levels of FDI prior to the upsurge in FDI that began in 2002, the literature has tended to prescribe solutions for GCC and MENA states as to how to attract more FDI.¹⁵ Where the increase in FDI in the GCC has been acknowledged, some scholars have attributed the upsurge to the increase in oil prices.¹⁶

There have been some country-specific examinations dealing with FDI the MENA region,¹⁷ the GCC itself,¹⁸ and with MENA investment ties to other

¹³ See, e.g., 1 INTERNATIONAL MIDDLE EAST AND ARABIC COUNTRIES FOREIGN INVESTMENT AND PRIVATIZATION LAW HANDBOOK (Igor S. Olynyk & Natasha Alexander eds., 2006); see also, e.g., WORLD BANK & INT'L FIN. CORP., DOING BUSINESS IN THE ARAB WORLD 2012, at 13–14 (2012), available at <http://www.doingbusiness.org/~media/FPDKM/Doing%20Business/Documents/Special-Reports/DB12-ArabWorld.pdf> (reporting on business regulations in Arab countries, but specifically not focusing on regulations related to foreign investment).

¹⁴ See, e.g., *GCC FDI Flows Decline for Second Consecutive Year in 2010*, IBQ (Oct. 16, 2011), [http://ibq.com.qa/mediacenter/publications/\\$Document/Default/en-gb/Copy/\\$UserFiles/ibqgccbrief161011eng.pdf](http://ibq.com.qa/mediacenter/publications/$Document/Default/en-gb/Copy/$UserFiles/ibqgccbrief161011eng.pdf); *Foreign Direct Investment Inflows into the GCC Region Declined by 15% to USD 50.8 Billion in 2009*, AL BAWABA (Sept. 6, 2010), <http://www.albawaba.com/news/foreign-direct-investment-inflows-gcc-region-declined-15-usd-508-billion-2009>.

¹⁵ WORLD BANK MENA DEVELOPMENT REPORT, *supra* note 9, at 1–2 (“With more trade and investment, countries in the region will be able to achieve faster growth, reduce poverty, create more jobs, and improve the knowledge, skills, and productivity of their work force. . . . The region now needs to deepen and accelerate its reform, finishing the process that it has started. It needs to make three fundamental shifts in its sources of growth: from oil to nonoil sectors; from public, state-dominated to private, market-oriented activities; and from protected, import-substitution to competitive, export-oriented activities. Intensifying trade and investment is at the core of all three shifts.”); E. Mick Riordan et al., *supra* note 8, at 15–16.

¹⁶ E.g., Ibrahim Saif, *The Oil Boom in the GCC Countries, 2002–2008*, CARNEGIE ENDOWMENT FOR INT'L PEACE 11 (2009), http://www.carnegieendowment.org/files/cmec15_saif_final.pdf (“The increase in oil prices had a dramatic impact on the external economic position of the GCC countries. . . . [C]ountries of the GCC became more attractive to foreign investors, thus attracting high levels of foreign direct investment (FDI).”)

¹⁷ E.g., ASHRAF MISHRIF, INVESTING IN THE MIDDLE EAST: THE POLITICAL ECONOMY OF EUROPEAN DIRECT INVESTMENT IN EGYPT (2010); Ahmed Kamaly, *Evaluation of FDI Flows into the MENA Region*, (Econ. Research Forum, Conference Paper No. 092002009, 2002), available at http://www.erf.org.eg/CMS/uploads/pdf/1185351142_FM-P_Ahmed_Kamaly.pdf; Peter A. Petri, *The Case of Missing Foreign Investment in the Southern Mediterranean* (OECD Dev. Ctr., Working Paper No. 128, 1997); Imad A. Moosa, *The Determinants of Foreign Direct Investment in MENA Countries: An Extreme Bounds Analysis*, ECON. RESEARCH FORUM (Jan. 2004), http://www.erf.org.eg/CMS/uploads/pdf/1183874104_RR0421.pdf (policy research report).

¹⁸ E.g., LOBNA ALI AL-KHALIFA, FOREIGN DIRECT INVESTMENT IN BAHRAIN (2010) (published thesis discussing the role of FDI in Bahrain's economic development).

countries.¹⁹ These studies, however, do not conduct comparative analyses of the rate of FDI growth in the GCC in relation to broader, global trends. Nor do these studies attempt to examine the legal frameworks governing FDI in each state. Some scholarship on FDI in the Middle East has failed to distinguish the GCC from the broader MENA region,²⁰ blurring what is otherwise a rather distinct line between FDI levels and development in the GCC on the one hand, and, on the other, the wider Arab world.

Overall, the literature is generally outdated and fails to make nuanced assessments of the broader trends of FDI in the GCC and the legal regimes giving effect to the upsurge in FDI. The literature tends to be advisory in nature, although scholars increasingly recognize the impact that legal and macroeconomic policy reforms have had on overall FDI levels. Moreover, scholars have largely ignored the increase in foreign stock investments in the GCC, and have yet to adopt the lessons of the resource-rich states of the Gulf to other MENA economies. More importantly, scholars have yet to examine the broader FDI trends in the GCC in light of the ongoing revolutions in the MENA region.

II. STATISTICS

The GCC is a regional economic bloc consisting of six Middle Eastern monarchies: Saudi Arabia—which accounted for forty percent of the GCC’s gross domestic product (“GDP”) in 2010 and sixty percent of the total GCC population²¹—Bahrain, Kuwait, Oman, Qatar, and the United Arab Emirates (“UAE”).²² Membership offers have been extended to Jordan and Morocco.²³ The GCC was officially created on May 25, 1981, by the leaders of the six

¹⁹ See WORLD BANK MENA DEVELOPMENT REPORT, *supra* note 9.

²⁰ See, e.g., Steve Onyeiwu, *Analysis of FDI Flows to Developing Countries: Is the MENA Region Different?* (Econ. Research Forum, Conference Paper No. 102003005, 2003), available at http://www.erf.org.eg/CMS/uploads/pdf/1184754629_Steve_Onyeiwu.pdf; Simon Neaime & Marcus Marktanner, *The Role of Foreign Direct Investment for Economic Development in the MENA Region*, TOPICS MIDDLE E. & N. AFR. ECONOMIES (Sept. 2009), <http://www.luc.edu/orgs/meea/volume11/PDFS/Paper-by-Neaime&Marktanner.pdf> (article published in volume 11 of the online journal Topics in Middle Eastern and North African Economies).

²¹ GULF INV. CORP., GCC ECONOMIC STATISTICS 8, 9 (10th ed. 2011), available at http://www.gic.com.kw/site_media/uploads/gic_ar_crted_4.20.12.pdf.

²² GCC Charter, *supra* note 1; OFFICE OF THE CHIEF ECONOMIST, THE WORLD BANK, REPORT NO. 57517, ECONOMIC INTEGRATION IN THE GCC 1–2, 4, 6 (2010) [hereinafter ECONOMIC INTEGRATION IN THE GCC], available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/10/27/000356161_20101027034540/Rendered/PDF/575170WP0B0x353768B01PUBLIC10GCCStudyweb.pdf.

²³ *Amid Turmoil, GCC Extends Invitation to Jordan and Morocco*, MIDDLE E. POL’Y COUNCIL (May 16, 2011), <http://www.mepc.org/amid-turmoil-gcc-extends-invitation-jordan-and-morocco>.

aforementioned Arab states, with the goal of “effect[ing] coordination, integration and inter-connection between member states in all fields in order to achieve unity between them.”²⁴ Headquartered in Riyadh, Saudi Arabia, the GCC is composed of the Supreme Council, a Commission for Settlement of Disputes, a Ministerial Council, and a Secretariat General, with a Secretary-General appointed by the Supreme Council.²⁵ The GCC does not possess “supranational competencies” and the Secretariat General is comparatively weak.²⁶ There has been mistrust between members, fostered primarily by the comparative strength of Saudi Arabia and the UAE in relation to the other four states.²⁷ Although several similarities characterize the resource-rich, labor-importing states of the GCC, “the attitudes towards attracting FDI . . . significantly differ from one GCC country to another.”²⁸

Together, the six GCC member states account for roughly thirty percent of the world’s proven oil reserves.²⁹ From the 1970s to the 1990s, GCC member states in general relied heavily on public funds generated through oil revenues, marginalizing both private and foreign investments.³⁰ In the early 2000s, many GCC states began instituting broad reforms designed to encourage more domestic and foreign private investment and to diversify the economies.³¹ In addition to several state-led reforms, the GCC organization itself initiated several trade- and investment-related initiatives, including the establishment of a customs union in 2003.³²

²⁴ GCC Charter, *supra* note 1, art. 4.

²⁵ *Id.* arts. 2, 6, 8.

²⁶ Steffen Hertog, EU–GCC Relations in the Era of the Second Oil Boom 4 (Dec. 2007) (C·A·P Working Paper), available at http://www.cap.lmu.de/download/2007/2007_hertog.pdf.

²⁷ Robert Haddick, *Foreign Policy: The Persian Gulf Needs Its Own NATO*, NPR (May 21, 2012), <http://www.npr.org/2012/05/21/153196702/foreign-policy-the-persian-gulf-needs-its-own-nato>.

²⁸ Reyadh Y. Faras & Khalifa H. Ghali, *Foreign Direct Investment and Economic Growth: The Case of the GCC Countries*, 29 INT’L RES. J. FIN. & ECON. 134, 135 (2009).

²⁹ See *The World Factbook: Oil-Proved Reserves*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2178rank.html> (last visited Oct. 24, 2012); *BP Statistical Review of World Energy June 2012*, BP 6 (June 2012), http://www.bp.com/assets/bp_internet/globalbp/globalbp_uk_english/reports_and_publications/statistical_energy_review_2011/STAGING/local_assets/pdf/statistical_review_of_world_energy_full_report_2012.pdf.

³⁰ See Faras & Ghali, *supra* note 28, at 136.

³¹ Faruk Balli et al., *The Patterns of Cross-Border Portfolio Investments in the GCC Region: Do Institutional Quality and the Number of Expatriates Play a Role?* 3, 17 (Univ. Library of Munich, Ger., MPRA Paper No. 19966, 2009), available at http://mpra.ub.uni-muenchen.de/19966/2/MPRA_paper_19966.pdf.

³² ECONOMIC INTEGRATION IN THE GCC, *supra* note 22, at 6.

Beginning in 2002, the GCC began to see noticeable increases in FDI inflows.³³ Sufficient data on FDI inflows and outflows—taken mainly from UNCTAD and the World Bank³⁴—exists to enable scholars to make nuanced estimations of FDI trends in the GCC during the past decade.

Part II.A summarizes FDI inflows into GCC countries between 2002 and 2010, followed by an outline of percentage increases of foreign stock investments in the GCC during the same period in Part II.B. Part II.C provides a brief overview of FDI trends in the GCC since 2010.

A. *FDI Inflows in GCC Member States, 2002–2010*

UNCTAD defines FDI as follows:

Foreign direct investment (FDI) is defined as an investment involving a long-term relationship and reflecting a lasting interest and control by a resident entity in one economy (foreign direct investor or parent enterprise) in an enterprise resident in an economy other than that of the foreign direct investor (FDI enterprise or affiliate enterprise or foreign affiliate). . . . Such investment involves both the initial transaction between the two entities and all subsequent transactions between them and among foreign affiliates, both incorporated and unincorporated.³⁵

Between 2002 and 2010, the GCC witnessed a 2533% increase in FDI, as indicated in Table 1.³⁶ This increase is over twenty times the increase in global FDI levels, roughly ten times the increase in FDI levels in developing economies, and roughly five times the increase in FDI levels witnessed in transition economies worldwide.

³³ UNCTAD, *FDI Statistics*, *supra* note 2.

³⁴ *Id.*; *Foreign Direct Investment, Net Inflows*, WORLD BANK, <http://data.worldbank.org/indicator/BX.KLT.DINV.CD.WD> (last visited Oct. 24, 2012).

³⁵ UNCTAD, WORLD INVESTMENT REPORT 2009, Annex at 243, U.N. Doc. UNCTAD/WIR/2009, U.N. Sales No. E.09.II.D.15 (2009) [hereinafter WORLD INVESTMENT REPORT 2009] (footnote omitted), *available at* http://unctad.org/en/Docs/wir2009_en.pdf. In addition, UNCTAD states that: “Flows of FDI comprise capital provided (either directly or through other related enterprises) by a foreign direct investor to an FDI enterprise, or capital received from an FDI enterprise by a foreign direct investor. FDI has three components: equity capital, reinvested earnings and intra-company loans.” *Id.*

³⁶ *See infra* Table 1.

*Table 1. Inward FDI Flows—Developing, Transition, and Developed Economies*³⁷

	2002*	2010*	Percentage Increase
GCC	\$1515	\$39,892	2533.14%
World	\$627,975	\$1,309,001	108.45%
Developing Economies	\$173,283	\$616,661	255.87%
Transition Economies	\$11,260	\$73,755	555.02%
Developed Economies	\$443,432	\$618,586	39.50%

*Measure: In millions of U.S. dollars at July 12, 2012, prices and exchange rates.

Table 1 reveals that among developing economies, the average increase in FDI levels was roughly 256%. Developing economies experienced higher year-to-year percentage increases in FDI than developed economies,³⁸ and therefore represent a more representative sample for comparative purposes. Table 2 provides a comparison between the GCC and developing economies in each major economic region of the world. As Table 2 indicates, even among developing economies, the GCC percentage increase from 2002 to 2010 was markedly higher.³⁹

*Table 2. Inward FDI Flows—Developing Economies Breakdown by Region*⁴⁰

	2002*	2010*	Percentage Increase
GCC	\$1515	\$39,892	2533.14%
Developing Economies:			
Africa	\$14,630	\$43,122	194.75%
Developing Economies:			
America	\$58,447	\$187,401	220.63%
Developing Economies: Asia	\$100,083	\$384,063	283.74%
Developing Economies:			
Oceania	\$123	\$2075	1586.99%
Developing Economies excluding Least Developed Countries (“LDCs”)	\$166,441	\$599,762	260.35%
Developing Economies excluding China	\$120,540	\$501,927	316.40%
LDCs	\$6842	\$16,899	146.99%

*Measure: In millions of U.S. dollars at July 12, 2012, prices and exchange rates.

³⁷ UNCTAD, *FDI Statistics*, *supra* note 2.

³⁸ *Id.*

³⁹ *See Id.*

⁴⁰ *Id.*

The GCC rate of increase for FDI inflows was higher than the increase among high-, middle-, and low-income developing economies, as evidenced in Table 3.

*Table 3. Inward FDI Flows—High-, Middle-, and Low-Income Developing Economies*⁴¹

	2002*	2010*	Percentage Increase
GCC	\$1515	\$39,892	2533.14%
High-income developing economies	\$63,190	\$317,198	401.97%
Middle-income developing economies	\$92,237	\$222,545	141.28%
Low-income developing economies	\$17,857	\$76,918	330.74%

*Measure: In millions of U.S. dollars at July 12, 2012, prices and exchange rates.

Emerging economies and the “Newly Industrialized Asian Countries” (“NIACs”) have also been associated with growth and high levels of FDI.⁴² As evidenced in Table 4, the GCC had a noticeably higher percentage increase between 2002 and 2010 than did the average emerging economy and the NIACs.

*Table 4. Inward FDI Flows—Emerging Economies and Newly Industrialized Asian Countries*⁴³

	2002*	2010*	Percentage Increase
GCC	\$1515	\$39,892	2533.14%
Emerging economies	\$64,887	\$178,574	175.21%
Newly Industrialized Asian Countries	\$29,017	\$164,615	467.31%

*Measure: In millions of U.S. dollars at July 12, 2012, prices and exchange rates.

Table 5 provides comparative statistics for prominent geographic regions of the world. As indicated in Table 5, Western Asia—the regional grouping of states that, with the exception of the GCC, saw the highest percentage increase

⁴¹ *Id.*

⁴² See YUJIRO HAYAMI & YOSHIHISA GODO, DEVELOPMENT ECONOMICS: FROM THE POVERTY TO THE WEALTH OF NATIONS 2 (3d ed. 2005) (referring to the growth of Korea, Taiwan, Hong Kong and Singapore). See generally ANIS CHOWDHURY & IYANATUL ISLAM, THE NEWLY INDUSTRIALISING ECONOMIES OF EAST ASIA (1993) (discussing the factors contributing to the high-levels of growth in East Asian newly industrializing economies).

⁴³ UNCTAD, *FDI Statistics*, *supra* note 2.

of FDI flows during the period from 2002 to 2010⁴⁴—experienced only half the percentage increase of FDI flows that the GCC witnessed during the same period.

*Table 5. Inward FDI Flows—Regions of the World*⁴⁵

	2002*	2010*	Percentage Increase
GCC	\$1515	\$39,892	2533.14%
Northern Africa	\$3872	\$15,709	305.71%
South America	\$27,990	\$90,357	222.82%
Eastern Asia	\$67,707	\$201,364	197.40%
Southern Asia	\$10,713	\$31,746	196.33%
Western Asia	\$4396	\$58,193	1223.77%
South-Eastern Asia	\$17,268	\$92,760	437.18%
Northern Africa (excluding Sudan)	\$3159	\$13,645	331.94%
South America (excluding Brazil)	\$11,400	\$41,851	267.11%
Eastern and Southeastern Asia excluding China	\$32,232	\$179,390	456.56%
Southern Asia excluding India	\$5083	\$7586	49.24%

*Measure: In millions of U.S. dollars at July 12, 2012, prices and exchange rates.

Among prominent regional-economic unions, the GCC had a noticeably higher percentage increase in FDI inflows between 2002 and 2010, as indicated in Table 6.

⁴⁴ *Id.*

⁴⁵ *Id.*

*Table 6. Inward FDI Flows—Regional Economic/Political Unions*⁴⁶

	2002*	2010*	Percentage Increase
GCC	\$1515	\$39,892	2533.14%
Arab Maghreb Union (UMA)	\$2580	\$7390	186.43%
ECOWAS (Economic Community of West African States)	\$2846	\$11,695	310.93%
League of Arab States	\$7257	\$65,137	797.57%
Organization of the Islamic Conference (OIC)	\$27,012	\$135,249	400.70%
Union of South American Nations (UNASUR)	\$27,990	\$90,357	222.82%
NAFTA	\$120,539	\$242,027	100.79%
OAS	\$153,381	\$343,379	123.87%
ASEAN	\$17,268	\$92,733	437.02%
EU	\$312,003	\$318,227	1.99%
APEC (Asia-Pacific Economic Cooperation)	\$238,866	\$632,085	164.62%

*Measure: In millions of U.S. dollars at July 12, 2012, prices and exchange rates.

Similarly, the GCC's percentage increase in FDI between 2002 and 2010 dramatically outpaced the percentage increases of the G8, the G20, and the G77, as revealed in Table 7.

*Table 7. Inward FDI Flows—G8, G20, G77*⁴⁷

	2002*	2010*	Percentage Increase
GCC	\$1515	\$39,892	2533.14%
G8	\$253,000	\$400,635	58.35%
G20	\$375,778	\$712,008	89.48%
G77	\$143,668	\$515,366	258.72%

*Measure: In millions of U.S. dollars at July 12, 2012, prices and exchange rates.

As stated above, some scholars have attributed the upsurge in FDI in the GCC since 2002 to the rise in oil prices.⁴⁸ Table 8 reveals that the major petroleum and gas exporting states all indeed experienced higher FDI percentage increases from 2002 to 2010.⁴⁹ However, the GCC's percentage

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ See *supra* note 17 and accompanying text.

⁴⁹ This trend was especially pronounced from 2002 to 2008 in the GCC, during the so-called second oil boom. See Saif, *supra* note 16, at 2.

increase in FDI levels was notably higher than that of developed petroleum economies, three times that of transition petroleum economies, and six times that of developing petroleum economies.⁵⁰

*Table 8. Inward FDI Flows—Major Petroleum and Gas Exporting Countries*⁵¹

	2002*	2010*	Percentage Increase
GCC	\$1515	\$39,892	2533.14%
Major petroleum and gas exporters	\$17,500	\$124,608	612.05%
Major petroleum and gas exporters: Developing economies	\$10,658	\$53,033	397.59%
Major petroleum and gas exporters: Transition economies	\$6051	\$54,056	793.34%
Major petroleum and gas exporters: Developed economies	\$791	\$17,519	2114.79%

*Measure: In millions of U.S. dollars at July 12, 2012, prices and exchange rates.

The data suggests that although the rise in the price of oil contributed to the increased levels of FDI among petroleum and gas exporters from 2002 to 2010, oil price was not the sole impetus to such increases within the GCC (or, as shown below, at least within certain GCC member states). Such a conclusion is substantiated by the variation among GCC member states with respect to the percentage increases of FDI levels between 2002 and 2010. As indicated by Table 9, Kuwait, Saudi Arabia, and the UAE each experienced a percentage increase in FDI levels exceeding 5600%; Oman and Qatar, on the other hand, experienced percentage increases in FDI inflows similar to those of other major petroleum and gas exporters, with 836% and 648% increases, respectively. Bahrain experienced a net percentage decline of twenty eight percent in FDI inflows.⁵²

⁵⁰ See *infra* Table 8.

⁵¹ UNCTAD, *FDI Statistics*, *supra* note 2.

⁵² See *id.*

Table 9. Inward FDI Flows—Individual GCC Member States⁵³

	2002*	2010*	Percentage Increase
Bahrain	\$217	\$156	-28.11%
Kuwait	\$4	\$319	7875.00%
Oman	\$122	\$1142	836.07%
Qatar	\$624	\$4670	648.40%
Saudi Arabia	\$453	\$28,105	6104.19%
UAE	\$95	\$5500	5689.47%

*Measure: In millions of U.S. dollars at July 12, 2012, prices and exchange rates.

The data reinforces the fact that Kuwait, Saudi Arabia, and the UAE dramatically outperformed other major petroleum and gas exporters in terms of percentage increase in FDI flows between 2002 and 2010, suggesting again that such increases in FDI inflows cannot be explained solely by the increase in the price of oil.⁵⁴

Although the percentage increase of FDI in the GCC between 2002 and 2010 is notable, the levels of FDI inflows should be interpreted as a percentage of global FDI inflows. Table 10 compares the GCC with eight other regional economic unions—the South Asian Association for Regional Cooperation (“SAARC”),⁵⁵ Economic Cooperation Organization (“ECO”),⁵⁶ Association of South-East Asian Nations (“ASEAN”),⁵⁷ Central American Common Market (“CACM”),⁵⁸ Southern African Customs Union (“SACU”),⁵⁹ Economic Community of West African States (“ECOWAS”),⁶⁰ Commonwealth of Independent States (“CIS”),⁶¹ and European Free Trade Association (“EFTA”)⁶²—with roughly the same⁶³ combined percentage of global FDI inflows in 2002.

⁵³ *Id.*

⁵⁴ See *supra* Table 9.

⁵⁵ Member states include: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka. UNCTAD, *FDI Statistics*, *supra* note 2.

⁵⁶ Member states include: Afghanistan, Azerbaijan, Iran, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkey, Turkmenistan, and Uzbekistan. *Id.*

⁵⁷ Member states include: Brunei, Cambodia, Indonesia, Laos People’s Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam. *Id.*

⁵⁸ Member states include: Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua. *Id.*

⁵⁹ Member states include: Botswana, Lesotho, Namibia, South Africa, and Swaziland. *Id.*

⁶⁰ Member states include: Benin, Burkina Faso, Cape Verde, Cote d’Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo. *Id.*

⁶¹ Member states include: Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Republic of Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. *Id.*

⁶² Member states include: Iceland, Norway, and Switzerland. *Id.*

Table 10. Inward FDI Flows as a Percentage of Total Global FDI Inflows—Regional Economic Unions⁶⁴

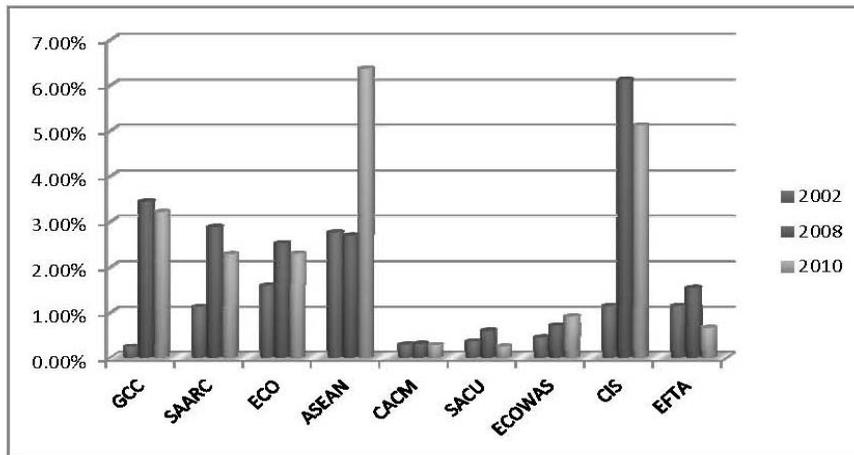


Table 10 demonstrates that although the GCC countries experienced a marked rise in FDI as a percentage of global FDI inflows between 2002 and 2008, in 2010 the GCC countries continue to lag behind other regional economic unions, such as ASEAN and CIS, in the total share of world FDI inflows.

Table 10 should be examined, however, in light of the GDP to FDI inflow ratio. In other words, although ASEAN and CIS enjoy a larger share of global FDI inflows, they also boast much larger GDPs. Table 11 reveals that among the other eight regional economic unions, the GCC ranks similar to ASEAN, ECOWAS, CIS, and EFTA in FDI inflows as a percentage of GDP during 2010.

⁶³ *Id.* ASEAN nations had noticeably more FDI inflows in 2002 than the other regional economic unions. See *infra* Table 10.

⁶⁴ UNCTAD, *FDI Statistics*, *supra* note 2.

*Table 11. FDI of the GCC as a Percentage of GDP Ratio—Other Regional Economic Unions*⁶⁵

	2010 GDP	2010 FDI Inflows*	GDP to FDI Ratio
GCC	\$1,080,915	\$39,892	3.69%
SAARC	\$2,047,966	\$28,098	1.37%
ECO	\$1,526,994 ⁶⁶	\$31,932	2.09%
ASEAN	\$1,814,695 ⁶⁷	\$92,733	5.11%
CACM	\$149,098	\$3694	2.48%
SACU	\$395,438	\$2690	0.68%
ECOWAS	\$309,358	\$11,695	3.78%
CIS	\$1,828,642	\$68,966	3.77%
EFTA	\$964,524 ⁶⁸	\$38,145	3.95%

*Measure: In millions of U.S. dollars at July 12, 2012, prices and exchange rates.

The GCC's GDP to FDI ratio is also higher than those of Brazil, Russia, India, and China ("BRIC"), as shown in Table 12.

*Table 12. GCC FDI as a Percentage of GDP Ratio—BRIC Countries*⁶⁹

	2010 GDP	2010 Inward FDI*	FDI as a % of GDP Ratio
GCC	\$1,080,915	\$39,892	3.69%
Brazil	\$2,143,035	\$48,506	2.26%
Russia	\$1,487,515	\$43,288	2.91%
India	\$1,684,323	\$24,159	1.43%
China	\$5,930,529	\$114,734	1.93%

*Measure: In millions of U.S. dollars at July 12, 2012, prices and exchange rates.

With the exception of Bahrain and Kuwait, the individual GCC member states boasted comparatively high FDI to GDP ratios in 2010, with Saudi Arabia and Qatar each outperforming the global average.⁷⁰

⁶⁵ *Id.*; Data: GDP, WORLD BANK, <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD> (last visited Oct. 24, 2012) [hereinafter *World Bank GDP Statistics*].

⁶⁶ The 2010 data from Iran, a member of ECO, is not available. The 2009 figure is used for the 2010 ECO calculations. See *World Bank GDP Statistics*, *supra* note 65.

⁶⁷ Data for ASEAN does not include the 2010 GDP figures for Myanmar, for which no data is available. See *id.*

⁶⁸ The 2010 data from Liechtenstein is not available. The 2009 figure is used instead. See *id.*

⁶⁹ *World Bank GDP Statistics*, *supra* note 65; UNCTAD, *FDI Statistics*, *supra* note 2.

⁷⁰ See Data: Foreign Direct Investment, Net Inflows (% of GDP), THE WORLD BANK, <http://data.worldbank.org/indicator/BX.KLT.DINV.WD.GD.ZS> (last visited Nov. 2, 2012).

*B. Foreign Stock Investments in GCC Member States, 2002–2010.*⁷¹

In addition to experiencing a dramatic percentage increase in the inward flow of FDI from 2002 to 2010, the GCC also experienced similar rises in foreign stock investments during the same period.⁷² UNCTAD defines FDI stock as “the value of the share of . . . capital and reserves (including retained profits) attributable to the parent enterprise, plus the net indebtedness of affiliates to the parent enterprise.”⁷³ Table 13 compares the percentage increase of foreign stock investments in the GCC to the same economies against which the inflows of FDI to the GCC were compared in Tables 1 through 8 above.⁷⁴

*Table 13. Inward Foreign Direct Investment of Stock—Global Sample*⁷⁵

	2002*	2010*	Percentage Increase
GCC	\$31,435	\$319,347	915.90%
World	\$7,501,217	\$19,906,662	165.38%
Developing Economies	\$1,730,852	\$6,256,066	261.44%
Transition Economies	\$115,419	\$759,687	558.20%
Developed Economies	\$5,654,947	\$12,890,909	127.96%
Developing Economies: Africa	\$166,535	\$561,354	237.08%
Developing Economies: America	\$529,011	\$1,963,581	271.18%
Developing Economies: Asia	\$1,032,560	\$3,716,491	259.93%
Developing Economies: Oceania	\$2746	\$14,641	433.18%
Developing Economies excluding LDCs	\$1,680,543	\$6,114,917	263.87%
Developing Economies excluding China	\$1,514,349	\$5,668,249	274.30%
LDCs	\$50,309	\$141,149	180.56%
High-income developing countries	\$1,032,562	\$3,506,051	239.55%

⁷¹ UNCTAD, *Foreign Stock Statistics*, *supra* note 4.

⁷² *Id.*

⁷³ WORLD INVESTMENT REPORT 2009, *supra* note 35, at 243. M. Sornarajah defines FDI stock (“portfolio investment”) as “a movement of money for the purpose of buying shares in a company formed or functioning in another country. It could also include other security instruments through which capital is raised for ventures.” M. SORNARAJAH, *THE INTERNATIONAL LAW ON FOREIGN INVESTMENT* 8 (3d ed. 2010). As Sornarajah points out, the “distinguishing element” between foreign investment and portfolio investment “is that, in portfolio investment, there is a separation between, on the one hand, management and control of the company and, on the other, the share of ownership in it.” *Id.*

⁷⁴ See UNCTAD, *Foreign Stock Statistics*, *supra* note 4; *supra* Tables 1–8.

⁷⁵ UNCTAD, *Foreign Stock Statistics*, *supra* note 4.

Middle-income developing countries	\$544,513	\$2,065,489	279.33%
Low-income developing countries	\$153,776	\$684,526	345.14%
Major Oil and Gas Exporters	\$247,067	\$1,232,919	399.02%
Major Oil/Gas Exporters: Developing Economies	\$117,938	\$488,589	314.28%
Major Oil/Gas Exporters: Transition Economies	\$86,348	\$572,414	562.92%
Major Oil/Gas Exporters: Developed Economies	\$42,781	\$171,916	301.85%
Emerging Economies	\$648,364	\$2,181,366	236.44%
Newly Industrialized Asian Countries	\$664,794	\$2,161,714	225.17%
Developing Economies: Northern Africa	\$55,823	\$205,013	267.26%
Developing Economies: South America	\$273,248.8	\$1,121,226	310.33%
Developing Economies: Eastern Asia	\$650,076	\$1,888,439	190.50%
Developing Economies: Southern Asia	\$43,797	\$266,641	508.81%
Developing Economies: Western Asia	\$65,188	\$587,781	801.67%
Developing Economies: South-Eastern Asia	\$273,499	\$973,631	255.99%
Northern Africa excluding Sudan	\$53,138	\$184,902	247.97%
South American excluding Brazil	\$172,386	\$446,462	158.99%
Eastern and South-Eastern Asia excluding China	\$707,073	\$2,274,252	221.64%
Southern Asia excluding India	\$17,970	\$61,949	244.74%
Arab Maghreb Union (UMA)	\$32,317	\$114,169	253.28%
ECOWAS (Economic Community of West African States)	\$37,334	\$92,529	147.84%
League of Arab States	\$102,582	\$610,633	495.26%
OIC	\$251,313	\$1,335,459	431.41%
Union of South American Nations (UNASUR)	\$273,173	\$1,121,150	310.42%
NAFTA	\$2,387,371	\$4,312,153	80.62%
OAS	\$2,708,253	\$5,563,412	105.42%
ASEAN	\$273,499	\$973,489	255.94%
EU	\$2,958,992	\$7,289,629	146.36%

APEC	\$3,684,916	\$8,612,891	133.73%
G8	\$3,793,728	\$7,925,909	108.92%
G20	\$4,606,969	\$11,098,916	140.92%
G77	\$1,443,012	\$5,244,344	263.43%

*Measure: In millions of U.S. dollars at July 12, 2012, prices and exchange rates.

As indicated in Table 13, only the group of developing economies in Western Asia (801.67%) comes close to the GCC's 915.9% increase of foreign stock. While foreign stock purchases are not as impactful on the economy of the host state as regular FDI inflows, they nonetheless represent international investor confidence in the host state's legal structure, institutional quality, economic stability, and economic growth,⁷⁶ all of which also factor into regular FDI.

Table 14 illustrates the percentage increase in foreign stock investments for individual GCC member states.

*Table 14. Inward Foreign Direct Investment of Stock in GCC Member States*⁷⁷

	2002*	2010*	Percentage Increase
Bahrain	\$6203	\$15,154	144.30%
Kuwait	\$444	\$11,235	2430.41%
Oman	\$1874	\$14,217	658.64%
Qatar	\$2831	\$30,564	979.62%
Saudi Arabia	\$17,734	\$170,450	861.15%
UAE	\$2348	\$77,727	3210.35%

*Measure: In millions of U.S. dollars at July 12, 2012, prices and exchange rates.

C. FDI Trends Since 2010

Data regarding global FDI levels during 2011 was recently released by UNCTAD, revealing that FDI inflows in the GCC decreased in 2011 by thirty-five percent.⁷⁸ FDI inflows decreased from roughly forty billion U.S. dollars in 2010 to roughly twenty-six billion U.S. dollars in 2011⁷⁹—levels not seen

⁷⁶ See *World Development Indicators Data: Financial Sector*, WORLD BANK, <http://data.worldbank.org/about/world-development-indicators-data/financial-sector> (last visited Nov. 15, 2012).

⁷⁷ UNCTAD, *Foreign Stock Statistics*, *supra* note 4.

⁷⁸ UNCTAD, *FDI Statistics*, *supra* note 2.

⁷⁹ *Id.*

since 2005.⁸⁰ Nonetheless, some individual GCC countries have seen increases⁸¹ and some projections for future FDI levels are positive.⁸²

For the purposes of the present study, the decreases in FDI levels since 2010 do not alter the scholarly value of the dramatic upsurge in FDI between 2002 and 2010, as scholars can still make nuanced assessments of the relationship between increased levels of FDI and economic growth with the available data. The decrease in FDI since 2009 constitutes a marked shift in FDI patterns over the past decade.⁸³ This decrease may actually enable scholars to ascertain more definitively the relationship, if any, between FDI levels and both short-term and, in particular, long-term economic growth. More pronounced FDI trends such as this are a boon when examining the very delicate statistical correlation between FDI levels and economic growth.

Overall, between 2002 and 2010, FDI in the GCC—both through regular FDI channels as well as foreign stock investments—increased dramatically, at a pace that rivals other developing, transitioning, and emerging economies.⁸⁴ The percentage increase of FDI in the GCC was markedly higher than that of the rest of the world, even following the 2008 global financial crisis, which hit the UAE particularly hard.⁸⁵ While FDI inflows into the GCC still constitute a relatively small portion of global FDI flows, FDI inflows and FDI as a percentage of GDP indicate that the GCC has relatively strong locational determinants,⁸⁶ making the GCC markets an attractive option for foreign investors.⁸⁷

⁸⁰ *Id.*

⁸¹ Bahrain, Kuwait, and the UAE saw increases in FDI in 2011. *Id.* (using data from the GCC table).

⁸² See, e.g., Pratap John, *Qatar Projects Set To Boost FDI Flows into GCC*, GULF TIMES (July 15, 2012), at 1; *USD 500 Billion Expected Surpluses for GCC Countries in 2012*, KUWAIT NEWS AGENCY (Aug. 10, 2012), <http://www.kuna.net.kw/ArticleDetails.aspx?id=2257144&language=en>.

⁸³ UNCTAD, *World Investment Prospects Survey: 2009–2011*, 9, U.N. Doc. UNCTAD/DIAE/IA/2009/8 (2009).

⁸⁴ See *supra* Table 12.

⁸⁵ MAY KHAMIS ET AL., IMF, IMPACT OF THE GLOBAL FINANCIAL CRISIS ON THE GULF COOPERATION COUNCIL COUNTRIES AND CHALLENGES AHEAD 16, 19, 21 (2010), available at <http://www.imf.org/external/pubs/ft/dp/2010/dp1001.pdf>.

⁸⁶ See JOHN H. DUNNING & SARIANNA M. LUNDAN, MULTINATIONAL ENTERPRISES AND THE GLOBAL ECONOMY 99–103, 323–27 (Edward Elgar Publ'g, 2d ed. 2008) (1993). Some of the locational determinates that John Dunning lists are input prices, distribution of resources, transportation and communication costs, investment incentives, trade barriers, infrastructure, and the legal and regulatory system. *Id.* at 101–02 box 4.1. These factors can affect whether a corporation decides to engage in FDI in a particular country. *Id.* at 100. Locational determinants are a subset of Dunning's ownership-location-internalization paradigm. *Id.* at 99–100.

⁸⁷ Mohammed Elsidafy, *GCC Remains an Attractive Option for Foreign Capital*, EMIRATES 24/7 (Feb. 16, 2009), <http://www.emirates247.com/eb247/economy/uae-economy/gcc-remains-an-attractive-option-for-foreign-capital-2009-02-16-1.92494>.

III. THE LEGAL FRAMEWORK GOVERNING FDI IN THE GCC

One of the primary factors behind the upsurge in FDI inflows has been the removal of legal and regulatory barriers to FDI. State-led reforms—initiated in some GCC states as far back as the 1980s, but systematically adopted by GCC states around 2000—opened the door to FDI in the GCC.⁸⁸ Concomitant to such reforms, however, was a deliberate exercise of regulatory authority by GCC states over strategic elements of their respective FDI regimes.⁸⁹ Although each GCC member state has legislated its own FDI regime,⁹⁰ enough similarities exist between the FDI regimes of individual member states to warrant a brief, thematic overview of FDI policies in the GCC.

Part III.A examines the neoliberal policies governing several aspects of the FDI regimes of GCC states. Part III.B outlines a few prominent ways in which GCC states have maintained or asserted regulatory control over strategic aspects of their FDI regimes in spite of otherwise neoliberal reforms.

A. *Neoliberal Economic Policies in GCC Member States' FDI Regimes*

In the past decade, GCC members states—as well as other MENA states—have modified their investment laws (UAE, Oman) or created new ones altogether (Kuwait, Saudi Arabia).⁹¹ These reforms have revolved around the standards promoted by the Organization for Economic Co-operation and Development (“OECD”), codified most recently in the 2006 MENA–OECD Investment Programme.⁹² The following sections briefly examine some of the principle reforms undertaken by GCC states.

⁸⁸ See Hussein, *supra* note 10, at 363.

⁸⁹ See *id.*

⁹⁰ For state-specific analyses, see, for example, K. Mellahi et al., *Motives for Foreign Direct Investment in Oman*, 45 THUNDERBIRD INT'L BUS. REV. 431 (2003); see also, e.g., AL-KHALIFA, *supra* note 18.

⁹¹ See Mellahi, *supra* note 90, at 433. See also Kuwait Eyes New ‘Investment Law,’ ARAB TIMES KUWAIT ENG. DAILY, <http://www.arabtimesonline.com/NewsDetails/tabid/96/smld/414/ArticleID/164499/refTab/73/Default.aspx> (last visited Oct. 12, 2012); Lucia Dore, *UAE Foreign Investment Law by 2008*, KHALEEJ TIMES (Mar. 23, 2007), http://www.khaleejtimes.com/DisplayArticleNew.asp?xfile=data/business/2007/March/business_March639.xml§ion=business; New Foreign Investment Law, SAUDI ARABIA MARKET INFO. RESOURCE & DIRECTORY, http://www.saudinf.com/main/c552.htm (last visited Oct. 12, 2012).

⁹² MENA INVESTMENT POLICY AGENDA, *supra* note 10; see also OECD, MENA–OECD INVESTMENT PROGRAMME: MINISTERIAL DECLARATION AND RELATED DOCUMENTS (2006), available at <http://www.oecd.org/mena/investment/37520012.pdf>.

1. Diversification

It is no secret that the six labor-rich states of the GCC all depend on oil and gas for government revenues and foreign investment. Qatar is one of the world's top exporters of liquefied natural gas, while the GCC states hold roughly thirty percent of the world's oil reserves, seventeen percent of the world's gas reserves, and GCC production of oil accounts for more than twenty percent of global production.⁹³ Oil and gas, in this sense, are the engine of the GCC economy, and the GCC will continue to utilize its unique resources as leverage in its continued economic growth.⁹⁴

As outlined above, FDI inflows into the GCC during the second oil boom increased at a rate higher than rates in other major petroleum and gas producing economies.⁹⁵ As Table 15 indicates, however, the rate at which FDI inflows within individual GCC member states increased from 2002 to 2008 was substantially higher than the rates of increase for the other top twenty-five oil-producing countries in the world during this same period.

Table 15. FDI Inflows Among Top 25⁹⁶ Oil-Producing States (2002 & 2008)⁹⁷

	2002	2008	Percentage Increase
Saudi Arabia	\$453	\$38,151	8321.85%
Russia	\$3461	\$75,002	2067.06%
US	\$74,501	\$306,366	311.22%
Iran	\$3657	\$1909	-47.80%
China	\$52,743	\$108,312	105.36%
Canada	\$22,155	\$57,177	158.08%
Mexico	\$23,883	\$27,140	13.88%
UAE	\$95	\$13,724	14,346.32%
Nigeria	\$2040	\$8249	304.36%

⁹³ *BP Statistical Review of World Energy June 2012*, *supra* note 29, at 4, 6, 20.

⁹⁴ *Contra* M. Nagy Eltony, *The Future Role of Gulf Oil in World Energy Demand*, in *ARAB BUSINESS: THE GLOBALIZATION IMPERATIVE* 92, 104 (Ali Al-Shamali & John Denton eds., 2000) (arguing that GCC countries should diversify their economies instead of relying on their oil reserves).

⁹⁵ *See supra* Table 8.

⁹⁶ *The World Factbook: Oil-Production*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2173rank.html> (last visited Oct. 24, 2012). Iraq, which ranks ninth among oil-producing states, was excluded from this list for this Article due to the events associated with the Iraq War and their impact on FDI inflows during the early stages of the Iraq War. *Id.* Bahrain is ranked as the sixty-third highest oil producing state. *Id.*

⁹⁷ UNCTAD, *FDI Statistics*, *supra* note 2.

Kuwait ⁹⁸	\$4	-\$6	-250.00%
Venezuela	\$782	\$1195	52.81%
Brazil	\$16,590	\$45,058	171.60%
EU	\$312,003	\$542,242	73.79%
Norway	\$791	\$10,564	1235.52%
Algeria	\$1065	\$2594	143.57%
Angola	\$1672	\$1679	0.42%
Libya	\$145	\$3180	2093.10%
Kazakhstan	\$2,590	\$14,322	452.97%
Qatar	\$624	\$3779	505.61%
UK	\$24,029	\$91,489	280.74%
Azerbaijan	\$1392	\$14	-98.99%
Indonesia	\$1896 ⁹⁹	\$9318	391.46%
India	\$5630	\$43,406	670.98%
Oman	\$122	\$2952	2319.67%
Bahrain (63rd)	\$217	\$1794	726.73%
Average increase of all GCC states (including Bahrain)			4328.36%
Overall average increase: (excluding Bahrain)			1400.98%
Overall average increase of all non-GCC producers:			419.01%

*Measure: In millions of U.S. dollars at July 12, 2012, prices and exchange rates.

Oil prices, adjusted for inflation, increased from \$29.12 in 2002 to \$97.33 in 2008, for an increase of 234%.¹⁰⁰ Table 15 reveals that the average overall increase in FDI inflows among the top twenty-five non-GCC oil-producing states was roughly 594%. The average percentage increase during the same period for GCC member states was 4328%, suggesting that both oil and non-oil sectors benefitted from increased FDI.¹⁰¹

A brief overview of the diversification efforts by GCC member states reveals that, indeed, the non-oil sector has benefitted from increased FDI inflows as a result of several changes instituted by GCC member states. GCC countries have reduced the number of sectors that were previously closed to

⁹⁸ In 2007, Kuwait's FDI was \$112 million. *Id.* In 2009, its FDI was \$1114 million, which constitutes a 27,750% increase. *See id.*

⁹⁹ \$1896 million is the 2004 figure.

¹⁰⁰ *Historical Crude Oil Prices (Table)*, INFLATIONDATA.COM, http://inflationdata.com/Inflation/Inflation_Rate/Historical_Oil_Prices_Table.asp (last visited Oct. 12, 2012).

¹⁰¹ *See supra* Table 15.

foreign investors.¹⁰² Foreign investors may now invest in a broad range of sectors, including tourism, renewable energy,¹⁰³ energy and feedstock-intensive heavy industries, education, real estate, environmental technologies and financial instruments, petrochemicals, infrastructure, health and medicine, construction, transportation (including railways), agriculture, food and beverages, mining,¹⁰⁴ services,¹⁰⁵ banking and financial services, airline, steel, transportation, pharmaceuticals,¹⁰⁶ satellite-transmission services,¹⁰⁷ wholesale/distribution, and telecommunications.¹⁰⁸

Privatization efforts have also been successful.¹⁰⁹ In Oman, the privatization process was inaugurated by royal decree in 1996.¹¹⁰ Among other things, the law “unbundl[es] and corporatiz[es] the ministry’s existing activities into a number of separate generation, transmission, and distribution businesses, which will be initially owned by the government and then privatized.”¹¹¹ Abu Dhabi has been particularly active on the privatization front, most notably in the domain of water and electricity, where the Abu Dhabi Water and Electricity Company has balanced demand and supply of water and electricity through sales contracts and Bulk Supply Tarriffs with the distribution companies.¹¹²

¹⁰² See Saif, *supra* note 16, at 5.

¹⁰³ See, e.g., Veronica Cinti, *The Countries’ Growth Beyond Oil: The Special Case of Saudi Arabia*, 1 WORLD REV. BUS. RES. 136, 149 (2011); Reem Shamseddine, *Renewables To Contribute to Saudi Power Mix*, REUTERS, Oct. 21, 2010, available at <http://www.reuters.com/article/2010/10/21/us-mideast-summit-saudi-power-idUSTRE69J2OF20101021>.

¹⁰⁴ Moin Siddiqi, *MENA—The Heaven of Foreign Direct Investment*, GLOBAL ARAB NETWORK (June 2, 2009), <http://www.english.globalarabnetwork.com/200906021019/Economics/mena-the-heaven-of-foreign-direct-investment.html>.

¹⁰⁵ Uri Dadush & Lauren Falcao, *Regional Arrangements in the Arabian Gulf*, CARNEGIE ENDOWMENT FOR INT’L PEACE (2009), <http://carnegieendowment.org/files/gcc1.pdf>.

¹⁰⁶ *GCC Looking To Expand Its Horizons*, PHARMA & HEALTHCARE (Mar. 2007), <http://www.pharmaceuticalsinsight.com/file/43716/gcc-looking-to-expand-its-horizons.html>.

¹⁰⁷ Siddiqi, *supra* note 104.

¹⁰⁸ E.g., UGO FASANO & ZUBAIR IQBAL, *GCC COUNTRIES: FROM OIL INDEPENDENCE TO DIVERSIFICATION* 14 (2003).

¹⁰⁹ See GLOBAL INVESTMENT HOUSE, *GCC MACROECONOMIC—CHANGING PARADIGMS* 7, 19 (2009) (illustrating the FDI inflows into non-oil sectors of the GCC economy).

¹¹⁰ See *Oman: Action Plan*, BUS. MIDDLE E., Nov. 1–15, 1996, at 4.

¹¹¹ Loren Page Ambinder et al., *The Mirage Becomes Reality: Privatization and Project Finance Developments in the Middle East Power Market*, 24 FORDHAM INT’L L.J. 1029, 1032 n.19 (2001).

¹¹² ABU DHABI WATER & ELECTRICITY COMPANY, <http://www.adwec.ae> (last visited Oct. 12, 2012); see also Ambinder et al., *supra* note 111, at 1035. ADWEC is a wholly owned subsidiary of the Abu Dhabi Water and Electricity Authority. ABU DHABI WATER & ELECTRICITY COMPANY, *supra*.

The Saudi Government recently announced that it would split the Saudi Electric Company, currently the largest utility provider in the Gulf, into “four independent power generation companies to encourage more competition.”¹¹³ Several investment opportunities and joint venture projects with the Saudi Electric Company have also been announced.¹¹⁴

With regards to infrastructure, Saudi Arabia has undertaken vast public-private partnerships (“PPPs”) to build a series of “economic cities” throughout Saudi Arabia.¹¹⁵ Emirates Dubai and Abu Dhabi of the UAE¹¹⁶ have undertaken similar public-private partnerships, as has Bahrain.¹¹⁷ It has been said “every third crane in the world is located somewhere in the Gulf and most of them are deployed in Dubai alone.”¹¹⁸

Economic diversification efforts throughout the gulf have opened up the Gulf economies to domestic and foreign investment, expanding the governments’ sources of revenue to several non-oil sectors.¹¹⁹

2. Trade

It has been generally established in the literature that trade openness has a positive impact on the FDI inflow.¹²⁰ Indeed, it seems apparent that increased trade openness and developed trading ties encourage FDI.¹²¹ Following a decade of protracted negotiations, Saudi Arabia acceded to the World Trade Organization (“WTO”) in 2005, “making it the last GCC country to enter the global free trade framework.”¹²² Since then, GCC countries have continued to

¹¹³ *Saudi Electricity Company*, ARABIANBUSINESS, <http://www.arabianbusiness.com/companies/saudi-electricity-company-66578.html> (last visited Oct. 24, 2012).

¹¹⁴ *Investment Opportunities*, SAUDI ELECTRICITY COMPANY, <http://www.se.com.sa/SEC/English/Menu/Partners/chances/> (last visited Oct. 12, 2012).

¹¹⁵ E.g., P.K. Abdul Ghafour, *Economic Cities Draw Foreign Investment: SAGIA Chief*, ARABNEWS (Sept. 27, 2010), <http://www.arabnews.com/node/356295>.

¹¹⁶ See, e.g., *Think Science Contest Invites Emirati Scientific Talents*, EDARABIA, <http://www.edarabia.com/60560/think-science-contest-invites-emirati-scientific-talents> (last visited Oct. 12, 2012).

¹¹⁷ See, e.g., Abdul-Haq Mohammed, *Can Public Private Partnerships Solve Bahrain’s Housing Crisis?*, GUARDIAN (Feb. 15, 2012), <http://www.guardian.co.uk/housing-network/2012/feb/15/public-private-partnership-bahrain-housing>.

¹¹⁸ Mahmood Rafique, *GCC’s Energy Sector to Keep Attracting FDI*, ARABNEWS (Dec. 6, 2007), <http://www.arabnews.com/node/306451>.

¹¹⁹ See Dania Saadi, *Gulf States Move to Diversify Income Sources*, N.Y. TIMES, (July 18, 2012), <http://www.nytimes.com/2012/07/19/world/middleeast/gulf-states-move-to-diversify-income-sources.html>.

¹²⁰ Mina, *Are the GCC FDI Location Determinants Favorable?*, *supra* note 10, at 13.

¹²¹ *Id.* at 12–13.

¹²² Jasim Ali, *GCC Focus: Attracting FDI Calls for an Attitude Shift*, GULF NEWS (Aug. 3, 2011), <http://gulfnnews.com/business/economy/gcc-focus-attracting-fdi-calls-for-an-attitude-shift-1.846327>.

expand their trade relationships. In April 2008, for example, the GCC finalized negotiations on a Free Trade Agreement (“FTA”) with the European Free Trade Association.¹²³ In addition to trade agreements that individual GCC member states have with other trading partners, the GCC has entered into FTA negotiations with other regional economic unions, including the EU.¹²⁴

The GCC has a large trade deficit in comparison to other emerging economies (more imports than exports).¹²⁵ Nonetheless, the GCC has adopted a relatively open trade policy.¹²⁶ This manifests the dependence and incorporation of GCC economies in the international market,¹²⁷ a factor that favorably influences FDI inflows.¹²⁸

Given their strategic geographic location, GCC states will remain attractive trading partners. Although intra-GCC trade has been lacking,¹²⁹ GCC states have not shied away from promoting open trade policies.¹³⁰ Such policies have reinforced FDI in the GCC member states,¹³¹ and will continue to do so as the GCC states continue to open their borders to intra-GCC and global trading partners.

GCC states—especially the two principal emirates, Dubai and Abu Dhabi, in the UAE—have also enjoyed widespread success in the creation and management of free trade zones (“FTZ”).¹³² Dubai’s FTZ, for example, is highly sophisticated, enabling thousands of international businesses to conduct

¹²³ *The EFTA States and GCC Sign Free Trade Agreement*, EFTA (June 22, 2009), <http://www.efta.int/free-trade/free-trade-news/2009-06-22-efta-gcc-sign-fta.aspx>.

¹²⁴ *International Affairs-Free Trade Agreements*, EUR. COMMISSION, <http://ec.europa.eu/enterprise/policies/international/facilitating-trade/free-trade/> (last updated Feb. 2, 2012).

¹²⁵ Aysu Insel & Mahmut Tekçe, *Bilateral Trade Flows of the Gulf Cooperation Council Countries: A New Approach to Gravity Model*, TOPICS MIDDLE E. & N. AFR. ECONOMIES 16 (Sept. 2009), <http://www.luc.edu/orgs/meea/volume11/PDFS/Paper-by-Insel&Tekce.pdf> (article published in volume 11 of the online journal Topics in Middle Eastern and North African Economies).

¹²⁶ See ECONOMIC INTEGRATION IN THE GCC, *supra* note 22, 17, 18 fig.7.

¹²⁷ *Id.*

¹²⁸ Mina, Are the GCC FDI Location Determinants Favorable?, *supra* note 10, at 12–13.

¹²⁹ See, e.g., Joel Bowman, *Intra-GCC Trade Still Problematic for Many*, ARABIANBUSINESS (Apr. 8, 2008, 12:34 PM), <http://www.arabianbusiness.com/intra-gcc-trade-still-problematic-for-many-51140.html>. *But see* Dadush & Falcao, *supra* note 105, at 2 (“Many of the GCC’s efforts have thus far been targeted at lowering tariffs between member states.”).

¹³⁰ See *supra* notes 123–26 and accompanying text.

¹³¹ See Dadush & Falcao, *supra* note 106, at 2, 4.

¹³² See *UAE Freezones: Air and Sea Ports and Free Zones*, MAZARS, <http://gcc.mazars.com/Home/Contact-us/Frequently-Asked-Questions/Frequently-Asked-Questions-for-the-UAE/UAE-Freezones> (last visited Oct. 12, 2012).

trade and expand their businesses in a comparatively open regulatory environment.¹³³

3. *Bilateral Investment Treaties*

As with the relationship between trade and FDI, scholars have examined the relationship between Bilateral Investment Treaties (“BITs”), and FDI.¹³⁴ In general, the conclusion in the literature is that, in the MENA region, BITs play a part in attracting FDI, although to a lesser extent than trade.¹³⁵ The leading determinant for FDI in the MENA region appears to be market size.¹³⁶

In the GCC specifically, some scholars have come to the conclusion that “BITs contracted with high-income non-OECD countries, such as Kuwait and UAE, has a positive FDI influence. . . . On the other hand, BITs contracted with high-income OECD and upper middle income countries have a negative FDI influence, while government stability, as a domestic institution, has a positive influence.”¹³⁷ Wasseem Mina argues that within GCC countries, “the rationale for contracting bilateral investment treaties seems controversial and goes beyond attracting FDI to strengthening bilateral economic and political relationships”¹³⁸ Mina concludes that “the empirical evidence seems to suggest that institutional development and targeting BIT partners matter for FDI promotion.”¹³⁹ The literature also suggests that while BITs serve as an important impetus for domestic institutional change, the most effective approach to domestic, FDI-related institutional reform is for MENA states to pursue such reforms *in addition* to pursuing BITs with other countries.¹⁴⁰

¹³³ *See id.*

¹³⁴ *E.g.*, Peter Egger & Michael Pfaffermayr, *The Impact of Bilateral Investment Treaties on Foreign Direct Investment*, 32 J. COMP. ECON. 788 (2004); Rodolphe Desbordes & Vincent Vicard, *Foreign Direct Investment and Bilateral Investment Treaties: An International Political Perspective*, 37 J. COMP. ECON. 372 (2009).

¹³⁵ *See* Wasseem Michel Mina, *Institutional Reforms Debate and FDI Flows to MENA Region: Does One “Best” Fit All?* 10–11 (Ga. State Univ. Andrew Young Sch. of Policy Studies, Working Paper No. 10-34, 2010).

¹³⁶ *Id.* at 9.

¹³⁷ *E.g.*, Wasseem Mina, *External Commitment Mechanisms, Institutions, and FDI in GCC Countries*, 19 J. INT’L FIN. MARKETS, INSTITUTIONS & MONEY 371, 384 (2009).

¹³⁸ *Id.* at 12.

¹³⁹ Wasseem Mina, *BITs Contracting and FDI Impact in the GCC Countries*, ECON. RES. FORUM 20 (Oct. 31, 2007), http://www.erf.org.eg/CMS/uploads/pdf/1198317319_BIT_Contracting_FDI_Impact_GCC_Countries_Wasseem_Mina.pdf.

¹⁴⁰ Mina, *supra* note 137, at 13–14.

As indicated above, the GCC states in general have pursued domestic institutional reforms independent of BIT obligations.¹⁴¹ GCC states have generally adopted approaches to reform “national rules and bureaucracies” and to create FTZs.¹⁴² These obligations have been reinforced in GCC BIT obligations.¹⁴³ As of June 2008, the GCC has entered into a total of 105 BITs.¹⁴⁴

4. *Legal Initiatives*

Since the early 2000s, GCC member states have instituted several changes to the legal regimes governing FDI. Saudi Arabia, for example, adopted the Foreign Investment Law (“FIL”) in 2000, which created the Saudi Arabia General Investment Authority (“SAGIA”).¹⁴⁵ The FIL provides equal tax treatment to foreign and local investors, permits 100% foreign ownership of projects, and gives foreign investors access to attractive finance from the Saudi Industrial Development Fund.¹⁴⁶ The FIL also “allows foreign banks to operate in the form of locally incorporated joint-stock companies or as branches of international financial institutions.”¹⁴⁷ Similar provisions can be found in laws of Qatar¹⁴⁸ and, in the UAE, a proposed Federal Companies Law will allow for 100% foreign ownership in some sectors outside of the FTZ.¹⁴⁹

¹⁴¹ See *supra* Part III.A.1.

¹⁴² ECONOMIC INTEGRATION IN THE GCC, *supra* note 22, at 17.

¹⁴³ See, e.g., *Signature of Bilateral Investment Agreement Between Japan and the State of Kuwait*, MINISTRY ECON., TRADE & INDUSTRY (Mar. 22, 2012), http://www.meti.go.jp/english/press/2012/0322_03.html.

¹⁴⁴ Mina, *supra* note 137, at 39.

¹⁴⁵ See *Investment Incentives: Investment Climate in Saudi Arabia*, SAUDI ARABIA GEN. INVEST. AUTH., <http://www.sagia.gov.sa/Investment-climate/Some-Things-You-Need-To-Know-/Investment-Incentives> (last visited Oct. 12, 2012).

¹⁴⁶ *Ushering in the New Generation*, MEED, Mar. 16, 2001, at 23, 24; accord Jason T. Burdette, *Saudi Law Launches New Investment Era*, US-ARAB TRADELINE, Apr. 21, 2000, at 1, 1. But see Taimur Ahmad, *Oman Unveils*, PROJECT FIN., Dec. 2000, at 24, 27 (noting that in Oman, the permitted level of foreign ownership of local companies is sixty-five percent, with the possibility for increases in the future).

¹⁴⁷ Ali, *supra* note 122.

¹⁴⁸ See *2012 Investment Climate Statement—Qatar*, U.S. DEP’T STATE (June 2012), <http://www.state.gov/e/eb/rls/othr/ics/2012/191221.htm> (stating that regulations for foreign and local banks are the same).

¹⁴⁹ *2012 Investment Climate Statement—United Arab Emirates*, U.S. DEP’T STATE (June 2012), <http://www.state.gov/e/eb/rls/othr/ics/2012/191258.htm>. (“The proposed law may allow 100 percent foreign ownership in some sectors and projects”). But see *id.* (“[T]here are four major laws affecting foreign investment in the UAE These laws, especially the Federal Companies Laws, are seen as the largest obstacles to foreign direct investment in the UAE.”).

GCC governments have also revised their tax codes to facilitate a more business-friendly market.¹⁵⁰ In addition to FTZs, several GCC states have instituted tax codes that are very friendly to multi-national corporations (“MNCs”). Kuwait, for example, recently lowered the top marginal tax rate for foreign corporations from fifty-five percent to fifteen percent.¹⁵¹ Some GCC states also have tax holidays.¹⁵² GCC states have also taken steps to reduce “bureaucratic red tape,”¹⁵³ such as expediting the issuance of visas.¹⁵⁴ Saudi Arabia’s establishment of SAGIA, which functions as a one-stop shop for the application and management of FDI projects in Saudi Arabia,¹⁵⁵ is perhaps the most notable example of reducing administrative and bureaucratic red tape. SAGIA has been surprisingly successful in facilitating FDI and managing FDI projects.¹⁵⁶ GCC states are also increasingly respecting a broad array of private property rights, including allowing 100% foreign ownership of residential property and other real estate in select areas.¹⁵⁷ GCC states have also taken steps to eliminate or reduce minimum capital requirements, and have instituted creative offset programs designed to encourage FDI.¹⁵⁸

These changes to the legal and institutional environment governing FDI in the GCC are reflected in the World Bank’s “Ease of Doing Business”

¹⁵⁰ See, e.g., Ahmad, *supra* note 146, at 27; 2012 *Investment Climate Statement—Saudi Arabia*, U.S. DEP’T OF STATE (June 2012), <http://www.state.gov/e/eb/rls/othr/ics/2012/191229.htm>.

¹⁵¹ *Corporate Tax by Country*, GLOBAL FIN., <http://www.gfmag.com/tools/global-database/economic-data/11865-corporate-tax-by-country.html> (last visited Oct. 15, 2012).

¹⁵² E.g., *Oman Highlights 2012*, DELOITTE 1, http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Taxation%20and%20Investment%20Guides/2012/dttl_tax_highlight_2012_Oman.pdf (last visited Oct. 28, 2012); *Qatar Highlights 2012*, DELOITTE 1, http://www.deloitte.com/assets/Dcom-Global/Local%20Assets/Documents/Tax/Taxation%20and%20Investment%20Guides/2012/dttl_tax_highlight_2012_Qatar.pdf (last visited Oct. 28, 2012).

¹⁵³ Ugo Fasano & Qing Wang, *Fiscal Expenditure Policy and Non-Oil Economic Growth: Evidence From GCC Countries 6* (Int’l Monetary Fund, Working Paper No. WP/01/195, 2001), available at <http://www.imf.org/external/pubs/ft/wp/2001/wp01195.pdf>.

¹⁵⁴ Mohammed Zaher, *FDI Inflows to GCC Below Potential Despite Recent Surge*, NAT’L BANK OF KUWAIT 1, 5 (Nov. 19, 2008), [http://www.kuwait.nbk.com/InvestmentAndBrokerage/ResearchandReports/\\$Document/GCCResearchNote/en-gb/MainCopy/\\$UserFiles/GCCResearchnote20081119%20\(1\).pdf](http://www.kuwait.nbk.com/InvestmentAndBrokerage/ResearchandReports/$Document/GCCResearchNote/en-gb/MainCopy/$UserFiles/GCCResearchnote20081119%20(1).pdf).

¹⁵⁵ See *What We Do*, SAUDI ARABIA GEN. INVEST. AUTH., <http://www.sagia.gov.sa/en/SAGIA/What-We-Do/> (last visited Oct. 28, 2012); see also Zaher, *supra* note 154, at 4–5.

¹⁵⁶ Khalil Hanware, *Saudi Arabia’s Ability To Attract FDI Becomes a Big Success Story*, ARABNEWS (Jan. 25, 2011), <http://www.arabnews.com/node/366416>.

¹⁵⁷ Zaher, *supra* note 154, at 4.

¹⁵⁸ *Id.* at 5.

statistics,¹⁵⁹ in which GCC member states have consistently improved since 2006.¹⁶⁰

Overall, GCC governments have instituted several changes to the legal and economic structures governing FDI. Legally speaking, the GCC is a much more open market than it was only ten or fifteen years ago.¹⁶¹ It is less regulated and more business friendly.¹⁶² To be sure, several challenges remain. Overall, however, the rapid increase in FDI inflows into the GCC can be attributed in part to the legal and institutional changes adopted by GCC governments during the past fifteen years.

5. *Other*

In addition to the foregoing factors, the GCC states have implemented additional reforms that have contributed to the dramatic upsurge in FDI over the past decade. To begin with, individual GCC governments have, in general, embraced prudent money management policies, and have utilized government surpluses wisely.¹⁶³ Large government surpluses have enabled GCC governments to limit debt¹⁶⁴ and generate additional revenue, through sovereign wealth funds, loans, and foreign investment in other economies.¹⁶⁵ This has not only given GCC states disproportionate influence in international money markets, but has contributed to the overall image of a fiscally responsible and solvent GCC.¹⁶⁶ It has also enabled the GCC to much more

¹⁵⁹ *Economy Rankings*, DOING BUS.—WORLD BANK GROUP, <http://www.doingbusiness.org/rankings> (last visited Oct. 28, 2012).

¹⁶⁰ See *Distance to Frontier*, DOING BUS.—WORLD BANK GROUP <http://www.doingbusiness.org/data/distance-to-frontier> (last visited Oct. 28, 2012).

¹⁶¹ See Zaher, *supra* note 154, at 4–5.

¹⁶² See *supra* Part III.A.

¹⁶³ See Zaher, *supra* note 154, at 3. The overseas capital resources of the Gulf bourgeoisie are estimated to be roughly \$800 billion. Steffen Hertog, *The GCC and Arab Economic Integration: A New Paradigm*, 14 MIDDLE E. POL'Y 52, 64 (2007).

¹⁶⁴ WORLD ECON. FORUM, ARAB WORLD COMPETITIVENESS REPORT 2011–2012, at 54 fig.8 (2011).

¹⁶⁵ See *GCC in 2020: Outlook for the Gulf and the Global Economy*, ECONOMIST INTELLIGENCE UNIT 14–15 (Mar. 2009), <http://graphics.eiu.com/marketing/pdf/Gulf2020.pdf>.

¹⁶⁶ Hertog, *supra* note 26, at 6 (“Total foreign asset holdings held by the Gulf states are estimated at amount 1.6 trillion \$ [sic]. Compare this with China’s foreign exchange reserves of 1.1 trillion—so far the main concern of economists worried about global imbalances. The figures indicate that the Gulf has become arguably the most important player on international currency markets, and one of the most important sources of foreign direct investment (FDI) in the world economy. Investment decisions made in Riyadh, Abu Dhabi or Kuwait City can have a strong influence on the fate of whole currencies and national economies—including European ones. Recent concerns about the uncoupling of GCC currencies from the US dollar have highlighted the issue.”).

effectively reduce oil price fluctuations¹⁶⁷—historically the GCC's Achilles' heel when it came to sustained growth and development.¹⁶⁸

GCC governments have also utilized tax and subsidies effectively,¹⁶⁹ enabling GCC governments to escape the lingering problems facing other MENA economies,¹⁷⁰ and contributing to per capita incomes that are among the highest in the world.¹⁷¹

The GCC as a whole has also facilitated FDI by promoting the free movement of capital and currency conversion with fixed rates.¹⁷² Although Oman, Qatar, and the UAE have all experienced relatively high inflation rates, Bahrain, Kuwait, and Saudi Arabia managed to keep inflation rates below seven percent in 2009, with Bahrain experiencing an inflation rate of only 3.6%.¹⁷³ The economic turmoil in Dubai in 2008 and 2009 notwithstanding, the GCC has enjoyed relatively stable economic growth,¹⁷⁴ which has been supported by relative political stability,¹⁷⁵ although the recent unrest in Bahrain¹⁷⁶ suggests that the GCC is not immune from the wave of discontent that has manifested itself throughout the Middle East over the past two years. All indicators, however, point to continued political stability in the GCC countries.

Additionally, the GCC has marketed itself very well. From available investment opportunities to cutting-edge financial tools, the GCC has shown

¹⁶⁷ Zaher, *supra* note 154, at 3.

¹⁶⁸ FASANO & IQBAL, *supra* note 108, at 3; *see also* WORLD INVESTMENT REPORT 2012, *supra* note 5, at 50–51 box II.2.

¹⁶⁹ *See* FASANO & IQBAL, *supra* note 108, at 1; Raphael Espinoza, *Government Spending, Subsidies and Economic Efficiency in the GCC 2* (OxCarre, Research Paper No. 95, 2012).

¹⁷⁰ Anthony O'Sullivan et al., *Opportunities and Challenges in the MENA Region*, ORG. ECON. CO-OPERATION & DEV. 2 (2011), <http://www.oecd.org/mena/investment/49036903.pdf>.

¹⁷¹ *The World Factbook: Country Comparison: GDP—Per Capita (PPP)*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2004rank.html> (last visited Oct. 24, 2012).

¹⁷² WORLD BANK MENA DEVELOPMENT REPORT, *supra* note 9, at 100.

¹⁷³ GLOBAL INVESTMENT HOUSE, *supra* note 109, at 6.

¹⁷⁴ Masood Ahmed, *GCC: Crisis Highlights Policy Challenges*, INT'L ECON. BULL.—CARNEGIE ENDOWMENT FOR INT'L PEACE (Mar. 18, 2010), <http://carnegieendowment.org/2010/03/18/gcc-crisis-highlights-policy-challenges/3w84#>.

¹⁷⁵ Abdulkhaleq Abdullah *Repercussions of the Arab Spring on GCC States*, ARAB CENTER RES. & POL'Y STUD. 6–7 (May 2012), <http://english.dohainstitute.org/file/pdfViewer/5b1fafdb-19d4-4946-a18e-f3115c6fd0aa.pdf>.

¹⁷⁶ *Bahrain Protest Continues*, AL JAZEERA (Feb. 21, 2011), <http://www.aljazeera.com/news/middleeast/2011/02/2011220211947585788.html>.

the world it is an attractive destination for FDI.¹⁷⁷ The GCC's advanced physical infrastructure goes far in conveying to the world the modern amenities and opportunities available for foreign investors in the Gulf region.¹⁷⁸

B. Anti-Liberal Trends in GCC FDI Regimes

The upsurge in FDI in the last decade is due in large part to the liberal reforms initiated by GCC member states. GCC states have, however, maintained notable levels of regulatory control over strategic aspects of their respective FDI regimes.¹⁷⁹ Although each state has adopted unique approaches to preserving control over various aspects of their FDI regimes, a few noteworthy generalizations can be made.

To begin with, GCC member states have maintained significant levels of regulatory control over labor policy. In general, GCC states all embrace labor regulations that are very favorable to local employees insofar as they seek to encourage all economic enterprises to employ domestic labor and to protect domestic employees.¹⁸⁰ Both Saudi Arabia and Kuwait, for example, have adopted indigenous worker requirements (officially referred to as “Saudi-ization” and “Kuwaiti-ization”), which require foreign entities to employ a certain percentage of Saudi or Kuwaiti employees among their labor force.¹⁸¹ In Saudi Arabia, the official requirement is seventy-five percent—that is, seventy-five percent of all employees must be Saudi citizens.¹⁸²

GCC member states also have very strict requirements for employee training, compensation, and termination. Employment is considered a basic right in GCC states,¹⁸³ and laws are designed to ensure that employees are protected from circumstances that infringe upon this right or otherwise prevent

¹⁷⁷ See, e.g., *Why Invest in Dubai?*, GOV'T DUBAI <http://www.dha.gov.ae/En/sectorsdirectorates/directorates/healthregulation/healthcareinvestment/pages/whyinvestindubai.aspx> (last visited Oct. 28, 2012).

¹⁷⁸ See, e.g., *id.*

¹⁷⁹ See generally *MENA–OECD Investment Programme Investment Climate and Regulation of International Investment in MENA Countries*, ORG. ECON. CO-OPERATION & DEV. (2005), <http://www.oecd.org/mena/investment/36086643.pdf> (discussing the investment climate in the MENA region).

¹⁸⁰ See Nasra M. Shah, *RECENT LABOR IMMIGRATION POLICIES IN THE OIL RICH GULF: HOW EFFECTIVE ARE THEY LIKELY TO BE?* 9–11 (2008), available at <http://www.ilo.org/public/english/region/asro/bangkok/library/download/pub08-12.pdf>.

¹⁸¹ See *id.*

¹⁸² *2012 Investment Climate Statement–Saudi Arabia*, *supra* note 150. Based on the author's personal experience, companies only rarely reach forty percent in practice.

¹⁸³ See, e.g., Labor Law, Royal Decree No. 51, 23 Sha'ban 1426 [Sept. 27, 2005] art. 3 (Saudi Arabia), available at <http://www.ilo.org/dyn/natlex/docs/MONOGRAPH/74429/81285/F969265747/SAU74429%20English.pdf>.

this right from being fully realized, whether it is through lack of training, insufficient compensation, or unlawful termination. Thus, Saudi labor law, for example, provides that each employer “prepare his Saudi workers and enhance their technical, administrative, vocational and other skills for the purpose of gradually replacing non-Saudis.”¹⁸⁴ As for compensation, employers may not work employees over the maximum statutory limit (no more than eight hours per day, or six during Ramadan) without providing overtime pay, which is calculated at fifty percent of basic pay.¹⁸⁵ Employees all receive paid time off for a “weekly rest day,” official holidays, and sick leaves.¹⁸⁶ Employees also have twenty-one days of prepaid annual leave, thirty if the employee has worked for the employer for five or more consecutive years.¹⁸⁷ Employees may not be required to perform work that is essentially different from the work for which they were hired.¹⁸⁸ Further, employment contracts renew upon the termination date of the contract unless otherwise agreed to by the parties.¹⁸⁹

As for termination, with only few exceptions,¹⁹⁰ the employer is severely restricted in their ability to terminate an employee.¹⁹¹ Also, Saudi labor law provides for an “end of service award,” which is defined as follows:

Upon the end of the work relation, the employer shall pay the worker an end-of-service award of a half-month wage for each of the first five years and a one-month wage for each of the following years. The end-of-service award shall be calculated on the basis of the last wage and the worker shall be entitled to an end-of-service award for the portions of the year in proportion to the time spent on the job.¹⁹²

The employer must pay an end of service reward tied to length of employment even when an employee resigns.¹⁹³

Employers also have other wide-ranging responsibilities including: health care, schooling requirements, mosque access, protections for women, and

¹⁸⁴ *Id.* art. 42.

¹⁸⁵ *Id.* arts. 98, 107.

¹⁸⁶ *See id.* arts. 104(2), 107(3), 117. All hours worked during official holidays are overtime hours. *Id.* art. 107(3).

¹⁸⁷ *Id.* art. 109(1).

¹⁸⁸ *Id.* art. 60.

¹⁸⁹ *Id.* art. 55.

¹⁹⁰ *Id.* art. 80.

¹⁹¹ *Id.* arts. 74(1), 75, 80, 82.

¹⁹² *Id.* art. 84.

¹⁹³ *Id.* art. 85.

literacy programs for employees living away from urban centers.¹⁹⁴ Moreover, all employment contracts remain in effect in the event of a change in ownership, either through sale, merger, partition, or any other restructuring, and both the predecessor and successor owners are jointly liable for all wages owed to employees prior to the change in ownership.¹⁹⁵ Wages owed to employees are considered “first-rate privileged debts” in the event of bankruptcy or liquidation.¹⁹⁶ The high standard of living of domestic workers and the dearth of unions add to the GCC member states’ success in maintaining regulatory control over labor.¹⁹⁷ Overall, considering cheap labor is often a catalyst to increased levels of FDI,¹⁹⁸ the GCC’s success in attracting FDI is notable given its rather strict labor policies.

In addition to labor law, GCC member states have maintained high levels of control over select sectors of their economies, most notably the oil and gas sectors. GCC states have enacted advanced regulatory frameworks governing the exploration, extraction, and refinement of natural resources, and all concession agreements must comply with these regulations.¹⁹⁹ Abu Dhabi, for example, established the Supreme Petroleum Council (“SPC”), which is:

[T]he highest authority responsible for the petroleum affairs in the Emirate of Abu Dhabi, laying down the Emirate’s policy and its objectives in all sectors of the petroleum industry, in addition to issuing resolutions for implementing its policy, and follow up such resolutions until the achievement of the aspired results.²⁰⁰

The SPC oversees the Abu Dhabi National Oil Company and “particularly implement[s] Law No. (8) of 1978” relating to the preservation of the oil industry.²⁰¹

¹⁹⁴ *Id.* art. 146(1)–(6).

¹⁹⁵ *Id.* art. 18.

¹⁹⁶ *Id.* art. 19.

¹⁹⁷ See generally Heather E. Murray, Note, *Hope for Reform Springs Eternal: How the Sponsorship System, Domestic Laws and Tradition Customs Fail to Protect Migrant Domestic Workers in GCC Countries*, 45 CORNELL INT’L L.J. 461, 469–70, 472–73 (2012).

¹⁹⁸ Nauro F. Campos & Yuko Kinoshita, *Why Does FDI Go Where It Goes? New Evidence from the Transition Economies 9* (Int’l Monetary Fund, Working Paper No. WP/03/228, 2003), available at <http://www.imf.org/external/pubs/ft/wp/2003/wp03228.pdf>.

¹⁹⁹ See generally Danyel Reiche, *Energy Policies of Gulf Cooperation Council (GCC) Countries—Possibilities and Limitations of Ecological Modernization in Rentier States*, 38 ENERGY POL’Y 2395, 2402 (2010) (“GCC countries have recently adopted a more pro-active approach to addressing environmental issues on all levels: international, regional, and national.”).

²⁰⁰ *Supreme Petroleum Council (SPC)*, ABU DHABI NAT’L OIL COMPANY, <http://www.adnoc.ae/Content.aspx?newid=24&mid=24> (last visited Oct. 28, 2012).

²⁰¹ *Id.*

Saudi Aramco, the national oil company of Saudi Arabia and one of the most valuable companies in the world,²⁰² operates in accordance with Article 14 of the Saudi Arabia Basic Law of Governance, which states:

All natural resources that God has deposited underground, above ground, in territorial waters or within the land and sea domains under the authority of the State, together with revenues of these resources, shall be the property of the State, as provided by the Law.

The Law shall specify means for exploitation, protection and development of these resources in the best interest of the State, and its security and economy.²⁰³

These examples in Saudi Arabia and the UAE show how GCC countries maintain close state-control over their most valuable industries.

IV. THE UPSURGE IN FDI AND ITS IMPACT ON ECONOMIC GROWTH

The foregoing analysis outlines the upsurge in FDI in the GCC and the legal regime giving rise to this upsurge.²⁰⁴ Although GCC member states have adopted FDI regimes rooted in neoliberal economics, they have also maintained notable control over important sectors of their FDI regimes, including labor policy and the exploitation and management of natural resources.²⁰⁵ This control has enabled GCC states to ensure protections for GCC nationals and to ensure that state resources are utilized and allocated efficiently.²⁰⁶

The question, however, remains: To what extent has the increase in FDI benefited the GCC economies? The assumption, of course, is that increased

²⁰² Stephen Simpson, *Apple, Google and the Six Hundred Dollar Stock Club*, FORBES (Apr. 12, 2006), <http://www.forbes.com/sites/greatspeculations/2012/04/16/apple-google-and-the-six-hundred-dollar-stock-club/> ("Saudis are famously close-lipped about Aramco, but there have been estimates that the company's value can be measured in the trillions."); *see also At a Glance*, SAUDI ARAMCO, <http://www.saudiaramco.com/en/home.html#our-company%257C%252Fen%252Fhome%252Four-company%252Fat-a-glance.baseajax.html> (last visited Oct. 28, 2012). Saudi Aramco operates under the direction of the Ministry of Petroleum and Mineral Resources. *Our Leadership*, SAUDI ARAMCO, <http://www.saudiaramco.com/en/home.html#our-company%257C%252Fen%252Fhome%252Four-company%252Fleadership.baseajax.html> (last visited Oct. 28, 2012).

²⁰³ The Basic Law of Government, Royal Decree No. A/90, 27 Sha'ban 1412 [Mar. 1, 1992] art. 14 (Saudi Arabia), *available at* http://www.saudiembassy.net/about/country-information/laws/The_Basic_Law_Of_Governance.aspx.

²⁰⁴ *See supra* Part III.A.4.

²⁰⁵ *See id.*

²⁰⁶ *See supra* Part III.A.

FDI flows bring economic benefits to the host state, and in order to increase FDI flows, states must adopt neoliberal FDI regimes based on openness and investor-friendly regulations.²⁰⁷ If FDI flows do not bring economic benefits, however, then states would likely be less inclined to concede important regulatory powers as a way to entice foreign investors.

Following a brief overview in Part IV.A of the academic debate surrounding the relationship between FDI and economic growth, Part IV.B presents statistical evidence regarding the degree to which the increased levels of FDI have impacted short-term economic growth in the GCC.

A. *The Academic Debate: The Impact of FDI on Economic Growth*

Scholars have long debated the relationship between FDI and economic growth, both in general²⁰⁸ and in relation to the Middle East.²⁰⁹ The research has intensified during the past decade as a result of increased flows of global capital.²¹⁰ Three general theories have emerged in the literature, each seeking to describe the impact that FDI has on economic growth.

The first theory on foreign investment is the so-called classical theory, which states that “foreign investment is wholly beneficial to the host economy.”²¹¹ Adherents to the classical theory argue that FDI elevates the skills and knowledge of the indigenous work force,²¹² improves management skills,²¹³ contributes to capital accumulation,²¹⁴ fosters economic diversification and innovation, reinforces trade policies,²¹⁵ improves and

²⁰⁷ See SORNARAJAH, *supra* note 73, at 48–52.

²⁰⁸ E.g., Brian J. Aitken & Ann E. Harrison, *Do Domestic Firms Benefit from Direct Foreign Investment? Evidence from Venezuela*, 89 AM. ECON. REV. 605 (1999); Mona Haddad & Ann Harrison, *Are There Positive Spillovers from Direct Foreign Investment? Evidence from Panel Data for Morocco*, 42 J. DEV. ECON. 51 (1993); Har Wai Mun et al., *FDI and Economic Growth Relationship: An Empirical Study on Malaysia*, INT’L BUS. RES., Apr. 2008, at 11; Gheorghe Ruxanda & Andreea Muraru, *FDI and Economic Growth. Evidence from Simultaneous Equation Models*, ROMANIAN J. ECON. FORECASTING, no. 1, 2010, at 45.

²⁰⁹ See Bassam M. AbuAl-Foul & Mohamed Soliman, *Foreign Direct Investment and LDC Exports: Evidence from the MENA Region*, EMERGING MKTS. FIN. & TRADE, Mar.–Apr. 2008, at 4; Khazri Bilel & Djelassi Mouldi, *The Relationship Between Financial Liberalization, FDI and Economic Growth: An Empirical Test for MENA Countries*, ECON. & FIN. REV., DEC. 2011, at 20; Hussein, *supra* note 10; Mohammed Omran & Ali Bolbol, *Foreign Direct Investment, Financial Development, and Economic Growth: Evidence from the Arab Countries*, 1 REV. MIDDLE E. ECON. & FIN. 231 (2003).

²¹⁰ Hussein, *supra* note 10, at 361.

²¹¹ SORNARAJAH, *supra* note 73, at 48.

²¹² *Id.*

²¹³ See MICHAEL P. TODARO & STEPHEN C. SMITH, ECONOMIC DEVELOPMENT 128 (8th ed. 2003).

²¹⁴ Hussein, *supra* note 10, at 363.

²¹⁵ SORNARAJAH, *supra* note 73, at 48–52.

increases access to technology,²¹⁶ decreases unemployment,²¹⁷ increases tax revenues,²¹⁸ breaks cycles of underdevelopment,²¹⁹ and expands production, marketing, transport, and communication networks.²²⁰ Proponents of the classical theory also maintain that FDI fosters the infusion of foreign capital, thereby freeing up domestic capital for projects directed toward public benefit.²²¹

The classical theory is rooted in free market economics and its concomitant tenets. Following the triumph of capitalism upon the fall of the Berlin Wall and facilitated by powerful states and prominent economic institutions such as the World Bank and International Monetary Fund (also known as the “Washington Consensus”), economic liberalism dominated global economic theory in the 1990s and greatly impacted states’ views towards FDI.²²² The classical theory continues to shape contemporary views towards FDI,²²³ although it does have its critics.

The second theory of FDI as it relates to economic growth is the “dependency theory,” which is “diametrically opposed to the classical theory, and takes the view that foreign investment will not bring about meaningful economic development.”²²⁴ The central tenets of this theory revolve around the fact that most FDI is undertaken on the part of MNCs who, in effect, serve the interests of the developed states in which they are headquartered.²²⁵ Some scholars have stated that repatriation of profits attendant to FDI are greater than the actual inflow of FDI.²²⁶ Regardless, these scholars argue that the resources that do attend FDI by MNCs only benefit the local elite.²²⁷ Thus, FDI, according to scholars who support the dependence theory, is actually

²¹⁶ Eltony, *supra* note 94, at 92–93.

²¹⁷ See TODARO & SMITH, *supra* note 213, at 128.

²¹⁸ SORNARAJAH, *supra* note 73, at 51 (quoting Charles N. Brower & Stephan W. Schill, *Is Arbitration a Threat or a Boon to the Legitimacy of International Investment Law?*, 9 CHI. J. INT’L L. 471, 496 (2009)).

²¹⁹ See TODARO & SMITH, *supra* note 213, at 128–29.

²²⁰ SORNARAJAH, *supra* note 73, at 239, 260.

²²¹ *Id.* at 48.

²²² *Id.*

²²³ *Id.* at 51.

²²⁴ *Id.* at 53.

²²⁵ *Id.*

²²⁶ *Id.* at 49 (citing John R. Oneal & Frances H. Oneal, *Hegemony, Imperialism, and the Profitability of Foreign Investments*, 42 INT’L ORG. 347 (1988)).

²²⁷ SORNARAJAH, *supra* note 73, at 50, 53.

injurious to the host state insofar as it perpetuates developing states' dependence on developed states.²²⁸

The final theory—the so-called “middle path” theory²²⁹—acknowledges, as the name implies, both the positive and negative effects that FDI brings to the host state.²³⁰ This theory was facilitated by the studies of the United Nations Commission on Transnational Corporations (“UNCTC”), which demonstrated that although “foreign investment through multinational corporations could have harmful results in certain circumstances, . . . properly harnessed, multinational corporations could be engines that fuel the growth of the developing world.”²³¹ In this sense, the objective of the host state is to attract FDI while carefully regulating its effects.²³² This appears to be the approach taken by the GCC during the preceding two decades.²³³

In addition to examining various aspects of the relationship between FDI and economic growth in other MENA countries,²³⁴ scholars have also analyzed the impact of FDI on economic growth in the GCC.²³⁵ Yet scholars are divided over whether and the extent to which FDI affects economic growth in the GCC. Some scholars argue that FDI does in fact facilitate economic growth.²³⁶ Other scholars suggest that there is a “weak relationship between FDI and GDP” in the GCC.²³⁷ Assessing the empirical link between FDI and GDP in GCC states is complicated by volatility in the price of oil, upon which GCC states heavily rely in their FDI and trade regimes, despite notable efforts to reduce this volatility. Moreover, controlling for the effects of fixed capital formation and international trade by GCC governments further complicates serious analysis.

Regardless, no study has incorporated the data surrounding the recent upsurge in FDI. The recent upsurge in FDI enables scholars to examine the post-2000 modifications to GCC FDI regimes and their impact on increased

²²⁸ *Id.* at 53.

²²⁹ *Id.* at 55.

²³⁰ *Id.* at 56.

²³¹ *Id.* at 55.

²³² *Id.* at 56.

²³³ Hussein, *supra* note 10, at 363.

²³⁴ Bilel & Mouldi, *supra* note 209, at 20.

²³⁵ Mahmoud Al-Iriani & Fatima Al-Shamsi, *Foreign Direct Investment and Economic Growth in GCC Countries: A Causality Investigation Using Heterogeneous Panel Analysis*, TOPICS MIDDLE E. & N. AFR. ECONOMIES (Jan. 2007), <http://www.luc.edu/orgs/meea/volume9/meea9.html>.

²³⁶ *E.g., id.*; Faras & Ghali, *supra* note 28.

²³⁷ *E.g., Hussein, supra* note 10, at 362.

levels of FDI. More importantly, the increase in FDI since 2002 enables scholars to more effectively test for the impact of FDI on economic growth. The higher the increase in FDI growth, the more likely it is for scholars to determine a statistically significant link, if any, between FDI and economic growth.²³⁸

B. Statistical Analysis: The Impact of FDI on Short-Term Economic Growth

The “ambiguous”²³⁹ results of scholarly inquiries into the relationship between FDI and economic growth in the GCC is attributable, in part, to the disparate data samples used by scholars in conducting their analyses and the manner in which the same scholars correlate the data to the respective FDI regimes being studied.²⁴⁰ Although some scholars have incorporated post-2000 data on FDI in the GCC into their analyses,²⁴¹ many have not.²⁴² Regardless, unless distinctions are made between data that correlates to, on the one hand, pre-2000 FDI regimes and, on the other, post-2000 FDI regimes, then nuanced conclusions will remain aloof, especially considering that the coefficients of the variables of interest in many studies (GDP, trade openness, fixed capital formation, etc.) are highly correlated with the legal structure of the FDI regime.²⁴³ In other words, studies that utilize post-2000 FDI data will be of little consequence unless they also correlate such data to the post-2000 legal regimes governing FDI, as all GCC regimes were modified to some degree or another after 2000.²⁴⁴ Otherwise, the statistical link or lack thereof between FDI and economic growth would be of little importance to both states and scholars alike, as the relationship between the FDI regime itself and FDI levels would be meaningless.

The differing conclusions in the literature regarding the relationship between FDI and economic growth can also be attributed to the differing methodologies utilized by the various scholars. Scholars have relied on such empirical tests as the Ordinary Least Square (OLS) method,²⁴⁵ heterogeneous panel analysis,²⁴⁶ and various cointegration techniques²⁴⁷ to examine the

²³⁸ Bilel & Mouldi, *supra* note 209, at 25.

²³⁹ *Id.* at 20.

²⁴⁰ Faras & Ghali, *supra* note 28, at 135.

²⁴¹ *E.g., id.* at 136; Hussein, *supra* note 10, at 364.

²⁴² *E.g., Hussein, supra* note 10, at 364.

²⁴³ Faras & Ghali, *supra* note 28, at 141–42.

²⁴⁴ Hussein, *supra* note 10, at 368.

²⁴⁵ *Id.* at 373.

²⁴⁶ Al-Iriani & Al-Shamsi, *supra* note 235, at 21.

impact that FDI has on GDP, and vice versa. The different empirical methods used by scholars have produced inconsistent results,²⁴⁸ resulting in a lack of unanimous support for the proposition that FDI stimulates economic growth.

The various methodological approaches utilized by scholars are not without merit, and differing conclusions can be expected given the sensitive correlation between FDI and economic growth. Indeed, even scholars who conclude that FDI impacts economic growth acknowledge that the correlation is subtle, with large increases in FDI having only small impact on GDP growth.²⁴⁹ Yet, as long as methodological differences prevent scholars from coming to uniform conclusions about the impact of FDI on economic growth, this important question will remain unanswered. For this reason, the dramatic upsurge in FDI in the GCC since 2002 is both fortuitous and demanding of critical attention, as it enables scholars to examine more definitively the impact that FDI growth has on economic growth, in spite of methodological differences.

Rather than evaluating the correlation between FDI and economic growth using a new methodological approach, this study seeks to apply accepted statistical analysis methods. While methodology is important, the purpose here is to provide the first general analysis of the new data, leaving more nuanced analysis to statisticians and economists.²⁵⁰ In addition to basic statistical analysis, this study will examine the impact of the upsurge in FDI on economic growth in the GCC in light of the conclusions reached by Reyadh Faras and Khalifa Ghali, authors of one of the most comprehensive analyses to date on the subject of the relation between FDI and economic growth in the GCC.²⁵¹ Faras and Ghali utilized a cointegration technique based on the autoregressive distributed lag approach (“ARDL”), “which is proven to be more accurate than other conventional co-integration techniques, especially when analyzing small sample sizes such as is the case for GCC countries.”²⁵²

²⁴⁷ *E.g.*, Faras & Ghali, *supra* note 28, at 135.

²⁴⁸ *Id.*

²⁴⁹ *Id.* at 142–43.

²⁵⁰ It is recognized that such an approach suffers from obvious flaws, including the fact that the “studies did not fully control for simultaneity bias, country-specific effects, and the use of routine of lagged dependant variable in growth regressions.” Jallab et al., *supra* note 10, at 4. Nor does it utilize dynamic panel procedures that control for individual heterogeneity. *Id.* at 5.

²⁵¹ *See* Faras & Ghali, *supra* note 28.

²⁵² *Id.* at 136.

Although suffering from many of the same limitations that characterize the literature in general,²⁵³ Faras and Ghali made significant contributions to the literature by analyzing state-specific relationships between FDI and economic growth rather than examining the GCC as a whole, concluding that with the exception of Kuwait, there existed “a weak but statistically significant causal impact of FDI inflows on economic growth.”²⁵⁴

Part IV.B.1 examines the statistical impact that the increase in FDI had on economic growth in the GCC since 2000 in light of the conclusions reached by Faras and Ghali. Part IV.B.2 provides some brief observations regarding the impact that the increase in FDI in the GCC had on long-term indicators of human development.

1. The Statistical Link Between FDI and Short-Term Economic Growth

Considering the proximity between the date of this study and the time period of the data under evaluation, this study will focus primarily on the impact of the increased levels of FDI on short-term, as opposed to long-term, growth. “It is common practice in the literature to use the growth rate of real GDP as a measure of economic growth,”²⁵⁵ and short-term growth is measured by the annual percentage change in real GDP.²⁵⁶

As indicated above, Faras and Ghali examined the relationship between FDI and GDP in each GCC member state. With the exception of Kuwait,²⁵⁷ they found a short-run equilibrium relationship between the variables for each GCC member state, evidenced by the following coefficients: 3.64 for the UAE, 1.08 for Oman, 1.05 for Saudi Arabia, .97 for Qatar, and .4 for Bahrain.²⁵⁸ A coefficient of one implies that an increase in the growth rate of FDI in the short run by ten percent causes the RGDP rate to increase by one percent.²⁵⁹ Averaging the coefficients of each GCC state together (with the exception of Kuwait) results in a coefficient of 1.428, suggesting that ten percent growth in

²⁵³ The study only incorporated data up until 2006 and no distinction was made between data taken from pre-modification of FDI regimes and post-modification. Faras & Ghali, *supra* note 28, at 136–37.

²⁵⁴ *Id.* at 143.

²⁵⁵ *Id.* at 137.

²⁵⁶ *Id.* at 142.

²⁵⁷ Faras and Ghali found no statistically significant relationship between the variables for Kuwait. *Id.* at 142–43.

²⁵⁸ *Id.* at 141–42.

²⁵⁹ *Id.* at 142.

FDI in the GCC as a whole should result roughly in a 1.428% increase in the GCC's GDP in the short-term.

Figure 1: FDI Percentage Growth in the GCC, 2000 to 2010²⁶⁰

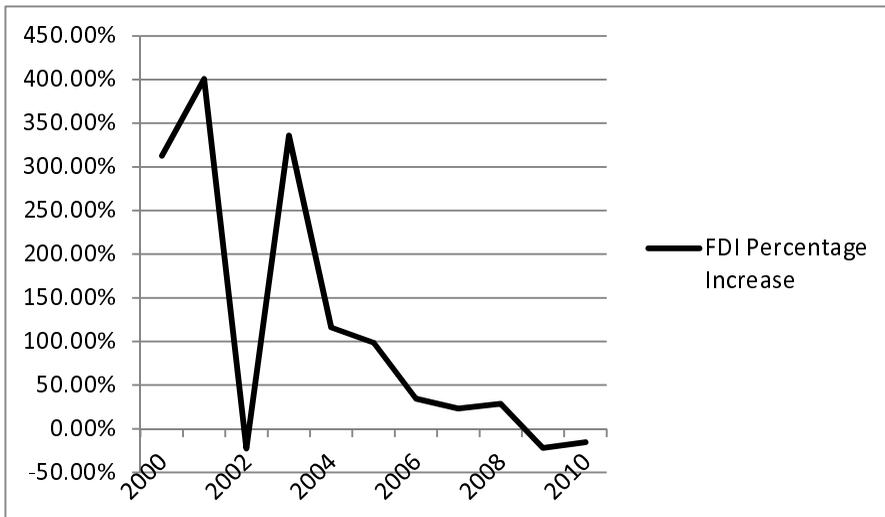


Figure 1 outlines the percentage of FDI growth in the GCC since 2000.²⁶¹ The roughly 300% growth in FDI in 2000 should be accompanied by a 42.84% growth in the GCC's combined GDP in the short-run.²⁶² Although the definition of "short-run" in the literature is somewhat nebulous, it is often used to refer to relatively immediate changes in the domestic economy as a result of a rise in aggregate demand.²⁶³

²⁶⁰ UNCTAD, *FDI Statistics*, *supra* note 2.

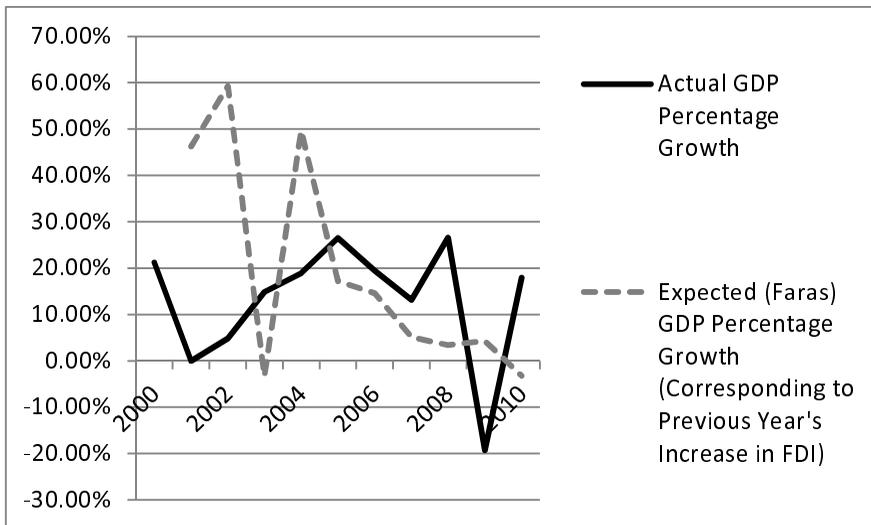
²⁶¹ See *supra* Figure 1.

²⁶² See *supra* note 259 and accompanying text.

²⁶³ See, e.g., *Economic Definition of Short-Run Aggregate Supply*, ECON. GLOSSARY, <http://glossary.econ.guru.com/economic-term/short-run+aggregate+supply> (last visited Oct. 2, 2012).

Figure 2 juxtaposes the GCC's actual percentage increases in the GCC's GDP onto the expected GDP growth rates postulated by Faras and Ghali.²⁶⁴ The expected GDP growth rate is depicted as the rise in GDP during the year following the actual percentage rise in FDI (i.e., the 300% increase in FDI inflows during 2000 would result in a roughly forty-two percent increase in the GCC's GDP during the following year).²⁶⁵

Figure 2: Actual Versus Expected (Faras) GDP Percentage Growth in the GCC, 2000 to 2010²⁶⁶



Naturally, the dashed line in Figure 2 mirrors the black line in Figure 1.²⁶⁷ However, while regression analysis would likely produce more nuanced estimations, it is evident from Figure 2 that there is little correlation between the GCC's actual GDP percentage growth and the GDP percentage growth expected from the Faras and Ghali analysis, suggesting the statistical correlation between the increased levels of FDI and GDP growth from 2000 to 2010 is weak.

²⁶⁴ See *infra* Figure 2.

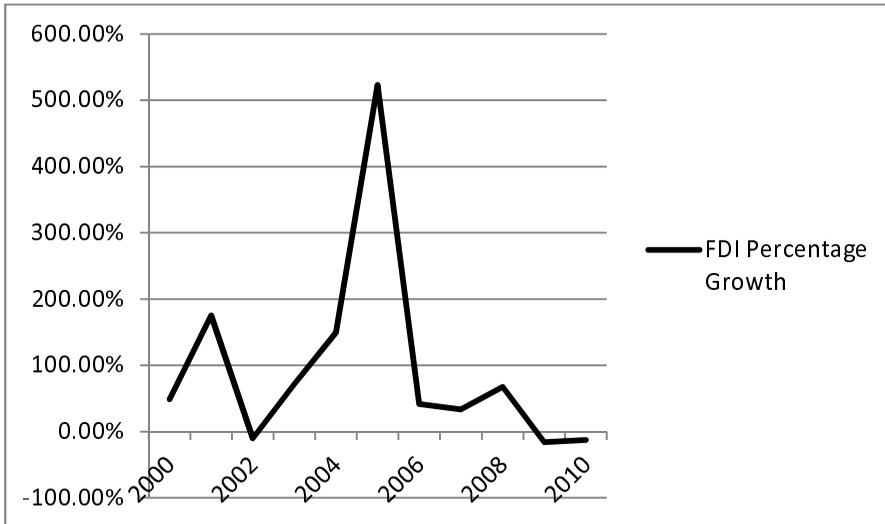
²⁶⁵ See *supra* note 259 and accompanying text.

²⁶⁶ See UNCTAD, *FDI Statistics*, *supra* note 2; see also Faras & Ghali, *supra* note 28.

²⁶⁷ Compare *supra* Figure 2, with *supra* Figure 1.

Similar results can be seen when evaluating the actual versus expected GDP growth rates in individual GCC member states. Figure 3 illustrates the percentage of FDI growth in Saudi Arabia between 2000 and 2010.²⁶⁸

Figure 3: FDI Percentage Growth in Saudi Arabia, 2000 to 2010²⁶⁹



According to Faras and Ghali, Saudi Arabia has an FDI–GDP coefficient of 1.05, suggesting that the FDI percentage increase in 2005, for example, of over 500 percent (indicated in Figure 3) would result in an increase in short-term GDP growth of roughly fifty percent.²⁷⁰

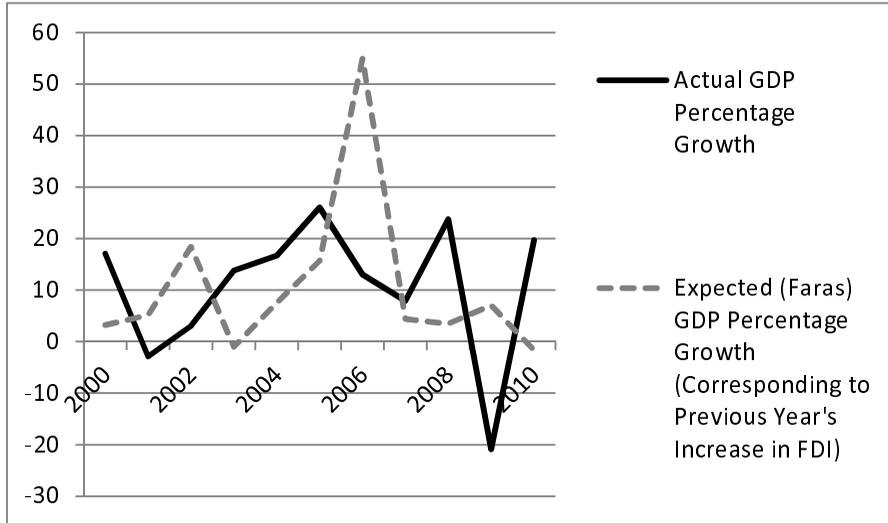
²⁶⁸ See *infra* Figure 3.

²⁶⁹ See UNCTAD, *FDI Statistics*, *supra* note 2.

²⁷⁰ See Faras & Ghali, *supra* note 28, at 142.

However, as Figure 4 indicates, at no point between 2000 and 2010 did Saudi Arabia experience anything close to a fifty percent increase in GDP growth.

Figure 4: Actual Versus Expected (Faras & Ghali) GDP Percentage Growth in Saudi Arabia, 2000 to 2010²⁷¹



To be sure, Faras and Ghali do not argue that, in the case of Saudi Arabia, the 1.05% increase in GDP corresponding to the ten percent increase in FDI flows would happen in the same year or the year following the increase in FDI.²⁷² As indicated above, the definition of “short-run” in the literature is somewhat nebulous.²⁷³ However, Figure 4 reveals that besides there being only two years where GDP growth surpassed even twenty percent, the statistical correlation between the expected GDP growth (according to Faras and Ghali) and the actual growth appears minimal.²⁷⁴

²⁷¹ See UNCTAD, *FDI Statistics*, *supra* note 2.

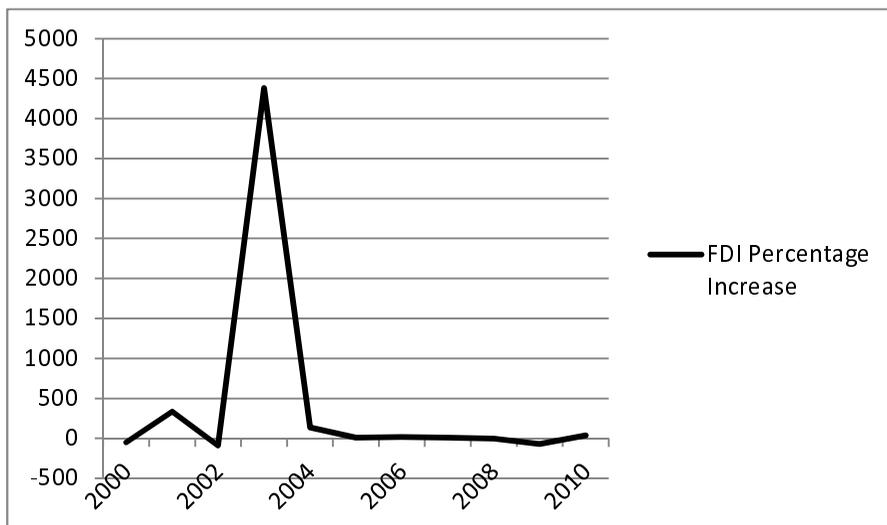
²⁷² See Faras & Ghali, *supra* note 28.

²⁷³ See *supra* note 263 and the accompanying text.

²⁷⁴ See *supra* Figure 4; see also Faras & Ghali, *supra* note 28.

Similar results manifest themselves in the FDI and GDP trends since 2000 in the UAE, which, as indicated above, has a coefficient of 3.64, implying that an increase in the growth rate of FDI in the short run by ten percent causes the RGDP rate to increase by 3.64%.²⁷⁵

*Figure 5: FDI Percentage Growth in the UAE, 2000 to 2010*²⁷⁶



Despite the dramatic percentage increase in FDI in 2002 and 2004, actual GDP growth during the same time period was statistically insignificant in relation to FDI growth, as indicated by Figure 6.²⁷⁷

²⁷⁵ See *infra* Figure 5.

²⁷⁶ See UNCTAD, *FDI Statistics*, *supra* note 2.

²⁷⁷ Compare *supra* Figure 5, with *infra* Figure 6.

Figure 6: Actual Versus Expected (Faras & Ghali) GDP Percentage Growth in the UAE, 2000 to 2010²⁷⁸

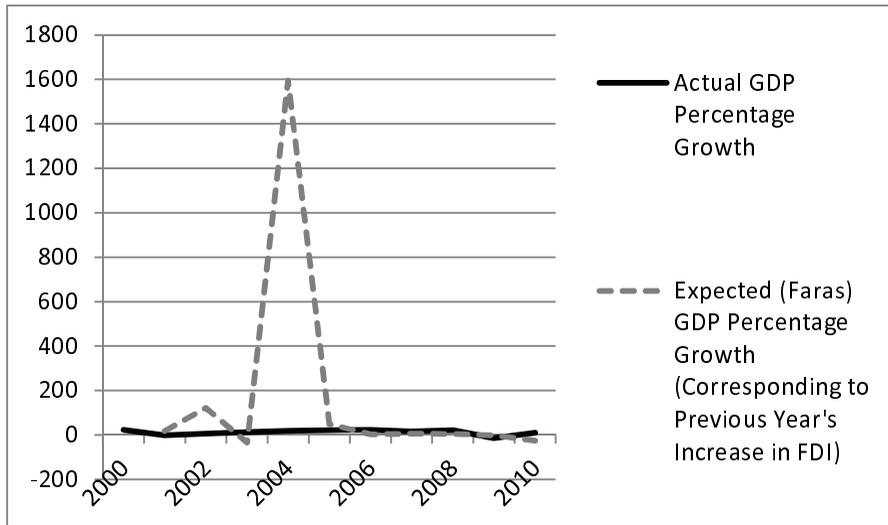
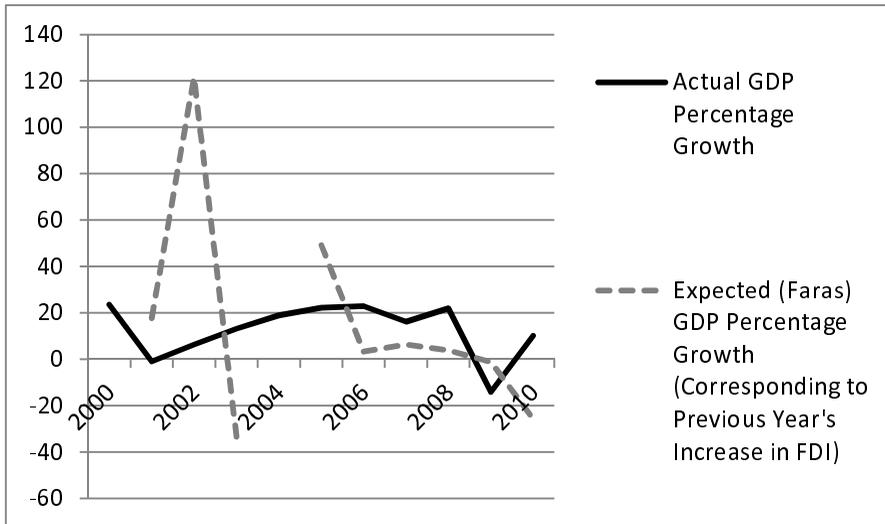


Figure 6 reveals that the dramatic percentage increase in FDI in the UAE in 2003 (4380%) did not result in a concomitant increase in short-term GDP percentage growth corresponding to the 3.64 coefficient.

²⁷⁸ See UNCTAD, *FDI Statistics*, *supra* note 2.

Figure 7 presents the same information as Figure 6, absent the dramatic expected GDP percentage growth figures of 2003, giving the reader a more detailed look at how the UAE's actual GDP percentage growth corresponded to the GDP percentage growth predicted by Faras.

Figure 7: Actual Versus Expected (Faras & Ghali) GDP Percentage Growth in the UAE, 2000 to 2010 (Absent 2003 Expected GDP Percentage Growth Figure)²⁷⁹



Even without the 2003 expected GDP percentage growth figure, data from the UAE suggests that Faras and Ghali's FDI-GDP short-term coefficients are not entirely accurate and need to be adjusted to account for the new data relating to the upsurge in FDI in the GCC since 2002. Indeed, the updated data indicates that the statistical relation between increases in FDI and short-term economic growth (as measured by GDP) is weak.

Overall, the foregoing analysis has relied on statistical analysis and co-integration techniques (ARDL) employed by Faras and Ghali,²⁸⁰ revealing the lack of a clear correspondence between FDI growth and short-term economic growth. While constituting only an introductory survey of the new data, the

²⁷⁹ *Id.*

²⁸⁰ See Faras & Ghali, *supra* note 28 at 137.

foregoing analysis supports the work of other scholars who, utilizing different methods and incomplete data, have cast doubt over the short-term economic benefits that FDI brings to the host state.²⁸¹

2. *FDI, Long-Term Growth, and Other Economic Development Indicators*

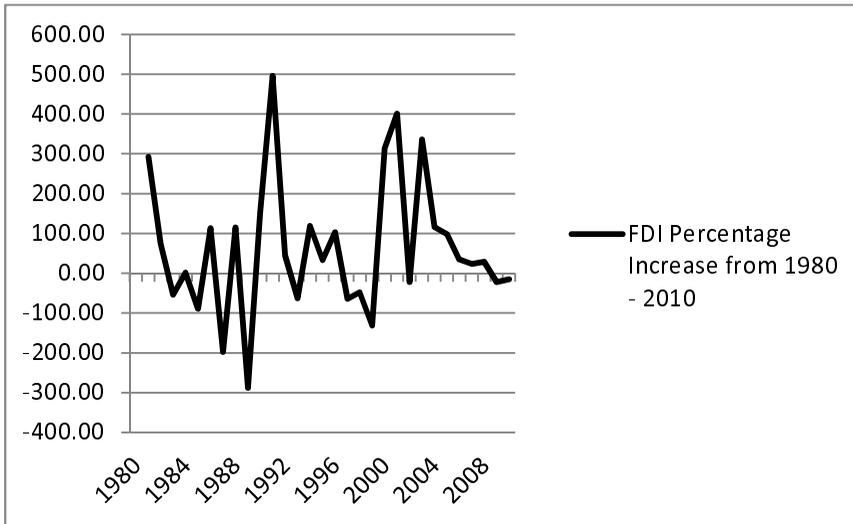
While the data attendant to the post-2002 increase in FDI does not lend itself to nuanced assessments of the long-term implications of the new FDI regimes in the Gulf and the increased FDI inflows those regimes have generated, scholars can nonetheless integrate the new data into the existing data from the past thirty years in order to draw preliminary conclusions. Although, as indicated above, scholars should be wary of drawing conclusions from the data when the pre-2000 data is associated with entirely different FDI regimes,²⁸² the following analysis briefly examines the integrity of Faras and Ghali's FDI-GDP long-term coefficients in light of the new data.

²⁸¹ See, e.g., Jallab et al., *supra* note 10, at 13.

²⁸² *Id.*; see Faras & Ghali, *supra* note 28.

According to the Faras and Ghali analysis, the average long-run coefficient for GCC member states is .365, suggesting that an increase in FDI by ten percent leads to long-term GDP increases of 3.65%.²⁸³ Figure 8 outlines the long-term FDI percentage increases in the GCC since 1980.

Figure 8: FDI Percentage Growth in the GCC, 1980 to 2010²⁸⁴

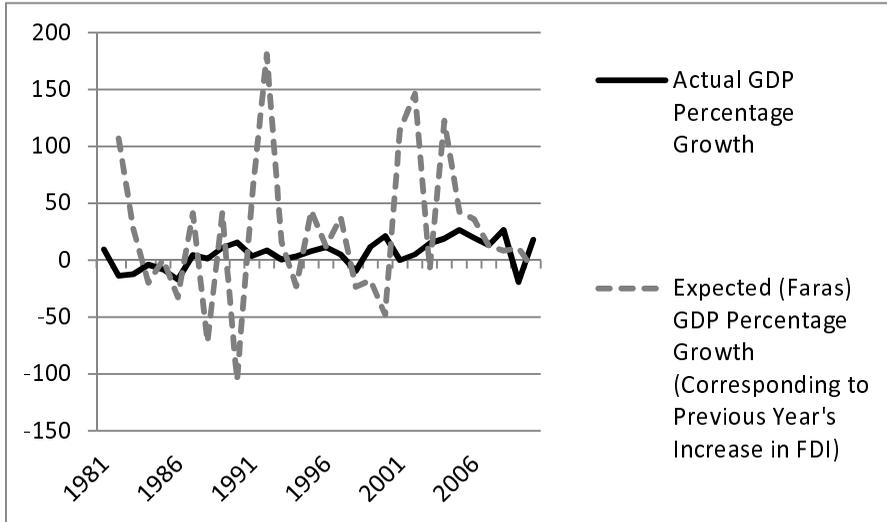


²⁸³ See Faras & Ghali, *supra* note 28, at 141 tbl.6.

²⁸⁴ See UNCTAD, *FDI Statistics*, *supra* note 2.

Figure 9 suggests that the correlation between actual GDP percentage growth in the GCC since 1980 and that expected from the Faras and Ghali analysis remains weak.

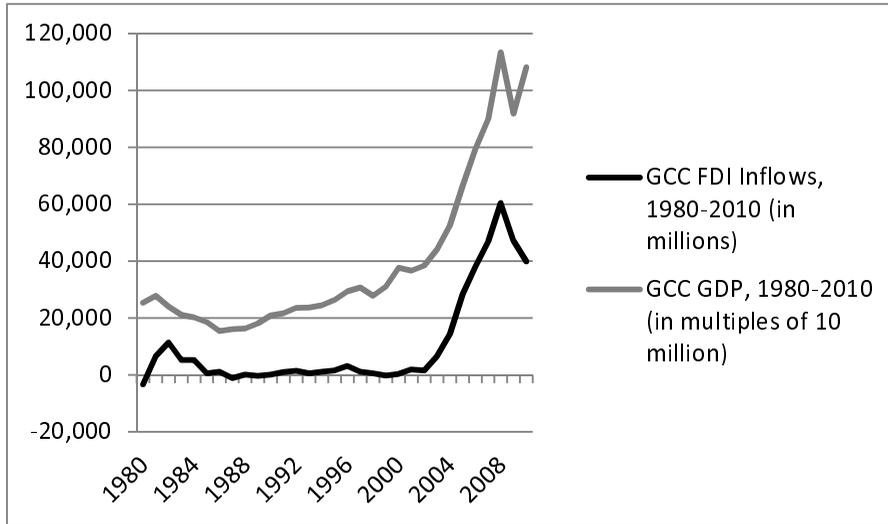
*Figure 9: Actual Versus Expected (Faras & Ghali) GDP Percentage Growth in the GCC, 1980 to 2010*²⁸⁵



²⁸⁵ See UNCTAD, *FDI Statistics*, *supra* note 2.

Figure 10 illustrates the long-term growth in GDP and FDI in absolute dollar figures.

Figure 10: Long-term Growth of GCC FDI (in millions) and GDP (in multiples of 10 million), 1980 to 2010.²⁸⁶



Although a more accurate determination would be gained through regression analysis of the variables, it appears from Figure 10 that there is a statistically significant correlation between FDI and GDP long-term growth.²⁸⁷

This long-term correlation is supported by alternative indicators of economic development, including the Human Development Index (“HDI”).²⁸⁸ “The HDI represents a push for a broader definition of well-being and provides a composite measure of three basic dimensions of human development: health, education and income.”²⁸⁹ The HDI incorporates the following indicators of human and economic development: life expectancy at birth, expected and mean years of schooling, Gross National Income per capita in purchasing

²⁸⁶ See UNCTAD, *FDI Statistics*, *supra* note 2.

²⁸⁷ See *supra* Figure 10.

²⁸⁸ See *Human Development Index (HDI)*, U.N. DEV. PROGRAMME, <http://hdr.undp.org/en/statistics/hdi> (last visited Oct. 10, 2012).

²⁸⁹ See *United Arab Emirates—Country Profile: Human Development Indicators*, U.N. DEV. PROGRAMME, <http://hdrstats.undp.org/en/countries/profiles/AE.html> (last visited Oct. 2, 2012).

power parity terms, multidimensional poverty index, gender equality index, and adjusted net savings.²⁹⁰ According to the U.N. Development Programme, the UAE experienced a noticeable improvement in its HDI score around 2002, suggesting a preliminary correlation between increases in FDI and economic development.²⁹¹ Saudi Arabia's HDI growth rate, however, retained its historical trajectory from 2000 to 2010, despite the increase in FDI inflows during this same period.²⁹²

The available data suggests more of a statistical correlation between FDI levels and long-term economic growth than between FDI and short-term economic growth. However, more research needs to be done to more effectively incorporate the post-2002 FDI data from the GCC into the statistical analyses surrounding the impact of FDI on economic growth.

CONCLUSION

The foregoing analysis of the upsurge in FDI in the GCC and the legal regimes giving rise to this upsurge is a modest attempt to evaluate the impact of increased FDI levels on economic growth in the GCC. The data suggests that among the primary factors contributing to the upsurge in FDI in the GCC was the liberal FDI policies adopted by GCC member states. Although the rise in the price of crude oil and the global expansion in FDI flows prior to 2008 also likely contributed to the rise in FDI,²⁹³ the inflows in FDI into the GCC—even during the global recession—were facilitated by open FDI regimes instituted by GCC member states, especially Saudi Arabia and the UAE. More importantly, the foregoing analysis reveals that GCC member states successfully promoted open FDI regimes while simultaneously maintaining regulatory control over strategic economic sectors, particularly in the areas of labor regulation and resource management. In this sense, GCC member states' recent FDI success is remarkable not merely because of the degree to which FDI increased, but because GCC states fostered increased FDI levels while maintaining a notable amount of sovereign control over important aspects of the FDI regime.

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² Compare *id.*, with *Human Development Report 2011: Saudi Arabia*, U.N. DEV. PROGRAMME, <http://hdrstats.undp.org/images/explanations/SAU.pdf> (last visited Oct. 28, 2011).

²⁹³ See *supra* notes 100–01 and accompanying text.

The decrease in FDI since 2010 reinforces the tenuous relationship between neoliberal FDI regimes and increased FDI levels. Moreover, the foregoing analysis suggests that even dramatically high increases in FDI do not necessarily have a statistically significant correlation to short-term economic growth. The available data suggests a more definitive statistical correlation between FDI and long-term economic growth, although more statistical research needs to be done to more effectively incorporate the data from the post-2002 upsurge and post-2010 decline in FDI into the academic debate. This Article has sought to incorporate data from 2002 to 2010 into the literature and to make some preliminary observations regarding the statistical relation between FDI and economic growth in light of the new data.

For states—particularly resource-rich, Middle Eastern states such as Libya—seeking to foster long-term development and more effectively integrate into the global economy, the results of the foregoing analysis should be instructive. After all, the GCC is considered the “anchor of stability” in the MENA region, and its reforms are often a harbinger for regional economic development.²⁹⁴ No longer do the tenets of classical economic thought find uniform support in the literature.²⁹⁵ If anything, the upsurge in FDI since 2002 in the GCC underscores the fact that resource-rich states can develop successful FDI regimes without abdicating regulatory control over aspects central to national interests.

It is not inaccurate to label some of the central tenets of the classical theory of economic growth as seductive mirages, at least as they apply in a GCC context. That is, no longer can it be assumed that successful FDI regimes depend upon open, unregulated, and investor-friendly laws. The GCC experience since 2000 demonstrates that while liberal policies are no doubt essential to the promotion of FDI, they can be supplemented with strategic regulatory controls that protect local investors and ensure long-term economic stability. The data available from the post-2002 upsurge in FDI also suggests that it would be ill-advised for resource-rich, Middle Eastern states to assume that high levels of FDI will translate ipso facto into increased economic growth, at least in the short term.

²⁹⁴ Hertog, *supra* note 163, at 67.

²⁹⁵ See *supra* Part I.