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ARE HUMAN RIGHTS SECONDARY TO TRADE?

By

KIRSTY JANE ROBINSON

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ABSTRACT
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This thesis examines the relationship between trade and human rights under conditions of globalisation. The issue of human rights has risen to prominence in the years since President George Bush Senior delivered a speech to Congress proclaiming the heralding of a 'New World Order' in 1991. During this period of globalisation state boundaries have been broken down in matters of trade, economics and finance and for many it seemed as though there would be a chance to realise the project to deliver universal human rights. However, documentary evidence suggests that success in the global realisation of human rights has not matched that of the global expansion of trade. To examine these issues this thesis addresses three main questions: under conditions of globalisation, how are trade and human rights related?; why have improvements in human rights not been forthcoming despite their position of prominence on the global agenda?; is the prioritisation of trade preventing the goal of achieving universal human rights?

The first part of the thesis explores different theoretical approaches to understanding human rights. Much of the literature focuses on the expansion of the human rights regime based upon international human rights legislation. Whilst at first sight this approach appears to have generated great progress in guaranteeing human rights, it remains a state-centric, problem-solving approach that has not kept pace with changes occurring in the global order. Problem-solving approaches can therefore be seen to fail in acknowledging the significance of the increase in reported human rights violations by those non-state actors and institutions that play an instrumental role in the process of globalisation. A more appropriate theoretical framework to draw on is suggested by Robert Cox and other 'critical' scholars who seek to understand change though the interrelationship between states, social forces and world orders.

The second part of the thesis applies this framework to documented examples of trade-related human rights abuses to assess whether the subordinate position of human rights is a result of the neo-liberal socio-economic and political context within which trade takes place. The values of neo-liberalism will also be assessed utilising Cox's theoretical framework in order to challenge many neo-liberal assumptions and allow an alternative view of trade and human rights to emerge. This approach suggests that current reliance on international legal responses to trade-related human rights violations in the period of globalisation fails, since it neither prevents future violations nor brings to account those non-state actors increasingly responsible for human rights violations. The conclusion reached is that human rights are indeed subordinated to trade and that the achievement of universal human rights will not be possible without significant change to many features of the existing world order.

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CHAPTER 1
Introduction

1.1 Introduction

Over the course of the last several years the notion of human rights has come to occupy a central position on the global agenda and the idea of universal human rights has today become a "fact of the world."[1] There is broad acknowledgement of the goal to promote the rights set down in the Universal Declaration of Human Rights, and it is often claimed that the post-World War Two period has witnessed 'revolutionary' or 'amazing' progress in securing human rights.[2]

During the same period the world has witnessed a strong push towards global economic integration and a broad consensus has emerged that sees trade liberalisation, deregulation of finance and global production as "the best, the most natural and the universal path towards development for all humanity."[3] The dual goals of securing universal human rights and encouraging development through economic growth have been supported by the assumption that trade has a positive relationship with human rights. In this view, trade acts as both a 'civilising' influence by raising awareness and creating pressure for human rights to be realised equally across state borders, as well as creating the necessary wealth to ensure that future improvements in human rights can be guaranteed.[4]

This thesis intends to examine these assumptions in order to determine whether trade has delivered human rights improvements or, as has been asserted by critics of this view, may instead be implicated in new and increasing forms of human rights violations.[5] Several questions emerge from this analysis. Have changes in the post-Cold War order led to the promotion of a narrow conception of rights that prevents realisation of the full complement of human rights? Has the transition in power relations during the period of globalisation subordinated human rights to the goals of global economic integration? Why has the increase in international human rights legislation not been met by a reduction in reported cases of human rights violations? Has the global promotion of trade become a barrier to the realisation of universal human rights?

1.2 Focus

The number and scope of issues that reach the global agenda has burgeoned in the period of globalisation so that military concerns no longer dominate all other subjects. Changes in patterns of finance and production in the post-Cold War world have led to enormous shifts in the global order and have put trade firmly at the top of the political agenda. These changes to the global order have allowed new issue areas to be linked and have also enabled the relationship between trade and human rights to be seen more clearly.

The issue of trade illustrates many of the global transitions that Robert Cox has highlighted, including the emergence of a global economy and the internationalisation of the state.[6] These changes are illustrated most obviously by the transition of power from the state to the World Trade Organization (WTO) over management of the global trade regime. Global trade also has a direct social and environmental impact and is an important conduit through which norms and values can be globally transferred. It is in this way that the 'civilising' influence of trade is claimed to occur. Similarly, global trade has far reaching consequences for social well-being, the environment and cultural life and is therefore central to the development of social forces and world orders.

The main focus of this study is to question whether recent transitions in the world order may be implicated in the continued failure to realise universal human rights. The conclusions drawn from this research suggest that the prioritisation of the goals of neo-liberalism, including the creation of a self-regulating global market for goods and services, has been instrumental in the subordination of social development, environmental protection and human rights. Neo-liberalism is an ideology that provides the dominant value system in the globalised world order and is given concrete expression through policies promoted by the Washington Consensus. The term 'Washington Consensus' was first used by John Williamson of the Institute for International Economics to refer to,

> not only the US government, but all those institutions and networks of opinion leaders centred in the world's *de facto* capital – the IMF, World Bank, think tanks, politically sophisticated investment bankers and worldly finance ministers, all those who meet each other in Washington and collectively

> define the conventional wisdom of the moment...One may...roughly summarize this consensus...as...the belief that Victorian virtue in economic policy – free markets and sound money – is the key to economic development. Liberalise trade, privatise state enterprises, balance the budget, peg the exchange rate...[7]

Since the term 'neo-liberal' is not used consistently in the international relations literature, in this research 'neo-liberalism' will be used to refer to the ideology promoted by the actors and institutions of the Washington Consensus and the policies emanating from such centres of power as the WTO, International Monetary Fund (IMF) and the 'internationalised' states of the G8. The main tenets of neo-liberalism include market rationality, privatisation, deregulation, reduced welfare spending and the centrality of the individual. These features have translated into policies that seek to remove private enterprise from any government regulation and remove price controls for all goods, including primary commodities. Through these policies the goal of enabling total freedom of movement for capital, goods and services is to be realised. Neo-liberal policies are also designed to generate an increased volume of global trade and investment with the subsequent increase in wealth improving the well-being of both rich and poor through a process of "trickle-down" through society.[8]

A policy of privatisation has also been central in neo-liberal thinking, so that state-owned enterprises and services, such as water, electricity, schools and hospitals are sold off to private investors. Although this policy is designed primarily to boost greater efficiency, privatisation has had the effect of concentrating wealth in the hands of fewer companies and individuals.[9] Similarly, whilst state provision of many basic-needs services has been eroded, government intervention remains widespread in granting favourable conditions and tax incentives for business. At the same time, neo-liberals believe that welfare payments should be minimal and public spending curbed on social goods such as education and health in order to encourage those who are dependent on the state to become more self-reliant.[10] Neo-liberals also view the individual as a rational economic actor so that in all aspects of life, including areas such as healthcare and education, private consumption is favoured over public provision.

By linking issues such as human rights, poverty and the environment with the goal of increasing economic growth and investment, neo-liberals have been successful in promoting trade as the obvious 'way out' of poverty, environmental degradation and deprivations of human rights.[11] However, the neo-liberal agenda is steeped in a problem-solving approach that seeks to moderate the worst social and environmental effects of existing economic and political practices without displacing those practices. Such problem-solving approaches focus on a particular issue or event in international politics and assess it in isolation from the broader economic, social and political context.[12] When applied to the issue of human rights, a problem-solving approach leads to increased reliance on international legal remedies to protect rights, yet fails to acknowledge that other issues, including trade, may have a negative impact on the global human rights situation.[13] Since problem-solving theories view prevailing power relations as neutral and unchanging, these approaches also fail to consider that changes in world order, such as the move towards a global economy, may impact on our ability to guarantee human rights. Instead, a problem-solving approach merely serves to uphold existing configurations of power, since the issue under examination is viewed in isolation from the broader context. Despite the number of studies concerned with the link between trade and human rights having increased in recent years, for problem-solving theorists the transition towards globalisation is not considered to have impacted significantly on this relationship.[14] The adoption of a problem-solving approach therefore fails to challenge the global political structures that enable trade-related human rights abuses to continue.

Cox also criticises problem-solving theories for failing to acknowledge 'ideological bias'.[15] By accepting the prevailing configurations of power as given, Cox claims that problem-solving approaches tacitly support the goals of the elite and the dominant ideology of the period, so that at present, the reliance on a problem-solving approach serves to legitimise neo-liberal policies and practices. Adopting a problem-solving approach also strengthens the structures underpinning the existing order by assuming that solutions for human rights violations can be sought from within that order.[16]

This thesis intends to examine the relationship between trade and the condition of workers involved in the production process because the two have generally been assumed to be complementary, with a growth in trade bringing benefits to all. However, evidence suggests the opposite is increasingly true, so that

whilst increased trade has brought inexpensive products to the western world it has also created new forms of human rights violations in the developing world where many of these products are made.

The broad acceptance that trade has a positive effect on human rights has meant that moves to deregulate industries, remove utilities from public control and encourage foreign investment have continued apace. However, the concept of free trade as it is conventionally understood does not resemble the reality of the existing global trade regime, nor are the benefits of free trade distributed equally amongst all players. Trade liberalisation has been very selective so that whilst the Less Developed Countries (LDCs) have opened up their markets for primary products, industrialised countries have not opened their markets to producers from LDCs. The protection that Transnational Corporations (TNCs) gain from the governments of industrialised states has also been maintained while the protections granted to smaller producers have been eroded. The result has been that TNCs have made most of the gains from increased market access in both developing and developed countries.[17] To claim that the global trade system is based on the ideal of free trade is to create a false impression of reality, so that whilst products and services may move freely around the world, the trade rules emanating from the WTO continue to support the practices favoured by TNCs over the needs of individuals, small businesses and poor countries.[18] Whilst the WTO claims that "there is a single set of rules applying to all members,"[19] protectionism in western states remains widespread and industrialised states continue to impose tariff barriers on processed products coming from the south, preventing poor countries from escaping economic dependence on raw materials and primary commodities.[20] Similarly, whilst the WTO may claim that one set of rules applies to all, there are hugely unequal power relations between the different member states that decide what the rules should be. There are also issues of inequality in terms of legal and technical expertise and resources that can affect the outcome of dispute settlements and influence the interpretation of the rules.[21]

The transition of power from the state to non-state actors in the period of globalisation has also enabled TNCs to operate largely beyond the controls of state policy so that regional trade bodies can no longer regulate global markets for products and services. Instead, the global market is organised privately by corporations and supported by WTO rules. Since the state is increasingly becoming 'internationalised' and is concerned with promoting the interests of capital and the wishes of corporate

lobbyists, corporate interests now dominate the WTO agenda so that in agriculture, for example,

> companies were involved in negotiations from the very beginning of the process...Cargill, a US firm which controls half of global trade in grains, was heavily involved in the preparations for the US negotiating position on agriculture before the last round of trade talks – with some commentators claiming that the company wrote the first draft of the US negotiating position...TNCs were also involved in the drafting and negotiation of agreements on intellectual property rights and services.[22]

The privatisation of items that were previously in the public domain, such as seeds and plants, through the WTO's Trade Related Intellectual Property Rights (TRIPs) agreement gives a clear indication of how the concept of free trade is to be understood in the current period. Thus, Bello asserts,

> when people talk about international 'free trade,' meaning trade at a price set on an open market, at least a third of world trade is immune from that because its price is simply an arbitrary value in the books of some transnational. Transnationals want 'free trade' simply because it frees them from government intervention...[23]

Neither does free trade extend to the individuals involved with global production processes. Commodities farmers, indigenous populations and workers rarely see the benefits of the global free trade regime as decisions are made in remote centres of authority that affect their livelihoods, habitats and working conditions. Much of the literature points to the detrimental effects of such decisions but there is little independent evidence to support the 'trickle-down' theory of wealth creation.[24] The WTO's proposed Multilateral Agreement on Investment (MAI) for example, would hand enormous power to TNCs and private financial actors without providing any corresponding duties. This would make government policies that aim to regulate the behaviour of TNCs to protect the environment, labour rights and internationally agreed human rights illegal under WTO rules.[25] Indeed, writing for the Guardian in 2002 Naomi Klein comments,

> [w]henever I hear the term 'free trade', I can't help picturing the caged factories I visited in the Philippines and Indonesia that are all surrounded by gates, watchtowers and soldiers – to keep the highly subsidised products from leaking out and the union organisers from getting in.[26]

Despite these facts and continued reports of human rights abuses perpetrated in the name of free trade, neo-liberals maintain that trade will secure improvements in human rights if bolstered by an international human rights legal framework.

This research understands human rights as those set out in the Universal Declaration of Human Rights (UDHR), as well as the rights recognised in the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).[27] Thus, civil and political rights include the rights to life, liberty, security of the person, privacy and property; the right to marry and found a family; the right to a fair trial; freedom from slavery, torture and arbitrary arrest; freedom of movement and to seek asylum; the right to a nationality; freedom of thought, conscience and religion; freedom of opinion and expression; freedom of assembly and association; and the right to free elections, universal suffrage and participation in public affairs. Economic and social rights include the right to work and for a just reward; the right to form and join trade unions; the right to rest and leisure, and to periodic holidays with pay; the right to a standard of living adequate to health and well-being; the right to social security; the right to education; and the right to participate in the cultural life of a community.[28]

It is accepted that there is formal parity between the rights recognised in the two International Covenants based on the adoption of parity status for both sets of rights during General Assembly Session 35 of 1979-80.[29] Neo-liberal claims that civil and political rights have priority over economic, social and cultural rights are therefore rejected since, drawing on the work presented by Henry Shue[30] and R. J. Vincent,[31] it is understood that many of the rights set out in the UDHR are necessarily interdependent. Thus, as Vincent asserts, "[s]ense cannot be made of a right to life unless it is a right to subsistence as well as to security."[32]

The research presented here will reject neo-liberal claims that trade 'civilises' and suggest instead that negative human rights consequences emerge from many of the trade practices promoted by neo-liberals. Similarly, the continued focus on international human rights law can have little impact upon the problems of trade-

related human rights abuses, since the very actors responsible for these violations are not within the remit of an *international* legal framework. Whilst many international lawyers respond to this criticism by arguing that it is the state's responsibility to protect citizens from the actions of TNCs by restraining the behaviour of such actors, this study will argue that power transitions occurring in the period of globalisation prevent the state from undertaking its obligations under international law.

Whilst the focus of this study is primarily with the relationship between trade and human rights some general conclusions will be drawn concerning the role and effectiveness of international legal remedies for the problem of human rights violations. The research presented here suggests that relying on international human rights law offers the impression of progress without disrupting the trade practices that lead to modern forms of human rights violations.[33] In this sense, the reliance on international law presents a barrier for engaging in a debate on the relationship between trade and human rights that challenges the assumptions of neo-liberalism. Similarly, by relying on international human rights law, a problem-solving approach is adopted that seeks solutions from within the existing order and prevents realisation of a global order that achieves genuine progress in protecting human rights. The reliance on an international law approach also prevents questions from being raised regarding the context in which trade and human rights exist. Structural factors that may enable human rights violations to continue unchallenged in the globalised world order may therefore be disregarded if an international legal approach is adopted without question.

1.3 Context

Globalisation is understood in this research as a set of changes within the world order that have led to the transition of power away from the state and into the hands of non-state actors. Of central importance is the move away from an international economy towards that of a global economy, where the traditional distinction between rich and poor, northern and southern states no longer applies. Instead, social, political and economic inequalities cut across state boundaries so that in 1994 Brazil, for example, the wealthiest fifth of the population earned 26 times as much as the poorest fifth creating 'north and south' within individual states.[34] State

power has also been eroded as the international economy has given way to a global economy in which non-state actors operate largely beyond political controls. This has seen TNCs adopt a prominent position in the emerging global political economy and, as a result, the state's ability to manage the national economy in isolation from global events has been seriously eroded. Instead, the state must react to global economic forces over which it has little control.[35] However, most scholars do not believe that the state is in terminal decline, but has become instead "a mechanism in the globalization process [that] intervenes directly in the economy to promote capital accumulation."[36] This process, known as the internationalisation of the state, has led Panitch to assert that states have now become "the authors of a regime that defines and guarantees, through international treaties and constitutional affect, the global and domestic rights of capital."[37] The state can no longer pursue the national interest in isolation from its role in promoting the interests of transnational economic actors.

The changes that have occurred in the global economy are underpinned by the dominant ideology of neo-liberalism, an ideology that is "largely consistent with the world view and political priorities of large-scale, internationally-mobile forms of capital."[38] Therefore, globalisation cannot be seen as an accidental or inevitable process, but has been shaped by global institutions, international organisations and International Financial Institutions (IFIs) such as the WTO, the World Bank and the IMF, as well as governments and TNCs, and is underpinned by a consensus around the values of neo-liberalism. Linked to the internationalisation of the state, the management of world trade and international public finance has been handed over to these organisations that act transnationally and beyond the control of any individual states.

The promotion of economic and political liberalisation has also been demonstrated in the policies pursued by IFIs and the liberal philosophy underpinning globalisation has been explicit in trade negotiations beginning with the Uruguay Round in 1986, the establishment of the WTO in 1995 and in the latest round of trade talks beginning in Doha in 2001. Indeed, Christian Aid notes that "[d]uring the 1980s and 1990s, trade policy became almost synonymous with trade liberalisation."[39] The intended outcome of the policies promoted by the Washington Consensus is the creation of a self-regulating global market and free trade regime. The Washington Consensus therefore prioritises the goal of global free trade as the means of providing

conditions through which secondary goals such as environmental and social concerns can be met.[40]

For neo-liberals, the individual is prioritised over groups or communities and human rights are those that support the freedom of the individual. Thus, civil and political rights are prioritised over economic and social rights since the former allow the individual to act as a free agent without the constraints that provision of economic and social claims may bring.[41] For neo-liberals then, "economic, social and cultural claims may be legitimate aspirations, but they can never be rights."[42] Neo-liberal thinking suggests that international human rights law provides the means through which civil and political rights should be protected whilst deprivations of economic and social rights are to be mitigated through the improvement in living standards that increased trade and economic growth will bring in the future. The research presented here will reject this view, drawing instead on Shue and Vincent's critique of the neo-liberal position. Both scholars claim that it is absurd to deny economic and social rights, since many of the basic rights set out in the ICCPR are dependent upon minimum levels of economic and social well-being. Thus, in order to guarantee the right to life, for example, there is also a requirement for basic levels of subsistence to be met.[43]

For academics, politicians and economists who continue to place trade coupled with international law at the centre of attempts to realise human rights, the condition of globalisation presents a serious challenge. If the state can no longer make policy decisions that regulate the activities of TNCs and international law cannot bring non-state actors to account, then prospects for bringing an end to trade-related human rights abuses seem unlikely.

1.4 Theoretical Approaches

Both the issues of trade and human rights have been the subject of great volumes of academic research and have been scrutinised by scholars using a variety of theoretical approaches. Those most commonly utilised include regime theory,[44] organizational theory[45] and transnationalism.[46] Each of these draws on the broader theoretical perspectives of realism and liberal-pluralism. However, the research presented here suggests that none of these theoretical frameworks can suitably

accommodate questions concerning the relationship between trade and human rights under conditions of globalisation. The state-centric approach of realism limits its understanding of change in the world order, so that the condition of globalisation is not perceived as a fundamental shift in international relations and is not regarded as being significant for the future protection of human rights. Nor is realism able to provide a coherent account of how best to ensure the provision of human rights, since it is concerned primarily with the concept of sovereignty and non-intervention. Similarly, whilst liberal-pluralism and regime theory grew out of an understanding of transnationalism and the inclusion of non-state actors in global politics, both these approaches fail to offer an explanation of the power relations between different actors so that Non-Governmental Organisations (NGOs) are assumed to have the same ability to influence policies as wealthy business groups. Both realism and liberal-pluralism also adopt a problem-solving approach that overlooks the context in which actors operate. Because problem-solving theories ignore the context of global politics, structural changes such as those that have enabled TNCs to operate outside of state controls are dismissed as unimportant, preventing questions about the significance of such change from being raised. The contributions of realism, liberal-pluralism and problem-solving approaches are discussed more fully in Chapter Two.

In contrast, critical theory provides a framework that is specifically concerned with the context of global politics and structural changes in the world order. To apply this approach to the relationship between trade and human rights, the theoretical framework first developed by Robert Cox will be utilised.[47] Although originally published in 1981, Cox has continued to develop the framework of critical theory in order to understand how changes in production processes and technology and the internationalisation of the state have generated a globalised world order that is increasingly responsive to the requirements of global capital.[48] The concept of hegemony is central to understanding these changes and Cox draws on the work of Antonio Gramsci[49] to illustrate the importance of ideological hegemony in the process of change.[50] Cox's development of an alternative approach to hegemony and the importance of change in a critical theory framework will be discussed more fully in Chapter Three.

The adoption of this alternative approach allows the relationship between trade and human rights to be analysed in the context of a changing global order. However, it does not presuppose either a positive or negative correlation and does not

therefore automatically support the neo-liberal consensus. Instead, a critical theory approach provides a suitable framework within which to challenge the assumptions of the dominant ideology of neo-liberalism.

1.5 Outline

Chapter Two will look at how the relationship between trade and human rights is viewed in traditional international relations theory. In this chapter the state-centric focus of realism will immediately suggest its lack of suitability for this research. Subsequently, more attention will be paid to the frameworks provided by liberal-pluralism and regime theory. The limits of a problem-solving approach in both frameworks will ultimately lead to their rejection.

Chapter Three will outline the use of an alternative theoretical framework based on the critical theory approach suggested by Cox. The importance of hegemony in the process of globalisation and in understanding the relationship between trade and human rights in the current period will also be presented. This framework will be adopted because of its ability to account for change in the global order and because it does not support any one ideological position. Instead, it allows for an analysis that can foresee alternatives to a global order dominated by neo-liberalism. The framework outlined in Chapter Three will inform the research presented in the following chapters.

Chapter Four will be presented in two parts. Part one will discuss the neo-liberal project, the goals of neo-liberal policy and the way in which this has impacted on the realisation of human rights. Part two will present five examples of how modern trade practices are directly linked to human rights abuses. These examples will be informed by reports undertaken by NGOs, including Christian Aid and Human Rights Watch (HRW). These reports often contain sensitive material concerning human rights abuses and experts in specialist interviewing techniques have gathered the qualitative data underpinning the reports' findings. The use of these secondary sources has been a practical way of gaining first hand information for use in this research.

Chapter Five looks at the context in which trade and human rights exist and provides a critique of neo-liberal claims based on the evidence provided in the

previous chapter. It is suggested here that the particular understanding of international law promoted by neo-liberalism is part of a conscious effort to support the transition towards a global economic order and has a detrimental impact upon the realisation of human rights. Evidence will demonstrate how structural factors within the current global order allow human rights abuses to continue unchallenged, particularly those violations associated with deprivations of subsistence rights, habitat, and freedom of association. More documentary evidence will be presented in this chapter to support these claims.

Chapter Six will provide a more detailed analysis of the politics of international human rights law. The disparity between increasing volumes of international law and lack of progress in the realisation of human rights will be discussed in order to assess why reported cases of human rights violations are not in decline. It will be suggested that current measures for protecting human rights cannot be successful under conditions of globalisation because the international organisations responsible for formulating international law are central to the promotion of neo-liberal values. This has led to the development of a legal framework that is so constrained by the demands of the global economy that human rights can neither be protected nor violations prevented, resulting in the subordination of human rights to the goal of expanding the free trade regime.

The conclusion will draw on the research presented above in order to determine whether human rights are secondary to trade. The evidence provided in previous chapters will also be used to answer the main questions that this thesis intends to address. Namely, what is the relationship between trade and human rights within the current global order?; what are the factors affecting the realisation of universal human rights?; is the issue of human rights subordinated to the free trade agenda?

1.6 Research Method

The research presented here relies on data and reports of human rights abuses collected by NGOs and United Nations fact-finding missions. The resources available and the length of time required to train in specialist interview techniques placed limitations on the collection of first hand information regarding human rights

violations, whilst language barriers also placed limitations on the collection of qualitative data of human rights abuses. However, the sources used are all recognised for their experience in gathering and reporting information on human rights abuses.

Further information has been gathered from the internet, journals and newspapers and from attending meetings organised by movements concerned with the impact of current trade practices upon human rights. A qualitative approach has been utilised in this study, as the questions posed rely on an analysis of the context in which trade and human rights exist and quantitative data fails to provide this contextual understanding of human rights abuses. This thesis is not concerned with questions of whether an international human rights regime is emerging, since the existence of the UDHR, ICCPR and ICESCR as well as the Commission for Human Rights, the United Nations Economic and Social Council, the International Labour Organization and the regional human rights charters, including the European Social Charter is seen as evidence for an internationally established human rights framework. To this end, I have not conducted an empirical analysis of the extent to which there is a trend towards the promotion of human rights, nor on whether the human rights norm is exhibited in practice. Instead, I have taken the UDHR and the rights set out in the ICCPR and ICESCR as a measure of which human rights should be secured and used secondary sources to determine whether these rights are being upheld or not.

A quantitative approach has also been rejected because it has been noted that "aggregation of data may produce a result at the aggregate level which is not supported at the individual, group or community level."[51] This can lead to findings that do not support the experiences of victims of human rights abuses and fails to put human interest in a position of priority. This thesis is particularly concerned with the human aspect since it seeks to challenge factors that may be implicated in human rights violations.

The aims of this thesis are twofold. Firstly, it aims to utilise an alternative theoretical framework to approach the subject. Much of the work on trade and human rights has been based on a broadly liberal agenda, which relies on a problem-solving approach and continues to support the goals of neo-liberalism. By adopting a critical theory approach I hope to contribute to an alternative understanding of the relationship between trade and human rights within the context of a changing world order. Secondly, the aim is to challenge the continued focus on international legal

solutions to problems that are transnational in scope. In this way, it is hoped that this study will contribute to a body of academic research that seeks alternatives that can provide real and lasting solutions.

ENDNOTES

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3. Thomas, C. (1999), "Introduction," in Taylor, A. and Thomas, C. (eds.) *Global Trade and Global Social Issues,* London: Routledge, p.1.

4. Yarbrough, B. and Yarbrough, R. (1987), "Cooperation in the Liberalization of Trade: After Hegemony, What?" *International Organization,* 41:1, pp.1-26.

5. McGrew, (1998), op. cit.

6. Cox, R. (1987), *Production, Power and World Order: Social Forces in the Making of History,* New York: Columbia University Press.

7. John Williamson, cited in Krugman, P. (1995), "Dutch Tulips and Emerging Markets," *Foreign Affairs,* 74:4, p.28-9.

Gill refers to the "internationalisation of authority and governance that not only involves international organisations (such as the BIS, IMF, and World Bank) and transnational firms, but also private consultancies and private bond-rating agencies which act...as arbiters of the supply of capital for public finance and corporate investment, and as 'private makers of global public policy'...The 'G-7 nexus'...tends to be represented in everyday political discourse and the mass media as an abstract, hyper-rational, and largely uncontested set of social forces and processes." Gill, S. (1995a), "Globalisation, Market Civilisation, and Disciplinary Neoliberalism," *Millennium,* 24:3, p.418; see also Gill, S. (1995b), "The Global Panopticon? The Neoliberal State, Economic Life, and Democratic Surveillance," *Alternatives,* 20:2, p.27.

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CHAPTER 2

International Relations Theory, Trade and Human Rights

2.1 Introduction

This chapter will look at how traditional theories of international relations approach the relationship between trade and human rights. The first part of the chapter will concentrate on the theories of neo-realism, liberal-pluralism and regime theory. The traditional conceptions of hegemony that inform these theoretical approaches will then be analysed. This will illustrate how the power relations that inform international and global politics are understood by these approaches. The conclusions drawn from this analysis will demonstrate the inadequacy of traditional theoretical frameworks for answering the questions raised in this research. The following section will outline some of the general difficulties of adopting a problem-solving approach when addressing the relationship between trade and human rights. It is suggested that viewing human rights violations in isolation from the broader context in which they occur often leads to temporary, short-term solutions and a more general failure to address the causes of human rights abuses. This discussion will reinforce the rejection of traditional theoretical approaches and will point towards the need for an alternative framework. The following chapter will present the case for adopting critical theory as a suitable alternative.

2.2 Traditional Theoretical Approaches

2.2.1 Neo-realism

Throughout the post-War period neo-realism has remained the dominant approach to understanding international relations. Developed primarily by Kenneth Waltz, neo-realism draws on the traditional, historically informed realism of E. H. Carr, yet rejects Carr's agent-centred focus and instead pursues a structural approach to the problems facing states in an anarchical world comprised of independent, sovereign units.[1] Emerging from the United States in the post-War period, the

continued dominance of the theory can be attributed to the focus placed on military security, the pursuit of the national interest in terms of power, and the support of American hegemony during the Cold War. For neo-realists, international politics is understood primarily as the interaction between sovereign authorities and must be separated from the issues that inform domestic politics. The interaction between states is characterised by the condition of anarchy, so that the pursuit of the national interest is competitive and takes place in the absence of regulation by a superior authority. Instead, state behaviour and the relations between states are seen to work through the operation of the balance of power.[2] The ideas underpinning a neo-realist account of international relations can be summarised as follows.

Firstly, there are universal principles that govern international relations. These principles assert that anarchy and conflict form the natural order between members of the international community as states seek to maximise power relative to one another. These laws are immutable and have always influenced international relations.[3] For neo-realists then, continuity rather than change characterises the international order. Secondly, since states are primarily concerned with the pursuit of power and security, military affairs will always dominate the international agenda. All other issues, including economic, environmental, and social concerns, are permanently subordinated to military goals.[4] Thirdly, the state is seen as the only legitimate actor in international politics and is the only unit responsible for international relations. The state is also perceived as a cohesive unit, driven by a singular concept of the national interest.[5] Sub-state and transnational actors are therefore of secondary importance to neo-realists. Fourthly, there is a distinction between the domestic and international realms of politics so that domestic actors are not seen to have any direct involvement in world politics.[6] Fifthly, the neo-realist concept of power determines that the national interest is equated with the realisation of military security based on traditional ideas of hegemony. Lastly, neo-realism denies attaching moral principles to the actions of states and statespeople because there is no moral obligation beyond the boundaries of the individual state.[7]

Given the centrality of the state, the denial of change in the international order and the rejection that moral obligations extend beyond state boundaries, neo-realist theory does not sit easily with an analysis of the relationship between trade and human rights under conditions of globalisation. There are several difficulties in proposing a theoretical framework based on neo-realism.

Firstly, by considering international politics in terms of continuity rather than change, neo-realism fails to acknowledge the transitions in world order that have occurred in the post-Cold War period. For neo-realists, the process of globalisation is not seen to have generated fundamental shifts in power relations and non-state actors remain of secondary importance. Ideas of transnationalism are rejected in favour of an approach that sees the increasing power of international organisations such as the World Trade Organization (WTO) and International Monetary Fund (IMF) as "simply reflecting a series of inter-state bargains and thus an underlying structure of power between states."[8] Neo-realism also disregards changes associated with the erosion of state power in the areas of trade, finance and investment. Instead, neo-realist studies remain concerned with how to protect state sovereignty and maintain a balance of power in the post-Cold War world.[9] The failure to accept that globalisation has led to changes in the distribution of power suggests that neo-realism offers little insight into how change in the world order may occur. Nor can the neo-realist approach identify the emergence of new and significant trends associated with such changes.

Secondly, because the principles that govern international relations are immutable, neo-realists claim that power politics and military security must always remain at the top of the international agenda. As widely acknowledged evidence demonstrates, this is clearly not the case. Issues such as human rights,[10] the environment,[11] development[12] and crime[13] have all become salient at different times and the period of globalisation has seen trade become dominant on the global agenda. The neo-realist approach also relies on the separation of domestic concerns from the realm of international politics and views political issues as distinct from economic concerns, subordinating the importance of economic power to the goals of military security. It is only in recent years that neo-realists have begun to accept the importance of economic power.[14]

Thirdly, neo-realism has failed to account for the increase in number, power and scope of non-state actors, such as international organisations, Transnational Corporations (TNCs) and Non-Governmental Organisations (NGOs). Such transnational actors are not seen to play a significant role in international politics for neo-realists and there is no acknowledgement that they may be able to influence the global agenda to their own advantage.[15] By failing to appreciate the importance of non-state actors in global agenda setting, questions concerning the role of TNCs and

their impact upon human rights cannot be raised. Similarly, neo-realism's continued focus on military security prevents a serious understanding of the rise of international cooperation and international regimes.[16] As a result, neo-realism marginalises issues such as the environment, social concerns and economic matters.

Fourthly, the concept of sovereignty and non-intervention is central to the neo-realist account of international relations so that "the relationship between the state and its citizens [should be] beyond the reach of other international actors."[17] For neo-realists who deny that the state has any moral obligation to uphold human rights beyond its borders, the project to deliver universal human rights cannot be a legitimate aim.[18] This has important implications for the realisation of human rights in the current period, since for those officials and leaders who continue to be informed by neo-realism, contradictions can arise between upholding the rights recognised in the Universal Declaration of Human Rights (UDHR) and the pursuit of the national interest. Indeed, evidence suggests that human rights are often violated or 'put on hold' in order to ensure the primacy of alternative goals concerned with political aims and economic benefits.[19]

Critics also claim that neo-realism informs an understanding of human rights that sees the moral language of rights merely as a disguise for the political desires of powerful states to exert pressure on the less powerful.[20] Similarly, because those informed by neo-realism accept that the pursuit of power must be prioritised over all other goals, some have claimed that the UDHR, International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) are little more than the result of political and ideological struggles between the USA and the USSR and that the rights set out in the Covenants show little real concession towards a moral outcome.[21] Indeed, Lewis asserts,

> [t]he debate about human rights and the upholding of human dignity, was in reality a process of re-legitimation of the principles of sovereignty and the non-intervention in the domestic affairs of sovereign states. The most powerful states, through the human rights discourse, made their own priorities the universal concern of others. Human rights in this context came to represent nothing more than an empty abstraction whose function was the legitimation and perpetuation of the given system of power relations, domestically and internationally.[22]

Obvious tensions exist between the supranational ambitions of the project to deliver universal human rights and neo-realism's understanding of the world system of sovereign states. As Donnelly asserts, "...in evaluating the achievements of the UN and other intergovernmental organizations, it would be naïve, perhaps even irresponsible, to ignore the basic fact of sovereignty and the limits it imposes."[23] However, this study is concerned with events in the period of globalisation. During this time, many states in both the developed and developing world have become "increasingly willing to relinquish significant elements of economic sovereignty."[24] There is an anomaly between neo-realist claims that the protection of human rights does not justify extending moral obligations beyond the state, whilst "the routine 'interventions' of global financial and economic markets in the economic affairs of states," are accepted as 'normal' in the current period.[25] Therefore, because neo-realism fails to accept that significant change has occurred in the world order it cannot provide a suitable framework for analysing the impact of globalisation upon human rights.

Although the rise of non-military issues to the global agenda has led some scholars to rethink the core principles of neo-realism to include work on cooperative mechanisms such as regimes, international law and the role of international organisations,[26] the theoretical framework provided by neo-realism fails to provide any insight into the changes occurring through globalisation. Neither do neo-realists accept that non-state actors may have become more significant as a result of these changes. The failure to accommodate actors that are central to this study, such as TNCs, the WTO and the World Bank, means that neo-realism cannot provide a satisfactory framework for addressing the central questions posed in this research.

2.2.2 Liberal-Pluralism

Widely held perceptions that global politics had become increasingly complex in the post-War period led some scholars to challenge the dominance of neo-realist international relations theory, basing their challenge on the ideas of complex-interdependence and transnationalism first outlined in the work of Keohane and Nye in the 1970s.[27] Keohane and Nye base their approach on an alternative understanding of global politics that rejects the state-centrism of neo-realism to include non-state

actors. The perception that domestic and transnational actors play a significant role in informing global politics leads to a rejection of the neo-realist assumption that military security consistently dominates any hierarchy of issues. Instead, alternative issues may become salient during different historic periods so that issues characterised as 'low politics' by neo-realists, including human rights, the environment and trade, are not precluded from reaching the global agenda in a liberal-pluralist understanding.[28] The liberal-pluralist approach has enabled scholars to challenge the assumptions of neo-realism and demonstrate that economic interdependence between states blurs the lines separating domestic and foreign policy. This has increased the number of issues seen as significant and has allowed human rights to become a legitimate focus for study.[29] Therefore, although liberal-pluralists still view the state as the central actor in international relations, the range of actors and issue areas that may be considered significant in world politics is broader in scope.

For liberal-pluralists, the rise of non-military issues to the global agenda has been achieved through new relations of interdependence brought about by changing global economic relations in the post-War period.[30] These changes are perceived to create space beyond purely inter-state relations and it is ideas and transactions that occur in this political space that are seen to have enabled alternative issues to reach the global political agenda. For liberal-pluralists, changes in production processes brought on by technological developments have fundamentally altered economic relations in the post-War period.[31] The range of issues that have been brought within the realm of international cooperation has also extended and includes both the issues of trade and human rights. For liberal-pluralists, changes occurring in the global order have been characterised by the creation of interdependent relations between transnational actors, informed by the widely shared ideology of neo-liberalism that seeks to enable economic actors to operate beyond political controls.[32] These changes have led to the increased formalisation of international negotiations through international organisations and legal frameworks. By linking actors and issues through interdependence and transnational relations, liberal-pluralism attempts to move beyond the state-centric approach offered by neo-realism.

Liberal-pluralists have focused their attention on the concept of international organisation, as increased levels of transnational cooperation and interdependence are seen to provide real benefits for economic growth, political organisation and social

welfare.[33] For liberal-pluralists, the growth in power of international organisations such as the World Bank, the IMF and the WTO is seen as a positive response to the increasing complexity of international relations in the last twenty-five years.[34] Liberal-pluralists also see the creation of the UDHR in 1948, and the formation of regional human rights regimes, including the European Convention for the Protection of Human Rights and Fundamental freedoms of 1953 and the European Social Charter of 1965, the American Convention on Human Rights of 1969, and the African Charter on Human and Peoples' Rights of 1981, as having been instrumental in bringing human rights to the forefront of the global political agenda. Indeed, for many liberal-pluralists the human rights regime and the regional charters have been successful not only for prioritising human rights on the global agenda, but also in achieving real progress in the realisation of human rights.[35]

However, evidence suggests that the fifty years of progress in international human rights law has not been equalled by improvements in human rights conditions in most parts of the world.[36] Although liberal-pluralism relies heavily on the existence of an international legal framework to secure human rights, several problems can be seen in this approach. Firstly, international legal responses to human rights violations continue to place the focus on state-centric solutions. In this view, the state remains the only actor that can be brought to account for human rights violations, whilst at the same time the state is also given the role of protecting human rights.[37] By adopting an international law approach, scant acknowledgement is paid to non-state actors such as TNCs, which may be implicated in human rights abuses, and the reluctance of states to relinquish sovereignty and be bound by human rights law is also neglected in this view. The political and ideological bias exhibited in international human rights law is also largely ignored. As Evans asserts,

> [t]he outcome of placing the source of human rights norms within international instruments, which are determined by a state-centric organisation like the United Nations, is that cosmopolitan normative claims are expressed in statist terms. Global leaders, perhaps with half an eye on avoiding the erosion of their own domestic authority by acknowledging universal values, turn instead to defining human rights by reference to international law as a measure of 'good' or 'bad' behaviour, and in so doing avoid moral questions.[38]

The adoption of an international law approach also looks at the issue of human rights in a political vacuum, denying the possibility that international law may be little more that a means of upholding existing power relations.[39] Therefore, whilst the dominant understanding of international human rights law promotes civil and political rights over economic, social and cultural rights, legitimising those rights that support freedom of economic action, free trade and limited government over rights associated with redistribution, trade regulation and state welfare provision, liberal-pluralists rarely acknowledge that an ideological bias underpins the current conception of international human rights law. Indeed, it is rarely considered in the liberal-pluralist literature that the development of international human rights law may be "facilitating new hierarchies of control and regulation...rather than challenging political and economic inequalities in the international system."[40]

Secondly, as the most important international human rights document, the UDHR remains at the centre of international human rights law. The historical account of the drafting of the Universal Declaration has been well documented and will not be examined in detail here.[41] However, certain issues are relevant to this discussion. The early drafting of the UDHR was a product of the political and ideological struggles between member states of the United Nations, especially between the United States and less developed socialist states supported by the USSR.[42] The United States sought to establish its own liberal principles by promoting civil and political rights, arguing that only by securing these rights could the challenge posed by anti-democratic regimes be countered. In contrast, socialist states urged the promotion of social and economic rights, embodying the idea of equality and freedom from want. This demanded the inclusion of basic subsistence rights as a fundamental of any international human rights document. Although attempts were made to draw the two opposing ideologies into a single document, the United States continued to reject the economic and social rights proposed by the socialist world and demanded that civil and political rights be separated from social and economic rights. This resulted in the existence of the UDHR and the two separate Covenants.

Although the UDHR incorporates both groups of rights and the ICESCR and the ICCPR are given formal parity with the UDHR outlining the indivisibility of all human rights, the USA's demands to introduce two separate Covenants have institutionalised the division between civil and political rights and economic, social and cultural rights.[43] American hegemony during the post-War period has since been

successful in subordinating economic and social rights, allowing the idea of civil and political rights to gain global primacy.[44] This separation of rights has been forcefully adopted by neo-liberals so that whilst civil and political rights are seen as both desirable and achievable, economic, social and cultural rights are merely 'aspirations' but can never be rights.[45] This view was expressed by the former USA Ambassador to the United Nations, Jeane Kirkpatrick who expressed the provisions of the ICESCR as

> a letter to Santa Claus...Neither nature, experience, nor probability informs these lists of 'entitlements', which are subject to no constraints except those of the mind and appetite of their authors.[46]

Critics of the neo-liberal position assert that the promotion of civil and political rights has been advantageous primarily for those who benefit from existing structural arrangements. Since civil and political rights focus on the responsibility of the individual for human rights abuses and these rights are promoted over economic and social rights, then human rights violations that occur through deprivation and neglect and lead primarily to violations of economic and social rights are subordinated. Similarly, by placing the focus of responsibility on the actions of individuals, structures that allow human rights abusive practices to continue are not challenged. For example, neo-liberals continue to promote Export Processing Zones (EPZs) as a way for states to encourage inward investment and generate economic growth. However, it is accepted that within EPZs international labour and environmental standards are not enforced, working conditions are harsh and often violate a country's own labour laws and prohibitions on union organisation are routine.[47] In this way, the structures of the global economy may be implicated in continued violations of human rights. The successful subordination of social and economic rights to civil and political rights has been underpinned by the dominant ideology of neo-liberalism that informs much liberal-pluralist analysis. This same ideology also informs the policies and practices of international organisations such as the World Bank, IMF and WTO and thus determines in a wider sense which rights are afforded legitimate status in global policy formation.

Thirdly, because the state is the only actor subject to the binding obligations of human rights treaties, non-state actors are exempt from the laws that prohibit human rights violations. International organisations, such as the World Bank, IMF

and WTO, as well as TNCs and International Financial Institutions (IFIs) are unaccountable under international human rights law. Whilst liberal-pluralist analysis rarely questions whether the actions and policies of non-state actors may violate human rights, neither can the international legal framework favoured by liberal-pluralists protect human rights from the practices undertaken by non-state actors. This dual failure to charge non-state actors over human rights abuses has therefore enabled TNCs to undertake operations that violate human rights with little fear of redress.[48]

Fourthly, the international law approach is hampered by the absence of a supranational body to implement and oversee law enforcement. The UDHR itself is not legally binding on states and is designed instead to be "a common standard of achievement."[49] Krasner has pointed to the existence of international human rights law in terms of its ability to "express good intentions" and continues by arguing that, "[w]ithout domestic support, a human rights convention can simply be an empty invitation, or even a cynical gesture, which has no consequences for the ability of rulers to exclude external authority from their territory."[50] Moreover, even when states ratify human rights treaties, major reservations to their acceptance may "virtually nullify obligations that might otherwise apply."[51]

By focusing primarily on transnational relations, liberal-pluralism does offer the opportunity to consider how non-state actors such as TNCs, international organisations, private banks and NGOs may interact with states in global politics. The inclusion of non-state actors is assumed to broaden the scope of issues perceived as significant and suggests that the impact of non-state actors on human rights may be considered within a liberal-pluralist framework. However, there are shortcomings in the liberal-pluralist approach to non-state actors.

Firstly, liberal-pluralism suffers from an inability to understand change in the world order. For liberal-pluralists, non-state actors have become central to the operation of global politics and are often seen as a force for global change. However, there is little explanation of how non-state actors have become significant, whether they operate purely within the existing order or whether they are concerned with challenging dominant power relations. Similarly, although liberal-pluralists accept that the international order is rapidly being replaced by a globalised order with a more visible role for non-state actors, it is rare to see questions concerning the influence of such actors being addressed. It is not therefore clear in the liberal-pluralist literature

whether all non-state actors share the same concerns regarding the process of globalisation.

Secondly, in much of the liberal-pluralist literature, little distinction is made between different types of non-state actors so that groups associated with social welfare or environmental issues are not differentiated from those concerned with the promotion of business interests.[52] The failure to distinguish between the different goals of non-state actors suggests that the involvement of all such groups in global politics is progressive, creating the opportunity for a range of opinions to reach the global political agenda.[53] However, this view disregards the political and ideological views of non-state actors and prevents questions from being raised regarding actors' preferred outcomes, so that liberal-pluralist analysis fails to question whether non-state actors may be central to the process of legitimating the status-quo. It is also rarely considered that non-state actors such as TNCs and private banks, may be more concerned with maintaining the benefits currently afforded to them than with creating the necessary conditions for the realisation of universal human rights.

Thirdly, liberal-pluralists place little emphasis on determining non-state actors' levels of involvement in global politics. The structural limitations that affect non-state actors are afforded scant recognition and the social, economic and political context in which such actors operate is rarely considered. Neither is it suggested that non-state actors may not be equal in regard to their capabilities and levels of access to centres of political and economic power.[54] Thus, despite Donnelly's assertion that "[t]he private status of human rights NGOs allows them to operate free of the political control of states,"[55] it is not clear in the liberal-pluralist literature whether actors that challenge the dominant order have the same opportunities to promote their agenda as those that support the existing neo-liberal consensus.[56]

Finally, the failure to examine the social, economic and political context in which actors operate denies consideration of a possible relationship between the everyday practices of non-state actors and violations of human rights. Instead, liberal-pluralist analysis focuses on providing solutions to individual cases of human rights violations through international law, without disturbing economic, social and political structures.[57] A liberal-pluralist analysis therefore fails to acknowledge that the structures in which non-state actors operate may allow the policies of the WTO and IMF and the business practices of TNCs to continue, despite their negative impact on human rights.

Liberal-pluralism's failure to analyse the social, economic and political context in which actors operate, combined with its focus on international law, leads to an understanding of international relations that continues to place the state in a central position of power. Similarly, the liberal-pluralist tendency to view human rights abuses in isolation from one another, rather than determining whether systematic patterns of abuse have occurred, denies the possibility that structural power relations may enable human rights violations to continue unchallenged. Liberal-pluralist analysis also fails to determine why some issues reach the global political agenda whilst other issues are permanently discounted, demonstrating a failure to challenge the dominant power relations that underpin the existing world order.[58] Thus, liberal-pluralism serves to uphold existing power relations and supports the global dominance of the values of neo-liberalism. Liberal-pluralism cannot therefore provide a suitable theoretical framework within which to assess the impact of trade upon human rights under conditions of globalisation.

2.2.3 Regime Theory

International regime theory emerged in response to the growth of issues that could not seemingly be explained by traditional neo-realist or liberal-pluralist approaches to international relations. Schools of regime theory developed from both neo-realism and liberal-pluralism in order to explain the increased cooperation between states over economic and monetary issues. International regime theorists also sought to analyse newly emerging issues, such as trade, the environment and human rights.[59] Three different schools of regime theory are identified in the literature, namely realist, liberal and Grotian.[60] Whilst Grotian and liberal approaches were developed as a challenge to traditional understandings of international relations, the realist model perceives regimes to be little more than formal structures that enable states to "promote and maintain the rules and procedures that best suit their interests."[61] This approach adds little to existing, traditional state-centric forms of analysis. For this reason, this research will focus upon liberal and Grotian approaches to regime analysis.

The growth of regime theory followed increasing complexity and interdependence in the international system in the 1970s, and to ideas that "on our

'only one earth' we are, for the first time, living a single history."[62] Regime theorists propose a theoretical framework that seeks to understand the complex interrelationships between actors within the international system. International regime theory is primarily concerned with the emergence of problems that can only be overcome through international cooperation.[63] This suggests that regime theory can accommodate an analysis of problems as diverse as environmental degradation, the organisation of international trade or the adoption of international human rights law. Several definitions of regimes abound, but the most influential provided by Krasner defines international regimes as

> sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations.[64]

These terms can then be understood as follows,

> principles are beliefs of fact, causation, and rectitude. Norms are standards of behaviour defined in terms of rights and obligations. Rules are specific prescriptions or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice.[65]

Adopting this definition suggests that international regimes are a prevalent part of global politics, illustrated by the myriad of international institutions which enable state cooperation in diverse issue areas.[66] The cooperative mechanisms emerging from such institutions are seen to enable the international community to respond to new economic, social and political conditions,[67] and such cooperative mechanisms are seen as the method through which governance can be maintained in the absence of government in an increasingly complex international system.[68] Regime analysis is therefore distinct from traditional international relations theory because action is seen as motivated by shared principles, norms and rules rather than being "guided exclusively by narrow calculations of interest."[69] Regimes are perceived as a community formed from "benevolent, voluntary, cooperative, and thus legitimate associations."[70] For this reason, international regimes are seen as both desirable and beneficial, tempering disorder and anarchy through increased international cooperation.

For regime theorists, the increasing volume of international human rights law is seen as evidence for the existence of a human rights regime that can generate

improvements in human rights. However, Evans argues that the concentration of research on achievements in international law neglects cultural, political and ideological conflicts and may prevent the realisation of human rights in practice.[71] The definition of international regimes provided by Krasner also raises questions for this research because regimes are seen to emerge as a result of 'convergent expectations'.[72] This understanding suggests that regimes are a purely technical device for overcoming problems, devoid of political disagreements and ideological bias. There are several reasons why an international regime theory approach may be problematic for this research.

Firstly, regime theory remains focused on *international* institutions so that solutions to global problems are sought through international cooperative mechanisms. This fails to challenge either neo-realist or liberal-pluralist approaches and maintains a state-centric understanding of international relations that sees only the political issues with which governments are concerned as significant.[73] Therefore, non-state actors remain outside the scope of studies adopting an international regime theory framework. Grotian regime theorists have attempted to understand the contribution that non-state actors make to the economic, social and political environment in which global politics takes place.[74] However, although Grotian analysts accept that both domestic and transnational actors play a role in global politics there is little analysis of the significance of such actors or of the power relations that determine their influence.[75] Because states are the primary participants in regime negotiations the state is also legitimised as the 'obvious' unit to manage international regimes and states are placed in the central position of responsibility for developing solutions to transnational problems. The formation of regimes may also be seen as little more than the response of national governments to the erosion of state autonomy under conditions of globalisation and the increased power of non-state actors.[76]

Secondly, regime theory emphasises cooperation through international agreements, international treaties and international law, yet fails to address the problem of promoting state-centric solutions to global problems. Regime theory therefore emphasises international legal approaches and deflects attention from viewing human rights violations in their social, economic and political context. As Evans and Hancock demonstrate, even though much progress has been made in the quantity of human rights law, gross violations of human rights continue to occur on a

regular basis. Focusing research, "...so singularly on international law offers an illusion of orderliness that deflects attention from wide-ranging fundamental disagreements when thinking about human rights issues."[77] Susan Strange also comments that "it is only too easy...to be misled by the proliferation of international associations and organizations, by the multiplication of declarations and documents, into concluding that there is indeed increasing positive action."[78] Placing emphasis on international human rights law therefore provides the illusion of "doing something without doing anything."[79]

Thirdly, regime theorists fail to analyse the particular configuration of power relations from which regimes emerge and there is no suggestion that regimes may be designed to promote the interests of dominant political and economic actors.[80] Therefore, the possibility that regimes may be designed to encourage the expansion of neo-liberal values is rarely considered. Critics contend that regimes are often designed to satisfy human welfare only through the maintenance of the existing order,[81] so that both the trade regime and the human rights regime may be seen as "little more than a rationalisation of the interests of the powerful,"[82] concerned with prioritising the objectives of neo-liberalism over goals concerned with freedom and justice. Since regimes are promoted as a positive response to global problems, broad support is usually guaranteed and a state that rejects the common wisdom may be branded as 'mad' and excluded from further negotiations.[83] By securing state involvement in international regimes, the interests of capital and the means through which capital expansion can be achieved are assured.[84]

Grotian scholars have attempted to understand regimes as a reflection of existing societal power relations,[85] illustrated by the assertion that regimes are "frequently designed to advance the interests of one or a few dominant actors."[86] Indeed, Keeley argues that the idea of "benevolent, cooperative and legitimate associations" is undermined by an ideological bias within regime analysis, which makes it "a language of apology or justification, a form of special pleading by and for the powerful and satisfied."[87] Evidence also suggests that the creation of the UDHR in the post-War period proved more useful to both the United States and the Soviet Union in their respective ideological struggles, than in securing human rights for the world's people.[88]

Finally, by viewing global problems in isolation from one another, regime theory seeks discrete solutions to each problem. Different problems are not seen as

part of a whole, leaving questions concerning the relationship between trade and human rights, or trade and the environment unanswered. It has also been suggested that the separation of issues leads regimes to "exacerbate the problems they are designed to help resolve."[89] As Onuf and Peterson suggest, many of the principles of the human rights regime are framed in language which "patently emphasizes situations in which redressing the rights of particular individuals...is less the issue than rectifying the overall, inevitably political complexion of those situations."[90]

Since regime theory does not seek to analyse the impact of one regime upon another, questions concerning the relationship between trade and human rights may not be considered within this approach. Similarly, by failing to consider political and ideological bias, the powerful interests that underpin regimes are rendered invisible. As a consequence, there is little consideration of whether regimes may have been created primarily to legitimise neo-liberal values in the period of globalisation. Regime analysis therefore supports uncritical acceptance of the assumptions of the neo-liberal elite and will be rejected for use in this study in favour of an approach that challenges these assumptions.

2.3 Traditional Theories of Hegemony

The concept of hegemony is central to the three traditional approaches to international relations outlined above. However, hegemony is understood in differing ways by neo-realists, liberal-pluralists and regime theorists. The neo-realist conception of hegemony, developed primarily by Kenneth Waltz in *Man, the State and War,* places one state in a position of complete dominance.[91] This enables the hegemon to control the behaviour of subordinate states in a manner that furthers its own national interest.[92] By contrast, liberal-pluralism and regime theory utilise an extended conception of hegemony that draws upon the work of Robert Keohane in *After Hegemony.*[93] In this view, the existence of a hegemonic state tempers anarchy in the state system and encourages international cooperation. The liberal understanding of hegemony also seeks to explain why subordinate states enter into international negotiations and form cooperative institutions. These conceptions of hegemony are seen to be relevant as they inform the way in which neo-realists, liberal-pluralists and regime theorists understand the power relations that underpin the world order.

For neo-realists, a state takes on the role of hegemon following victory in a major global war. The state emerging with the largest share of military and economic power assumes the role of hegemon during the post-War period and dominates the international system. The hegemon will have the power capabilities and material resources to determine the international agenda and can ensure that subordinate states comply with the rules of the international system by threatening to use military force.[94] The hegemon will "reshape the existing system by creating and enforcing rules to preserve not only the existing world order, but also the hegemon's own power."[95] In this way, the dominant state imposes its own national interests on the international system.

Neo-realists argue that this view of hegemony is borne out by the facts of the twentieth century, since the USA emerged from World War Two in a position to dominate the international community of states. In the post-War period, the USA sought to maintain the role of hegemon by fostering "a world environment in which the American system [could] survive and flourish."[96] The USA also had economic and military capabilities sufficient to "deter those actions of other actors that could potentially disrupt hegemonic leadership and systemic stability."[97] However, although events in the post-War period appear to support this view of hegemony, the neo-realist literature fails to explain how and why a state would take on the role of hegemon considering the potential economic and strategic costs involved. Instead, neo-realists argue that their view of hegemony is correct simply because the USA dominated international politics in the post-War period. Thus, several criticisms may be levelled at neo-realists.

Firstly, it remains unclear how the hegemon persuades subordinate states to comply with the rules of the international system. Although neo-realists assert that the threat of military force is sufficient to achieve international dominance, the post-War period has seen increasing levels of international cooperation that cannot be attributed to American threats of military action. Secondly, neo-realists fail to offer an explanation of how military capabilities are converted into hegemonic power.[98] Therefore, the focus for neo-realist research remains on resources and military might and wider considerations of power are ignored. Thirdly, neo-realism does not explain why some states accept the hegemon's rules while others resist.[99] Some scholars have sought to broaden the neo-realist conception of hegemony in order to accommodate an understanding of consensus formation and the mutual benefits of a stable

international system.[100] However, the neo-realist literature remains focused on the concept of a coercive hegemon that controls the international system in order to strengthen its own position.[101] Neo-realism cannot therefore provide an explanation for the USA's support of the General Agreement on Tariffs and Trade (GATT) and the WTO for example, nor of the willingness of subordinate states to join the international trade regime. Lastly, the neo-realist literature fails to account for the decline in American hegemony and the increasing power of transnational capital in the period of globalisation. Since neo-realism does not accommodate an understanding of changing power relations in the current period it provides little insight into how such changes may affect our ability to realise human rights.

In order to challenge the concept of hegemony suggested by neo-realism, liberal-pluralism and regime approaches draw on the theory of hegemonic stability developed by Robert Keohane in the 1970s.[102] Whilst neo-realist research continued to focus on balance-of-power politics, the increasing importance of economic cooperation in the post-War period led Keohane to develop a conception of hegemony that sought to understand the relationship between politics and economics. Keohane's theory was developed in response to increasing international cooperation in areas that were new to the international agenda and was utilised by liberal-pluralist and regime theorists to understand the increasing interdependence between states.

Keohane and Nye suggest that a state becomes hegemonic when it is has the power capabilities to maintain the rules governing interstate relations and is willing to take on the role.[103] A successful hegemon will have "control over raw materials, control over sources of capital, control over markets, and competitive advantages in the production of highly valued goods."[104] In this view, the hegemon does not maintain its position simply by resorting to military force, but may instead wield economic power to influence the actions of other states.[105] However, for liberal-pluralists the hegemon is not concerned with promoting its own interests through compulsion and conflict, but acts instead as an "enlightened leader, submerging narrow and short-term national interests to the preservation of a well-ordered and mutually beneficial international system."[106] Indeed, much of the liberal-pluralist literature suggests that the hegemon behaves as a benevolent actor, concerned with maintaining systemic stability through international cooperation for the benefit of all members.[107] Thus, liberal-pluralists supported post-War American hegemony because of the perceived benefits of a stable international monetary system and the provision

of open markets for goods brought about by American-centred regimes.[108] As Grunberg asserts, "[the] regime of free trade promoted by the hegemon is in the long-run interest of the system and therefore in the interest of its members."[109] In this way, the theory of hegemonic stability has provided a broader understanding of hegemony that does not rely on military dominance as an explanation for increasing international cooperation.

However, hegemonic stability theory continues to focus on the hegemony of an individual state that exhibits liberal-democratic tendencies. The liberal state is seen to provide an arena for conflicting sub-state groups to engage in national politics and compete to influence external policy decisions.[110] This is seen to generate positive outcomes so that Deudney asserts,

> a distinctive feature of the American state is its decentralized structure, which provides numerous points of access to competing groups, both domestic and foreign. Because the decision-making process of the American liberal state is so transparent, secondary powers are not subject to surprises.[111]

Since liberal-pluralists assume that all actors have equal access to government decision-making channels it is rarely considered that certain groups may command more influence on external policy-making than others and may suggest policies that promote their own interests. A liberal–pluralist analysis does not therefore consider that the structures of world order put in place by the hegemon may uphold the interests of powerful groups within the hegemonic state, so that there is little acknowledgement that powerful business interests in the USA have been instrumental in the transition towards a global economic order and global free trade regime. Instead, illustrating the liberal-pluralist position Deudney asserts, "taken together, liberal state openness and transnational relations create an ongoing political process within the hegemonic system without which the system would be undermined by balancing or become coercive."[112] By failing to recognise the power relations that underpin the hegemon's position, liberal-pluralist analysis serves to equate the interests of the powerful in the hegemonic state with the interests of all members of the international system.[113]

The ideological aspect of hegemonic leadership also remains underdeveloped in hegemonic stability theory, so that for liberal-pluralist and regime theorists the international trade regime is always assumed to bring positive rewards. It is rarely

considered that the benefits of free trade may not be equally dispersed or that the hegemon may be "structuring the system to strengthen its own international economic position,"[114] at the expense of redistributive policies that promote broader goals associated with improving human rights. In this way, adopting an understanding of power based on liberal-pluralist and regime analysis continues to support the values of neo-liberalism and fails to challenge the assumption that a positive relationship exists between trade and human rights. This research will therefore draw upon the conception of hegemony suggested by Antonio Gramsci and developed by scholars such as Robert Cox and Stephen Gill.[115] A detailed discussion of this alternative conception of hegemony will be provided in Chapter Three.

2.4 Problem-Solving and World Order

The previous discussion has considered the theoretical frameworks provided by neo-realism, liberal-pluralism and regime theory and accepts that these approaches are not able to accommodate the questions raised in this research. Emphasising the common problems associated with these approaches reinforces the rejection of traditional theoretical frameworks. In summary, four problems common within the traditional literature can be emphasised.

Firstly, neo-realism, liberal-pluralism and regime theory each maintain a state-centric approach to international relations. Despite the evolution of neo-realism to include work that accommodates increased international cooperation, the state remains the central actor in international politics. Similarly, although both liberal-pluralism and regime theory developed as a rejection of neo-realism, both theories advocate the promotion of human rights through international law and international regimes, respectively. By placing the future of human rights with international institutions and organisations the state remains in a dominant position. This state-centric view fails to acknowledge the importance of globalisation and the recent transition of power relations between states and non-state actors, including TNCs.[116]

Secondly, neo-realism, liberal-pluralism and regime theory continue to assume that the world order is neutral. This view fails to recognise that the world order is underpinned by a particular ideology that shapes the economic, social and political context in which structures emerge. This denies the validity of research that

seeks to challenge dominant power relations and to provide alternative solutions from those available within the existing structures of world order. By adopting the position that the world order is neutral, traditional international relations theories also lend unquestioning support to neo-liberal values. The assumptions of neo-liberalism are not challenged, so that values associated with justice, equity and the realisation of universal human rights remain secondary to the expansion of an unregulated global market and free trade regime. A research framework that accepts the neutrality of the world order also marginalises critical agendas that seek to understand how ideology informs global politics.

Thirdly, both the issues of trade and human rights are presented in the literature as technical rather than political problems. Human rights are treated as a legal concern and much of the analysis remains focused on legal texts and enforcement measures.[117] Trade is also presented as a technical issue with the management of bilateral trade agreements, dispute settlements, and rule-making functions at the WTO receiving the most attention within traditional analysis.[118] The consideration of trade as an a-political issue is supported by a general assumption in the literature that free trade "boosts economic growth and supports development"[119] and must be seen to provide positive benefits. This view fails to recognise the ideological and political motivations underpinning the trade and human rights regimes, so that neo-liberal claims of a positive relationship between trade and human rights are accepted without question.

Lastly, traditional theoretical frameworks demonstrate a problem-solving approach that concentrates on individual instances of human rights abuses. Denials of human rights are therefore viewed in isolation from the political, economic and social context in which they occur. The view that human rights have become 'the idea of our time' has gained considerable ground in the recent literature[120] so that Montgomery asserts, "[t]oday rights are found as much in the nuances of expected behaviour as in the niceties of legal definition. They have become all but obligatory."[121] However, the literature fails to question whether acceptance of the language of human rights has been accompanied by normative changes that actively prioritise human rights. Evidence suggests that these changes have not occurred, leaving the theoretical claims with little to support them.

The adoption of a problem-solving approach also fails to question whether the structures of world order may contribute to an economic and political environment in

which human rights abuses can continue unchallenged. Thus, traditional theoretical frameworks do not consider the possibility that the emerging global order may support structures and practices that are linked to new forms of human rights abuses. Instead, the existing literature continues to seek solutions that do not disturb the structures of globalisation and reinforces the legitimacy of existing configurations of power.

Criticisms of a problem-solving approach have been developed by Robert Cox who has concentrated his analyses on the 'ideological bias' within traditional theories of international relations.[122] For Cox, problem-solving theory "takes the world as it finds it, with the prevailing social and power relationships and the institutions into which they are organised, as the given framework for action."[123] Problem-solving theories therefore fail to analyse the particular configuration of power relations within which the relationship between trade and human rights exists and cannot determine whether the social forces underpinning globalisation are more concerned with the expansion of global capital than with providing the mechanisms through which human rights can be realised.

The reasons for rejecting traditional theoretical approaches having been outlined, it is necessary to look for a theoretical framework that moves beyond problem-solving analysis in order to assess the impact that existing power relations have upon the realisation of human rights. The following chapter will discuss the contribution that a critical theory framework can make by drawing on the work of Robert Cox and other critical theorists.[124] An alternative conception of hegemony that draws on the work of Antonio Gramsci and has been further developed by Robert Cox will be central to this discussion.[125]

ENDNOTES

1. Carr, E. H. (1939), *The Twenty Years' Crisis: 1919-1939,* Basingstoke: Macmillan; Waltz, K. (1959), *Man, the State and War: A Theoretical Analysis,* Columbia: Columbia University Press; Waltz, K. (1979), *Theory of International Politics,* Reading, Massachusetts: Addison Wesley.

2. Rosenberg, J. (1994), *The Empire of Civil Society,* London: Verso, p.9-10.

3. Carr, (1939), op. cit.; Waltz, (1979), op. cit.

4. Waltz, (1959), op. cit.

5. O'Meara, R. (1984), "Regimes and Their Implications for International Theory," *Millennium,* 13:3, p.251; Waltz, (1979), op. cit.

6. Rosenberg, (1994), op. cit., p.10.

7. Cohen, M. (1984), "Moral Skepticism and International Relations," *Philosophy and Public Affairs,* 13:4, pp.299-346; Hoffmann, S. (1983), "Reaching for the Most Difficult: Human Rights as a Foreign Policy Goal," *Daedalus,* 112:4, p.20; Wheeler, N. (1997), "Agency, Humanitarianism and Intervention," *International Political Science Review,* 18:1, p.10.

8. Gill, S. (1994), "Introduction," in Gill, S. (ed.) *Gramsci, Historical Materialism and International Relations,* Cambridge: Cambridge University Press, p.6.

9. Krasner, S. (1999), *Sovereignty: Organized Hypocrisy,* Princeton, New Jersey: Princeton University Press; Linklater, A. (1992), "The Question of the Next Stage in International Relations Theory: A Critical-Theoretical Point of View," *Millennium,* 31:1, pp.77-98; Vasquez, J. (1998), *The Power of Power Politics,* Cambridge: Cambridge University Press.

10. World Conference on Human Rights and Vienna Declaration, 14-25 June, 1993.

11. United Nations Conference on Environment and Development, 3-14 June, 1992.

12. World Summit on Sustainable Development, 26 August-4 September, 2002.

13. United Nations Convention Against Transnational Organized Crime, 12-15 December, 2000.

14. Keohane, R. (1984), *After Hegemony: Cooperation and Discord in the World Political Economy,* Princeton, New Jersey: Princeton University Press.

15. Strange, S. (1996), *The Retreat of the State,* Cambridge: Cambridge University Press.

16. Keohane, R. and Nye, J. (1977), *Power and Interdependence,* Boston: Little Brown, p.23-37.

17. Evans, T. (1996), *US Hegemony and the Project of Universal Human Rights,* Basingstoke: Macmillan, p.13.

18. Damrosch, L. (1993), "Changing Conceptions of Intervention in International Law," *Emerging Norms of Justified Intervention: American Academy of Arts and Sciences,* p.91; Kennan, G. (1985), "Morality and Foreign Policy," *Foreign Affairs,* 64:2, pp.205-218; Montgomery, J. (1999), "Fifty Years of Human Rights: An Emergent Global Regime," *Policy Sciences,* 32:1, p.79.

19. Donnelly, J. (1993), *International Human Rights,* Boulder, Colorado: Westview Press, p.104; Hitchens, C. (2001), *The Trial of Henry Kissinger,* London: Verso. Schlesinger asserts, "the double standard was inherent in the situation...[a] nation's fundamental interest must be self-preservation; and, when national security and the promotion of human rights came into genuine conflict, national security had to prevail." Schlesinger, A. (1978), "Human Rights and the American Tradition," *Foreign Affairs*, 57:1, p.519.

Schlesinger also notes "[Carter's] human rights policy...was entirely compatible with effusive support for the Shah of Iran, with an egregious letter of commendation to Somoza in Nicaragua, with the possible recognition of Vietnam and Cuba. Washington was fearless in denouncing human rights abuses in countries like Cambodia, Paraguay and Uganda, where the United States had negligible strategic and economic interests; a good deal less fearless toward South Korea, Saudi Arabia, Yugoslavia and most of black Africa; increasingly circumspect about the Soviet Union; totally silent about China." Schlesinger, (1978), op. cit., p.515.

20. Forsythe highlights the way in which human rights became a tool of foreign policy in the east-west conflict in the post-War period, especially during the Nixon, Carter and Reagan administrations. Forsythe's evidence demonstrates how human rights were used to legitimise the double standard in foreign policy afforded between communist and 'friendly' regimes during the Cold War. Forsythe, D. (1990), "Human Rights in US Foreign Policy: Retrospect and Prospect," *Political Science Quarterly,* 105:3, pp.435-454; see also Vincent, R. (1986), *Foreign Policy and Human Rights,* Cambridge: Cambridge University Press.

21. Donnelly, J. (1999), *Ethics and International Human Rights*, available at http://www.humanrightsworkingpapers.org; Onuf, N. and Peterson, V. (1983), "Human Rights From An International Regimes Perspective," *Journal of International Affairs,* 37:2, p.336.

22. Lewis, N. (1998), "Human Rights, Law and Democracy in an Unfree World," in Evans, T. (ed.) *Human Rights Fifty Years On: A Reappraisal,* Manchester: Manchester University Press, p.89.

23. Donnelly, (1993), op. cit., p.12.

24. ibid. p.137.

25. Mcgrew, A. (1998), "Human Rights in a Global Age: Coming to Terms with Globalization," in Evans, op. cit., p.201.

26. Gilpin, R. (1981), *War and Change in World Politics,* Cambridge: Cambridge University Press; Krasner, (1999), op. cit.

27. Keohane and Nye, (1977), op. cit.

28. Goldstein, J. (1986), "The Political Economy of Trade: Institutions of Protection," *American Political Science Review,* 80:1, p.165.

29. Keohane and Nye, (1977), op. cit.

30. Ruggie, J. (1982), "International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order," *International Organization,* 36:2, pp.379-415.

31. Moon, B. (1996), *Dilemmas of International Trade,* New York: Westview Press; Ohmae, K. (1995), *The Evolving Global Economy,* Boston: Harvard Business Review.

32. The term 'neo-liberal' is used here to indicate the predominant value system that guides the current world order, where the "main units of analysis...are rational, self-interested actors...who operate within the constraints of market structure and competition...to increase [their] power, security, affluence and satisfaction or unity." Gill, S. (1990), *American Hegemony and the Trilateral Commission,* Cambridge: Cambridge University Press, p.20.

33. Keohane, (1984), op. cit.

34. When liberal-pluralism began to emerge as a distinct theory, the international trade management structure was the General Agreement on Tariffs and Trade. The World Trade Organization only came into effect in 1995.

35. Donnelly, J. (2001), *The Universal Declaration Model of Human Rights: A Liberal Defense*, available at http://www.humanrightsworkingpapers.org accessed on 16/04/2002; Montgomery, (1999), op. cit.

36. Evans, T. (1998), "Introduction: Power, Hegemony and the Universalization of Human Rights," in Evans, op. cit., p.3.

37. Cranston, M. (1973), *What Are Human Rights?* London: Bodley Head.

38. Evans, (1996), op. cit., p.35.

39. ibid.

40. Chandler, D. (2004), "Introduction," in Chandler, D. (ed.) *Rethinking Human Rights,* Basingstoke: Palgrave/Macmillan, p.2.

41. Donnelly, J. (1981), "Recent Trends in UN Human Rights Activity: Description and Polemic," *International Organization,* 35:3, pp.633-656; Donnelly, J. (1986), "International Human Rights: A Regime Analysis," *International Organization,* 40:3, pp.599-642; Evans, (1996), op. cit.; Forsythe, D. (1985), "The United Nations and Human Rights, 1945-1985," *Political Science Quarterly,* 100:2, pp.249-269.

42. Evans, (1996), op. cit.

43. Evans, T. (1999), "Trading Human Rights," in Taylor, A. and Thomas, C. (eds.) *Global Trade and Global Social Issues,* London: Routledge.

44. ibid.

45. Robertson, G. (2000), *Crimes Against Humanity: The Struggle for Global Justice,* London: Penguin, p.157.

46. Kirkpatrick, J. (1981), "Establishing a Viable Human Rights Policy," *World Affairs,* 144:2, p.332.

47. Compa, L. and Diamond, S. (1996), *Human Rights, Labor Rights, and International Trade,* Pennsylvania: Pennsylvania Press, p.151.

48. Evans, (1999), op. cit.

49. United Nations Commission on Human Rights (1948), "Universal Declaration of Human Rights," 6th Session, supplement 1, E/CN.4/RES/V(II).

50. Krasner, (1999), op. cit., p.112 & 120.

51. Montgomery, (1999), op. cit., p.82.

52. Willets, P. (1993), "Transnational Actors and Changing World Order," *International Peace Research Institute,* Occasional Papers Series 19.

53. ibid.

54. ibid.

55. Donnelly, (1993), op. cit., p.13.

56. Ullrich suggests that equality of access to centres of power is very much dependent upon a group's views concerning global trade liberalisation. Ullrich adopts the labels, conformist, reformist, and radical to differentiate between groups. For Ullrich, conformists "generally support the objectives of trade liberalization and the basis behind the activities of the WTO." These groups are regularly invited to submit their proposals for review at the meetings of International Financial Institutions (IFIs). Reformists "actively work to alter the liberal approach to trade [and] seek to transform policies to take into account such aspects as environmental considerations as well as modify WTO operating procedures." Such groups are also involved in

proposing the agenda for discussion at the meetings of IFIs but are not invited to submit their proposals. Instead, they use their influence as third party actors. Finally, radicals "aim to limit the rule-making power of the WTO [and] reject the WTO and other trade liberalization agreements." The ideas promoted by radical groups remain excluded from the agenda at meetings of IFIs. Indeed, Ullrich argues that, "were the G8 to communicate with such radical groups, the danger exists that their destructive mode of operation would be seen as legitimate to the broader spectrum of civil society." Ullrich, H. (2001), "Stimulating Trade Liberalization After Seattle: G7/8 Leadership in Global Governance," paper presented at the G8 2000 New Directions in Global Governance, Academic Symposium, University of the Ryukyus, Naha, Okinawa: Japan.

57. Evans, (1999), op. cit., p.34.

58. Lukes, S. (1986), *Power,* Oxford: Blackwell.

59. Donnelly, (1986), op. cit.; Montgomery, (1999), op. cit.; Onuf and Peterson, (1983), op. cit.; Ruggie, (1983), op. cit.

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65. ibid. p.186.

66. Young, (1980), op. cit.

67. Evans and Wilson, (1992), op. cit.

68. "Governance is not government – it is the framework of rules, institutions and practices that set limits on the behaviour of individuals, organizations and companies...Intergovernmental policy-making in today's global economy is in the hands of the major industrial powers and the international institutions they control – the World Bank, the International Monetary Fund, the Bank for International Settlements." United Nations Development Programme (1999), *Globalization With a Human Face: United Nations Development Programme Report 1999,* Oxford: Oxford University Press, p.34; see also Kratochwil, F. and Ruggie, J. (1986), "International

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69. Krasner, (1982), op. cit., p.187.

70. Keeley, (1990), op. cit., p.84.

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76. Chatterjee, P. and Finger, M. (1994), *The Earth Brokers: Power Politics and World Development,* London: Routledge.

77. Evans, T. and Hancock, J. (1998), "Doing Something Without Doing Anything: International Human Rights Law and the Challenge of Globalisation," *International Journal of Human Rights,* 2:3, p.19.

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79. Evans and Hancock, (1998), op. cit. p.1.

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CHAPTER 3

An Alternative Theoretical Approach

3.1 Introduction

As the previous chapter notes, the world order has undergone massive transformations over the last twenty-five years. Power transitions have profoundly altered the relationship between the state and non-state actors and the emergence of an 'internationalised' state and global economy, combined with an increase in the power and scope of non-state actors has been central to the process of globalisation. A central feature of the global order is the growing structural power of capital relative to states and the growing strength and acceptance of neo-liberal values seen in the practices and policies of key social institutions.[1]

New patterns of global governance have emerged from these economic and political changes and the issues of trade and human rights have come to the centre of the global political agenda. This research intends to consider the relationship between trade and human rights in the current period of globalisation in order to question why increasing optimism over human rights has not been met with real improvements in securing universal human rights. One way to approach this problem is to assess whether the structures of the global order may act to prevent the realisation of human rights and to question why this negative relationship is continually overlooked. Chapter Two has shown that traditional international relations theories fail to provide an account of how the global order may impact upon the relationship between trade and human rights. This failure stems from the adoption of a problem-solving framework that deals with issues in isolation from one another and is only concerned with "specific reforms aimed at the maintenance of existing structures."[2] By contrast, this chapter will discuss whether a theoretical framework based on critical theory combined with a revised account of Gramsci's work on hegemony can accommodate an analysis of the relationship between trade and human rights.[3]

This chapter will draw upon the work of critical theorists who have developed an alternative theory of international relations,[4] paying particular attention to the works of Robert Cox.[5] The theoretical framework outlined in this chapter will inform the research undertaken in the remainder of this study. The chapter will begin by

reviewing the aspects of a critical theory framework that are relevant for this research. The alternative view of hegemony proposed by Antonio Gramsci and developed by Cox will then be outlined, as this framework will inform the focus of Chapter Four, which is concerned with how the relationship between trade and human rights may be affected by recent changes in world order and the displacement of American-led hegemony by a hegemony underpinned by the values of a transnational capitalist elite. Aspects of change that are central to the onset of globalisation, including the emergence of a globalised economy, the internationalisation of the state and the changing role and power of non-state actors will also be assessed later in this chapter.

3.2 Critical Theory and International Relations

As previously noted, neo-realism, liberal-pluralism and regime theory have all failed to accommodate an understanding of the relationship between trade and human rights. This demands the adoption of a more appropriate theoretical framework for use in this thesis. This research will draw primarily on the work of Robert Cox with specific reference to his 1981 article, "Social Forces, States and World Orders."[6] This article provides the basic premise of Cox's critical theory approach to international relations, but references will be also be drawn from his subsequent work on the impact of globalisation on world politics and from other scholars pursuing a broadly critical agenda.

Cox bases his challenge to the problem-solving aspect of traditional international relations theory on five main characteristics of critical theory. Firstly, critical theory provides an alternative to traditional international relations approaches because "it stands apart from the prevailing order of the world and asks how that order came about."[7] Rather than taking the existing order as given, critical theorists are concerned with the potential for change in world order and have sought to provide an explanation for the transition from an international political order to a globalised order by identifying the configuration of economic, social and political forces that underpin such power transitions.[8] For critical theorists, whilst the state and international organisations have traditionally played the central role in creating and enforcing the rules of the international economy, it is powerful non-state actors operating transnationally that have been instrumental in bringing about the transition

to a globalised order. Indeed, during this period new configurations of power have seen the state's ability to protect its national economy from the negative effects of globalisation diminish, so that for Cox,

> globalisation began to be represented as a finality, as the logical and inevitable culmination of the powerful tendencies of the market at work. The dominance of economic forces was regarded as both necessary and beneficial. States and the interstate system would serve mainly to ensure the working of market logic.[9]

Similarly, for Gill "the operation of the neoliberal myth of progress in market civilisation is intended implicitly to engender a fatalism that denies the construction of alternatives to the prevailing order, and thus negates the idea that history is made by collective human action."[10] The critical theory approach developed by Cox draws instead on a historical materialist tradition that rejects the idea of globalisation as the 'end of history'[11] so that the globalised world order is not seen as a 'natural endpoint', but is instead subject to tensions between economic, social and political forces that may generate alternative configurations of power in the future.[12] From a critical theory perspective world orders are seen as a continuous process of historic transformation emerging from particular configurations of power relations. Critical theory also focuses on the process of change rather than on achieving any particular outcome, so that for Cox,

> [c]ritical understanding focuses on the process of change rather than on its ends...Once a historical movement gets under way, it is shaped by the material possibilities of the society in which it arises and by resistance to its course as much as by the (invariably diverse) goals of its supporters.[13]

Critical theorists suggest that transitions in the configuration of power relations allow alternative issues to become salient during different historic periods so that military concerns are sometimes subordinated to more pressing issues on the global agenda.[14] This has meant that in the current period the emergence of a globalised order has enabled trade and human rights as well as environmental concerns and human development to rise to the top of the political agenda.[15] Therefore, by suggesting that power relations determine the dominant norms and values of a world order and impact upon global political agenda setting, a critical

theory framework can accommodate an understanding of the relationship between trade and human rights that does not assume a positive outcome.

Secondly, critical theory rejects traditional ideas that view the state as a monolithic unit. Instead, Cox suggests that the state and civil-society constantly interact with one another to form a state-society complex, challenging the neo-realist position that the state can act as a unitary authority with a clear conception of the national interest.[16] Instead, whilst domestic interests may not be the only determinant of a state's economic policy, the underlying "identities, interests, and power of individuals and groups (both inside and outside the state apparatus), constantly pressure the central decision-makers to pursue policies consistent with their preferences."[17] In this way, the concept of state-society complexes seeks to highlight the impact of domestic actors on the state and on global politics and offers an opportunity to explain how USA-based hegemony, built on the strength of American capital and powerful corporate groups within the USA, formed the basis of a world order concerned primarily with the promotion of neo-liberal values.

Thirdly, critical theory seeks to understand the social, economic and political context in which issues are 'managed'. Critical theory is concerned with the interaction between the structures of world order so that issues are seen as part of a whole, and are not dealt with in isolation from one another, or in isolation from broader configurations of power.[18] By rejecting neo-realist and liberal-pluralist approaches that de-politicise issues such as trade and human rights, critical theory provides a framework that seeks to understand how common thinking regarding such issues may be one aspect of a broader political agenda concerned with the universal promotion of neo-liberal values. Similarly, critical theory seeks to understand how the wider socio-economic and political context impacts upon the relationship between trade and human rights, allowing challenges to the positive correlation to be considered.

Fourthly, whilst problem-solving theories are predicated on the assumption that the structures of world order are neutral, critical theory rejects this understanding. Instead, critical theory seeks to analyse the power relations underpinning global structures to determine the interests they serve.[19] The concern for critical theorists is that viewing the structures of world order as 'given' reduces politics to questions of "who gets what, when and how but not *why*."[20] Thus, "the purpose of critical theory is to isolate and critique those rationalisations of society which are advanced as self-

evident truths, but which may be ideological mystifications."[21] In contrast to neo-realism and liberal-pluralism that view the world order as the given context for action, critical theory seeks to expose the ideological and political bias upon which the structures of world order are built. A critical theory framework therefore offers the opportunity to challenge claims that trade and human rights share a positive relationship by suggesting that this linkage is of primary benefit for the interests of transnational capital. As Stammers asserts, "because power and power relations are a key aspect of, and embedded in, social relations – ideas and practices with respect to human rights can only be understood once their relation to particular forms and dimensions of power is fully grasped."[22]

Finally, critical theory rejects the assumption that problem-solving approaches are value-free because they take the world order as given.[23] Instead, by failing to question aspects of the existing order, problem-solving approaches seek solutions that do not disturb the structures of world order and reinforce the legitimacy of existing configurations of power. Indeed, liberal-pluralism and regime theory both focus their research on international institutions and organisations despite claims that,

> rules and constitutional mandates are being redesigned to sustain neoliberal arrangements so as, for example, to give greater veto power to the minority interests of capital and to make certain kinds of political change in the future more difficult. Innovations in constitutional provisions mean new constraints that circumscribe the maneuvering room of (future) politicians to manipulate monetary and fiscal policy or trade protectionism to provide social protection from world market forces.[24]

Problem-solving approaches can be seen to legitimise the neo-liberal orthodoxy in the current period so that prioritising trade and economic growth over social concerns has become the broadly accepted wisdom.[25] Indeed, Gill argues that the dominance of neo-liberal values "accords the pursuit of profit something akin to the status of the quest for the holy grail...Deviation from [neo-liberal] orthodoxy is viewed as a sign of either madness or heresy, a view which acts to disarm criticism and to subvert the development of alternatives."[26] Through an understanding of historical change and an acceptance that the structures of world order are subject to political and ideological struggles, critical theory sees the possibility of developing alternatives to a global order based on neo-liberalism. As Cox asserts,

> [c]ritical theory allows for a normative choice in favour of a social and political order different from the prevailing order, but it limits the range of choice to alternative orders which are feasible transformations of the existing world.[27]

To inform a critical theory analysis incorporating change and an assessment of power relations, Cox suggests that particular economic and political complexes form 'historical structures' through the interaction between social forces, forms of state and world orders.[28] The power transitions that generate change within historic structures occur through the interaction between social forces, which can be identified as *ideas, material capabilities, and institutions.*[29] Cox identifies two broad types of *ideas.* Firstly, 'intersubjective meanings' are collectively shared ideas regarding the nature of social relations. These ideas maintain broad acceptance over long periods of time and their acceptance perpetuates certain practices and certain expectations of behaviour.[30] Cox suggests that the organisation of people into territorially defined states, the idea of state sovereignty, and the acceptance of diplomatic relations between states, provides an example of an intersubjective meaning. Secondly, 'collective images' are ideas held by different social groups regarding the legitimacy of power relations or ideas regarding social welfare. Collective images differ from intersubjective meanings because they are not shared universally but are contested by rival groups, which compete to see their views gain broad acceptance. This competition has the capacity to challenge the dominant wisdom of a particular period so that for Cox, "the clash of rival collective images provides evidence of the potential for alternative paths of development."[31]

Cox's concept of ideas is important because it informs an understanding of the transition from an international world order to a globalised order in the post-Cold War period. The social forces underpinning the move to a global order drew on the intersubjective meaning of capitalist accumulation and the benefit of steady economic growth and development. However, the transnational capitalist class that began to emerge in the latter part of the twentieth-century challenged the collective image of state-led economies and protected international markets in favour of a global economy based on the creation of a deregulated, globally integrated free market outside the control of the nation state.[32] Indeed, as Murphy asserts, "[t]he social forces and political arrangements associated with what John Ruggie called

'embedded liberalism' were progressively undermined by the growing extension, resources, and power of internationally mobile forces."[33]

The consequence of challenges to the collective image of 'embedded liberalism' has been the emergence of new collective images based on neo-liberal values, which underpin the process of economic, cultural, and technical globalisation, the emergence of an 'internationalised' state and increasing ability for non-state actors to operate outside of political controls. This research will draw on the concept of ideas suggested by Cox, so that the ideology of neo-liberalism can be understood as a collective image that persists in the current period because it has been broadly incorporated into the policies and actions of powerful groups including governments, officials of international organisations and business leaders.

The notion of collective images can also be used to explain competing proposals for the best way to realise universal human rights. As the introduction noted, the persistent collective image based on neo-liberalism, views the promotion of trade combined with an international legal framework as the best means of securing human rights. However, critics of this view suggest that human rights violations are occurring increasingly as a consequence of patterns of development, underpinned by the intersubjective meaning of capital accumulation and economic development and the dominant collective images of neo-liberalism.[34] Indeed, such critics claim that the realisation of human rights cannot be sought from institutions and structures that are themselves the cause of human rights violations. Nor can a human rights regime based on state-centric enforcement measures guarantee protection for human rights in the period of globalisation because of the diminished power of states relative to non-state actors.

For Cox, *material capabilities* are necessary to promote desired outcomes and ensure the maintenance and extension of collective images.[35] A dominant group therefore requires the economic wealth or military strength to support the regimes underpinning collective images. In the post-War period, the USA utilised its material capabilities to promote a version of human rights that prioritises civil and political rights over economic, social and cultural rights. As the evidence presented later in this chapter demonstrates, this has enabled the expansion of a collective image of economic and social development that supports the interests of global private capital at the expense of economic and social rights for the poor, group rights for indigenous communities and labour rights for workers.

Cox also identifies the importance of *institutions* as a means of expressing intersubjective meanings and transmitting collective images since institutions reflect prevailing configurations of power and "encourage collective images consistent with these power relations"[36] primarily through the creation of international organisations. International organisations are seen to reflect and reproduce the values of the dominant order in several ways. Firstly, since international organisations emerge in a particular historical period, they reflect the values of the dominant groups of the time and promote these as 'common sense'.[37] Secondly, international organisations promote the legitimacy of practices that serve the interests of dominant groups and deflect criticism from groups opposed to such practices. Thirdly, dominant collective images are widely diffused through the policies and actions of international organisations so that they become broadly accepted across the globe. Fourthly, international organisations absorb or deflect challenges to dominant collective images so as to strengthen and maintain the existing order. To illustrate the acceptance of the collective image of neo-liberalism within international organisations, Barber Conable, President of the World Bank in 1990 asserts,

> if I were to characterise the past decade, the most remarkable thing was the generation of a global consensus that market forces and economic efficiency were the best way to achieve the kind of growth which is the best antidote to poverty.[38]

The interaction between social forces, forms of state and world orders creates particular historic structures which determine the social, political and economic context within which global politics takes place. Each aspect is linked to the others so that change in one element will affect the other aspects, transforming the overall historical structure. As Cox asserts,

> ideas and material conditions are always bound together, mutually influencing one another, and not reducible one to the other. Ideas have to be understood in relation to material circumstances. Material circumstances include both the social relations and the physical means of production. Superstructures of ideology and political organisation shape the development of both aspects of production and are shaped by them.[39]

By drawing on this analysis, the transformation of power relations that ushered in the period of globalisation can be seen to have begun with the

development of new production processes by private corporations (social forces) as a result of declining profits in industrial states. These changes saw Transnational Corporations (TNCs) seek out new investment opportunities where labour costs were cheaper so that manufacturing operations became fragmented.[40] These new processes profoundly altered the relationship between the state and capital since capital now had the freedom to move location with little regard for the state. This period saw a decline in corporatist policies and an increasing number of industrial relations disputes. Strikes in the 1970s and 1980s also led to sharp increases in wages in some industries, causing larger corporations to seek alternative production sites and enabling private companies to extract themselves from the control of governmental policies.[41] The state no longer initiated economic and trade policy, but began to adjust the national economy to create conditions favourable for the interests of capital, over time becoming 'internationalised' (forms of state). The ascendance of ideas of individualism and anti-trade unionism led to a weakening of the labour force during this period and together these factors brought about a shift in world order which saw a decline in American hegemony, the global expansion of transnationalism and the emergence of a global economic free market based on the ideology of neo-liberalism (world orders).

In his more recent work, Cox has focused on transitions of power between states and non-state actors, paying particular attention to the social and political impact of new production processes and the global economy.[42] Cox asserts that there are three central processes of globalisation: the emergence of a global economy, the internationalisation of the state, and a transition in world order from an international order underpinned by American leadership to a global order based on the interests of a transnational capitalist elite. These power transitions will be looked at in more detail later in this chapter.

3.3 Hegemony and Human Rights

To understand processes of change in world order, Cox draws on a conception of hegemony originally developed by Antonio Gramsci, which challenges the traditional ideas of hegemonic power and hegemonic stability theory emerging from neo-realism and liberal-pluralism. In these traditional approaches, hegemony is seen

to occur when a state with large material resources is willing to dominate the international system and use the threat of military force to coerce subordinate states to comply. By contrast, Cox asserts that hegemony results from a combination of coercion by dominant groups and consent generated by social forces that share the values and goals of the hegemon. The hegemon must be willing to "make concessions that will secure the weak's acquiescence...and...express this leadership in terms of universal or general interests, rather than just serving their own particular interests."[43]

The collective images promoted by dominant social forces legitimise a singular vision of how social, economic, and political life should be organised. Although coercion remains important for the hegemon to maintain its superior position, a consensual order binds subordinate groups to the hegemon, so that the interests of the hegemon become universally accepted.[44] Indeed for Cox, "these institutions and ideologies will be universal in form. i.e., they will not appear as those of a particular class, and will give some satisfaction to the subordinate groups while not undermining the leadership or vital interests of the hegemonic class."[45] These two aspects of the exercise of hegemony can be seen as "*externally* influencing behaviour and choice through rewards and punishment and *internally* shaping beliefs, opinions and values that reflect prevailing interests."[46] Hegemony can therefore be sustained through the creation and maintenance of a broadly accepted order with a "common social-moral language [that informs] with its spirit all forms of thought and behaviour."[47] As Deudney and Ikenberry assert "[t]he expansion of capitalism that free trade stimulates tends to alter the preferences and character of other states in a liberal and democratic direction, thus producing a more strategically and politically hospitable system."[48] By generating consensus for the hegemon's values, the threat of force can also be marginalised, and coercion used merely as a 'latent' tool that need only be used in 'deviant cases'.[49]

The importance of Cox's understanding of hegemony is that whilst the interaction of social forces, forms of state and world orders may serve to sustain the hegemonic order, these interactions also have the capacity to challenge the hegemon's position. Indeed, in the post-Cold War period much international relations literature has been concerned with the crisis of post-War American hegemony and the emergence in its place,[50] of a globalised hegemonic order based on the ideology and values of a transnational elite. These transitions in power relations challenge traditional assumptions of a state-based hegemony so that the dominant social force

may be comprised of "a state, or a group of states, or some combination of a state and private power."[51] Indeed, for many critical theorists the period of globalisation has been characterised by the dominance of a transnational capitalist elite comprised of non-state actors combined with the recognition and support of powerful industrialised states.[52] This dominant group has sought to promote the values of neo-liberalism through the institutions under its control so that the World Bank, International Monetary Fund (IMF) and World Trade Organization (WTO) have been central in the promotion of laissez-faire economics, the rolling back of the state, the deregulation of finance and the creation of free trade zones. Therefore as Gill asserts, "[a]lthough the governance of market civilisation is framed by the discourse of globalising neoliberalism and expressed through the interaction of free enterprise and the state, its coordination is achieved through a combination of market discipline and the direct application of political power."[53] For critical theorists then, USA-based hegemony has been replaced by a hegemony of neo-liberal values emanating from a transnational capitalist elite underpinned by the increasing power of internationally mobile capital.[54]

However, the USA has not become a marginal actor in the global order and it is too early to announce the end of American hegemony. Since the transnational capitalist elite emerged primarily from powerful business groups in the USA, the ideological agenda of dominant social forces remains congruent with the American conception of liberalism and the 'American way'. Indeed, by drawing on Gramsci, Cox notes that "a world hegemony is...an outward expansion of the internal (national) hegemony established by a dominant social class,"[55] so that although the transnational elite operates beyond the control of the USA "there is no basic inconsistency between the progress of multinational corporations and the national interest of the United States."[56] Similarly, international institutions and organisations that play a central role in encouraging the process of globalisation, in particular the WTO, adhere to neo-liberal principles that support the interests of the American capitalist class. Gill also claims that the USA has continued to use its military dominance to destabilise regimes that reject neo-liberal orthodoxy, emphasising America's continuing centrality in the neo-liberal project.[57]

While claims that the state is in terminal decline as a result of recent changes in the global order may be rejected, the perceived harmony between the interests of governments and the emerging hegemonic social force of global capital has led some

scholars to claim that the state has become 'internationalised'.[58] In this view, the state acts to consolidate links between domestic and international politics[59] acting as a buffer "between external economic forces and the domestic economy" and "adapting domestic economies to the exigencies of the global economy."[60] In this way the state has become an administrative unit for the interests of global capital, legitimising and promoting the collective images of neo-liberalism as the 'common sense' view of the world.

The concept of 'common sense' is central to understanding hegemony through consensus formation since it is important that both the hegemon and subordinate groups perceive their interests and values to be broadly convergent. In the current period, the principles of neo-liberalism have assumed the status of 'common sense', gaining broad support for the creation of a global free market for goods and services, global deregulation of trade and finance, and acceptance of the primacy of the individual as a rational economic actor. The transmission of these values occurs both globally through international organisations and nationally through governments and domestic organisations, which disperse these values as widely as possible.[61] The idea of 'common sense' is important for this research because it explains how the positive correlation between trade and human rights has become accepted wisdom despite the vast body of evidence that negates this view. The concept of 'common sense' can also provide insight into the post-War ascendance of a view of human rights that promotes civil and political rights over economic, social and cultural rights despite their formal parity in the Universal Declaration of Human Rights (UDHR).

Both sides in the competing discourse between neo-liberalism and counter-hegemonic movements have adopted the idea of human rights for their own use. In this way, the concept of human rights has been utilised by dominant social forces to uphold norms and values that support their own interests but has also become a subversive idea designed to challenge dominant power relations. As Stammers asserts, "conceptions of human rights have both challenged and sustained particular forms of power"[62] so that the language of human rights has come to represent both emancipatory and oppressive goals.[63] However, instead of offering a means of protection for the poor and vulnerable, the idea of human rights has been of major importance in generating consensus, both during the period of post-War hegemony characterised by a broadly liberal world-view, and for gaining broad acceptance of the neo-liberal values underpinning the globalised world order. As Evans asserts, "the

emphasis on individualism and limited government, which civil and political freedoms support, has seen the rich accumulate an even greater share of wealth and resources and offered a justification for withdrawing welfare and social entitlements from the poor."[64]

By accepting that the idea of human rights may be used as a tool by the hegemonic group for legitimising its own values and preventing challenges to prevailing power relations, an explanation of why the central position afforded to human rights on the global political agenda has not been met by genuine progress becomes apparent. The post-War project to position human rights at the centre of global politics has generated increasing volumes of international human rights legislation, including the UDHR, which has become the most widely accepted statement of the rights afforded to all humanity. However, a large disparity remains between the increasing volume of international human rights legislation and the actual safeguarding of human rights and dignified standards of living for the majority of the world's people(s). Despite the intentions set out in the UDHR, the genuine realisation of universal human rights has not in fact materialised and may in part be due to the heavy reliance on legal, technical and philosophical reasoning in discussions regarding human rights.[65]

The neo-liberal consensus has been keen to place the solution to human rights violations on international law and methods of implementation. This has led to a commonly held view that human rights are an 'a-political' issue, no longer a subject for global political wrangling, but instead a matter for international lawyers and the international organisations charged with implementing and enforcing human rights legislation. By sustaining this view, human rights improvements are assumed to be possible using legal and technical remedies so that progress in human rights continues to be measured primarily "by a detailed examination of international law and formal methods of implementation."[66] However, progress in international human rights legislation and enforcement measures has not been equalled by a reduction in reported human rights violations around the world.

Drawing on the analysis of liberal-pluralism presented in Chapter Two, the approach to human rights outlined above can be seen to follow a broadly neo-liberal agenda whereby considerations of power and interests are separated from legal and technical solutions. In this view, political aspects of the human rights debate are systematically ignored and if power and human rights are linked, the focus is placed

on state-centric issues of power such as the principles of sovereignty and non-intervention. This view of human rights has increased the legitimacy of neo-liberal values since it "denies the possibility of any further social or political dynamism, and confines the 'political' to disagreements *within* the dominant world order."[67] Indeed, any suggestion that the delivery of universal human rights was used to legitimise the creation of a liberalised global market is dismissed out of hand in the dominant discourse on human rights. As well as issues of power and influence remaining largely absent from the human rights debate, the role of human rights in the post-War period is also rarely considered in the traditional international relations literature. However, a critical theory approach to power and hegemony suggests a broader range of questions that may be addressed. For example, Evans suggests considering "which groups benefit from the dominant idea of rights? What exclusionary practices are sustained by the dominant idea of human rights? What role does the dominant idea of human rights play in processes of legitimation?"[68] To consider these questions it is useful to return to the work of Neil Stammers, whose work outlines the historical precedents that underpin current human rights thinking.[69]

Stammers rejects the idea that human rights are a neutral concept, asserting instead that both the idea and definition of human rights are the result of social and political construction, since "ideas and practices concerning human rights are *created* by people in particular historical, social, and economic circumstances."[70] Thus, for example, in the period following both the French and American revolutions the newly emerging bourgeois classes in these countries sought to promote a new social and political order and with it a new understanding of human rights, based not on the divine right of kings and duty to the monarchy but on the sovereignty of the people and the rights of the individual citizen held against the state. The bourgeois classes justified these newly emerging rights by promoting the idea of individual empowerment against persecutions and injustices inflicted upon citizens by the crown. In this way, rights that had been constructed by a newly emerging elite in the post-revolutionary period came to be understood by the general populace as the natural means through which freedom from the oppressive rule of the monarchy could be achieved.

Stammers goes on to suggest that because natural rights theory in post-revolutionary France and America emerged as a product of social construction, the modern idea of human rights must also have been borne out of a desire to establish

and maintain moral justifications that legitimise dominant interests. If natural rights are couched in the language of emancipation and promoted as "a moral imperative in the interests of all citizens,"[71] this disguises the bourgeoisie's desire to create a separation between the private (economics) and the public (politics). Such a separation is designed to support the free ownership and disposal of property and is of primary benefit to those with existing property who make up the bourgeois class.[72] In this way, natural rights theory "provided the 'moral high ground' that justified overturning the old order while simultaneously legitimating the interests of the dominant group in the new."[73] By relating this view of human rights to a Gramscian understanding of hegemony, the concept of human rights may be seen as a tool for legitimising a social and political order that primarily supports the values of an elite group. The idea of human rights may therefore also be used to justify exclusionary practices that deny access to groups that challenge dominant social forces or fail to concede to the dominant group's demands.

3.4 Human Rights and American Hegemony

The relationship between human rights and power in the post-War period differs little from the historical example outlined above as the post-War period saw the idea of human rights rise to international prominence and become a "fact of the world."[74] During this period the international human rights legal system also began to produce increasing volumes of human rights legislation and research into enforcement procedures. The USA was at the centre of the newly emerging human rights regime, yet was subject not only to the benefits of the regime but also to its constraints. However, theories of hegemony at that time failed to account for the USA's involvement in the human rights project because in these accounts a hegemon would not bring into being a regime that undermines its own state sovereignty. Instead, the role played by the USA in creating a universal human rights regime can be better explained by a conception of hegemony that sees consensus building as a means of achieving "legitimacy in the exercise of power and leadership."[75]

By understanding that consensus formation is central to achieving hegemony, reasons for America's initial involvement in the creation of a universal human rights regime can be understood. However, the post-War shift in the USA's policy from one

of isolationism towards increasing international interdependence must first be explained. Emerging from World War Two with a strong economy and expanding manufacturing base, the USA was alone in exhibiting high levels of productivity growth.[76] With the USA the only state capable of taking on the role of hegemon during this time, the developing post-War order was heavily influenced by the need to ensure safe and reliable foreign markets for American products, both for increased international economic growth and to prevent over-production, recession and a return to economic depression and political uncertainty at home.[77] Unable to achieve this goal whilst retaining an isolationist stance, the USA sought to open up markets around the world through increased international trade and closer economic interdependence. Drawing on Gramsci, Augelli and Murphy assert, "it is precisely this essential role in the world of production that first confers prestige on a leading social group and makes its dominant social and political role acceptable to others."[78] However, in order to achieve a broad consensus over its trade and economic policies, the USA needed to provide a 'common social-moral language' to convince subordinate states that interdependence would bring benefits to all members of the international community.[79] To this end, the USA viewed the project to deliver universal human rights as an ideal way to add moral legitimacy to the broader goals of trade expansion and economic interdependence.[80]

The idea of human rights promoted by the USA was synonymous with expressions of individualism, personal freedom and *laissez-faire* economics favoured by the American citizenry. The worldwide promotion of such American values during the formative years of the UDHR was believed to be necessary for ensuring continued public support for the policy within the USA.[81] At the same time, the promotion of individualism and property ownership through the rights set out in the UDHR benefitted the goals of the USA's trade policy in the same way as the French and American property owners had benefitted 200 years earlier. As Vincent asserts,

> [t]he insistence...on the right of everyone to own property, looks after the interests, not of everyone, but only of property-owners [especially] if the ownership of property in any society is uneven.[82]

The USA sought to gain a broadly international support base for those civil and political rights associated with individualism and economic freedom so that the universal project of human rights converged with those rights that already formed the

basis of the American Constitution.[83] In this way, the concept of human rights came to "fulfil the function of an ideological mask at home and a form of cultural imperialism abroad."[84] The promotion of a particularly 'American' view of human rights can therefore be seen as "part of a strategy intended to extend US sphere of influence over a much wider area, including gaining access to world markets."[85] However, because the creation of the UDHR would demand constraints not only on states that the hegemon wished to open up but also on the hegemon itself, the promotion of an understanding of human rights that differed little from the hegemon's existing national legislation was vitally important.

In the formative stages of drafting the UDHR, the USA began to lose support for the universal human rights policy at home. Subordinate states also claimed that the USA was more interested in claiming the moral high-ground than with the ensuring the genuine realisation of universal human rights. These accusations came primarily from socialist states and a support group of Less Developed Countries (LDCs) that rejected the liberal, individualist conception of rights promoted by the USA in favour of collective rights, economic rights and social rights.[86] Concerned less with the ownership of property than with worker's rights and the provision of basic needs such as food, clean water and jobs, these states pushed for a vision of human rights that looked to the future and did not rely on the values expressed in the historical Constitutions of France and America.

The USA became concerned that the goals of international trade liberalisation and access to global markets by American corporations might be threatened by the inclusion of economic, social and cultural rights within the package of universal human rights. Indeed, for conservative America, the demand to give equal weight to economic and social rights within the International Covenants was merely a "manifestation of efforts by Soviet and other Eastern European states to promote the virtues of communism" and undermine democracy and capitalism.[87] So began the use of human rights in the ideological struggle between the USA, the eastern bloc states and the LDCs of the south. The Cold War saw an escalation of the rivalry between these contending conceptions of human rights, and the challenge provided by the socialist states made it more difficult for the USA to promote its own version of human rights and support American interests abroad.

However, the post-Cold War period has brought an end to the overt ideological struggle between East and West and a period of globalisation dominated

by neo-liberal ideology has followed. During this period the USA has been instrumental in the promotion of a liberal conception of human rights that prioritises civil and political rights over economic, social and cultural rights in order to maintain the expansion of global capital and support the interests of the American capitalist class.[88] For the transnational capitalist elite, human rights have taken on a dual function. Firstly, the promotion of universal human rights can provide a useful distraction from the more controversial goals of globalisation so that increased trade and the spread of capital-flows are seen as a means through which human rights can be realised. In this view, trade has a 'civilising' role and maintaining trade-relations raises human rights standards and justifies the economic imperatives of globalisation.[89] The global elite is also keen to acknowledge that whilst there are transition costs for those living in states subject to marketisation processes, these costs are a necessary trade-off between presently low human rights standards and the promise of improvements in the future through increased trade and economic growth.[90] This argument is convenient for the neo-liberal elite since it legitimises continuing with trade and investment practices despite their detrimental effects, as well as quelling demands for immediate improvements in human welfare.

Secondly, the promotion of a view of human rights that is congruent with the goals of globalisation can legitimise many actions and processes with negative human consequences because they do not directly violate international human rights legislation. For example, the deprivation of land, food and clean water that has accompanied the arrival of the oil industry in Ogoniland in Nigeria has not directly violated any legitimate claims upon human rights according to the view of rights promoted by the transnational elite.[91] Indeed, Evans asserts that the ratification of the International Covenant on Civil and Political Rights (ICCPR) by the USA "is little more than the formal legitimation of a set of rights that supports the interests associated with global economic growth and development."[92] Similarly, whilst the USA's ratification of the ICCPR was dependent upon the inclusion of so many derogations and reservations that it has become all but worthless,[93] the USA continues to refuse to ratify the International Covenant on Economic, Social and Cultural Rights (ICESCR) fearing the consequences for global capital of legitimising claims to adequate shelter, food and employment. This ensures that the imperatives of neo-liberalism, free markets, free trade and deregulation, remain paramount and are not hindered by alternative claims, including claims upon universal human rights.

3.5 Human Rights and Globalisation

The previous section has demonstrated how a critical theory approach combined with an alternative conception of hegemony may explain how change occurs in the international system and can be applied to the transition in world order from USA-based hegemony to a globalised world order based on the ideological hegemony of neo-liberal values. Prior to the period of globalisation the two opposing collective images of Socialism and embedded-liberalism had competed for supremacy but the project to deliver worldwide Socialism failed to gain broad acceptance.[94] Instead, the post-War period was characterised by a general consensus that improvements in human welfare would be generated by increased economic growth regulated by government intervention in the national economy, an internationally managed trade regime in the form of the General Agreement on Tariffs and Trade (GATT) and the provision of state welfare to those most vulnerable to market economics.[95] These ideas formed the basis of the Bretton Woods institutions and were supported and promoted through the leadership of the USA.

However, changes to this order began in the 1970s when management of the international economy began to move out of the institutions of Bretton Woods and increasingly into the hands of private corporations, banks and investors.[96] These emergent groups had become increasingly wealthy during this period and began to internationalise both manufacturing and service operations, creating a globalised market for goods, services, finance and investments. The authors of this newly globalised order rejected the values of embedded-liberalism in favour of neo-liberal goals including deregulated finance and investment, free trade, and an end to the destabilising influence of welfare provision. The global order that emerged was therefore concerned with the promotion of the interests of capital over those of social welfare and human development and was part of a "strategy of global economic rollback unleashed by Northern political and corporate elites to consolidate corporate hegemony in the home economy and shore up the North's domination of the international economy."[97] However, the power of capital relative to the state also continued to grow during this period, restricting the ability of individual governments to manage the national economy in order to protect citizens from global economic trends. Indeed, the growth in power of transnational capital to reconstitute certain ideas, interests and forms of state is central to the process of globalisation. As Gill

asserts, "in this liberal view of the world, economic forces are represented as having potentially planetary reach and are akin to forces of nature; they are represented as beyond or above politics and form the basic structures of an interdependent world."[98] Therefore, it is now no longer feasible or acceptable for governments to restrict markets or investments, and governments are now increasingly prioritising the needs of capital over the welfare of their populations.[99]

Three processes are central to the move from USA-based hegemony to a globalised world order underpinned by neo-liberalism. Firstly, a globalised economy operating outside of the managed international economy has emerged as a result of the increased number, size and scope of transnational financial actors.[100] Trade has been central to this process, with TNCs developing production techniques and technologies that removed the need for a national base for many industries. Instead, TNCs often choose where to base their manufacturing or service centres according to the financial benefits of a location, or choose to contract out work to whoever can provide manufactured components or services for the most competitive prices.[101] Most recently, evidence can be seen for this in the case of banking firms Lloyds TSB and Barclays who have chosen to relocate many call-centre jobs from the UK to Indian service centres with the loss of over 8000 jobs in the UK.[102] Contracting out has also been popular with manufacturers as overheads are cheap and the factory owners are liable to incur many of the day-to-day running costs.[103] The allegiance to a particular locality that existed as part of the international economy no longer exists for many TNCs. However, the economic benefits to the TNC often fail to recognise the human impact of the ever-cheaper labour costs required to maintain competitive pricing.

Trade has also been central to the growth of the global economy by stimulating wealth creation and the need for capital investments. However, trade patterns have also become increasingly globalised since the 1970s with around 40 per cent of trade occurring within TNCs and between their subsidiaries.[104] Because these transactions occur between units of the same corporation they are not subject to the rules of trade management outlined in the GATT/WTO and therefore occur beyond the control of international organisations. This has led to dual systems of trade existing in the globalised economy, the 'managed' trade regime that operates through formal rules and procedures under the supervision of the GATT/WTO and the free trade regime operating informally, beyond the scope of international regulations.

The emergence of new forms of trade has had a profound effect on human welfare, human development and human rights since patterns of wealth and poverty have fundamentally changed during the period of globalisation. It is no longer possible to understand divisions of wealth in terms of first and third World, or even north and south, since both wealth and poverty cut across state boundaries and can no longer be territorially defined. Instead, it is useful to return to Cox's work and an understanding of 'core' and 'periphery' in terms of social rather than geographical access to centres of power.[105] In this view, a global elite with direct access to economic power through membership of key institutions continues to experience the greatest gains from the global economy, whilst the vulnerable remain at the periphery, excluded from the benefits of global wealth creation. Those at the periphery are also unable to protect themselves from the destructive capacity of the global economy and suffer disproportionately from human rights violations that occur as a result of trade practices. These include deprivations of water, food, shelter and medicines, loss of habitat and a means of subsistence and denials of basic worker's rights and a living wage.

The continued growth of the global economy has also been underpinned by the financial services industry that provides investment in the form of loans, insurance and share trading. The amounts involved are often vastly higher than the GDP of many states, and attracting Foreign Direct Investment (FDI) is dependent upon a government creating a 'favourable climate' for investors. Often this means reduced taxation, reduced regulations on environmental, health and safety standards and guaranteed wage caps. These policies may be attractive to investors but they often violate international human rights law as well as a state's national legislation. However, states are rarely in a position to reject foreign investment and the power of the financial services industry to determine a country's policies is bolstered by its global reach and lack of regulation. Decisions are therefore made beyond the control of any individual government and often lead to states competing against each other in a 'Dutch Auction' to provide the lowest possible restraints on financial activity.[106]

The second process that has underpinned change towards a globalised order is the internationalisation of the state. This new form of state developed from the demands of the global economy and a rejection of the consensus of post-War embedded liberalism that had provided job security, wage security, food security and military security for the population.[107] In contrast, the 'internationalised' state

develops policies that ensure capital is protected, increasingly by limiting the scope and power of union activity, reducing welfare payments to encourage an open market for wages, providing tax incentives that reduce operating costs and opening previously nationalised industries to private ownership and foreign inward investment. Despite governments being powerless to invoke policies that protect the national economy from global events, the state remains an important actor in global politics as governments are required to create and maintain the conditions that major global economic actors request. Indeed, to return to Panitch's assertion, states have now become "the authors of a regime that defines and guarantees, through international treaties and constitutional affect, the global and domestic rights of capital."[108] The state has thus become an administrative unit for advancing the interests of global capital.[109]

This new 'internationalised' role for the state has not occurred equally between all states and disparities between the concessions that rich and poor states must offer to attract inward investment differ widely. Poor countries and those that rely heavily on raw materials and unskilled labour are particularly influenced by the demands of transnational economic actors. Most developing countries are also required to meet the conditions set out in Structural Adjustment Programmes (SAPs) imposed by the World Bank and IMF, preventing governments from assisting the most vulnerable in society from the impact of free trade and the vagaries of the global market in commodities. Many such countries are also dependent on FDI in order to service their debts to both international and private banks, reducing these countries' ability to regulate the behaviour of TNCs. It is well documented that TNCs exploit the vulnerability of developing countries to gain concessions on worker's rights, health and safety, environmental regulation and taxation with little regard for the human welfare of the population.[110]

More importantly, the interference of global economic institutions in national economies has reduced the state's ability to provide welfare assistance that guaranteed at least minimum standards of human rights for their citizens. The United Nations Development Programme (UNDP) points to the human consequences of these processes by arguing,

> everywhere the imperative to liberalize has demanded a shrinking of state involvement in national life, producing a wave of privatisations of public enterprises and, generally, job cuts.

> And everywhere the opening of financial markets has limited governments' ability to run deficits – requiring them to slash health spending and food subsidies that benefit poor people.[111]

Similarly, Johnston and Button have argued that the removal of economic decision-making from the state and into the hands of 'multilateral lenders' and the WTO has prevented states from guaranteeing either civil and political, or economic and social rights for their own citizens.[112]

Whilst the ability to defend the national economy from global economics has been most severely eroded in the developing countries, the industrialised states including the USA, have also been affected. As the post-War order of embedded-liberalism gave way to a global order, the harmony of interests between American capital and global capital has been eroded. The ability of global capital to move freely between states has seen many industries leave the USA for more profitable regions. For example, in July 2003 American corporations moved 30,000 technology-sector jobs to India, drawn by the disparity in wages between the two countries.[113] Similarly, the North American Free Trade Association (NAFTA) agreement is also claimed to have had a negative impact on jobs in the USA, so that many manufacturing firms have taken advantage of NAFTA rules by moving production to the Maquiladora region of Mexico. In this way companies gain competitive advantage from cheap wages, lack of union organisation and the absence of health and safety and environmental regulations.[114] This has not only impacted on the American economy but has also affected workers in the USA. As Cavanagh asserts,

> [t]he lack of basic rights for workers in many developing countries is a powerful inducement for capital flight and overseas production by US industries...Labor repression in the developing world and erosion of labor standards in the United States are not unrelated. The two are linked through both economics and politics...Capital flight from the United States and labor repression in the Third World not only beat down American workers' wages and benefits, but also erode the enforcement of their basic rights to organize and bargain.[115]

However, global capital has not become entirely distinct from the most powerful states and trading regions. The USA, European Union and Association of South East Asian Nations (ASEAN) have retained a measure of power over the

global economy and continue to influence global economic decision-making. For this reason it may be more useful to adopt an understanding of hegemony in the current period as American-centred transnational dominance.[116]

The third aspect of transformation towards a globalised economy has been the changing role and function of international institutional structures during the process of globalisation. In order to achieve governance without a supranational government, members of the core elite form institutions that reflect and disseminate their common ideological perspective. Issues can then be 'managed' in a way that supports the values and norms of the hegemonic group. As part of the post-War order, international organisations were created to reproduce internationally the core values of embedded-liberalism emerging from the USA and the core elite of international capitalists, so that "[t]he international financial institutions – the International Monetary Fund and the World Bank – behaved as accessories to US policy."[117] However, transformations have also occurred within international organisations that have seen the focus of policy diverge from supporting American interests and move instead towards generating the conditions required for the free movement of global capital. As Ikenberry asserts,

> [t]he tenets of liberal multilateralism were several: trade and financial relations are best built around multilateral rather than bilateral or other partial arrangements; commercial relations are to be conducted primarily by private actors in markets; and states are to become involved in setting the domestic and international institutional framework for trade and financial relations, both participating in liberalizing international negotiations and facilitating domestic adjustment to international economic change.[118]

Central to these changes was the emergence of the WTO as a result of the Uruguay round of trade negotiations, which was initially charged with managing the increased volumes of trade and investment occurring beyond the scope of the international trade regime under the supervision of the GATT. However, dominant interests within the WTO ensured that its role became that of mediator between the transnational capitalist elite and the state to pave the way for the interests of global capital. By reflecting, legitimating and universalising the values of the neo-liberal elite, the WTO has been central to the creation of a global economy.

3.6 Human Rights and International Institutions

More than ever, the activities of international organisations such as the IMF and WTO, and private actors such as TNCs and privately owned banks impact upon the lives of individuals. Of particular relevance for this study is the increasing role of the WTO and international lending agencies in the creation of a new set of "rules for action."[119] Lack of accountability in global governance has become a major concern for those engaged in promoting human welfare and human rights, so that in 1999 the UNDP reported,

> new rules and institutions advance global markets. But there has been much less progress in strengthening rules and institutions to promote universal ethics and norms – especially human rights to promote human development and to empower poor people and poor countries.[120]

Although the state has remained central to international politics, international organisations have become increasingly responsive to the demands of global capital. The state's ability to make political decisions and economic policy has also been increasingly relinquished to transnational rule making. Indeed, Cox concludes that in the post-Cold War period the banks, International Financial Institutions (IFIs) and TNCs have become the "principal agents of globalization" and "states and the interstate system...serve mainly to ensure the working of market logic."[121] The transfer of rule making powers from the national level towards global economic institutions can be seen explicitly in the imposition of SAPs in developing states by the World Bank and IMF.

Tied up in ideas of development emerging from the neo-liberal consensus, SAPs are designed to ensure that governments can meet certain economic conditions before a loan is agreed. The international agencies responsible for SAPs thus gain control of the state's economy and spending proposals.[122] Cutbacks in social spending and privatisations are usually criteria for an agreed loan, and the impact of such cuts is usually felt most sharply by the most vulnerable within society.[123] To achieve the necessary conditions for foreign firms to invest and generate export earnings, support networks that guaranteed minimum levels of human rights are often dismantled. Thus, "human rights to food, education, work and social assistance" are often denied by the imposition of SAPs.[124] The promotion of SAPs has also been accompanied by

a "massive redistribution of financial resources from the South to the North."[125] Similarly, the promotion of a view of 'development' that is synonymous with economic growth and that has emerged from dominant power relations in the period of globalisation has also impacted negatively on human rights. Running concurrently with SAPs, many of the development projects negotiated by international organisations to attract foreign investment have been responsible for forcibly removing indigenous peoples from their land and depriving people of a means of providing themselves with food, water and shelter.[126] As Shue asserts, "[d]evelopment is not just providing people with adequate food, clothing, and shelter; many prisons do as much. Development is also people deciding what food, clothing and shelter are adequate, and how they are to be provided."[127]

By tying SAPs into the neo-liberal idea of development, human rights and economic growth are also promoted as though they are synonymous. In this way, neo-liberal values gain 'common sense' status and trade is suggested as the obvious means through which human rights can be secured. At the same time, the 'common sense' of the neo-liberal approach also serves to "conflate the interests of people with those of corporate and financial interests."[128] The 'internationalised' state remains involved in this process by ensuring that the national interest mirrors exactly the interests of global financial and corporate institutions.[129] In this way, neo-liberalism "falsifies perceptions of social relations, exalting individual autonomy while obfuscating the fact that in society wealth and power objectives are pursued by organised groups."[130] As the examples presented in the following chapter demonstrate, whilst the promise of improved lifestyles that often accompanies investment programmes may be true for the directors of TNCs and IFIs, such improvements rarely materialise for the population at large.[131]

The hegemony of values held by the transnational capitalist elite has had two important consequences for human rights. Firstly, the concept of human rights has been co-opted by neo-liberals to support the goals of the global free market. The USA, working in the interests of its large capitalist class has been instrumental in ensuring that only civil and political rights have been promoted at the global level. The realisation of economic, social and cultural rights is not seen as a legitimate goal for global economic institutions and international organisations. Instead, by promoting only civil and political rights as legitimate claims, the core ideas of neo-liberalism such as individual responsibility, the separation of politics and economics

and the right to own and dispose of property take precedence over claims to social justice and redistributive goals. The subordination of the rights set out in the ICESCR has also enabled private actors to continue with activities that pay little regard to economic, social and cultural demands. Deprivations associated with the activities of private investors and the practices of TNCs therefore continue to go unpunished.

Secondly, whilst the transnational elite has accepted only the narrowest conception of human rights as legitimate, the means through which to secure these rights has also been narrowed to the point that developing trade relations has become the 'common sense' method. The argument that trade 'civilises' continues to dominate despite strong links having been drawn between human rights abuses and modern trade practices. Similarly, whilst neo-liberals continue to assert that economic 'trickle-down' will contribute to improvements in human rights, this position tolerates current human rights violations because immediate claims for clean water, food and shelter, as well as freedom of expression and the right to form and join trade unions are subordinated to the future benefits that economic activity promises.[132] These ideas will be discussed in more depth in the following chapter.

This analysis is not designed to dismiss as irrelevant the overall concept of human rights, but to suggest that the understanding of human rights that currently dominates has acted as a barrier to the practical realisation of human rights for many of the world's people. At present, the changing power relations underpinning globalisation are undermining many of the institutions that currently exist to protect human rights. At the same time, the diminishing power of the state opens up national economies to the ravages of the global marketplace and makes citizens more vulnerable to external forces that the state can no longer control. The following chapter will provide several examples that demonstrate the reality of human rights in the current period. These examples will highlight the inconsistencies between claims that trade 'civilises' and the reality of an increase in trade-related human rights abuses in the period of globalisation.

3.7 Conclusion

By viewing change in world politics as an interaction between social forces, forms of state and world orders, critical theory provides a suitable framework within

which to understand the transition from post-War USA-based hegemony to a hegemony based on the ideology of neo-liberalism pursued by a transnational capitalist elite. Applying Cox's conception of consensus-based hegemony also allows for an understanding of the transnational dominance of neo-liberalism despite the negative effect it has had on state power.

The structure of a critical theory framework enables the relationship between trade and human rights to be viewed in one of two ways. Firstly, that a positive relationship does indeed exist and that increased trade and global economic activity both stimulate claims for human rights to be realised, and create the conditions within which such claims can be met. Secondly, that the relationship between trade and human rights has in fact led to new patterns of human rights violations that can be traced to the operating procedures of transnational economic actors and the policies pursued by global financial institutions. The remainder of this thesis will concentrate on these two positions in order to determine the complexities of the relationship between trade and human rights.

The emergence of a global economy, the internationalisation of the state and the new role for international institutions are at the core of the globalised order. These changes are important in an analysis of the relationship between trade and human rights since neo-liberals suggest that states can trade their way out of poverty and underdevelopment to create a society in which human rights can be realised. Power transitions in the period of globalisation are also relevant to a discussion concerning human rights because the diminishing power of the state has implications for the protection of human rights. The globalisation of international institutions has also tied the idea of human rights into the neo-liberal project and has meant that newly emerging forms of human rights abuses resulting from the actions of transnational economic actors are commonly overlooked.

Cox's critical theory framework will inform the research undertaken in the remainder of this thesis so as to apply a critical analysis to the evidence presented in the following chapters. Cox's view of hegemony is also important as it does not view a globalised world order underpinned by the values of neo-liberalism as a natural endpoint for the development of humanity and thus enables us to conceive an alternative world order. A critical theory framework therefore provides scope for alternative solutions to emerge that can protect human rights without relying on claims that trade is the 'common sense' solution to the problem.

ENDNOTES

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CHAPTER 4

The Relationship Between Trade and Human Rights

4.1 Introduction

This chapter intends to consider the relationship between trade and human rights in the context of globalisation. As Chapter Three notes, since the early 1980s there has been a move towards greater global economic integration through the emergence of a global economy, the restructuring of the state and increasing freedom for non-state actors to operate transnationally. The term 'globalisation' is used to encapsulate these changes, especially in areas such as the deregulation and growth in global financial transactions, the internationalisation of production by Transnational Corporations (TNCs) and the increasing integration of national economies in world trade.[1] The process of globalisation is often regarded as having a primarily economic aspect, so that the term 'globalisation' is "understood as being driven by the latest stage of capitalism, wherein accumulation is taking place on a global rather than a national scale."[2] However, the term 'globalisation' is not confined to a description of purely economic changes and can be used to explore connections between economics and developments that have occurred in other aspects of life. These would include the broadening of telecommunications networks, the development of new technologies for global information dissemination, the increasing reach of the media and entertainment, increased instances of global environmental harm and risk, the rise in number and scope of inter-governmental agencies and transnational groups, and an increase in the growth of inequality in both economic and social terms.[3]

The globalised order has seen economic and trade policy become increasingly an issue of global rather than national concern, so that the state's role in the organisation of social power has diminished and led to a reconfiguration of national sovereignty.[4] The restructuring of global relations has therefore led to changes that "redraw the social as well as the economic map, profoundly altering the relationship between state, market and citizen."[5] For scholars critical of the process of globalisation, these transitions can be charged with undermining economic and personal security, social justice and equity.[6] However, for many writing in the liberal tradition, the same process may also generate increasing awareness of global issues

and lead to better methods of dealing with transnational problems, including human rights concerns.[7]

Chapter Three has also noted the central role held by international organisations in generating structural and institutional reforms in national economies in order to promote the idea of economic progress through market-led rather than state-led strategies.[8] These reforms centre on five main goals: "open international trade; currency convertibility; private ownership; openness to foreign investment; and membership of key international economic institutions, including the IMF, the World Bank, and the GATT (WTO)..."[9] The policies of International Financial Institutions (IFIs) are shaped by the belief that participation in the global economy and trade system is the best method to promote global welfare.[10] However, the consequence of these reforms has been the transition of responsibility for trade policy from the state to global institutions and a reduction in the state's ability to manage the national economy in isolation from events taking place at the global level.[11] These reforms have also seen the erosion of state involvement in social welfare provision and "narrowing [of] the parameters of legitimate state activity."[12]

This chapter intends to question the possibility of delivering human rights within a global economy in which the state is unable to act in isolation from external events. Evidence presented here will also implicate trade in new forms of human rights abuses and leads to a rejection of neo-liberal claims that trade and human rights can be positively linked. Chapter Five will then view trade and human rights in the broader socio-economic and political context to consider why human rights abuses continue under conditions of globalisation, if neo-liberal claims are correct.

4.2 Globalisation, Trade and Human Rights

The neo-liberal ideology upon which the process of globalisation is founded "resists any suggestion that moral or humanitarian issues take priority over free trade."[13] Indeed, trade and human rights have never been explicitly linked through formal institutions as happened with the issues of trade and the environment, articulated in the United Nations Conference on Environment and Development (UNCED) and the European Free Trade Association Working Group on Environmental Measures in International Trade (EFTA-EMIT). Instead, the

transnational elite promotes trade as the best method for achieving improvements in human well-being, relying on commonly held assumptions that appear to draw a positive link between trade and human rights. For neo-liberals, trade is seen to benefit human rights in three ways. Firstly, because "the social contacts generated by the unregulated exchange of goods and services are paralleled by an inevitable and unregulated exchange of moral values,"[14] a process of constructive engagement with states exhibiting a poor human rights record will ensure that citizens in such states will be exposed to the values of human rights.[15] Free trade is thus seen to have an "important educative role" in target states, whereby the citizens' newly acquired awareness of their human rights will generate demands for those rights to be realised in practice.[16] Maintaining trade relations with states with poor human rights records is therefore seen to foster democratic forces and enhance human rights.[17] This idea is illustrated by the USA's granting of Most-Favored-Nation (MFN) status to post-Tiananmen Square China in 1993, since one supporter claims that "[t]hrough encouraging broadened American involvement in China's economy...Rapid economic growth and joint ventures have done more to improve the human rights situation in South China than innumerable threats, demarches, and unilaterally imposed conditions."[18] However, systematic human rights abuses by the Chinese state continue to be well documented, suggesting that maintaining trade relations with China is not delivering human rights improvements for most Chinese citizens.[19] Indeed, Amnesty International claims that

> independent trade unions remain illegal and the official All China Federation of Trade Unions continues to be controlled by the ruling Communist Party. Activists who attempt to organize independent labour action continue to be detained, imprisoned or subjected to 're-education through labour'. They are sometimes singled out for particularly harsh treatment, including beatings and denial of medical care.[20]

Despite these facts, as the MFN decision approached in 1993, nearly 300 corporate leaders representing companies that exported $7.5 billion to china in 1992 sent an open letter to Clinton opposing "withdrawing or placing further conditions on MFN" that could "terminate the large potential benefits of the trading relationship."[21] Although the USA conditioned MFN status on improvements in China's human rights record, "the increasingly mixed signals projected by the administration's

'enhanced engagement' policy have encouraged the Chinese leadership to act as if it can get away with doing nothing."[22] While China certainly offers important future opportunities for American firms, the Chinese economy is heavily dependent on maintaining good trade relations with the United States, since America is China's largest export market buying around 40 per cent of all Chinese exports. America's failure to use this unequal trade relationship to demand improvements in human rights appears to be a wasted opportunity for the USA. However, neo-liberals also argue that *interrupting* trade relations because of poor human rights conditions is counterproductive for several reasons.[23]

Primarily, economic sanctioning such as a withdrawal of trade relations is seen as an ineffective means of encouraging better human rights standards because the condition of globalisation allows states under sanction to find alternative suppliers of goods and services.[24] Similarly, trade sanctions may also have a greater negative impact upon the citizenry than on the government and agencies responsible for human rights violations.[25] Many commentators claim that this has been the case in Iraq during the 1990s when the population suffered disproportionately because of Western imposed trade and economic sanctions.[26] The use of trade sanctions on human rights violators may also be rejected because of the "potential to 'demonize' sanctioners."[27] Imposing sanctions can generate animosity towards those responsible for punitive actions allowing the target government to generate propaganda and invigorate nationalist sentiments that maintain the stability of the existing government and prevent the changes that sanctions were intended to achieve.[28] Using trade sanctions as a means of generating improvements in human rights standards may also introduce new forms of protectionism related to the conditions under which goods are produced. Therefore, the use of performance requirements is rejected since such sanctions could be used by countries looking to protect markets for their own goods under the guise of altruistic concern for foreign workers.[29] Finally, imposing economic sanctions may also generate domestic political and economic risks as markets for businesses in the sanctioning state are likely to be damaged, leading to possible reductions in domestic political support.[30] The maintenance of American and British trade relations through "constructive engagement" with apartheid South Africa under the respective leaderships of Reagan and Thatcher serves to illustrate "the neo-liberal defence of free trade with human rights violators."[31]

Secondly, neo-liberals suggest that economic liberalisation will be accompanied by political liberalisation and democratisation ensuring that civil and political human rights will be guaranteed.[32] However, although a full discussion of these points is beyond the scope of this study, it is important to note that much of the progress in democratisation has been based upon *formal* democracy rather than *substantive* democracy,[33] the former telling us much about "formal electoral participation" but little about whether "the basis for broader popular participation and greater social justice" has been established.[34] This narrow view of democracy benefits the interests of transnational capital as it supports the rule of law and property rights without generating claims on the right to general participation.[35] As Gill asserts,

> [t]here has been a spread of formal aspects of liberal democracy (free elections, freedom of speech and association, a plurality of parties, constitutional guarantees of other rights and responsibilities.) However, in the same period there has been enormous growth in social inequality and the erosion of public social provisions (e.g., education and public health) and forms of economic redistribution (e.g., social welfare and unemployment insurance systems.)[36]

When democratisation processes and Structural Adjustment Programmes (SAPs) have been forced on developing countries, political groups that are left of centre with popular support from the citizenry have often emerged. However, the need to maintain a compliant regime in power has led to certain forms of election fraud becoming commonplace in newly created democracies since it is necessary to ensure that the party implementing structural and liberalising reforms maintains power.[37] As Bello asserts, "it is testimony to the potent combination of technocratic free-market ideology and Northern economic power that, despite the dismal record of failures in the 1980s, most Third World elites saw few alternatives to structural adjustment in the 1990s."[38] Where the liberalisation process has been met with resistance, the result has often been a persistent increase in human rights violations such as clampdowns in peaceful public protest, harassment of political opponents, illegal killings, and torture in prisons.[39] In 1989 for example, rioting was triggered in Venezuela when the government raised transport fares and other subsidised prices in response to International Monetary Fund (IMF) demands. Two hundred and fifty people lost their lives in the violence.[40] The failure to allow legitimate public protests,

combined with improper electoral processes in the newly created democracies often results in flagrant breaches of civil and political rights in such states. The process of democratisation does not therefore guarantee that civil and political human rights will be realised.[41] Indeed, Marks asserts,

> [f]ar from holding out the prospect of perpetual peace, contemporary conditions may suggest the prospect of perpetual war...even if liberal democracy promotes peace...it is a 'peace' which remains compatible with wide-ranging violence, within and across national boundaries. To curb this violence, it cannot suffice to promote democratic government – or anything else - at national level.[42]

Instead, low intensity democracy is linked "to the project of expanding the reach of global markets and eliminating remaining barriers to the transnationalization of capital."[43] In this way, policies that deliver economic liberalisation, structural adjustment and exchange deregulation ensure "the penetration and consolidation of capitalist relations of production in peripheral and semi-peripheral regions."[44] Gills and Rocamora thus refer to "the new formal democratisation" as "the political corollary of economic liberalisation and internationalisation."[45]

Thirdly, it is assumed that the wealth generated by economic liberalisation and free trade will 'trickle-down' through societies to secure better living standards for all citizens and meet demands for social and economic human rights to be met.[46] Indeed, a White Paper presented by the British Secretary of State for International Development in December 2000 asserts, "[m]anaged wisely, the new wealth being created by globalisation creates the opportunity to lift millions of the world's poorest people out of their poverty."[47] However, provision for economic and social rights is left to global market forces in the neo-liberal view and the period of neo-liberal reforms has produced little evidence to support the 'trickle-down' theory.

For example, three billion people in the Third World still lack basic sanitation and up to one and a half billion lack clean water. A billion or more are without adequate food, housing and healthcare, and twenty per cent of children do not learn to read and write.[48] Similarly, inequality has increased, with the gap between richest and poorest widening so that the top 20 per cent of the global population living in high-income countries earned 86 per cent of world GDP whilst the bottom 20 per cent earned just 1 per cent.[49] Whilst poverty is not directly in violation of the rights set out

in the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), the effects of poverty lead to deprivations of the right to food, housing, medical care and education.[50] Indeed, Thomas asserts "[w]hile acknowledging differentiation within [the] Third World grouping, in broad terms these states remain economically weak, politically powerless, and socially marginalized."[51] This has important consequences for the human rights of those living in the poorest regions of the world since the state is unable to provide the basic standards that would fulfil claims on economic and social rights and a standard of living adequate for health and well-being.[52]

The neo-liberal response to such criticisms is that whilst the inequality gap continues to widen, trade liberalisation has enabled overall levels of income and well-being to increase globally, creating the conditions through which economic and social rights can be delivered.[53] However, there is little evidence to support this claim as the 1999 United Nations Development Programme demonstrates that over a third of the world's countries, 80 out of 195, have lower per capita incomes at the end of the 1990s than a decade before.[54] This fall corresponds to the fact that almost a quarter of the world's population have daily incomes of less than one USA dollar, and half of the world's population exist on less than two dollars per day. For many, this level of poverty provides inadequate resources to meet basic human rights since neo-liberal reforms have brought the poorest in society into the global economy, forcing them to enter into economic exchanges for food, water, education and basic medicines.[55] For example, following privatisation of Ghana's water industry undertaken as part of World Bank and IMF loan agreements, prices are estimated to have risen by 300 per cent so that many spend their entire daily income on water.[56] As a result, "many Ghanaians are forced to draw water from dangerous and polluted sources."[57] Similarly, in South Africa the imminent privatisation of the electricity supplier Eskom on the advice of the World Bank has seen government subsidies removed and bills to individuals increasing, resulting in electricity cut-offs for the poor and vulnerable.[58] Christian Aid also notes that,

> wealth that goes to large companies does not 'trickle-down' to the poor via employment opportunities: though the top 100 TNCs control around 14% of all the world's wealth, they employ less than half of one percent of the world's workforce.[59]

However, the realisation of economic and social rights has been placed solely in the hands of the global market despite global inequality continuing to increase, whilst the "fulfilment of social and economic rights eludes over half of the global population."[60] Indeed, the liberalisation and deregulation of trade and finance brought about through policies promoted by the Washington Consensus, accompanied by growing economic and social inequality, has led Johnston to comment that,

> for economic and social rights the conclusion is that development processes (trade agreements, national economic development strategies, and so forth), individuals, organisations, (multilateral lenders, multinational and national corporations), and governments, all deny human rights.[61]

Despite the trend towards growing inequality and increasing poverty, the success of the neo-liberal agenda can be seen in the global acceptance of free markets, democracy and a neo-liberal view of human rights, with these ideas gaining universal validity and assuming primacy over values associated with public provision and collective responsibility.[62] The outcome of these political changes has been the adoption of Western-style liberal democracy around the world, whilst the embedded norms of state involvement in the national economy, the existence of a welfare state and the state ownership of basic-needs services that held throughout the post-War period have been undermined through the "erosion of the regulatory capacity of the state."[63] Despite the international legal requirement for states to secure both civil and political *and* social and economic rights for their citizens, the provision of basic needs that would fulfil claims on social and economic rights has therefore become increasingly difficult for states to guarantee.[64] Instead, the prioritisation of civil and political rights lends support to the freedom of autonomous economic actors to accumulate wealth "at the expense of distributive policies that could have empowered the poor."[65] Indeed, Wilkin asserts, "...whereas it was once considered normal and important for governments to intervene in at least some sectors of the economy and to provide welfare to those on the receiving ends of the cyclical crises of capitalism, we have moved to an era where such ideas are considered to be foolish at best, heretical at worst."[66] The global acceptance of neo-liberal reforms can therefore be seen to rely more on the lack of 'legitimate' alternative economic models than on the success of the neo-liberal project so far.[67]

Despite its seeming failure to address those issues of global poverty and underdevelopment that directly impact on the human rights of many in the developing world, neo-liberal ideology has maintained its dominant position and continues to inform the policies of IFIs and other international organisations. Even at the United Nations, the International Development Strategy for the United Nations Development Decade (1981-1990) states, "all countries commit themselves to an open and expanding trade system, to further progress in the liberalization of trade and to the promotion of structural adjustment."[68] Neo-liberals defend their attitude towards human rights by arguing that the inequalities generated by free trade will "contribute to maximising global wealth creation."[69] The high transition costs associated with neo-liberal reforms are also seen as an inevitable price to pay for the future human rights benefits that increased free trade will generate.[70] Similarly for neo-liberals, entering into a political debate over the relationship between trade and human rights risks confusing political issues such as human rights with "technical or apolitical" issues such as economics, finance and trade legislation.[71] As Evans asserts,

> [e]ven when the demands of globalization and international trade lead to forms of production and exchange that violate the right to life, security, opinion, assembly, culture and an adequate standard of living, neo-liberals are reluctant to make the connection between the inconvenient facts of human rights violations and free trade.[72]

This chapter will continue by demonstrating that in contradiction to the neo-liberal suggestion that a positive relationship exists between free trade and human rights, current trade practices often lead directly to violations of both civil and political and social and economic rights. In the following chapter, human rights abuses will be looked at in the context of globalisation in order to determine whether structural factors can be implicated in the continued existence of gross violations of human rights.

4.3 Linking trade to Human Rights Abuses

As previously noted, the prioritisation of trade as the means to secure improvements in human rights has been endowed with 'common sense' status in the

current period through the repeated promise that free trade not only "plays an important educative role" but also "raises people's awareness as to their rights, and increases the demand to be treated in accordance with internationally agreed standards."[73] There is little acknowledgement that many of those employed in the global economy are poor, uneducated, have few opportunities to choose their employment, and remain ignorant of internationally agreed human and labour rights laws. Even for those who are aware of their rights, many remain marginalised and vulnerable in their employment and are powerless to lay claim to those rights.

The evidence presented in this chapter will demonstrate that prioritising trade "has strengthened the conviction that life is of value only in so far as it contributes to the greater value of economic growth and the global expansion of capital."[74] Whilst this view of human life would suggest that neo-liberals view human rights with little significance, the promotion of civil and political rights such as the right to freely own and dispose of property has been used as a successful means of legitimising neo-liberal economic goals. Through the prioritisation of civil and political rights over economic and social rights, the unfettered accumulation of capital has been validated so that "although 'property and investment rights are protected in exquisite detail' under GATT and NAFTA, the rights of workers, women, children, the poor and future generations (environmental rights) are ignored."[75]

Indeed, neo-liberal reforms such as those required by IMF and World Bank SAPs have led to reduced public spending on welfare programs as well as reducing wages for the majority of the population in developing countries.[76] Structural reforms have also led to government denials of rights set out in the UDHR and International Labour Organization (ILO) Conventions and have perpetuated poverty, limited the benefits of economic development and growth to elite groups and ultimately led to violent protests and political instability.[77] The long-term effect of these reforms has been violent repression when governments crack down on popular opposition to liberalisation, so that whilst the erosion of living standards reduces the capacity for social and economic rights to be realised, government repression may also lead to violations of civil and political rights.[78] Indeed, as Cox asserts, "the ideology of globalization left understood but unstated the need for repressive police and military force to prevent destabilization of the world economy by outbursts of protest from the disadvantaged outsiders."[79] This is illustrated by the response of the local authorities to the formation of an independent trade union in the Maquiladora region of Mexico,

when in 2001 during a ballot between the government's official union and the independent worker's union it is reported that "[w]ith the full cooperation of the factory owner and local government officials, CROC [the government union] brought automatic weapons into the factory, tore down all advertising for the independent union, physically accompanied each worker into the voting area, told them how to vote and took notes on how each worker voted."[80] This example illustrates one of the ways in which trade and human rights violations may be linked.

The Transnational Corporation is the first modern human institution with the money and technology to plan on a global scale.[81] By 1999 there were about 60,000 TNCs with over 800,000 affiliates abroad.[82] These firms have cumulative foreign direct investment of about USA$1.3 trillion, one third of which is controlled by the largest 100 corporations.[83] The top 100 corporations are all situated within the developed world triad, consisting of the European Union, the United States and Japan. Such corporations accounted for 71 per cent of world inflows and 82 per cent of outflows in 2000,[84] and estimates suggest that up to 40 per cent of global trade is composed of transactions between affiliates of the same corporation.[85]

The growing strength and mobility of TNCs have been facilitated both by technological advances and by the progressive withdrawal of investment controls by governments and through negotiations in the General Agreement Tariffs and Trade (GATT) and World Trade Organization (WTO). TNCs have always played a significant role in international trade but the emergence of a global economy has allowed TNCs to dominate markets and finance and reinforce their position as political actors. TNCs have therefore played a key role in influencing governments to pursue WTO rules that deregulate investment controls in order to aid the global expansion of capital.[86] TNCs have also been highly involved in national decision-making so that for example, "[d]uring the Clinton administration's first term in office Nike was part of a coalition of Transnational Corporations that successfully dissuaded Clinton from acting on his election promise to link trade with China to human rights improvements."[87] The power of TNCs has been strengthened by global economic policies that favour production for the world market over production for domestic use,[88] and such corporations are now increasingly able to exploit differences in social and environmental standards between states with a view to maximising profits and creating global production systems over which governments have little control. TNCs have enhanced their power to direct patterns of trade and finance and determine the

context of production. This carries with it the threat of a constant downward pressure on human rights as well as labour and environmental standards as states compete with each other to offer corporate investors the most 'favourable' conditions.[89] As a result, political tensions emerge between the objectives of protecting human rights and supporting profit margins for TNCs.

A major inducement for corporate investment overseas, particularly in the Third World, has been the creation of Export Processing Zones (EPZs). Within these zones, TNCs employ growing numbers of Third World workers who no longer earn their livelihood from agricultural activities.[90] Using a subcontracting strategy, American manufacturers send labour-intensive operations such as sewing or electrical assembly to EPZs. Once assembled the goods are imported back to the USA or exported to third country markets. Goods made in EPZs are rarely, if ever, sold on the local market.[91] To ease the way for investment by TNCs, over fifty developing countries have set up these zones. Besides offering foreign exchange benefits, local tax windfalls, subsidised utilities, exemptions from customs duties and other common incentives for business, authorities in EPZs commonly guarantee strike bans, wage levels that do not meet the minimum legal standard, and allow exemptions from health and safety as well as internationally agreed labour standards.[92] Developing countries also tend to keep the legal minimum wage as low as possible. This practice is reinforced through the actions of TNCs that regularly move production to find new sites where wage costs are lower.[93] It is not therefore surprising that human rights violations continue to be well documented within EPZs and that labour conditions have often been found to be harsher in EPZs than in the rest of the country.[94] Indeed Cavanagh asserts,

> [t]he transnational corporation poses a central challenge to the conventional wisdom of development. That wisdom claims that governments and communities must provide 'good business climates' for corporate investment, laying the foundation for the increased standards of living which will ensue...[Instead] competition to provide the best business climate sets communities against each other, with drastic impacts on workers and communities. Rather than striving to create communities which provide the cleanest environment and meet the basic

> needs of all, the competition becomes one of providing the lowest wages, the largest tax breaks, and the least regulation.[95]

Over one million workers, the vast majority of them women, work in EPZs in the Third World. The creation of EPZs around the world has institutionalised the practice of 'turning a blind eye' to human rights violations under certain conditions. This has meant that despite the introduction of minimum wage legislation, wages for workers in Asian EPZs, for example, average 50 cents an hour, while Mexicans hired under the Maquiladoras program on the USA-Mexican border earn less than $1 an hour. Besides cheap labour TNCs value political stability and strict controls on workers' freedoms. Thus, many TNCs have relocated plants to areas of the world where trade unions are non-existent or severely limited by government policy, such as China, Indonesia, Malaysia and Vietnam.[96] Countries hosting EPZs have been keen to emphasise the number of jobs generated rather than the quality and nature of employment provided by TNCs and Cavanagh has unearthed evidence to suggest that,

> the effects of export-directed industrialization show that the jobs created 'are highly temporal, often dangerous as a result of exposure to unsafe chemicals, frequently devoid of fringe benefits, and unsuitable as vehicles for technological transfer and independent national development'.[97]

The connection between many current trade practices and human rights violations can be illustrated more clearly when viewed through specific examples. The next section will provide evidence to illustrate how modern trade practices can cause human rights violations that affect the daily lives of millions of people.

4.4 Trade Practices and Human Rights

4.4.1 Maquiladoras and Human Rights

The plight of workers employed in the Maquiladora sector in Mexico provides the first example of the link between current trade practices and human rights violations. The export-processing factories found in the Maquiladoras currently employ over 500,000 workers and generate over USA$29 billion in export earnings

for Mexico.[98] Those employed in the Maquiladoras are usually from the "poorest, least experienced, and least educated groups in society,"[99] they are also primarily women. This example will demonstrate the way in which trade practices impact specifically on women's human rights through discrimination based on pregnancy.

A Human Rights Watch (HRW) report carried out in Mexico's Maquiladora sector observes that pregnancy tests are routinely carried out as a condition of women's employment.[100] Many women are also subjected to an enquiry into their sexual activities and required to provide information about their use of contraception.[101] It was also discovered that whilst female workers are entitled to two days off every month for 'menstrual leave', workers were subjected to a "humiliating" physical examination, sometimes by a male doctor, in order to prove that they were menstruating before they were allowed to take this leave.[102] If women do become pregnant, the Maquiladora owners often force them to resign through intimidation tactics such as forcing compulsory overtime, refusing time off for doctor's appointments, or moving them to work that is more physically strenuous and may require heavy lifting.[103]

Such actions are in clear violation of international human rights and labour rights law. For example, Article 26 of the ICCPR states "[a]ll persons are equal before the law" and discrimination based on gender is clearly a violation of this Article of the Covenant.[104] Similarly, discrimination against women, especially in the workplace, is outlawed in the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in Article 2, whilst discriminatory pregnancy-based practices are also a violation of the right to privacy as set out in both the UDHR, Article 12 and the ICCPR, Article 23.2. CEDAW also includes the right to decide freely the number and spacing of children in Article 16.1, a right that is regularly violated by the actions of employers in the Maquiladora sector according to Human Rights Watch.

Such discrimination continues to occur despite Mexico's ratification of CEDAW and ILO Conventions relating to Freedom of Association and Discrimination,[105] as well as Mexican labour law prohibiting discrimination on grounds of gender, because these laws are not effectively enforced. HRW asserts that one of the main reasons for the lack of government enforcement of labour laws is that "there are economic disincentives...given the number of people the maquiladora industry employs and the amount of foreign currency earnings it produces."[106]

Workers in the Maquiladoras are also rarely unionised which prevents collective action that could demand the enforcement of Mexico's stringent labour and human rights laws. For example, a dispute between the Ford Motor Company and Mexican employees in the Hermoville Plant Maquiladora in 1989 resulted in the employer, Ford Motors, dismissing those employees who were involved in the protests. Ford dismissed over 3000 workers from a total of 3800 employees before the union organisers withdrew their demands for an independent trade union.[107]

4.4.2 Nike and Human Rights

The second example will draw upon a Global Exchange report by Tim Connor published in 2001 that has collated much of the evidence against the Nike Corporation and employment conditions faced by its 530,000 subcontracted employees in over 700 factories in states such as China, Indonesia, Mexico, Pakistan and Vietnam.[108] The track record for employment standards in factories manufacturing sports goods for Nike has not been good and over the past ten years, "independent research has repeatedly found conditions in Nike factories to be very different from what Nike claims them to be."[109] For example, in 1996, an article published in Life magazine provided evidence that children were regularly employed in the production process for manufacturing Nike goods, contravening the ILO Minimum Age Convention, ILO Convention on the Worst Forms of Child Labour, and the UN Convention on the Rights of the Child, Article 32.[110] Despite claims from Nike that the employment of underage workers was rare, and that the case highlighted by Life was a one-off mistake, more recent reports such as the BBC's Panorama programme on October 15th 2000 have discovered many underage workers in factories in states such as Cambodia, Indonesia and Mexico, suggesting that the employment of children is far more widespread than Nike is willing to admit.[111] A report conducted by the Worker's Rights Consortium in a Mexican factory also reported that "factory management admitted that the factory has employed children aged 13 through 15 for workdays of nine to ten hours."[112]

In 1997, an audit report commissioned by the Nike Corporation revealed that workers in a Vietnamese Nike contract factory were being exposed to toxic fumes from the chemical Toluene at up to 177 times the Vietnamese legal limit.[113] The

report also documented other serious breaches of health and safety and stated that over-exposure to dangerous chemicals had led to an increasing number of employees being affected by allergies, skin and throat conditions and diseases of the heart and nervous system.[114] Workers have also gone on record to report that when factory monitors visit, the workers are instructed to lie about which chemicals are used in the manufacturing process.[115] Another Nike in-house investigation also gained evidence of the "exchange of sexual favours for jobs at factories in Indonesia...[it also] revealed that 30 per cent of the employees interviewed at Nike franchises in Indonesia had been abused verbally."[116] Other reports have shown that workers in Nike contract factories are regularly subjected to varying forms of human rights abuse. For example, Nike workers "frequently report that it is extremely difficult to obtain sick leave and that the annual leave to which they are legally entitled is often refused, reduced or replaced with cash without the worker having any choice in the matter."[117] The evidence collated by Tim Connor from various reports, repeatedly points to a "culture of fear in Nike contract factories."[118] Indeed, Connor states,

> [w]orkers are afraid to speak out about labor abuses because of concerns that they will be fired or that their factory will lose orders. As bad as their jobs are, the fear of unemployment in countries with no social security system and very high unemployment rates makes them reluctant to openly complain about their conditions.[119]

Following this statement, what is possibly of most importance in this example is the lack of union organisation for employees in Nike contract factories, since the ability to organise may enable workers to improve their working conditions and earn a wage that would not leave them so vulnerable to exploitation. Since Nike first began to subcontract to Korea and Taiwan there has been a rise in union membership in these countries supported by the governments of these states. However, as unionisation has spread Nike has sought to find suppliers in countries such as China, Thailand and Indonesia where more brutal governments can be relied on to suppress independent unions.[120] Lack of union activity has been well documented in reports concerning Nike contract factories and *prevention* of union activity also appears to be commonplace, despite this being in contravention of ILO Convention on the Freedom of Association and Protection of the Right to Organise, the ILO Convention on the Right to Organise and Collective Bargaining, the UDHR, Article 23.4, and the

ICCPR, Article 19.2, Article 21, and Article 22.1,2,3.[121] Despite promises from the CEO of the Nike Corporation, Phillip Knight, that employment conditions would be improved, a recent investigation by a Sunday Observer reporter states that,

> Nike employees continue to face poverty, harassment, dismissal and violent intimidation despite its pledge three years ago to improve conditions for the 500,000 - strong global workforce...Nike workers still toil for excessive hours in high-pressure work environments while not earning enough to meet the basic needs of their children, and are subject to harassment, dismissal and violent intimidation if they try to form unions or tell journalists about labor abuses in their factories.[122]

The modern production process of subcontracting has benefited TNCs such as Nike in two main ways. Firstly, when production is subcontracted, the corporation has not usually invested its own money in plant or machinery so the logistical side of relocating is simplified and does not act as a barrier to moving production. Because workers are not in the direct employment of the corporation, neither are there expensive legal responsibilities in regard to personnel. This has meant that the TNC is able to move production with minimal cost and disruption so that threats to relocate can act as a disincentive for raising standards or wages in the contracting factories, keeping costs low for the parent company. This has also meant that employees have learnt not to speak out for fear that the parent company may 'cut and run' leading to large scale job losses or factory closure.[123] Nike has been charged with cutting and running when the media have exposed poor conditions in their subcontracted factories. In particular, following the BBC's Panorama investigation of the poor working conditions and employment of children in the June Textiles factory in Cambodia, Nike removed orders from the factory leaving many workers unemployed and unable to find alternative jobs.[124] This tactic serves to demonstrate the ease with which TNCs can move around the globe in order to gain the most 'favourable' conditions for production, and avoid circumstances that may damage their public image for western consumers.

Secondly, contracting out production allows TNCs to claim ignorance of conditions in the subcontracting factories. Nike is not the only corporation to claim that due to the quantity of factories that they subcontract from it is impossible to know the conditions in every one of them at all times.[125] They also accept that there

may be breaches of health and safety regulations from time to time and that occasionally there may be incidents in which an employee's human rights may be breached.[126] What corporations such as Nike refuse to accept is that human rights violations in their contract factories are not isolated incidents. The failure of Nike's own monitoring program to discover the extent of child labour in Nike factories for example, raises concern when those compiling independent reports have no difficulty finding evidence of illegal working conditions and human rights violations.[127]

However, contradictions exist between the two positions put forward by TNCs. The fact that TNCs do choose to leave subcontracting factories if they continue to attract bad publicity demonstrates that despite claiming ignorance of poor working conditions and human rights violations in their subcontracting factories, they are in fact ideally placed to enforce better human rights standards by threatening factory owners with relocation unless international labour laws and internationally agreed human rights laws *are* met. Indeed, since a key feature of contracting out policies is that the buyer ensures that producers meet delivery dates and quality standards and the buyer controls many of the aspects of production carried out by the subcontracting factory, then the buyer is also in the ideal position to take responsibility for the conditions under which subcontractors operate in terms of their human rights and labour rights commitments. Unfortunately, the ease with which TNCs relocate in order to benefit from cost and productivity gains is not met by a commitment to tackle human rights violations through the use of similar tactics.

4.4.3 Oil Production in Nigeria

The third example uses evidence from a Human Rights Watch report concerning the oil industry in Africa to demonstrate how both civil and political as well as economic, social and cultural rights may be violated in the pursuit of profit through trade.[128] Oil accounts for about 90 per cent of Nigeria's annual foreign exchange earnings and 80 per cent of the federal government's revenue.[129] However, reports of human rights violations in the Ogoni region of Nigeria and the struggle and death of the Ogoni leader, Ken Saro Wiwa in 1995 brought global attention to the link between TNC investment in the extraction of raw materials and environmental

degradation, loss of habitat, physical repression by the police and military and human rights violations.[130]

Human rights violations by the Nigerian military in oil-producing regions have been particularly severe and since May 1994 the government has been "engaged in a systematic crackdown in Ogoniland...[whilst] other communities have also been subject to attacks by the security forces."[131] These attacks have occurred in response to peaceful demonstrations by indigenous communities which contend that the oil TNCs, in particular the Shell (Nigeria) Petroleum Development Company have been responsible for environmental damage such as the contamination of fertile land with chemicals and the pollution of ground-water sources and rivers. This has been particularly damaging to communities who rely heavily on subsistence farming and fishing, and environmental destruction has not been offset by economic benefits to local communities as is set out in The Land Use Decree of 1978.[132] The destruction of indigenous communities' land and means of subsistence in full knowledge of the government of Nigeria is therefore in breach of the UDHR Article 25, "an adequate standard of living...including food and housing," and the ICCPR and ICESCR, Article 1.2, "in no case may a people be deprived of its own means of subsistence."[133] Governmental prevention of peaceful protests by indigenous community groups is also a violation of the ICCPR, Article 19.1, 2, Article 21 and Article 22.1, 2.[134]

In 1993, the Shell Petroleum Development Company claimed that there were no plans to resume oil production in Ogoniland. However, pipelines carrying oil from other Shell oilfields continue to cross the region.[135] HRW has since gained statements from company officials admitting that during the period in which operations were based in Ogoniland the company requested assistance from the Nigerian military for protection during protests by local indigenous groups. Military attacks have been reported to be "characterized by flagrant human rights abuses, including extrajudicial executions, indiscriminate shooting, arbitrary arrests and detention, floggings, rapes, looting, and extortion,"[136] all of which contravene both the Nigerian Constitution as well as Nigeria's obligations under international law. The military response to demonstrations in Ogoniland seems to have been particularly severe because of the government's desire to deter other minority groups from protesting about activities in other oil producing regions. HRW has gained evidence from four other community protests in oil-producing areas and states that,

> [i]n each case, the local residents initially tried to express their grievances through peaceful channels, although their protests culminated in violence on some occasions. The authorities invariably responded with disproportionate force and usually targeted those members of each community who had taken the lead in articulating the community's demands.[137]

Despite Shell Nigeria's claim that it had minimal contact with the Nigerian military and police, a Shell Nigeria company official gave evidence to HRW that regular contact had taken place between the company and Lieutenant-Colonel Paul Okuntimo. The Shell Nigeria official refers to Okuntimo as "a savage soldier" whose role in Ogoniland was to "make the area safe for the oil companies."[138]

The international response to events in Nigeria was initially positive. In July 1993 the European Union (EU) "agreed to suspend military cooperation, suspend visits by members of the military and intelligence service, and impose visa restrictions for members of the military, the security forces and their families."[139] Further recommendations included "travel restrictions for all military staff of Nigerian diplomatic missions; case-by-case review, with a presumption of denial, for all new export license applications for defense equipment; cancellation of training courses for all Nigerian military personnel; case-by-case review of new EU aid projects; and suspension of all non-essential high-level visits to and from Nigeria."[140] However, the European Development Fund has continued to provide funds for export promotion and universities as well as hard currency facilities for the government of Nigeria. The British government has also issued more than thirty export licenses for 'non-lethal' military equipment as well as continuing to fulfil an order for tanks that had been agreed prior to EU restrictions.[141] The selective enforcement of EU agreements and willingness to supply the government with military equipment therefore demonstrates the EU's lack of commitment to the prevention of human rights abuses in the case of Nigeria.

The Shell Group of Companies claims that the demands of the Ogoni people are politically motivated and "outside the business scope of oil operating companies."[142] Shell believes that it is being taken hostage by communities in oil-producing regions and "is being unfairly used to raise the international profile of [those] campaign[s] through disruption of oil operations, and environmental accusations."[143] The company has continued to deny responsibility for environmental

damage and destruction of indigenous habitats and claims that "any industrial enterprise, including oil operations, has an impact on the environment, and this is true in Ogoni. A further impact on the lives of people in the area comes from the rapidly expanding population which has caused deforestation, erosion and over-farming leading to degraded soil."[144] Shell did not seriously respond to the claims against it until 1997 when a shareholder's meeting called for greater openness and social responsibility. Since this meeting Shell has been keen to promote itself as socially aware through the publication of annual social accountability audits. To meet standards in these audits, Shell's agricultural officers have been advising on soil management, fertiliser application and crop rotation in oil-producing regions of Nigeria to maximise the use of land, and an environmental programme has also been put in place that "aims to progressively reduce emissions, effluents and discharges of waste materials that are known to have a negative impact on the environment."[145] The 2001 Shell Annual Report also includes a commitment to the protection of human rights, stating "[w]e make sure that human rights are considered before approving investment decisions and talk closely with human rights organisations."[146] However, in June 2004 sections of a report commissioned by Shell that the company has declined to make public were leaked to the press. The leaked document states, "sometimes we feed conflict by the way we award contracts, gain access to land and deal with community representatives."[147] The report also criticises the company for unnecessary environmental destruction and in the way it deals with grievances put forward by indigenous groups within the oil producing region.[148] The commitment to protect human rights outlined in the 2001 Shell Annual Report has therefore failed to lead to any genuine improvements in the human rights situation in Nigeria.

4.4.4 Sudan's Civil War and Oil Revenues

The fourth example is drawn from a Christian Aid report of May 2001, which claims that the civil war in Sudan, in which 2 million people have died and 4 million have become internally displaced is now primarily fuelled by oil revenues.[149] Since construction began on the Lundin oil pipeline in 1998, revenues from oil exports have risen to around USA$400 million whilst military spending doubled to USA$327 million in 2000.[150] Christian Aid claims that the relationship between oil revenues

and military expenditure demonstrates how the maintenance of investment and trade links between oil companies and the Sudanese government is providing the means through which human rights violations can be paid for.[151] The oil TNCs operating in Sudan have consistently failed to acknowledge the extent of human rights abuses in their areas of operation and deny any responsibility for "the destruction and displacement" occurring in oil producing regions.[152] However, human rights abuses are not only occurring as a direct result of military action associated with the civil war. The presence of the oil TNCs is also providing the justification for the government's 'scorched earth' policy of clearing the oil areas of civilians to make way for the exploration and exploitation of oil by foreign companies, violating the ICCPR Article 1, 6.1, 12 and 25 and the ICESCR Article 1 and 25.

According to Christian Aid, the process of building a transport link for oil exportation in the concession area of Sweden's Lundin Oil has been accompanied by massive human rights violations. "Government troops and militias have burned and depopulated dozens of villages along, and in the vicinity of the oil road...[leaving] thousands of Nuer civilians displaced from villages along this road, hundreds of miles away in Dinka Bahr el-Ghazal."[153] This report also gained evidence from civilians who gave evidence that "Antonovs bombed the villages to scatter the people. Then government troops arrived by truck and helicopter, burning the villages and killing anyone who was unable to flee – in most cases, the old and the very young."[154] The Sudanese government is also reported to have closed off airstrips for military reasons, denying permission for aid flights, and preventing the United Nations' Operation Lifeline Sudan (OLS) from delivering food aid and crops to Sudanese civilians. Christian Aid's report states "[b]y the end of the planting season in mid-2000, for example, Western Upper Nile (which is located in the oil company Lundin's concession area) received no OLS flights, leaving the civilian population with no crops to plant and no means of receiving food aid to fill the gap."[155]

The actions of the Sudanese government in oil producing regions clearly violate the rights set out in the UDHR Article 3, Article 5, and Article 12. Similarly, the violence against civilians and denial of aid also contravenes the ICCPR, Article 6 and Article 9 as well as the ICESCR, Article 1 and Article 11. This example also demonstrates the improbability of neo-liberal claims that trade plays an educative role and improves human rights. As Christian Aid notes, "[t]he right of foreign oil companies to exploit oil concessions is taking precedence over the right of Sudanese

civilians to live peacefully..."[156] Because there are no means of regulation to enforce human rights standards upon companies or hold them accountable for "the repercussions of their activities overseas," oil TNCs are free to continue their operations abroad without fear of redress.[157]

4.4.5 The Banana Trade in Ecuador

The fifth example also provides evidence of how TNCs act without fear of legal repercussions under international law, by drawing on a HRW report concerning the banana trade in Ecuador.[158] About a quarter of the bananas supplied to the USA and Europe are grown in Ecuador, which is the largest banana exporter in the world employing between 120,000 and 160,000 workers.[159] The banana plantations supply bananas to corporations such as Chiquita, Del Monte and Dole and according to HRW figures "[i]n 2000, roughly 31 percent of Dole's export bananas, 13 percent of Del Monte's, and 7 percent of Chiquita's were supplied by Ecuadorian plantations."[160] The TNCs involved in the banana business in Ecuador do not own the plantations but instead sub-contract to third-party producers. HRW claims that this subcontracting relationship allows corporations such as Chiquita and Dole to reduce their "direct responsibility" for the harsh and often illegal working conditions on banana plantations.[161] This view is not directed solely at TNCs involved in the banana trade. Similar concerns have also been raised in regard to TNCs in other sectors and have been outlined above in the example of Nike.[162]

HRW has gathered evidence that points to the systematic use of children as a form of cheap labour on the banana plantations. Of the children HRW interviewed, "[f]orty-one of them began in the banana sector between the ages of eight and thirteen...[t]hey described workdays of twelve hours on average and hazardous conditions that violated their human rights, including dangerous tasks detrimental to their physical and psychological well-being."[163] These children were regularly exposed to hazardous chemicals, used unsuitable equipment, were given heavy lifting tasks, and many were in prolonged contact with organophosphates, chemicals that are known to damage the central nervous system.[164] Evidence suggests that adult workers fare little better. They are exposed to the same hazardous working practices, have little job security due to employment practices such as consecutive short-term

contracting, and are prevented from organising trade unions due to prohibitive obstacles imposed by employers. Indeed, HRW states "[s]o strong is the deterrent that banana worker organizing in Ecuador has largely been stifled, and the constitutionally and internationally protected right to freedom of association has been rendered a fiction for most in the sector."[165] The Ecuadorian government's failure to prevent these practices has led to clear violations of the many international human rights laws that Ecuador has ratified. For example, the use of child workers breaches the Convention on the Rights of the Child, the ILO Worst Forms of Child Labour Convention, and the ILO Minimum Age Convention.[166] Similarly, the prevention of trade union formation and organisation also contravenes the UDHR, Article 23.4, the ICCPR, Article 22, the ICESCR, Article 8, the ILO Convention Concerning Freedom of Association and Protection of the Right to Organise and the ILO Convention Concerning the Right to Organise and Collective Bargaining.[167]

It is a problem of the international law approach to human rights that, despite failures by the Ecuadorian government to enforce international labour laws and protect workers from violations of their human rights, the TNCs involved in the banana sector in Ecuador can act with impunity. For example, HRW claims that responsibility for damage to health from exposure to chemicals such as pesticides and fertilisers should fall with the TNC because chemicals that are restricted in the USA may be given approval for use by the parent company on Ecuadorian plantations.[168] Similarly, TNCs clearly benefit from reduced costs when receiving goods produced under abusive labour conditions, where trade unions are effectively prohibited and where little or no health and safety procedures are adhered to. All the companies that HRW contacted "disclaimed any obligation to mandate respect for workers' rights" on the plantations that they receive produce from.[169]

As will be discussed in detail in Chapter Six, a considerable problem in reducing trade-related human rights violations, such as those outlined above, is that they are committed by non-state actors. Presently, human rights law remains focused on the international so that only the state can be held responsible for human rights abuses that occur within its borders. However, "corporations, financial institutions, governments and international organizations are responsible for violations through their decisions in the same way that perpetrators of physical violations are responsible,"[170] yet as Christian Aid notes,

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> [t]here are no means of regulation, national or international, to either enforce human rights standards upon companies nor to hold them accountable for the repercussions of their activities overseas...While all UK and European countries have ratified international standards such as the Universal Declaration of Human Rights (UDHR), governments have not applied this to their own companies. This is a serious obstacle in attempting to establish clear boundaries for corporate liability in cases of human rights violations.[171]

In a move to seek redress for human rights violations committed by TNCs it has been suggested that the Ecuadorian state should be held accountable, since "if states fulfilled this obligation [to uphold international human rights and labour rights standards], they would demand that corporations also respect these rights and standards."[172] In cases where the nature of industry prevents corporate cut and run, such as the banana trade, the governments in these states are seen to have a clear responsibility for preventing trade practices that lead to human rights violations, so that Shue argues,

> if a particular type of corporation has demonstrated an inability to forgo projects that produce deprivation...it is foolish to rely on corporate restraint, and whichever governments have responsibility to protect those who are helpless to resist the corporation's activity – host governments, home government or both – will have to fulfil their duties to protect.[173]

Indeed, the International Council on Human Rights Policy (ICHRP) argues that through the drafting of new conventions, the state could be obligated to regulate the operations of TNCs within its jurisdiction. Enforcement of these conventions would be secured by penalising the state if human rights violations occurred as a result of the state's failure to regulate TNCs.[174] However, the consequence of this approach is that non-state actors remain free to continue with human rights abusive practices and can externalise the costs of human right law, whilst the state must burden taxpayers for the costs associated with human rights violations generated by private actors. The global elite also resists the use of governmental controls and regulations on trade as a means of protecting human rights as this may create opportunities to reverse the trend towards free trade. Increased governmental

regulation also challenges the expansion of a global free market, one of the core principles of neo-liberalism.

4.5 Conclusion

The first part of this chapter demonstrated how the concept of human rights is understood in the period of globalisation. Following a broadly neo-liberal agenda, civil and political rights have been prioritised over economic, social and cultural rights and a very particular view of how to guarantee human rights has come to be widely accepted by governments, transnational actors and within international organisations and IFIs. This understanding has promoted the positive link between trade and human rights and is based on three main ideas. Firstly, trade 'civilises' and generates demands for human rights to be standardised between trading partners. This view is based on the assumption that upward levelling will occur because "the ability of people in each country to organize and raise their standards is beneficial to people in other countries."[175] Secondly, the process of democratisation accompanying economic reforms generates constitutional guarantees that human rights will be protected. The civil and political rights that emerge allow freedom of speech and public protest and enable the population to demand improvements in economic well-being and social welfare that will fulfil claims on economic and social rights. Thirdly, the increased wealth being generated by trade will trickle-down through society so that those previously reliant on the welfare state for food, shelter, medicines and education will have the means with which to provide for themselves and guarantee their own economic and social rights.

However, the evidence presented in the second part of the chapter suggests that neo-liberal claims drawing a positive link between trade and human rights may be questioned. The examples outlined here are representative of a vast body of reports detailing the human rights costs of modern day trading practices. The creation of EPZs within which the protection of human rights is almost absent demonstrates the general acceptance that trade must be prioritised above human welfare. The frequency with which workers are exposed to hazardous conditions in full knowledge of both the employer and the government also suggests that human rights are subordinated to the profit motive of modern trade. Similarly, in the examples presented here and in the wider literature the prevention of union activity stands out. This is particularly

important since unionisation for members of the global unskilled workforce may lead to realistic demands for safe working conditions, fair wages and broader issues of welfare to be realised. The examples presented here also demonstrate how transnational capital in the form of the TNC can wield power over the individual state. Not only do the demands of TNCs prevent the state from enforcing minimum human rights standards, labour standards and payment of fair wages, they also put states in competition with one another to offer the lowest human rights standards, environmental regulations and labour legislation for the indigenous workforce. The following chapter will consider how the broad acceptance of neo-liberal values has created a global socio-political and economic context in which violations of economic and social rights are disregarded, whilst the promotion of civil and political rights primarily supports the rights of global capital.

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Reports detailing similar incidents have been published on other garment and sportswear retailers such as Adidas, GAP, Tommy Hilfiger, Mitre, Reebok, and Umbro; chain stores such as Sears, Target and Wal-Mart and toy manufacturers, in particular, Disney. See Burke, J. (2000), "Child Labour Scandal Hits Adidas," *Observer,* 19th November, pp.4; and Klein, N. (2000), *No Logo,* London: Harper Collins, p.328.

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152. ibid. p.4.

153. ibid. p.4.

154. ibid. p.3; The evidence gathered by Christian Aid is supported by Gerhart Baum's report to the UN Human Rights Commission which states, "[d]uring my visit I gathered further evidence that oil exploitation leads to an exacerbation of the conflict with serious consequences on the civilians. More specifically, I received information whereby the government is resorting to forced eviction of local population and destruction of villages to depopulate areas and allow for oil operations to proceed unimpeded...It seems that, under the conditions of the ongoing war, oil exploitation is often preceded and accompanied by human rights violations, particularly in terms of forced displacement." Baum, G. (2002), "The Situation in Sudan. Report to the Human Rights Commission." E/CN.4/2002/46, 29th April.

155. Christian Aid (2001), op. cit., p.5.

156. ibid. p.2-3.

157. ibid. p.12.

158. Human Rights Watch (2002), Tainted Harvest: Child Labor and Obstacles to Organizing on Ecuador's Banana Plantations, available at http://www.hrw.org/reports/2002/ecuador/ accessed on 23/09/2002.

159. ibid. p.1&7.

160. ibid. p.1.

161. ibid. p.2.

162. Connor, (2001), op. cit.

163. Human Rights Watch (2002), op. cit., p.2.

164. The ILO is keen to accept that the contribution that working children make to poor families can be invaluable for their economic well-being. However, in the ILO Minimum Age Convention C138, a distinction is made between child work and child labour. Work is classed as tasks that do not negatively affect the physical and mental development of the child, that teach a trade or help to support the family economy. Labour is classed as hard toil that interferes with the child's education, may damage the child's physical and mental development and depresses wages, preventing adults from accessing work in that particular sector; International Labour Organization (2000), "Working Out of Poverty," *Report of the Director General,* Juan Somavia, available at, http://www.ilo.org/public/english/standards/relm/ilc/ilc91/pdf/rep-i-a.pdf; for more information on organophosphate health risks: http://www.epa.gov/pesticides

165. Human Rights Watch (2002), op. cit., p.4.

166. Ecuador ratified the Convention on the Rights of the Child on 23/03/1990, ILO Worst Forms of Child Labour Convention on 19/09/2000, and the ILO Minimum Age Convention on 19/09/2000.

167. Ecuador ratified the ICCPR on 06/03/1969, the ICESCR on 06/03/1969, the ILO Convention Concerning Freedom of Association and Protection of the Right to Organise on 27/05/1967, and the ILO Convention Concerning the Right to Organise and Collective Bargaining on 28/05/1959.

168. Human Rights Watch (2002), op. cit., p.16.

169. ibid. p.61.

170. Evans, (1999), op. cit., p.48.

171. Christian Aid (2001), op. cit., p.12.

172. Human Rights Watch (2002), op. cit., p.60.

173. Shue, H. (1980), *Basic Rights: Subsistence, Affluence, and US Foreign Policy,* Princeton, New Jersey: Princeton University Press.

174. International Council on Human Rights Policy (2002), *Beyond Voluntarism: Human Rights and the Developing Legal Obligations of Companies,* Geneva: ICHRP.

175. Brecher, (1994), op. cit., p.79.

CHAPTER 5

The Context of Trade-Related Human Rights Abuses

5.1 Introduction

Chapter Four has shown how trade and human rights are related within a neo-liberal understanding and how the positive link between trade and human rights based on neo-liberal values has now become broadly accepted as 'common sense'. International organisations, financial institutions, businesses and governments all accept that human rights can be best protected by increasing levels of trade backed up by an international legal framework. This view is also supported by traditional academic research that continues to inform politicians and officials of international organisations. The idea that human rights improvements will emerge from increased trade has now become so entrenched that criticisms of this view are largely disregarded.

However, the evidence of trade-related human rights violations presented in Chapter Four shows how the realities of global trade conflict with neo-liberal claims. Therefore, this chapter intends to consider the social, economic and political context and the 'rules for action' that determine how trade and human rights interact in the globalised world order. The global acceptance of neo-liberal values has ensured that improvements in human rights must be sought within a context of increased economic, financial and political liberalisation. Indeed, whilst governments and private transnational actors may vie for the greatest share of the benefits of economic growth, they remain committed to the process of globalisation and the expansion of a global order underpinned by neo-liberal values.

This chapter will demonstrate how the context of globalisation prevents the genuine realisation of human rights. It will show that the neo-liberal values underpinning the global order promote the freedom of capital at the expense of issues of human welfare including human rights, environmental concerns and poverty. The chapter will begin by examining how the neo-liberal understanding of human rights narrows the range of demands that can be considered genuine rights, preventing deprivations that result from trade practices being considered human rights violations, so that such abuses continue to be marginalised.

5.2 The Neo-liberal Conception of Rights

The neo-liberal conception of rights is historically based upon the theory of natural rights and individual responsibility. At its centre, the neo-liberal view of rights is concerned with "the freedom of individual action, non-interference in the private world of economics, the right to own and dispose of property and the important principle of *laissez-faire.*"[1] This view of rights has become widely accepted in the period of globalisation since international organisations and International Financial Institutions (IFIs) have been keen to promote neo-liberal values as part of their reform packages. In particular, Structural Adjustment Programmes (SAPs) imposed by the World Bank and International Monetary Fund (IMF) have demanded social, political and economic reforms based on the tenets of neo-liberalism. These reforms have centred on removing state control from basic needs services to encourage private ownership and dismantling state welfare systems to draw a greater number of people into the global economy.[2] In this way, the individual's right to freely own and dispose of property has been validated and the idea of the individual as a rational economic actor operating within a free market has been almost universalised. Coupled with the global promotion of the formal aspects of democracy,[3] the strategies pursued by international organisations have been successful in enabling the neo-liberal definition of human rights to dominate. Therefore, in the current period human rights have come to be defined as a set of rights "that protects the autonomy of economic actors at the expense of the development of mechanisms of control by governments to decrease uncertainty."[4]

Since in neo-liberal rights thinking the individual is perceived to be the only legitimate claimant upon human rights, so in this view, is the individual the only actor responsible for violating human rights.[5] This understanding denies the significance of the context in which human rights violations take place because the individual must be seen as a free actor, accountable for his/her own behaviour. The individual is never constrained by external events in the neo-liberal view so that any actions that the individual may undertake that violate another's human rights are the sole responsibility of that individual.[6] By focusing on the individual's role in perpetrating human rights violations, when the cause of human rights violations is sought the social, political and economic context in which individual actions take place is rarely considered.[7] Placing the focus of responsibility for human rights violations solely

with the individual thus 'renders invisible' the structures in which such actions take place and "is convenient for those whose interests are best served by existing social and economic practices, because it deflects attention from structural violations."[8] By rendering structures invisible, the changes occurring in the transition to a globalised order are not seen to impact on the relationship between trade and human rights, so that the increased power of transnational capital relative to the state is not regarded as significant. However, as Chapter Four has demonstrated, the increased freedom and power of Transnational Corporations (TNCs) has seen the state offer concessions to attract Foreign Direct Investment (FDI) that lead directly to human rights violations.

The neo-liberal focus on the individual also sustains the existence of structures that mask certain forms of human rights violations. Since structures may act as a "consciousness-reducing device," certain structures and processes allow actors to behave in certain ways because "everybody does them" and because they, themselves "have always done it."[9] For example, following a 1996 Human Rights Watch (HRW) report conducted in the Maquiladora sector in Mexico that detailed many incidences of gender-based discrimination, HRW confronted the American parent companies that use the Maquiladoras for the production of labour intensive goods.[10] The responses failed to demonstrate much concern regarding the report's findings and included admissions that "pregnant women are in fact screened out of the applicant pool as a way to avoid paying for maternity leave."[11] Despite discrimination on grounds of gender violating the International Covenant on Civil and Political Rights (ICCPR), Article 26, the Convention on the Elimination of All Forms of Discrimination Against Women and the International Labour Organization (ILO) Convention on Equal Remuneration and Discrimination, each of which Mexico has ratified, gender-based discrimination by American parent companies continues as a standard practice.

These trade-related human rights abuses cannot be attributed to Mexico's poor legal protections since Mexican law demands high standards in the protection of environmental, social and human rights law.[12] Instead, a general lack of enforcement in Export Processing Zones (EPZs) allows TNCs to operate freely in the Maquiladoras. This is possible within a global neo-liberal structure that allows EPZs to operate with few environmental, labour or human rights regulations so that states can attract FDI from Transnational Corporations.[13] That this is tolerated and even accepted is the result of what Galtung refers to as a "negatively structure-orientated

perspective"[14] that deems any actions 'normal' if all parties agree to behave in a similar way. As Galtung asserts, "the legal tradition will have a tendency to look for the guilty actor when a norm has been violated rather than looking for the wrong structure."[15]

The importance of suggesting that structures may lead to human rights violations is not to allow individuals to be absolved from blame for their actions, but to acknowledge that the context for action provided by dominant social forces may have an impact upon our ability to guarantee human rights. Instead, by examining the structural factors that sustain human rights violations the methods currently available to prevent such abuses are called into question. In particular, acknowledging that structural factors may lead to human rights abuses makes it necessary to reassess the reliance placed on the international human rights legal framework, since it may be that the legal approach can be implicated in the failure to prevent human rights violations.

The current international legal framework is based upon an acceptance of the relationship between trade and human rights suggested by the core of global elites. In this view whilst the rights set out in the ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR) are given formal parity, "the more forceful language of obligation, and the more effective enforcement measures in the ICCPR, have supported western claims of primacy for the so-called first generation civil and political rights."[16] This inequality in the status of rights is even exhibited in certain General Assembly resolutions. For example, the 32nd Session of the United Nations General Assembly Resolution begins "all human rights...are indivisible and interdependent; equal attention...should be given...to civil and political, and economic, social and cultural rights."[17] However, later paragraphs assert that priority should be given "to mass and flagrant violations of human rights of peoples and persons affected by situations such as those resulting from *apartheid,* and occupation, from aggression and threats against national sovereignty."[18]

Since those rights that support the ownership of private property and economic freedom have achieved primacy, human rights law therefore fails to challenge the negative outcomes of neo-liberal policies and can be seen instead to seek improvements in human rights through strengthening international treaties and enforcement measures without disturbing the global order. In this way, international law can be seen as part of the dominant problem-solving approach that seeks

technical remedies to global problems.[19] The legal approach supports the existing order by remaining focused on the relationship between states, excluding both sub-state and transnational actors so that the actions of these groups remain outside the remit of international law. Based on the neo-liberal assumption that politics occupies the public sphere whilst economics should remain in the private realm,[20] global regulation to bring non-state actors to account for human rights violations has been rejected in favour of the promotion of privately drawn up codes of conduct. However, as the evidence presented in Chapter Four has shown, private codes of conduct have rarely reduced human rights violations but have acted instead as a public relations device to bolster sales for corporations such as GAP and Nike.[21] As Christian Aid asserts,

> codes are an excellent public relations tool but are unenforceable and more than often meaningless, adopted after atrocities have been committed. They rarely include reference to fundamental human rights and provide no redress for those most negatively affected as a result of company activities. There is no deterrent to hold companies back from committing human rights abuses short of the threat of negative publicity.[22]

A report commissioned by the United Nations Center on Transnational Corporations (UNCTC) in 1990 also found that many TNCs were unaware of international guidelines for conduct and more than half did not base their activities on international guidelines.[23] Instead, corporate policy-makers often claim that if there is a duty on TNCs to act in ways that fulfil claims on human rights "then it is up to governments, through international organizations, to implement procedures that clarify exactly what those duties are."[24] However, given the power transitions that have occurred in the move to a global order and the diminished role for the state in policy formation, it is unlikely that this clarification of duties will be forthcoming through existing institutional arrangements. Similarly, the presence of an international legal framework that cannot bring non-state actors to account makes the means of enforcing duties on TNCs far from obvious. As a result, neither international legal remedies nor private codes of conduct can bring to account the very actors whose impact upon human rights has been put into question in the period of globalisation. To regulate the behaviour of private economic actors would also run counter to the principles of economic freedom and free market activity central to the

neo-liberal understanding of human rights law. Therefore, the international human rights legal approach can be seen to not only support neo-liberal values but also to legitimise and promote the neo-liberal understanding of the relationship between trade and human rights. Despite acknowledgment that in the current period of globalisation human rights are "regularly and systematically threatened and violated as a consequence of decisions taken by economic actors in the private realm,"[25] these actors remain unaccountable under international law.[26] As Evans asserts "[s]ince the structures and practices of globalization are the cause of many violations, reliance on a legal system that seeks to apportion blame and punish individuals seems misplaced."[27]

Treating the international legal approach as neutral also prevents consideration of the context in which human rights abuses occur. Galtung uses the example of torture to demonstrate how focusing only on the actions of the individual torturer allows structures of torture production to continue unchallenged. In order to prevent violations of the right not to be subject to torture, the international torture industry must be viewed in its "international structural context, not merely as a problem of infraction of human rights in the country where torture shows up."[28] This approach would include identifying "torture production and trading systems, training practices and the torture research structures..."[29] In order to protect human rights there must be condemnation of the torturer and protection for the victim but there must also be condemnation of the "structures producing the torture."[30] At present, whilst the European Convention may provide a framework within which signatory states found guilty of human rights violations can be punished retrospectively, the broader international human rights legal framework cannot punish states for human rights violations, nor does it provide the means to bring non-state actors to account for their actions. The legal approach also fails to provide effective mechanisms for the *prevention* of human rights violations, since a legal approach does not challenge the structures that allow violations to continue. This allows non-state actors whose operations are increasingly resulting in human rights violations to continue with such practices, since corporate leaders are aware that their huge financial power is ample to defend individual legal claims that may follow an incident where human rights or labour rights are violated. Emphasis is therefore placed on punishing those responsible for human rights violations rather than preventing the trade practices that deprive people of their human rights.[31]

Similarly, because the international legal framework is regarded as neutral the advantage of certain actors over others is rarely noted. For example, the power of the USA relative to weaker southern states is not considered. However, this power differential allows the USA to operate more freely within the international legal system, rejecting the adoption of aspects of international law that are not deemed beneficial whilst insisting that weaker states comply. As Chinkin asserts,

> a number of states have expressly renounced passing judgment upon claimants that have seized power through unconstitutional means. By doing so states maximize their options for commercial dealings with new regimes, but fail to offer support to individuals whose constitutional guarantees have been disregarded.[32]

Whilst the USA may have a greater ability to utilise international law to influence outcomes for its own perceived benefit, Less Developed Countries (LDCs) should not be seen as helpless victims of the consequences of international law. Many leaders of LDCs have been keen to adopt neo-liberal economic and political values. Indeed, as Gill asserts,

> it is clear that neoliberal and authoritarian political leaders in many Third World countries oppose attempts by some Western governments to add environmental and labor standards to trade agreements. The standard response of these ultraliberals is that better global labor and environmental standards are really only disguised forms of protectionism by wealthy nations, with the intention of undermining Third World countries' comparative advantage in cheap labor and 'tolerance' for pollution.[33]

International law also has no effective sanctions, allowing the most powerful states to choose which legal decisions to accept and which to reject so that governments will only comply with international law if it can be seen to conform to their perceived national interests. As Kennan asserts,

> [i]t is true that there are certain words and phrases sufficiently high-sounding the world over so that most governments, when asked to declare themselves for or against, will cheerfully subscribe to them, considering that such is their vagueness that

> the mere act of subscribing to them carries with it no danger of having one's freedom of action significantly impaired.[34]

This may provide an explanation of why states remain reluctant to relinquish sovereignty in human rights matters and questions of humanitarian intervention yet have accepted the "routine 'interventions' of global financial and economic markets" that have eroded state sovereignty in the areas of economics and trade policy.[35]

In the period of globalisation, basing the solution to human rights violations on an international legal framework serves only to support the values of neo-liberalism. International law acts as a problem-solving device that treats economic, social and political structures as given, and by excluding non-state actors from blame, supports the 'common sense' of promoting human rights through increased free trade. That international law remains the most frequent response to the systematic violation of human rights suggests a lack of will to acknowledge that great transitions of power have taken place between states, international organisations and private economic actors in the transition to a global order and that private actors are now increasingly implicated in new forms of human rights violations.[36] The international legal structure therefore provides a context in which non-state actors, such as TNCs, may operate without fear of legal redress for actions that breach international human rights law. Similarly, where trade practices can be directly linked to human rights abuses, the solution continues to be sought through the creation of more international law and improvements in enforcement measures rather than challenging the practices that lead to human rights violations.

5.3 Civil and Political versus Economic and Social Rights

The dominance of neo-liberal rights thinking has also led to broad acceptance that a qualitative distinction exists between civil and political rights and economic, social and cultural rights, the former pairing now becoming commonly referred to as 'negative' rights whilst the latter are referred to as 'positive' rights.[37] This presumption of difference derives from the neo-liberal tenets of individualism, the right to own and freely dispose of property and the separation of economics and politics and has been propounded most notably by Maurice Cranston.[38] The basis of Cranston's claim is that whilst negative rights require the individual to *refrain* from

violating another's human rights, so-called positive rights require the individual to *provide* for another's needs if they are unable to provide for themselves.[39] The protection of negative rights requires inaction whilst the protection of positive rights requires action.[40] The perceived distinction between negative and positive rights provides neo-liberals with a justification for promoting civil and political rights over economic and social rights, and in some cases of denying that economic and social rights are human rights at all.[41]

Several assertions underpin the view that civil and political rights are the only genuinely universal human rights. Firstly, neo-liberals argue that whilst civil and political rights can be protected simply by enforcing international human rights law, in contrast, positive rights require governments to provide both massive capital resources and large scale social and welfare programmes. Thus, whilst negative rights are relatively cost free for states to implement, few states have the resources to provide positive rights for the whole population. Neo-liberals therefore claim that economic and social rights cannot be genuine human rights since "if it is impossible for a thing to be done, it is absurd to claim it as a right."[42]

The second assumption that underpins neo-liberal refutations of economic and social rights claims rests on the different levels of development between states. International human rights law demands that redress for human rights violations must be claimed against the state so that provision for positive rights claims, such as the right to adequate food, shelter, education and social security is the sole responsibility of the individual state. However, because not all states have the necessary wealth or have reached the required levels of economic and social development to fulfill the provision of positive rights, setting universal standards for economic and social rights becomes an impossible task.[43] Demanding that all states provide social security, for example, would be to demand that many states "acknowledge rights that they could not realistically deliver."[44] Indeed, for the USA, the rights set out in the ICESCR are "primarily a statement of goals to be achieved progressively, rather than through immediate implementation."[45]

Thirdly, neo-liberals assert that economic and social claims cannot be human rights because they do not apply to all people. The example most commonly identified is set forth in the Universal Declaration of Human Rights (UDHR), Article 24, and concerns the right to periodic holidays with pay. It is often claimed that this request cannot be a universal human right since it is both culturally specific to those

who live in societies where the concepts of 'holidays' and 'pay' are understood, as well as applying only to those who are currently employed and paid in monetary terms. This excludes many workers around the world who are employed in informal economies where payment does not equate to an exchange of money.

Lastly, neo-liberals assert that any universal right must be met by an equal universal duty.[46] In the case of negative rights this correlative duty requires that all individuals refrain from acts that would violate the rights of another. However, the same correlative duty cannot be imposed upon individuals in the case of positive rights since the individual cannot be directly responsible for the economic and social well-being of all other people. The denial that economic and social claims can be human rights derives from the centrality of the individual within neo-liberal rights thinking. Therefore, even if "some form of world-wide social security system"[47] could be institutionalised, "the attempt to impose a duty on wealthy countries to fulfill positive rights may conflict with negative freedoms, particularly those associated with economic activity, including free market practices and the freedom to own and dispose of property."[48] The neo-liberal rejection of economic and social rights claims has led to a commonly held understanding of human rights that promotes only negative freedoms. In this way, when the actions of TNCs lead to human rights violations, particularly those that deprive people of their means of subsistence, they remain free to operate in this way because individual actors cannot be held responsible for the broader economic and social well-being of others. Since the freedom of economic action is paramount, neither can TNCs be required to provide capital outlay to improve the local environment in which they operate. This view of rights has created a social and political context in which all actions that do not directly violate another's civil and political rights must be regarded as legitimate. There are several obvious benefits of this view of rights for powerful economic actors.

Firstly, if civil and political rights are the only genuine human rights then actions that conform to the principle of negative freedoms are always legitimate even if they deprive people of their economic and social 'aspirations'.[49] Indeed, human rights violations that occur as a result of deprivation are often disregarded since they cannot be attributed to a particular individual's action. Thus, even if the trade practices used by TNCs deprive people of their land, homes and traditional means of subsistence, such actions can be justified by the prioritisation of the freedoms

guaranteed by civil and political rights. If the right to trade freely is supported by civil and political rights then no blame can be placed upon actors "who take advantage of prevailing practices, regardless of the human rights consequences of actions taken within the existing economic and social context."[50] Since private actors are rarely expected to modify their behaviour to avoid violations of human rights then provided TNCs conform to prevailing norms of conduct and the accepted rules of action they "are not expected to organize their business affairs to 'avoid deprivation'."[51]

Secondly, violations of economic and social rights often occur as a result of patterns of deprivation rather than because of a particular decision or a particular action. However, the neo-liberal view of rights is blind to such structural human rights violations and looks instead to punish an individual actor. This has been of particular benefit for TNCs and international organisations such as the World Bank and IMF, since although the individual may be responsible for *refraining* from actions that violate civil and political rights, individuals cannot be held responsible for the prevailing economic, social and political context in which action takes place. Since there may not be a single decision or actor that can be blamed for violations of economic and social rights, such violations are commonly ignored and all is "business as usual."[52] Instead, the focus remains on international legal remedies, preventing questions concerning the context of the global order from being raised and maintaining a legal approach to the problem of human rights violations that sustains prevailing relations of economic power. Indeed, as Galtung asserts "the legal paradigm is biased in favor of the actor-oriented perspective; that perspective has conservative bias; the legal paradigm favors politically conservative conclusions."[53]

Thirdly, by placing the focus for human rights improvements on achieving better standards of civil and political rights the state remains central whilst the behaviour of non-state actors is largely ignored. For example, the American Congress has tried to prevent the trade in arms to regimes with poor human rights records through section 502B of the International Security Assistance and Arms Export Control Act of 1976 which states,

> no assistance may be provided under this part to the government of any country which engages in a consistent pattern of gross violations of internationally recognized human rights, including torture or cruel, inhuman, or degrading treatment or punishment,

> prolonged detention without charges, or other flagrant denials of the right of life, liberty, and the security of the person...[54]

However, this commitment to address governmental human rights violations through American trade and foreign policy has not been met by a commitment to address the trade-related human rights abuses perpetrated by USA-based TNCs around the world.[55] As Christian Aid asserts, "while all UK and European countries have ratified international standards such as the UDHR, governments have not applied this to their own companies. This is a serious obstacle in attempting to establish clear boundaries for corporate liability in cases of human rights violations."[56] Neither has the USA's application of '502B' been consistent in dealing with regimes with poor human rights records. As Shue asserts,

> in too many cases a major source of the power of violating governments is close cooperation and extensive investment or funding from American corporations and the US government...The US government has ordinarily continued to support, with military aid where considered useful, incumbent governments that it favors for reasons other than their records on basic rights.[57]

The USA has also frequently resorted to prioritising national security concerns as a means of legitimising military sales to governments in spite of their violations of basic rights.[58] In the case of the Ogoni outlined in Chapter Four, the state-centric focus of human rights violations was highlighted by the focus placed on the violations of civil and political rights by the government and military against groups that opposed Shell's presence in the region.[59] This focus highlighted the state's role in human rights violations and attributed less importance to the many documented violations of economic and social rights committed by the Shell Oil Company (Nigeria) against the Ogoni people.[60]

The promotion of civil and political rights over economic and social rights is also legitimised by the focus placed on political prisoners, personal security, discrimination and cases of torture by high-profile Non-Governmental Organisations (NGOs) involved with the issue of human rights, in particular Amnesty International and Freedom House. In general, these NGOs retain their high-profile status by absorbing the core values of neo-liberalism and working within the current economic, social and political context.[61] By prioritising individual cases of civil and political

human rights violations and choosing to ignore more general denials of economic and social rights these NGOs help to support the view that civil and political rights should be prioritised.

Lastly, because "all actions that conform to the prevailing neo-liberal orthodoxy are understood as legitimate"[62] and the neo-liberal orthodoxy rejects the importance of economic and social rights, trade practices that violate the rights set out in the ICESCR are not targeted for prohibition. Instead, the focus for improvements in human rights has been aimed at the realisation of civil and political rights through the implementation of the formal aspects of democracy, whilst economic and social rights have been largely ignored in the neo-liberal policies pursued by IFIs and other international organisations. However, the neo-liberal view fails to consider that it is not only economic and social rights that are regularly violated by current trade practices. Much of the evidence set out in Chapter Four demonstrates that the operations of transnational actors lead to regular violations of civil and political rights including the right to form and join trade unions enshrined in the ICCPR, Article 22, and the right of peaceful assembly set out in the ICCPR, Article 21.[63]

To consider an alternative to the neo-liberal view of rights it is useful to look at the works of both Henry Shue and R. J. Vincent.[64] The basis of both scholars' work is to reject the assumption that civil and political and economic, social and cultural rights can be neatly packaged into the respective categories of negative and positive rights.[65] In particular, Shue rejects the neo-liberal assumption that civil and political rights must be prioritised over economic and social rights because they can be more easily and cheaply met.[66] Instead, Shue claims that civil and political rights are more positive than neo-liberals claim and that economic and social rights are more negative than they are said to be. This assertion provides a useful challenge to the current neo-liberal orthodoxy since it allows for the possibility of calling to account non-state actors whose operations have resulted in human rights violations.[67]

Both Shue and Vincent believe that there are basic rights without which the fulfilment of other rights cannot be achieved - the right to life, the right to security and the right to subsistence. For Vincent,

> the right to life has as much to do with providing the wherewithal to keep people alive as with protecting them against violent death...it is true to say that economic and social rights (the right to subsistence) and civil and political rights (the right

> to security) [must be] interdependent if something resembling a minimally satisfactory human life is to be lived.[68]

However, neither scholar accepts the negative/positive dichotomy into which the rights to life and physical security, and the right to subsistence are commonly placed. For example, the right to physical security may be seen as a negative right because all members of society must simply refrain from actions that harm another. However, relying on individual restraint is not sufficient to ensure everyone's right to physical security is guaranteed. Instead, to guarantee the so-called negative right to physical security positive action is required. Therefore, the demand for physical security is not only a demand not to be harmed, "but a demand to be protected against harm"[69] and requires the existence of an effective justice system that must be paid for. Indeed, for Shue "for such cases, in which individual restraint would be too much to ask, the duty to protect includes the design of laws and institutions that avoid reliance upon unreasonable levels of individual self-control."[70] The neo-liberal claim that negative rights are cost free fails to note the necessity of a large tax base "to support an enormous system for the prevention, detection, and punishment of violations of personal security."[71]

The flip side of rejecting a purely negative categorisation of civil and political rights is to challenge the claim that subsistence rights are wholly positive.[72] Instead, Shue asserts that there are two different requirements necessary to guarantee subsistence rights.[73] Whilst one method involves the duty to "provide the needed commodities when those in need are helpless to secure a supply,"[74] a better way to guarantee the right to subsistence is to enable people to provide for themselves. As Shue asserts,

> a demand for the fulfilment of rights to subsistence may involve not a demand to be provided with grants of commodities but merely a demand to be provided some opportunity for supporting oneself. The request is not to be supported but to be allowed to be self-supporting on the basis of one's own hard work.[75]

Vincent presents a similar argument thus,

> the supposedly negative civil and political right to security of life might require a network of 'positive' arrangements – such as the provision of adequate

> policing...Equally, the supposedly positive right of subsistence might merely require a 'negative' arrangement – such as the withdrawal of interference–in order to allow a person to provide for himself or herself.[76]

Thus, provision for others is not the only solution to denials of the right to subsistence. In contrast, "all that is sometimes necessary is to protect the persons whose subsistence is threatened from the individuals and institutions that will otherwise intentionally or unintentionally harm them."[77] Therefore, if free market practices lead to deprivations of people's subsistence, whether intentional or not, those who undertake such practices cannot call upon the argument that negative freedoms permit such behaviour. Such acts should rightfully be treated as human rights violations since being neither exclusively negative nor positive, the right to subsistence must include a duty to *aid* those unable to provide for their own subsistence, a duty to *protect* others whose only means of subsistence is threatened, and a duty to *avoid* taking action that deprives others of the means of subsistence.[78]

Vincent takes this argument further by suggesting that "the failure to provide for subsistence universally is not an unfortunate accident of international politics, but something which is built into the structure of the system."[79] Shue also argues that "if preventable starvation occurs as an effect of a decision not to prevent it, the starvation is caused by, among other things, the decision not to prevent it."[80] Neo-liberals may be correct in their claim that it is often difficult to know who is responsible for human rights violations especially in cases of deprivation associated with subsistence rights. However, for both Shue and Vincent it does not follow that since there may be structural causes of violations resulting from the "joint workings of individual actions and social institutions,"[81] that there is no violator and that there can be no redress for human rights violations. If neo-liberal assumptions are rejected and consideration is given to structural factors that may be implicated in human rights violations then,

> what follows from this is not that no one is responsible (since everyone is). What follows is that the distinction between duties to avoid and duties to protect, which is relatively clear in the abstract, blurs considerably in concrete reality.[82]

To illustrate this point, the example of the Sardar Sarovar dam building project on the Narmada River in India will be presented. The Sardar Sarovar dam project on the Narmada River was begun in 1985 with a massive financial support

scheme from the World Bank. Ten years of negotiations had preceded this start date during which time the planning of the project was discussed between the World Bank, the national government of India and the four river regions of Gujarat, Madhya Pradesh, Maharashtra and Rajasthan. These plans were necessary to deal with the development and management of the river area, water allocation, institutional arrangements and resettlement and rehabilitation of those affected by the dams.[83] The dam project was designed to irrigate around 2 million hectares of arid land and provide drinking water for 30 million people in drought-prone areas. The dam project would also bring electricity to cities and agricultural areas in order to stimulate industry and lead to faster economic development for the regions surrounding the river.[84] A trade zone was also to be developed with the assistance of the World Trade Organization (WTO) once suitable land had been reclaimed.[85] The trade zone was designed to create jobs for those whose agricultural livelihoods would be damaged following the building of the dam and to attract FDI from Transnational Corporations to help India repay loans to the World Bank, IMF and private banks.

However, the Sardar Sarovar dam project was also responsible for the submergence of 245 villages and the displacement and loss of livelihood of over 140,000 indigenous people who relied on the river for their means of subsistence.[86] Despite the prime goal of the dam project being improvements in "welfare and equity" and the creation of jobs for unskilled labour,[87] for many river societies the dam project has led to forced resettlement on already overpopulated hill-slopes that are rapidly becoming infertile. Resettlement has also led to the loss of subsistence farmland through sedimentation and "reductions in the yield of artisanal fisheries."[88] The project has thus led to many violations of the ICESCR, Article 11.1, the right to adequate food and housing and the continuous improvement of living conditions. The view that such forced evictions should be treated as human rights violations has been supported by the United Nations Committee on Economic, Social and Cultural Rights which has explicitly recognised forced eviction as a violation of the right to adequate housing. The Committee "considers that instances of forced evictions are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law."[89] Violations of cultural rights also occur when the traditional way of life enjoyed by a community is destroyed by a forced eviction. Human Rights Watch also notes that forced resettlements are often linked to violations of civil and

political rights such as the right to free speech, freedom of assembly and association, and the right to be protected from arbitrary detention when activists opposing resettlement are met by excessive use of force by the police and military.[90]

What the case of the Narmada Dam has in common with the evidence presented in Chapter Four is that it highlights how trade-related human rights abuses continue with little redress for those parties responsible. Despite the World Bank commissioning its first independent review of a Bank-supported project,[91] human rights violations have occurred as a result of both individual actions and structural processes so that it has not been possible to assign blame to a single actor. Indeed, it is difficult to see how blame could be apportioned if the neo-liberal view of rights is accepted, since multiple agencies have been responsible for different parts of the Sardar Sarovar dam project. For example, is the World Bank to blame for funding a project, which despite its purported trade and economic benefits has led to the displacement of many thousands of indigenous peoples? Is the Indian government to blame for pursuing a project that it believes will increase economic growth and development by providing FDI through the creation of a trade zone despite the loss of subsistence farmland for many river societies? Are the regional governments to blame for failing to provide adequate resettlement packages for those that the dams will displace? Are the corporations responsible for the dam building to blame for their involvement in a project that has resulted in human rights violations? Or, indeed can the global economic structures that prioritise trade and economic growth over considerations of human rights be implicated in these human rights violations?

When Non-Governmental Organisations (NGOs) such as Narmada Bachao Andolan have raised the issue of resettlement for economic reasons, the World Bank's response has been that "resettlement of people displaced by projects supported by the Bank has always been, and still is, the responsibility of the borrower agency."[92] Similarly, whilst the Indian government "entered into financial arrangements with the Bank,"[93] Indian law makes resettlement and rehabilitation policies the responsibility of local governments. The private corporations involved in the building work also deny responsibility, claiming that the process of international tendering merely assigns the contract but does not involve TNCs in policy formation. Therefore, although human rights violations have undoubtedly taken place according to the United Nations Committee on Economic, Social and Cultural Rights, the

difficulty of redressing such violations has meant that human rights abuses remain a marginal issue.

The importance of raising questions regarding the human rights consequences of international multi-agency projects that prioritise trade and economic development, such as the Sardar Sarovar dam project, is that doing so reveals systemic failures in the methods currently available for preventing human rights violations. For example, whilst it is important for the actors involved in such projects to acknowledge their role in any resulting human rights violations, neither international organisations nor regional governments, nor private corporations can be held to account within the current structure of international law. The World Bank, WTO and TNCs operating both in the building of the dam and in the subsequent trade zone are all exempt from any legal redress for the human rights violations caused in the Narmada Valley. The dominance of the neo-liberal approach to rights therefore enables many structural processes and practices that result in human rights violations to be upheld as "part of a natural, normal and rational approach to life."[94] Indeed, the prioritisation of negative freedoms in the neo-liberal view of rights has supported the idea that a 'trade-off' between the benefits of trade and human rights violations is acceptable.[95] The involvement of international organisations in projects to develop trade zones has also legitimised the view that human rights should be subordinated to trade liberalisation.

However, by rejecting the neo-liberal view of rights in favour of the ideas presented in Shue and Vincent's work it becomes possible to challenge the acceptability of a trade-off between freedom of action for economic actors and violations of economic and social rights. Similarly, the practices and policies of international organisations and IFIs come under fire if Shue and Vincent's analysis is applied. If the promise of future benefits used to justify denials of fundamental human rights is no longer accepted then non-state actors such as TNCs may not claim that their obligations "extend only to negative responsibilities."[96] Instead, significant change in global economic structures would be necessary to prevent the practices that continue to violate human rights.

5.4 Conclusion

Despite neo-liberal claims that human rights are central to the global political agenda, the primary method through which human rights can be guaranteed remains the promotion of trade relations supported by the international human rights legal framework. However, this approach fails to consider the evidence that new forms of trade-related human rights violations have increased during the period of globalisation. Similarly, the neo-liberal reliance on international law fails to consider that a state-centric legal system may be implicated in allowing human rights violations to continue within a globalised order. The focus placed by neo-liberals on prioritising civil and political rights over economic and social rights also creates an impression that deprivations of the rights set out in the ICESCR are not genuine human rights violations. In this way, TNCs have been allowed to continue with practices that deprive people of their means of subsistence by claiming that they are operating within the boundaries of the negative freedoms set out in the ICCPR. As Evans asserts, "in the current period, legitimate human rights can only be defined as that set of rights that require government abstention from acts that violate the individual's freedom to innovate and to invest time, capital and resources in processes of production and exchange."[97]

Whilst neo-liberals point to the creation of corporate codes of conduct as an alternative means with which to reduce trade-related human rights abuses, such codes have been shown to be full of empty promises that satisfy shareholders and the purchasing public but do little to prevent the practices that lead to human rights violations. By pursuing a version of human rights that prioritises civil and political rights over economic and social rights and allows the freedom to own and dispose of property to dominate over all other claims, the interests of those most central to the global economy are also prioritised. In this way,

> economic and social rights that could have empowered the poor in their fight against exploitation and exclusion, now take second place to civil and political rights, or those rights that support freedom in the private sphere of economic interests.[98]

The neo-liberal focus on the individualism of civil and political rights has also denied the possibility of challenging the structures of world order for failures to prevent human rights violations. For example, the emergence of a global economic

order has supported the creation of EPZs that are exempt from international human rights laws, international labour laws and international environmental guidelines. Therefore, whilst structures cannot be brought to account, changing certain aspects of the global economic order could result in better protection for the human rights of the most vulnerable. Indeed, Article 28 of the UDHR calls for "a social and international order in which the rights and freedoms set forth in the Universal Declaration can be fully realized."[99] The analysis presented by Shue and Vincent provides an initial suggestion for challenging neo-liberal thinking on human rights. Chapter Six will look more closely at the politics of international human rights law to assess the possibility of challenging neo-liberal attitudes towards the relationship between trade and human rights. The significance of the emergence of corporate codes of conduct will also feature in the next chapter. Lastly, the failure of international organisations to implement a framework within which to regulate TNC activities will be discussed. In particular, the political debate that resulted in the United Nation's failure to produce a code of conduct to regulate the behaviour of TNCs will be assessed.

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CHAPTER 6

The Politics of Human Rights Law

6.1 Introduction

As the previous chapter has shown, the understanding of human rights that has become dominant in the current period is broadly based on the values of neo-liberalism. Dominant social forces have been successful in promoting a version of human rights that supports the negative freedoms of civil and political rights whilst denying that economic, social and cultural rights are legitimate human rights. In this way the transnational capitalist elite has used a particular understanding of human rights to promote the freedom of economic activity and individualism over more progressive rights that could empower the poor and vulnerable in their struggle for improved levels of well-being.[1] Strategies for guaranteeing universal human rights have been dominated by a neo-liberal approach so that such policies have been based on the assumption that the relationship between trade and human rights is complementary. The promotion of trade as a means to secure human rights has also been coupled with a reliance on international human rights law. However, international law remains state-centric and can only punish those states responsible for human rights violations in retrospect. Reliance on international law therefore ignores the structures and practices that are increasingly implicated in human rights violations in the period of globalisation, whilst focusing on punishment rather than prevention of human rights abuses.

Whilst the fiftieth anniversary of the Universal Declaration of Human Rights (UDHR) in 1998 was met with claims of unprecedented progress in the development of international human rights law,[2] these claims ignore the continuing evidence of "widespread torture, genocide, structural economic deprivation, disappearance, ethnic cleansing, political prisoners and the suppression of trade unions and democracy movements."[3] The frequency with which reports of human rights abuses are published by Non-Governmental Organisations (NGOs) also suggests that existing methods of delivering human rights have had little impact on the genuine realisation of these rights. As Mary Robinson the United Nations Human Rights Commissioner stated on 10th December 1998,

> [c]ount up the results of fifty years of human rights mechanisms, thirty years of multibillion dollar development programmes and endless high-level rhetoric and the general impact is quite underwhelming...this is a failure of implementation on a scale that shames us all.[4]

However, critics contend that it is not only a failure of implementation that has prevented the genuine realisation of human rights.[5] Indeed, the argument presented in Chapter Five suggests that whilst the structures and practices of globalisation have been increasingly responsible for new forms of human rights violations, these structures cannot be brought to account through reliance on an international legal framework. Neither can the increasingly powerful non-state actors responsible for trade-related human rights violations be charged under international human rights law. The perceived neutrality of the international legal framework has also marginalised questions of power and excluded "consideration of prevailing economic, social and political structures and practices that support particular interests," enabling the context in which human rights violations continue to remain unchallenged.[6] Therefore, whilst the increasing volume of international human rights law is generally assumed to relate to improvements in human rights in the literature, this relationship is never clearly articulated. This point is illustrated by Marks' claim that,

> international law is nowadays valued less for its potential role in relation to 'particular places, people, or causes' than out of enthusiasm for some generalized notion of 'the international'...reform proposals are not so much geared to achieving specific outcomes; rather, their point is to enhance the authority of international law and institutions as an end in and of itself. Attention to the level of governance has overtaken attention to the consequences of governance.[7]

The broad assumption that international law provides a neutral framework for responding to the problem of continued human rights abuses reveals a more general failure to question whether the political construction of rights may act as a barrier to the genuine realisation of universal human rights. Indeed, consideration is rarely given to the role that the international legal framework may play in supporting and extending the reach of neo-liberal values in the period of globalisation.

By contrast, this chapter looks at the political dimensions of existing strategies for protecting human rights in order to question why the rise of human rights to the top of the political agenda in the last twenty-five years has not led to real improvements in human rights. This chapter intends to consider the way international law and liberal economics operate together to consolidate the 'common sense' of neo-liberal approaches for resolving the conflicting priorities of trade and human rights. Therefore, the role human rights have played in supporting the transition to a globalised world order will be discussed and the broader international legal framework encompassing trade law at the World Trade Organization (WTO) and the involvement of the United Nations in trade and human rights issues will also be outlined.

6.2 The 'Common Sense' of International Human Rights Law

As Chapter Three notes, throughout the post-War period dominant social forces within both the USA and USSR sought to promote a version of international human rights law that was broadly convergent with their respective ideological positions. The project to deliver universal human rights was therefore based upon the competing conceptions of rights held by the USA, and the USSR assisted by the socialist Less Developed Countries (LDCs) with each side competing to see their understanding of human rights become dominant. In the early post-War period the USA sought to distance itself from the obligations imposed by the human rights regime, since the creation of the two International Covenants that gave equal weight to both civil and political and economic, social and cultural rights seemed to undermine the negative freedoms of economic action that the USA favoured. The USA was concerned that if economic, social and cultural rights were afforded legitimacy, the interests of American capital would be damaged and unacceptable regulations would be placed on American companies operating abroad. Having failed to assert its own interests in the initial development of the human rights regime, the USA used its position as hegemon to promote the values of individualism, laissez-faire and economic liberty through the international trade regime.

In order to extend acceptance of the tenets of a liberal trade regime the USA sought to endow international organisations with enforcement powers that guaranteed

international compliance with the opening of national borders to the free flow of trade, services and capital and once the process of economic liberalisation had begun, interests developed both within states and transnationally that favoured continuing and expanding this process.[8] In this way, the operation of a liberalised trade regime became standard international practice.[9] At the same time, whilst the socialist project failed to gain ground and many LDCs began to adopt the ideas of western liberal democracy, the USA sought to oppose "all references to state duties in relation to economic, social and cultural rights, thereby devaluing these claims as rights and consigning them to free market forces."[10] The USA's refusal to acknowledge the formal parity between the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) led to broad acceptance during the Cold War period that civil and political rights were the only 'genuine' human rights that should be protected under international law, whilst economic, social and cultural rights could be achieved through the extension of economic markets and increased levels of international free trade. The current understanding of human rights can therefore be seen as a product of the political struggle between competing social forces during the post-War period with the prioritisation of civil and political rights mirroring the ideological concerns of the United States.[11] Since political bias underpins the dominant understanding of rights during any particular period, the dominant social forces of the post-War period can be seen to have transformed their political goals into codified international human rights law through the promotion of a particular version of human rights.[12] The conflict between competing conceptions of rights also suggests that human rights are better understood as a "process rather than an endpoint"[13] so that the dominant conception of rights may be challenged by competing groups that favour an alternative approach.

In the period of globalisation, the emergence of an American-centred transnational hegemonic group has led to the use of human rights to promote neo-liberal values and to encourage greater liberalisation and deregulation in the move from an international to a global trade regime. International human rights law has been used to legitimise and extend the principles associated with freedom of economic action, the right to own and dispose of property, free trade and limited government so that human rights have come to assume the role of protecting transnational capital in the period of globalisation. Indeed, transformations in broader

international legal issues including trade law and environmental law have sought to "establish the legal and institutional framework favourable to the accumulation of capital in the era of globalisation."[14] The emergence of a global economy has also ensured that the rights of transnational capital take precedence in the policies of international organisations and International Financial Institutions (IFIs) so that both the law and legal institutions are used to facilitate and legitimise the processes and practices of globalisation. The idea of human rights has been co-opted by neo-liberals so that instead of offering a strategy that can protect the weak and vulnerable, human rights have come to support the private accumulation of wealth and the privatisation of public goods.[15] The failure of the international human rights legal system to support the conditions through which claims on economic and social rights could be fulfilled, can be understood by looking to an example where the prevailing conception of international human rights law upholds the interests of a dominant group over the realisation of these rights.

In the Declaration on the Right to Development (DRD) of 1986, one of the stated goals is to improve the "well-being of the entire population" and within the Declaration the right to development is asserted as an "inalienable human right."[16] The history of the drafting of the DRD was subject to similar conflicts as the UDHR in that it was the result of the conflicting understanding of development held by northern states and the LDCs of the south. In this example, the right to development was perceived in conflicting ways by the northern industrialised states and the poorer states of the south, with the northern states generally promoting an understanding of development that was synonymous with economic development. In this view economic growth would occur following the transition to a democratic political system and by encouraging freedom for economic actors and redistribution of wealth through market-led mechanisms rather than through welfare provision or international redistribution.[17] The northern conception of development therefore supported the freedom of economic action, and although some states did give concession to the need for continued aid provision for the poorest states of the international community, the USA rejected any reference to the right to equitable economic development.[18] In contrast, the south saw the rights set out in the DRD as a means of securing the right to economic development through the redistribution of wealth from north to south.[19] In the south's view, development would mean increasing levels of education,

sanitation, food security and freedom from want through the creation of a more equitable economic order and relief from their increasing debt burdens.

However, the dominance of neo-liberalism led to the promotion of a conception of the right to development that converged with the north's view of development as the freedom to trade out of poverty. The DRD came to support the extension of neo-liberal values so that far from providing the poor and vulnerable with additional human rights claims that could challenge structural violations related to trade practices and the policies of international organisations, the adoption of an understanding of development synonymous with economic growth "has led to denials of human rights, for example, those of indigenous persons displaced through development projects, despite the assertion that the 'human person is the central subject of development'."[20] This understanding of the right to development merely serves to uphold the values of neo-liberalism and in this way human rights law has come to reinforce the legitimacy of inequality during the process of economic globalisation. This has prevented the redistribution of wealth that could fulfil demands on economic and social rights.[21]

Under conditions of globalisation international law can be seen to promote the interests of transnational capital in two main ways. Firstly, the institutions responsible for international law have been endowed with rule making and enforcement powers that extend the legitimacy of a legal framework supportive of the values of neo-liberalism. International organisations such as the WTO, World Bank and International Monetary Fund (IMF) are also able to override the decisions of individual states in order to extend the reach of neo-liberal policies and protect the interests of private property in the emerging global economy. In recent years, even the policies emerging from the United Nations have become more convergent with the values of neo-liberalism and the interests of transnational capital.[22] Secondly, the continued promotion of a conception of human rights that prioritises civil and political over economic, social and cultural rights has successfully put the pursuit of the latter rights largely outside the scope of international human rights law. The legitimacy of prioritising civil and political rights is based on the perceived neutrality of international law as a strategy for dealing with global problems. In this way, if the legal approach is seen to be value-free and immune from political bias and supports the prioritisation of the rights set out in the ICCPR, then this view must also be free from political distortion and therefore legitimate.

The consequences for human rights of prioritising the rights set out in the ICCPR over those in the ICESCR have been discussed already in Chapter Five, but it is worth reiterating some points that are relevant to this discussion. Firstly, the prioritisation of civil and political rights has led to the emergence of an international law approach that legitimises unequal economic and social relations and promotes the interests of capital over goals concerning the realisation of economic and social rights. The transnational capitalist elite has also sought to create international laws that support "global economic expansion without...the pursuit of equity in international economic relations."[23] Instead, for neo-liberals the promotion of civil and political rights is sufficient to generate the conditions within national boundaries that enable contested elections, electoral participation and freedom of speech to become standard practice.[24] Claims for the fulfilment of economic and social rights can then be directed towards national governments and can be dealt with through the democratic contestation of frequent and open elections.

However, there are two main criticisms of this view. The first is to recall that power transitions in the period of globalisation have constrained the capabilities of the democratic state to pursue the wishes of the population.[25] Indeed, the newly emerging 'internationalised' state acts to protect the interests of transnational capital so that claims upon economic and social rights by the citizenry are subordinated to the requirements of Transnational Corporations (TNCs), private banks and IFIs, particularly in poor states bearing a large international debt burden. Whilst some political parties contesting elections may adopt progressive policies designed to fulfil claims on economic and social rights, such parties are constrained in power by the need to curb government spending and attract Foreign Direct Investment (FDI).

The limited understanding of democracy that international organisations promote through Structural Adjustment Programmes (SAPs) also benefits the interests of the transnational capitalist elite because it provides the veneer of a society governed by popular consent without giving concessions to broader public participation in economic, social and cultural life.[26] This form of liberal-democratic state fails to provide equality before the law so that different actors and institutions have uneven social, economic and political power with which to influence and constrain government decision-making.[27] With the structural power of capital increasing relative to labour and governments it is increasingly those actors that support neo-liberal ideas that are best able to influence law making. Again, the

transition of economic power from the state to non-state actors in the move to a globalised world order prevents the state from pursuing the requests of citizens in isolation from the demands of the global economy and powerful actors such as TNCs. The increasing role for non-state actors in the practices and policies of key social institutions has therefore led to a reconfiguration of power relations and a redistribution of wealth from the state into the hands of private capital, preventing the state from fulfilling economic and social rights claims despite demands from the electorate.[28]

Secondly, international human rights law focuses on human rights violations that result from individual actions and disguises those violations that occur as a result of the structures and practices of a globalised world order. Reliance on international human rights law has therefore been a particularly useful strategy of regulation for the transnational capitalist elite, since the creation of a framework that governs only the relations between states allows non-state actors to remain free of any legal constraints. Because of power transitions occurring in the period of globalisation this inability to challenge non-state actors has led to the emergence of new forms of human rights violations linked to the trade practices of TNCs and IFIs, and because the international legal framework is based on the view that only national governments can be held accountable for human rights violations, corporations and institutions remain outside the remit of international law and such non-state actors cannot be brought to account for human rights violations

Since the focus of international law has remained on state violations of human rights, the 1998 agreement to create an International Criminal Court (ICC) that could punish individuals for human rights abuses was therefore a landmark decision by the member states of the UN.[29] The implementation of the ICC was pushed through with 120 countries in favour and only 7 against and was seen as a way to bring individuals to account for actions that result in human rights violations.[30] However, despite the progress in challenging individuals for actions that lead to human rights violations, the ICC continues to fail to protect human rights in the period of globalisation. Indeed, whilst the introduction of the ICC offers a means of bringing individuals to account, the focus of the ICC only extends to war crimes, crimes against humanity and genocide.[31] Therefore, because the remit of the ICC continues to address the consequences rather than the causes of human rights abuses, structural abuses and the trade practices of TNCs that lead to massive deprivations of economic and social

human rights remain exempt. At the same time, whilst the jurisdiction of the ICC is limited to certain serious crimes against humanity it is also not recognised by the United States and so lacks the broad authority needed to genuinely improve the worldwide human rights situation.

Under conditions of globalisation, continued reliance on international human rights law also fails to acknowledge that the erosion of state power limits the efficacy of an international legal framework so that as Evans asserts, "to expect more of international law overlooks the point that it is itself the product of traditional, state-centric thinking on world politics and cannot therefore resolve the more damaging aspects of an alternative globalized world order."[32] Therefore, by entering into international agreements on human rights law, governments may be acting merely to deflect criticism that their decision-making capacity has been eroded by the condition of globalisation, rendering the international legal system ineffective in the current period.[33]

International law also offers a technical, a-political response to global problems that suggests neutrality and disguises the political dimensions of human rights violations. Since rules are more likely to be seen as neutral "when expressed formally and abstractly as *laws,*"[34] dominant social forces are keen to pursue a legal approach that supports particular interests whilst giving the appearance of providing an independent framework. Therefore, when determining the cause of human rights violations, the context is not regarded as significant and the focus remains on extending covenants, conventions and declarations. For example, Chimni suggests that the broadly accepted understanding of humanitarian intervention is now "synonymous with the intervention of the developed world, transnational capital, international organisations and IFIs to penetrate state borders in order to maintain a political and economic climate favourable to the interests of transnational capital."[35] However, at the same time the legal interpretation of humanitarian intervention prevents it being invoked to protect individuals from processes and practices that violate their human rights. Indeed, as Chinkin asserts, "the explicit purpose of Chapter VII [of the United Nations Charter] is the restoration of international peace and security, not the preservation of human dignity and human rights."[36]

Whilst seeking improvements in human rights may be seen as a legitimate goal, the power relations underpinning the dominant understanding of human rights law serve to exclude, marginalise and silence alternative views.[37] The perceived

independence of international law acts to obstruct the emergence of alternative approaches that could prevent human rights abuses rather than relying on strategies that seek to redress human rights violations in retrospect. Basing claims for the realisation of human rights on international law is therefore "an appeal to the same structures that are the cause of many human rights violations."[38] By claiming that international human rights law provides a neutral strategy for protecting human rights, neo-liberals have ensured that the broad legitimacy of the international legal approach is extended despite the legal system acting to serve the interests of transnational capital.

This discussion has sought to highlight the role played by international human rights law in underpinning the values of neo-liberalism. The condition of globalisation combined with an international legal system based on the core assumptions of neo-liberalism has constrained government decision-making in economic, social, political and cultural life and has prevented states from providing the conditions within which claims on human rights could be fulfilled. The following section will outline how the relationship between trade and human rights has been perceived differently by particular international organisations and how this has influenced the strategies pursued for achieving human rights. The transition of law making powers from the state to international institutions that further consolidates the expansion of global capital at the expense of human rights will also be discussed. These power transitions have eroded the capacity of states to implement policies that can secure both civil and political, and economic, social and cultural rights and have witnessed the emergence of an international law approach that is designed primarily to protect the interests of capital whilst imposing no corresponding duties or restrictions on the operations of non-state actors, particularly TNCs.

6.3 International Institutions, Trade and Human Rights

In much of the literature on international organisations there is little acknowledgement that the institutions responsible for creating and enforcing international law may be central in sustaining dominant configurations of power within the global order.[39] Instead, most analysis of international institutions remain focused on the legal status of international organisations, the structure of international

regimes and the function of international law. The role that ideology plays in the formation and maintenance of international institutions is also largely ignored so that international organisations are perceived to be beneficial, providing a neutral space within which global issues can be debated and managed. That international organisations may play a central role in legitimising the values and goals of dominant social forces is therefore not regarded as significant in much of the literature. However, as Chapter Three notes international organisations serve several legitimation functions; to extend the reach of the ideas of the dominant group; to normalise behaviour that is consistent with the values of this group; to frame the political agenda so as to include and exclude particular issues; and to provide boundaries for political debate so that alternative views can be marginalised or co-opted.[40] In this way international institutions have been central in promoting the 'common sense' of a global order based on the values of neo-liberalism.

This section will begin by looking at the perception of the relationship between trade and human rights at the WTO and at the UN. The very different perceptions held by these two organisations have led to the development of alternative strategies for improving human rights, yet neither has seen overwhelming results in the realisation of these rights. The following discussion will suggest that whilst the WTO's approach to the relationship between trade and human rights has always subordinated rights to the expansion of free trade, in the post-Cold War period the emerging transnational elite also sought to bring the UN's policies into line with neo-liberal priorities. In this way, powerful institutions such as the global trade regime and the human rights regime have been co-opted by dominant social forces to "regulate core aspects of national economic, social, and cultural life."[41] The policies emerging from these institutions have thus brought about a "transfer of sovereign economic decision-making from nation-states to international economic institutions [and] gearing of the UN system towards promoting the interests of transnational capital."[42]

Whilst the moral and progressive language of human rights has generated broad acceptance for the legitimacy of the human rights regime, to gain the same level of acceptance for the global trade regime, dominant social forces have found it necessary to broaden the appeal of neo-liberal policies. For the transnational capitalist elite the means to secure such a broad consensus has been to extend the private ownership of capital globally. In this way it is not only members of the capitalist class

in traditional industrial centres of power, but also the newly emerging capitalists in the south who have become responsive to the goals and values of neo-liberalism. As Gill asserts, "many of the most ultraliberal economists and political leaders today are in and of the Third World."[43]

The spread of capital ownership has been achieved through two main processes in the period of globalisation. Firstly, the privatisation of the public sector in both the developed and developing world has seen private capital enter into areas previously within public control such as the provision of basic needs services including water, healthcare and education. Through the imposition of SAPs by the World Bank and IMF, "forced privatisation" has become standard practice in the period of globalisation.[44] Therefore, whereas the role of the World Bank was intended to be the promotion of economic growth and development and the IMF was intended to monitor financial efficiency, their roles have become "indistinguishable as the enforcers of the North's economic rollback strategy."[45] Similarly, the role of the WTO has been extended far beyond simply rule making within the global trade system so that its function has become that of creating convergence between national policies over matters such as intellectual property, investments and subsidies and has been particularly concerned with freeing transnational capital of "all spatial and temporal constraints."[46]

6.4 The WTO and Human Rights

One of the founding principles of the WTO is that "freer trade boosts economic growth and supports development."[47] Built on the belief that increased trade leads to 'trickle-down' and that the exchange of goods is matched by an exchange of moral values, the WTO is one of the core members of the neo-liberal consensus that promotes the human rights benefits of increased levels of free trade. The WTO assumes that trade and human rights are complementary and that human rights concerns can be met primarily by the creation of a global free market for goods and services. Therefore, there is no direct policy statement regarding the WTO's role in actively protecting and promoting human rights. Instead, the WTO claims that human rights will emerge from the continued expansion of the global economy so that,

> the construction of a truly global system for an increasing globalized economy stands as a powerful and encouraging symbol for those seeking solutions to the many other issues which now spill across borders, jurisdictions, and cultures...the environment, development, labour, human rights or other ethical values.[48]

The WTO was created in 1994 following the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) in 1986, although the WTO was significantly different from the GATT, many of whose provisions were contained in voluntary codes and practices. By contrast, prospective members of the WTO had to accept every part of the Uruguay Round Agreement and treat it as a 'single undertaking' so that states seeking to remain within the future international trade regime were faced with the choice of either joining the WTO or "finding themselves outside the world trading system without legally secure access to foreign markets."[49] This effectively forced states into joining the WTO regime and hastened the liberalisation of global trade, as alternative patterns of trade could not emerge.

The WTO agreement was designed to further secure the interests of capital and "was intended not merely to secure the old rights and freedoms associated with trade but to extend the agenda into new areas of property rights not previously explored."[50] It is also the first international organisation with the authority to "strike down particular national interests, even when these are enshrined in law or custom."[51] The restructuring of trade agreements during the formation of the WTO saw the extension of the WTO's enforcement powers to encompass free trade in all areas in which TNCs operate. These include not only manufactured goods, but also agriculture, services, investments and intellectual property rights. At the same time, trade issues that restrict the operations of TNCs have been excluded from the agenda of WTO business so that problems over the terms of trade between northern and southern states and plummeting prices in primary commodity markets are not directly part of the WTO's concern.[52] The vision of international trade law promoted by the WTO also supports the view that state intervention to regulate trade is exceptional, whilst unregulated trade is the norm. As Marks asserts,

> treaty-based rules against tariffs and quotas, procedures for mitigating swings in commodity prices, and provisions managing exchange rate fluctuations, are presented as

> exceptional measures which in normal conditions – characterized by stable and self-regulating trade, commodity exchange, and currency convertibility – are not required.[53]

Whilst trade liberals claim that the WTO acts as a neutral organisation providing rules and enforcement measures to ensure fair trade relations between states, critics claim that the power differentials between members skews their ability to generate outcomes that suit their preferences so that not all states are equal within the WTO system.[54] Indeed, since it is costly to maintain permanent representatives in Geneva, many of the poorer members have no representation at the headquarters of the WTO. Of the LDCs that do have representation in Geneva few have more than one person responsible for negotiations, whilst there may be upwards of 40 meetings a week on diverse subjects that require specialist knowledge. By contrast, the USA has over 250 representatives in Geneva and richer states often bring in technical experts to deal with complex negotiations.[55] This inequality of representation means that whilst the LDCs have a total population of more than 80 million people, they have little or no voice at the WTO. Whilst it is government ministers and officials who conduct WTO negotiations, many of the largest TNCs also have permanent representatives in Geneva in order to lobby for decisions that support their business interests and to act as members of official delegations.[56] The promotion of trade decisions that support the interests of capital is therefore a direct result of the growing influence of TNCs on government decision-makers at the WTO.[57] For example, Christian Aid notes that

> intellectual property rights were put on the agenda for trade talks by a committee of 13 major companies, including General Motors and Monsanto, which lobbied governments to include their proposals in the Uruguay round of trade talks. In the talks that followed, 96 out of the 111 members of the US delegation negotiating on intellectual property rights were from the private sector.[58]

The WTO has played a central role in promoting the positive relationship between trade and human rights, generating policies that seek to increase trade liberalisation whilst refusing to consider the negative impact that the actions of TNCs may have on human rights, including deprivations of the means of subsistence, environmental degradation and denials of labour rights. Therefore, whilst the WTO

has been keen to regulate the steps governments can take to protect their economies from transnational capital, no steps have been taken to draft a code of conduct for the behaviour of TNCs. Since the WTO sees the use of sanctions as a protectionist trade measure, standards of good behaviour to prevent human rights violations are to be met through compliance with a vague list of commitments by all WTO members. These state,

> all WTO member nations oppose abusive work place practices, through their approval of the United Nations Universal Declaration of Human Rights; trade sanctions should not be used to deal with disputes over labour standards; member states agree that the comparative advantage of low wage countries should not be compromised; and the International Labour Organization (ILO) holds primary responsibility for labour issues.[59]

Whilst the business of protecting workers' rights is left to the non-binding ILO Declaration on Fundamental Principles and Rights at Work,[60] the main objective of this WTO statement is to promote open trade relations and anti-protectionist measures.

The WTO's concern to protect the free movement of capital can also be seen in the negotiations over the Multilateral Agreement on Investments (MAI) proposed by the Organization for Economic Cooperation and Development (OECD).[61] The MAI is designed to deepen and extend the goals of deregulation in finance and investment and intends to remove all governmental barriers to the entry and operations of capital, so that whilst the rights of capital are consolidated in the MAI, there are no corresponding duties placed on TNCs. The requirement to respect the internationally agreed human rights set out in the UDHR, ICCPR and ICESCR is therefore not mandated upon TNCs and other private financial actors, such as insurers and banks in the MAI. Nor are TNCs required to observe the national laws of the states in which they operate. Instead, governments would be required to alter national legislation in order to create a level playing field for TNCs so that states must accept the dispute-resolution process that allows investors to sue governments for damages through the WTO if they believe state laws are in violation of MAI rules.[62] This would leave the rights of indigenous people and workers especially vulnerable to the operations of TNCs.

As part of the agreement, if states implement legal performance requirements that require investors to behave in a certain way in exchange for market access, this would be in violation of the rules of the MAI. This would encourage the growth of Export Processing Zones (EPZs) within which, as Chapter Four notes, environmental and labour regulations are purposely overlooked so that states can attract increasing levels of FDI. Therefore, the rules of the MAI would effectively make it illegal for governments to veto the operations of TNCs no matter how environmentally, economically or socially destructive,[63] so that as Evans asserts,

> if accepted the MAI would constitute a significant step towards creating a 'constitution of a single global economy' or 'a bill of rights and freedoms for transnational corporations...a declaration of corporate rule'.[64]

The WTO is also involved in dispute settlements between states in order to prevent a return to protectionist trade measures that are seen to damage global free markets, and must rule on disputes in which environmental matters, labour regulations and human rights are central. At the same time, WTO rulings outlaw any trade barriers erected to prevent human rights violations or environmental destruction if they obstruct the free movement of goods and services. Indeed, the WTO courts have "consistently ruled that environmental and human rights concerns are unacceptable motivations for trade policy if they interfere with the interests of commerce."[65] The protections afforded to individuals within the international human rights legal framework are therefore devalued by WTO decisions and the issues of trade and human rights are put into direct conflict with one another. The power of the WTO is now considerable and could be used if the organisation was made more democratic and accountable, to promote "conformity to civilized standards in the workplace and economy more generally – standards that are being violated worldwide, including in the United States."[66] However, since the WTO rejects the use of trade sanctions to deal with disputes over human rights violations, the claim that trade and human rights are complementary is put into serious doubt. Two examples will be presented here to illustrate how the rules of trade emanating from the WTO subordinate human rights concerns to the goal of free trade. These will demonstrate how neo-liberal assumptions of a positive relationship between trade and human rights cannot be upheld.

Firstly, following the resignation of military dictator Ne Win on 23rd July 1988, the UN announced the formation of a provisional democratic government in Burma. However, Ne Win associates soon regained power, violently suppressing all dissent and leading to gross violations of human rights.[67] In response to these atrocities, the Massachusetts State Court ruled that purchasing contracts with TNCs operating in Burma should be terminated. The selective purchasing laws were designed to keep public money from supporting the military regime in Burma and providing foreign earnings that would pay for military equipment used in genocide against the population.[68] However, when the European Union (EU) and Japan filed a challenge against this policy, the WTO ruled that the action of the Massachusetts State Court was illegal since withdrawing public contracts on the grounds of environmental degradation, human rights abuses or labour conditions is prohibited under WTO rules.[69] The WTO's decision rejects the use of trade restrictions and instead promotes the interests of capital even in situations where gross violations of human rights are widely documented. In 2004 the human rights situation is little better in the renamed Myanmar with extrajudicial killings, torture of political prisoners and forced labour still reported to be widespread.[70] It is therefore questionable whether WTO support of TNCs that continue to trade with Myanmar has led to improvements in human rights.

The second example demonstrates how the corporate interests of individual TNCs are often directly supported by the WTO, whilst human rights are sacrificed to the goal of maintaining global free trade. Under the terms of the Lomé Convention the EU grants special preferences to banana exporters from small countries in the Caribbean, as a means of providing reparations to ex-colonial countries and to provide assistance to the poor so that they can meet their basic needs and fulfil economic and social rights such as the right to adequate food, shelter and education. The Lomé agreement is designed to benefit poor farmers in countries dependent upon banana exports, since in the Caribbean, smallholders rather than TNCs work the plantations. The Lomé Convention favours small producers by guaranteeing them access to 7 per cent of the EU market at a low tariff rate, which ensures that Caribbean bananas will be cheaper than their mass-produced competitors.[71] Whilst this policy has been in force since 1975, in 1996 USA-based Chiquita Brands International prompted the USA to file a WTO complaint on the grounds that the EU policy was a barrier to free trade.[72] The complaint was duly filed at the WTO despite

the fact that the USA does not produce bananas for export, whilst Chiquita Brands International controls a 75 per cent share of the EU banana market, in contrast to Caribbean smallholders who produce just 3 per cent of the world's bananas.[73]

Evidence suggests that a donation of $500,000 by Chiquita to Democratic Party funds only twenty-four hours before the USA lodged the complaint at the WTO may have persuaded the USA's government to file on behalf of Chiquita.[74] The WTO ruled that the EU's Lomé Convention does conflict with internationally agreed trade rules so that the EU has been forced to rescind the preferences granted under the Lomé Convention, leaving poor smallholders and their families to exist on what they can earn in the global banana market competing against TNCs such as Chiquita. This example illustrates not only how the power of TNCs to influence governments and bring about policies designed to protect the interests of large-scale capital contrasts with the access of poor states at the WTO, but also how the WTO supports claims made by powerful business interests by ruling against human rights concerns to prioritise the interests of privately owned capital.

6.5 The United Nations, the ILO and Trade and Human Rights

In contrast to the WTO's perception that trade and human rights are positively linked, the UN has historically been more cautious over the benefits of free trade and has sought to regulate the behaviour of TNCs to moderate the worst effects of their operations.[75] Within various agencies of the UN, including the Commission on Human Rights, Sub-commission on the Promotion and Protection of Human Rights and the High Commissioner for Human Rights, the relationship between trade and human rights has been perceived as one of conflicting goals,[76] so that whilst trade may generate economic growth, the benefits of this growth have not been equally distributed, leaving the majority of the world's population unable to fulfil the most basic demands on economic and social rights. Civil and political rights have also been subject to regular violations as states override citizen's freedoms in order to provide an environment conducive to attracting trade and FDI. The negative consequences of increasing levels of international trade for labour rights and the human rights of the poor have also been a central concern of the UN agencies. Therefore, rather than relying on trade to improve human rights, the UN and ILO have sought to implement

codes of conduct that can regulate the behaviour of TNCs and other private financial investors to ensure that their behaviour complies with the human rights set out in the UDHR, ICCPR and ICESCR.[77]

Following the Report of the Group of Eminent Persons set up by the UN Economic and Social Council, which drew attention to the increasingly negative impact of TNCs on the environment and worker's rights in the 1970s, the United Nations Centre on Transnational Corporations (UNCTC) was created in 1975.[78] In 1977 UNCTC began negotiations on a Draft Code of Conduct for Transnational Corporations, setting out a framework for regulation intended to forge a positive link between TNCs and national development goals by outlining equal levels of rights and responsibilities for both TNCs and the states in which they operated.[79] The UNCTC Code was seen as a strategy for regulating TNCs by imposing certain duties, such as respect for the legislation of host states, respect for human rights, respect for the environment and transparency in their operations.[80]

However, in the 1980s the emerging social forces of transnational capital sought to bring the United Nations into line with the goals of neo-liberal expansion so that UN policies became more convergent with the goals of the transnational elite. Therefore, despite early progress in creating a regulatory code for the behaviour of TNCs, the Code was never agreed upon and the UNCTC was shut down in 1993.[81] This followed calls from the Reagan and Bush administrations for the issues under discussion at UNCTC to be dealt with through the United Nations Conference on Trade and Development (UNCTAD), since UNCTAD was perceived to be more convergent with the neo-liberal desire for economic expansion and increased levels of global free trade.[82] The UNCTC was thus transferred into a division within UNCTAD in 1993 following restructuring in the UN's economic and social agencies. In contrast to the UNCTC Code, which sought to conform TNC behaviour to internationally agreed human rights, environmental and labour standards, the goal of UNCTAD's programmes on international trade include promoting the development of southern states through international trade, and promoting the integration of trade, environment and development. Therefore, the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices developed at UNCTAD was more concerned with the "need to ensure that restrictive business practices do not impede or negate the realization of benefits that should arise from the liberalization of

tariff and non-tariff barriers affecting international trade, particularly those affecting the trade and development of developing countries."[83]

More recently, the UN system has come to play an important role in legitimising the expansion of neo-liberal values, so that whilst the Sub-Commission has asserted, "it is not possible for private actors whose actions have a strong impact on the enjoyment of human rights by the larger society...to absolve themselves from the duty to uphold international human rights standards"[84] the absence of a legally binding code of conduct prevents the regulation of TNCs in practice. Instead, a change of direction in UN policy has emerged that promotes the expansion of free trade as a means through which human rights can be secured and UN agencies have come to play a central role in promoting the interests of capital. This change of direction is illustrated by Kofi Annan's speech to the World Economic Forum in 1997, which stated "strengthening the partnership between the United Nations and the private sector will be one of the priorities of my term as Secretary-General [based on a] new universal understanding that market forces are essential for sustainable development."[85] More recently, Mr Annan wrote that enhanced trade may be "even more important for developing countries in alleviating poverty than increased official development assistance."[86] As Chimni asserts, "while there has never been any doubt about the policy tilt of the international financial institutions, private interests have come to influence a larger segment of the UN system."[87]

During the same period, the ILO drafted the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, yet unlike the UNCTC's Draft Code of Conduct, the ILO's Tripartite Declaration was successfully adopted in November of 1977.[88] The Declaration's stated aim was to "encourage the positive contribution which Multinational Enterprises can make to economic and social progress, and to minimize and resolve the difficulties to which their various operations may give rise."[89] The Declaration contains general principles intended to guide governments, business groups, unions and TNCs and requires companies to respect the sovereign rights of states, obey national laws and regulations, respect the rights set out in the UDHR and conform their operations to the development priorities and social aims of host countries. However, the Declaration has had little impact on the behaviour of TNCs since compliance is voluntary and the Declaration has no enforcement mechanisms. Therefore, whilst disputes are supposed to be dealt with by

the Committee on Multinational Enterprises, during its first decade in operation the Committee only issued two such interpretations.[90]

In 1976 the OECD also adopted a Declaration on International Investment and Multinational Enterprises.[91] The OECD Declaration was designed to ensure that TNCs comply with the policies of host states and covers a range of issues including the environmental and human rights impact of TNC operations. However, the main aims of the Declaration are to ensure foreign TNCs are not treated less favourably than domestic companies and to minimise the imposition of conflicting requirements on TNCs by different governments, so that this Declaration is seen primarily as an attempt by northern states to respond to the growing criticism of TNCs operations in the South. At the same time, the Declaration makes it clear that northern governments are not prepared to see excessive controls imposed on TNC activity. Similarly, because the Declaration is voluntary and the guidelines favour TNCs by placing heavier regulation on governments, it has limited usefulness in practice. The OECD Declaration therefore acts primarily to deflect criticism of the activities of TNCs rather than providing a genuine attempt to control TNC behaviour and can be seen as part of the consensus view that prioritises trade over human rights concerns.

The failure to draw up international regulations to restrict the behaviour of TNCs and ensure compliance with internationally agreed human rights legislation can be seen as part of an ideological shift in the period of globalisation and these transformations have witnessed the co-option of international organisations for the promotion of the values of neo-liberalism over concerns of continuing human rights violations. Whilst the ILO and OECD codes remain a voluntary standard, the UNCTC Code, which would have bound transnational capital into a regulatory framework, was abandoned in favour of more general recommendations and a reliance on voluntary codes. Therefore, having failed to assert the protection of human rights from the worst effects of TNCs in an official code of conduct through the UN system, reliance has now fallen on private codes of conduct.

6.6 Corporate Codes of Conduct

Whereas in the 1970s national governments had attempted to regulate the activities of TNCs within their borders, the internationalisation of the state during the

period of globalisation has shifted power from the state to non-state actors so that states are no longer able to control the impact of TNCs within their borders. However, the process of globalisation has also facilitated the spread of global communications and the transmission of information about working conditions in overseas factories. Therefore, the combined significance of brand status and public awareness of poor human rights records has led to a proliferation of corporate codes of conduct and an increased emphasis on corporate responsibility emerging from the headquarters of many high-profile TNCs.[92] These corporate codes of conduct emerged in the early 1990s and focus primarily on the impact of TNCs in the areas of social conditions and environmental harm.

Whilst supporters claim that corporate codes of conduct have enabled TNCs to develop company policies, procedures, training, and internal reporting structures that "ensure commitment to economic, social and political justice,"[93] there is a danger that codes may be used primarily to deflect criticism and reduce the demand for external regulation. Indeed, in some cases codes have led to a worsening of the situation for those whom they purport to benefit, since when codes of conduct are applied by corporate centers to their suppliers, failure to comply is often to be sanctioned by removing orders from the sub-contracted factory. This 'cut and run' policy is not necessarily desirable since those who ultimately suffer from such sanctions are the workers, who find themselves unemployed in countries where there is no social security provision. As Chapter Four notes, the fear of job losses often prevents workers from speaking out about poor standards and harsh treatment.[94] Similarly, whilst the ILO distinguishes between child labour and child work,[95] it argues that a sudden outright ban on child workers can lead to a deterioration in the well-being of poor and vulnerable families who depend on the additional income that children bring in.[96] Evidence also suggests that when children are prohibited from working in export industries they can be subject to far worse exploitation in black-markets and in the supply of goods for domestic markets where consumer concerns are absent. This is reported to have happened in Bangladesh in the 1990s after child workers were dismissed from the garment industry.[97]

Corporate codes of conduct have also been accused of undermining the position of trade unions in the workplace.[98] The International Organization of Employers, for example, estimates that 80 per cent of codes are merely statements of general business ethics that have no implementation methods, and many codes do not

even cover the ILO's core labour standards, particularly those on freedom of association and collective bargaining.[99] Corporate codes of conduct also suffer from a lack of independent monitoring and the reluctance of many firms to include independent monitoring as an integral part of their codes of conduct suggests that voluntary codes may be used primarily as a public relations exercise rather than a genuine attempt at improving conditions and performance. Corporate codes of conduct may also act to replace government regulation and remove the pressure for government control of corporations in the future.[100] A further failure of the 'cut and run' policy is that whilst high-profile brand corporations may move production as a result of the public exposure of bad working conditions, under conditions of globalisation, one corporation's decision to remove production from a factory does not prevent alternative manufacturers from moving production in. Similarly, TNCs often move their contracting out operations to states where working conditions are equally harsh but where information on human rights abuses is also harder to gather.[101]

A more recent development to bring corporations to account for their involvement in human rights violations is the move by the Los Angeles Superior Court in 1998, to bring the American oil company Unocal to trial for human rights abuses, including rape, torture, forced labour and extrajudicial killings, which have occurred whilst Unocal was involved in a pipeline project in Burma. As Andrew Gumbel asserts, "the ruling by the Los Angeles Superior Court marks a potential turning point in the policing of corporations overseas, since it suggests that US courts can assert jurisdiction when the events took place on the other side of the world."[102]

Although Unocal has argued that any human rights violations taking place in Burma should be subject only to Burmese law, the Court heard evidence that Unocal had specific knowledge that human rights abuses, including the use of forced labour, were commonplace in this region of Burma.[103] However, on January 23rd 2004 a Los Angeles judge ruled that the plaintiffs in the case against Unocal had sued the wrong corporate entity and should have pursued the subsidiaries instead of the parent company. Although the trial has yet to conclude, this early decision by the Court has effectively absolved Unocal from blame for the operations of its subsidiaries, by allowing Unocal bosses to claim that they knew nothing of the operations in Burma. This is despite evidence to suggest that Unocal had ample information on the Burmese human rights situation before operations began, whilst it is hard to believe

that a company investing millions of dollars in an oil pipeline would not have gathered all the relevant information regarding the political, economic and social environment of the host country. By deciding that Unocal cannot be held responsible for the behaviour of its subsidiaries this case reinforces the use of sub-contracting strategies that render TNCs blameless for human rights violations.[104]

6.7 Conclusion

This discussion demonstrates how there is both unwillingness and inability to protect human rights from the actions of TNCs and gives little hope for the future of human rights provision under conditions of globalisation. The continued reliance on international law cannot bring those actors increasingly responsible for human rights violations to account for their actions. Neither can the current legal system prevent human rights abuses, but can only charge those responsible in retrospect. This approach suits corporate leaders whose operations are directly responsible for human rights violations because their financial resources are such that they can easily defend any legal action brought against them.

Whilst the neo-liberal consensus has continued to promote international legal solutions to human rights violations, future improvements for human rights are claimed to emerge from global economic expansion and increased free trade. This view is legitimised through the policies of international organisations, in particular the WTO. The global reach of WTO rules, combined with an enforcement power that can overrule state legislation has also enabled the 'common sense' of the neo-liberal approach to become almost universally accepted by governments and international officials. This has led to the promotion of trade as the obvious solution to the problem of human rights abuses in an era of transnational relations and overlooks the negative effects of current trade and investment rules on human rights.

The co-option of UN policy-making by neo-liberals has also occurred during the period of globalisation so that whilst many agencies of the UN retain their commitment to promoting universal human rights, there is general agreement that by prioritising civil and political rights, claims for the fulfillment of human rights can be met through the democratic operation of individual states. Similarly, whilst UN agencies continue to promote economic, social and cultural rights, these rights are to

be realised through a strategy of poverty reduction, achieved by drawing people into the global economy. Kofi Annan's speech outlining the "universal understanding" that deregulated trade and expanded free markets are the best means to improve people's living conditions is illustrative of the new policy direction of the UN.[105] Whilst the ILO has continued to push for the regulation of investment and TNC behaviour, it has also come to accept that regulation to protect human rights can only emerge from within the context of a liberalised global market, rather than challenging the 'common sense' of a globalised world order underpinned by the values of neo-liberalism.

The emergence of corporate codes of conduct as the primary means of securing certain standards of behaviour from TNCs is illustrative of the power of transnational capital in the current period, since whilst these codes may provide some benefit for workers, in general they remain weak in terms of guidelines, poorly implemented and often have negative consequences that result in the opposite of what they set out to achieve. More often, whilst corporate codes appear to offer a framework of rules for the operation of TNCs they act primarily as a public relations exercise for winning over consumers in the west. That the future for the relationship between trade and human rights is left to the goodwill of those actors that are increasingly implicated in new forms of human rights abuses is indicative of the status of human rights in the current period. The following chapter will conclude this discussion and will draw together the main points of this research. However, the evidence presented here suggests that human rights are indeed subordinated to trade and that the transnational capitalist elite continues to pursue policies that maintain its position of wealth and power whilst consigning the majority of the world's population to poverty and deprivation.

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CHAPTER 7
Conclusion

7.1 Choosing a Theoretical Framework

7.1.1 Traditional Theoretical Approaches

This research has sought to consider the relationship between trade and human rights under conditions of globalisation. As noted in the introduction, the post-War period has been witness to 'revolutionary' and 'amazing'[1] progress in developing human rights law and there is broad acceptance that free trade can provide "the best, the most natural and the universal path towards development for all humanity."[2] However, despite the issue of trade and its social and environmental impact having risen to the top of the global political agenda in the post-Cold War period, a 'trade and human rights debate' remains absent, as a consequence of the broad acceptance that the link between trade and human rights is positive among governments, international organisations, International Financial Institutions (IFIs), business leaders and the academic community. Whilst the issues of trade and human rights have become the focus of an increasing body of international relations literature in recent years,[3] much of the literature that seeks to understand the link between trade and human rights is dominated by a liberal-pluralist perspective. This liberal-pluralist bias in the literature underpins the view that trade and human rights share a complementary relationship. The support given to this view in the traditional literature has also been central for legitimising the idea that increased free trade is the 'natural' means through which future improvements in human rights can be secured. The traditional literature therefore supports the neo-liberal claim that trade benefits human rights, and has enabled neo-liberal values to achieve the status of 'common sense' in the current period.[4]

Whilst many scholars claim that the post-Cold War period has been characterised by great transformations in world politics in the move from an international to a globalised order,[5] the body of literature that is informed by traditional international relations theory relies on a problem-solving approach that fails to treat the power transitions occurring in the period of globalisation as a

significant factor in an analysis of the relationship between trade and human rights. It is therefore worthwhile to return to the traditional literature and the shortcomings that traditional theories of international relations share in their understanding of globalisation, trade and human rights.

There are several features common within the traditional international relations literature. Firstly, the literature is dominated by a problem-solving approach that sees the issues of trade and human rights in isolation from one another and from the broader socio-economic and political context. Secondly, there is a bias towards viewing the state as the central actor within global politics, which denies the significance of non-state actors. Thirdly, there is a failure to accept that global political changes have led to power transitions that reconfigure the relationship between the state and non-state actors, particularly in the areas of trade and finance. Fourthly, the literature generally assumes that the global order is both neutral and fixed, so that existing configurations of power are upheld as the 'natural' order. Whilst a growing number of scholars are attempting to challenge these shortcomings,[6] in general, the traditional literature lacks an understanding of the significance of the relationship between trade and human rights and of the impact that processes of globalisation may have on the realisation of human rights.

Of most significance in the traditional international relations literature is the reliance on a problem-solving approach. This approach views issues in isolation from one another and in isolation from the broader context, so that the impact of particular configurations of power relations on our ability to realise human rights is rarely considered. Problem-solving approaches do not acknowledge that the structures put in place by dominant social forces may act to prevent the genuine realisation of universal human rights, so that by viewing individual cases of human rights abuses in isolation from the structures of a globalised world order, scant attention is paid to trade practices and economic policies that lead to regular human rights violations. This allows certain behaviours to continue because many actors are operating in similar ways. For example, the creation of Export Processing Zones (EPZs) in states that require Foreign Direct Investment (FDI) to service their international debt burden has been a determined policy of the International Monetary Fund (IMF) and World Bank. However, whilst EPZs are designed to attract foreign investment because of the favourable conditions offered to Transnational Corporations (TNCs) and private financial organisations within these zones, the conditions offered to attract investors

often violate both the state's own national legislation and the state's obligations under international law.[7] Common features that are included in the incentives to attract FDI are a guarantee that wages can be paid at below the legal minimum wage and a suspension of labour laws, environmental regulations and human rights legislation within the EPZ. Therefore, although reports of trade-related human rights abuses within EPZs have been increasing, the structures of globalisation put in place by dominant social forces act to marginalise this evidence and prevent those responsible for violations from being called to account.[8]

By disregarding the context in which global politics operates, problem-solving theory also leads to unquestioning acceptance of the power relations underpinning the current world order. The first consequence of accepting the legitimacy of existing power relations is that the state is continually placed in the central position of responsibility for global politics. Whilst it is accepted that the neo-realist literature is informed by a state-centric view of international relations, liberal-pluralism and regime theory emerged in order to challenge the centrality of the state in neo-realist theory. However, both liberal-pluralism and regime theory continue to focus on *international* law, *international* regimes and *international* organisations, so that the state remains central and non-state actors are marginalised. When non-state actors are acknowledged in the liberal-pluralist and regime theory literatures, both approaches exhibit a commonly held assumption that the involvement of non-state actors in global politics is progressive.[9] This denies the increasing body of evidence suggesting that non-state actors are responsible for new forms of human rights abuses in the current period.[10]

In the traditional literature, actors whose interests broadly converge with those of dominant social forces are considered to be progressive, so that in the current period 'progressive' is defined in terms of support for neo-liberal values. Actors that support the principles of market-led economics, liberal-democracy, personal responsibility and freedom from state interference are therefore afforded more open access to centres of power than actors who remain critical of the values of neo-liberalism. Whilst the liberal-pluralist bias in the literature leads to claims that all participants have equal opportunities to influence political outcomes, this view fails to acknowledge that the power relations determining access to centres of authority do not allow equal representation for all groups involved in global politics. For example, groups supporting business interests, such as TNCs, have access to resources and

centres of power that Non-Governmental Organisations (NGOs) seeking to protect human rights cannot possibly command.[11]

The adoption of problem-solving theory in the traditional literature also legitimises prevailing power relations, so that critical views that seek to understand human rights abuses in their wider context are marginalised. The traditional literature also excludes actors that aim to politicise discussions concerning trade and human rights in order to identify ideological bias. Similarly, since both liberal-pluralist and regime theorists support the view that trade benefits human rights when coupled with international human rights law, actors that support the international legal response to human rights violations, including international lawyers, international organisations and IFIs are seen to be progressive, whilst NGOs that seek to challenge the negative impact of development policies and Structural Adjustment Programmes (SAPs) on human rights are marginalised.[12]

The traditional literature focuses on 'managing' trade and human rights as separate issues through international organisations and regimes, based on the notion that these issues can be dealt with as legal and technical matters, free from political debate and ideological bias. However, the continued reliance on international law to overcome the problem of trade-related human rights abuses can also be seen as part of the problem-solving approach favoured in the traditional literature. The state-centric character of international law results in a method of dealing with human rights abuses that excludes the very actors seen to be increasingly responsible for human rights violations in the period of globalisation. Since international law can only aim to regulate the behaviour of states, non-state actors such as TNCs and IFIs remain free to continue with policies and practices that violate human rights with little fear of redress. Whilst the international legal framework is designed to enable the state to uphold its obligations under international human rights treaties by regulating the behaviour of non-state actors within state borders, reconfigurations of power in the period of globalisation have undermined the state's ability to regulate non-state actors. The research presented in Chapter Five demonstrates that the erosion of the state's capacity to enforce international human rights law has not been an accidental process, but has been the result of moves by dominant social forces to deregulate the relationship between the state and private economic actors.[13] The traditional literature therefore fails to note the transnational character of newly emerging forms of human rights violations.

The international legal approach has also been beneficial for the neo-liberal elite, since the continued failure to secure human rights in the current period can be blamed on failures of implementation and enforcement rather than on the structures of globalisation. By denying that policies and practices supported by neo-liberal ideology are responsible for a failure to secure improvements in human rights, reliance on the international law approach serves to deflect challenges to the neo-liberal project and to the structures underpinning globalisation.[14]

A second consequence of accepting the prevailing order as neutral is a failure to consider how the power relations underpinning global politics affect the perception of issues such as trade and human rights. By failing to acknowledge that ideological bias underpins the dominant conception of human rights in any given period, the current view that civil and political rights are the only genuine human rights is given broad support in the traditional literature.[15] The prioritisation of the rights set out in the International Covenant on Civil and Political Rights (ICCPR) has resulted in the pursuit of economic, social and cultural rights becoming an 'aspirational' goal, denying the legitimacy of claims on the rights set out in the International Covenant on Economic, Social and Cultural Rights (ICESCR).[16]

By accepting prevailing configurations of power relations without question, the traditional literature also lends support to the values and practices of the transnational elite and legitimises neo-liberal values and policy goals. This unquestioning support has enabled the idea that economic, social and cultural rights should be subordinated to civil and political rights to acquire the status of 'common sense' in the current period.[17] Similarly, both liberal-pluralism and regime theory accept that the tenets of neo-liberal ideology - free trade, deregulated markets, privatisation and the expansion of the global economy - provide unquestionable benefits for human well-being. Since prevailing power relations are seen as legitimate, the traditional literature supports neo-liberal claims that trade and human rights share a complementary relationship. This support has enabled the neo-liberal elite's view of trade and human rights to become broadly accepted wisdom.

A third consequence of treating prevailing configuration of power relations as given is that the traditional international relations literature fails to account for change within the world order. Whilst an increasing number of studies now accept that the period of globalisation can be seen as distinct from the international post-War order,[18] few traditional theorists attempt to explain the processes of change underpinning the

transition to a global order. By continuing to place the state at the centre of global politics, traditional theories fail to provide an account of the power transitions that have been instrumental in bringing about the move towards a globalised world order. Similarly, within the traditional literature the human rights consequences of such power transitions are not considered. For example, in both the liberal-pluralist and regime theory literatures, the increasing power of the World Trade Organization (WTO) in guaranteeing financial deregulation and freedom of movement for transnational capital is not considered to be significant.[19] There is also little acknowledgement that the increasing power of the WTO during the period of globalisation has brought about new relations of power that enable TNCs to operate beyond the control of the state, whilst international organisations increasingly regulate state activities and policies.[20]

The traditional literature also fails to note that the period of globalisation has seen the emergence of a form of state that is increasingly responsive to the requirements of transnational capital, so that the perceived national interest has become convergent with the interests of the transnational capitalist elite. The role played by dominant social forces in drawing the state into new relations of power through membership of key institutions is also largely ignored by traditional approaches, which view international organisations and regimes as a positive, politically neutral response to global problems. Traditional theoretical approaches therefore fail to acknowledge the significance of change in world order, despite reconfigurations of power leading to the promotion of the interests of transnational capital over considerations of human well-being and environmental protection in the period of globalisation.

Despite continued evidence that trade related human rights abuses are increasing in number and severity, for liberal-pluralists and regime theorists the neo-liberal approach continues to be promoted as 'common sense'. The traditional literature also continues to view increasing levels of free trade coupled with the formation of regional human rights regimes based on international human rights law as the 'natural' way to generate future improvements in the realisation of universal human rights.[21] Claims made for the success of the international legal approach in the traditional literature can therefore be seen to stem more from the increasing volume of international human rights law than from a decline in reported instances of human rights violations in the current period.[22]

7.1.2 A Critical Theory Framework

In order to challenge the dominance of traditional liberal-pluralist and regime theory approaches, this study has utilised the theoretical framework developed by Robert Cox, which applies a critical understanding of global politics to the issues under discussion.[23] The use of a critical theory framework is designed to approach the problem of trade-related human rights abuses from an alternative perspective. There are several reasons why a critical theory approach provides a more suitable theoretical framework within which to approach the relationship between trade and human rights under conditions of globalisation.

Firstly, critical theory rejects a problem-solving approach in order to challenge 'ideological mystifications' that are perceived as 'truths'.[24] Secondly, because critical theory is part of the historical materialist tradition, it is an approach that is concerned with understanding both the process and impact of change in world order. A critical theory approach can therefore provide an account of the transition from the post-War order of 'embedded liberalism'[25] to the increasingly globalised order of the post-Cold War period. Thirdly, a critical theory approach views issues in relation to one another, as well as in relation to the broader context of global politics, in order to understand how the structures of world order may affect commonly held perceptions of issues such as trade and human rights. Fourthly, critical theory can foresee that alternative patterns of organisation to those of the prevailing world order may emerge, based on transitions of power that reconfigure the relationship between dominant social forces and less powerful groups.

The critical theory framework developed by Cox sees the interaction between ideas, institutions and material capabilities as the basis for the operation of global politics.[26] These features can be understood as social forces, which encompass the conflicting ideologies at play in any political activity; forms of state, which comprise the particular organisational and structural features of the state; and world orders, which emerge from the interaction between social forces and forms of state.[27] Each of these features relates to the others and it is the interaction between these three spheres that forms the structural context in which global politics operates and through which global change may occur. The interaction between ideas, institutions and material capabilities provides a framework that informs the research undertaken in this thesis. Therefore, within a critical theory approach the reconfiguration of power relations

that has transformed the scope and reach of international institutions, created a global economy and led to an increasingly 'internationalised' state are seen as significant factors that impact on our ability to realise universal human rights in the current period.[28]

In an analysis informed by critical theory, the relationship between trade and human rights is seen to be significant because trade has been central in bringing about the transition towards a globalised world order. Changing patterns of trade and production processes in the late post-War period led to the reconfiguration of power relations that underpinned the emergence of a global economy, and it is powerful actors in the areas of trade and finance that have been instrumental in the global promotion of neo-liberal values and policies. Global trade supports the structures of world order and has been central in expanding the reach of economic globalisation into all areas of the world. At the same time, global trade is supported by economic, social and political structures that have brought about transitions in power relations, such as the emergence of an 'internationalised' state. The 'internationalised' state is a state that has become subject to the demands of the global economy, so that governments increasingly develop policies that broadly converge with the goals of the neo-liberal elite. The 'internationalised' state therefore supports the interests of transnational capital as though they are synonymous with the national interest, which has enabled private actors, and TNCs in particular, to operate largely beyond the control of state regulations.[29]

Global trade also has a profound effect on society and the environment, since in the newly emerging globalised economy increasing numbers of people have become reliant on global markets for their livelihoods, as agricultural work declines and jobs that produce goods for export and attract FDI become more numerous. In this way, many people who had no previous involvement with the global economy have become central to the lower levels of its operations in jobs that provide goods and services directly to global markets.[30] Since there are now more people than ever employed directly in the global economy, global trade is seen as a conduit through which values can be exported and it is in this way that the 'civilising' influence of trade is said to impact on claims for human rights to be recognised around the world.

The concept of hegemony developed by Gramsci and revised by Cox has also been central to this research.[31] The concept of hegemony provided by a critical theory analysis explains how the formal parity between the rights set out in the ICCPR and

those set out in the ICESCR was undermined by powerful social forces seeking to promote the values of neo-liberalism in the post-War period. The evolution of human rights has seen the concept used as both a regressive and progressive force, so that in the early drafting of the Universal Declaration of Human Rights (UDHR), ICCPR and ICESCR, the emergence of a conception of economic, social and cultural rights was seen as a progressive step towards giving the poor a genuine claim upon improved levels of economic and social well-being. However, both the USA and the emerging transnational capitalist class perceived that the rights set out in the ICESCR would jeopardise the neo-liberal project.[32] Instead, during the post-War period dominant social forces sought to promote a version of human rights that was more convergent with neo-liberal values. Therefore, by prioritising the rights set out in the ICCPR, neo-liberals guaranteed that civil and political rights that support the ownership and disposal of property, freedom of economic action and personal responsibility would become ascendant.

The difference in status afforded to civil and political, and economic, social and cultural rights is reinforced by the transnational elite, who promote the realisation of civil and political rights as a legitimate goal of international human rights law, whilst claiming that economic, social and cultural rights can be guaranteed by the 'trickle-down' of wealth that an increasingly liberalised global economy will generate.[33] For neo-liberals, human rights are to be sought from a policy of non-intervention, so that guaranteeing personal freedom of action and economic freedom of action through international law is seen as the best means of safeguarding civil and political rights. At the same time, neo-liberals claim that the realisation of economic, social and cultural rights will not come from a redistribution of wealth to the worlds poorest people, but will be guaranteed by allowing a deregulated global market to deliver adequate food, shelter, education and water.

Whilst neo-liberals claim that the increased wealth generated by free trade will guarantee economic, social and cultural rights, the 'civilising' influence of trade is also seen to generate demands for civil and political freedoms to be realised. Increasing the volume of global free trade is therefore seen as the obvious means of promoting and protecting human rights for neo-liberals. The broad acceptance of this view amongst politically and economically powerful institutions has enabled the idea that trade and human rights share a complementary relationship to gain ground and achieve the status of 'common sense'. At the same time, the promotion of free trade

has served to alter patterns of consumption and production that benefit the transnational capitalist elite.

Gramsci's understanding of 'common sense' and the transmission of ideas is central for understanding how neo-liberal claims have become broadly accepted in the current period despite evidence of increasing trade-related human rights violations under conditions of globalisation. By promoting neo-liberal values through SAPs, multi-agency lending programmes and development projects, the tenets of neo-liberalism have been institutionalised in most states, so that the values of the dominant group have become accepted wisdom for both western and non-western political leaders who stand to benefit from the access to centres of power afforded them when their governments adopt neo-liberal policies.[34]

Cox's understanding of hegemony also seeks to understand how change occurs at the level of global politics. By providing an account of processes of change, a critical theory approach suggests that the power transitions occurring in the move towards globalisation were not accidental, but came about as the result of intentional policies promoted by the emerging social force of transnational capital during the later stages of the post-War period. These policies were designed by an emerging transnational capitalist elite and supported by powerful business groups within the American state that held a measure of control over the American government. These policies led to power transitions that have brought about the erosion of American hegemony and the emergence in its place of a hegemonic group made up of transnational capital supported by American interests.[35] Whilst American hegemony may be in decline, powerful capitalist groups with influence over the USA's foreign and economic policy continue to ensure that the USA's central position in the promotion of neo-liberal policy goals is sustained.

The transnational elite holds little allegiance to any particular locality and has therefore been instrumental in creating a global economy, free of individual state controls. Members of the transnational elite have also sought to extend both the reach of the global economy, and the legitimacy of the neo-liberal ideology underpinning globalisation, so that the values of neo-liberalism, including deregulation, the benefits of economic growth, freedom of economic action and market-led economics become globally accepted and prioritised above all other goals. This elite can also be seen to benefit most from the expansion of the global economy since transnational capital has played a leading role in developing new patterns of economic growth and

consumption that promote the interests of capital accumulation over social, cultural and environmental concerns. Since members of the transnational capitalist elite are ultimately the authors of these transformations, they have gained the most advantages from the emergence of a global economy. In order to understand how these global power transitions have affected our ability to realise human rights in the period of globalisation, it is useful to reconsider the questions posed in the introduction.

7.2 Have Changes in the Post-Cold War Order Led to the Promotion of a Narrow Conception of Rights that Prevents Realisation of the Full Complement of Human Rights?

The research presented in this thesis demonstrates that the USA emerged from the Second World War seeking greater international economic interdependence in order to create new and expanding markets for American products. However, many industrialised states were struggling to achieve economic stability after the expense of the War and showed little enthusiasm for the prospect of American products flooding international markets. The USA needed to generate a moral consensus that would convince reluctant states that increased economic interdependence would bring benefits to all participants. The USA's involvement in developing the UDHR in the post-War period was therefore borne out of the need to provide moral legitimacy for the expansion of American trade, and centred on promoting civil and political rights that supported economic and personal freedom of action.[36] At the same time, the USSR was concerned with developing an international human rights framework that would guarantee the rights to economic equality and freedom from worker exploitation that were the primary goals of the post-War socialist agenda. The development of the international human rights regime can therefore be seen as a process through which dominant groups within the USA and USSR sought to legitimise their ideological positions.[37]

Initially, the USA was successful in creating a separation between civil and political, and economic, social and cultural rights in the two separate Covenants, institutionalising the distinction between the two sets of rights and promoting civil and political rights as more important. However, the increasing number of Less Developed Countries (LDCs) that became members of the UN in the post-War period

began to skew the development of the human rights project in favour of economic, social and cultural rights. Powerful business groups within the USA saw that their interests might be damaged if claims for economic equality were afforded legitimacy, and used their influence over the American government to push for the promotion of civil and political rights that were consistent with American values and neo-liberal ideology. Subsequently, despite the declaration of formal parity between the ICCPR and the ICESCR in 1980,[38] the USA was able to utilise its position as hegemon to promote a human rights agenda that prioritised civil and political freedoms. Economic equality was therefore subordinated to the principles of economic freedom and equality of opportunity.

American hegemony in the post-War period generated broad international support for the prioritisation of civil and political rights and led to a gradual denial that economic, social and cultural rights are legitimate human rights. Following the demise of the socialist project and the end of the Cold War, the period of globalisation has seen the emerging transnational elite consolidate the view that civil and political rights are the only legitimate rights through policies promoted by international organisations, IFIs and more recently through the UN. A broad consensus has now emerged that sees the subordination of economic, social and cultural rights to those rights that support economic freedoms as the 'common sense' view. Indeed, neo-liberals commonly suggest that the rights set out in the ICESCR do not deserve the status of human rights but should instead be thought of as 'aspirations'.[39] As this research demonstrates, a hegemony of civil and political rights has been institutionalised in the policies and practices of international organisations, so that in centres of global political power the prioritisation of civil and political rights is rarely questioned. As Donnelly asserts,

> [a]lthough the United States is a party only to the Civil and Political Covenant, ideological attacks on economic and social rights have largely disappeared from American diplomacy. Furthermore, the recent American emphasis on markets is regularly defended by their greater capacity to deliver economic welfare and by arguments of long run interdependence between economic and political freedom.[40]

Since civil and political rights have come to dominate human rights thinking, actors whose policies and practices lead to denials of economic, social and cultural

rights, including the displacement of indigenous groups and denials of adequate food, shelter and subsistence, remain free to continue their operations by calling on the position of priority afforded to the freedom of economic action.[41] Non-state actors may also justify the use of trade practices that violate human rights by appealing to the idea that there is a 'legitimate' trade-off between current human rights standards and the future benefits that increased trade will bring. However, the suggestion that immediate human rights violations can be traded-off against future human rights improvements acts merely to support the interests of transnational capital in two main ways. Firstly, the notion that the future is more important than the present legitimises the use of current trade and investment practices despite their detrimental effects, whilst suppressing demands for immediate improvements in human welfare. Secondly, prioritising future benefits ignores the growing body of evidence that disproves the 'trickle-down' theory and suggests that TNCs stand to benefit most from the current organisation of global trade.[42] Indeed, since the financial headquarters of many TNCs are spread globally, states have found it increasingly difficult to collect an adequate level of corporate taxation from TNCs.[43] Similarly, in order to attract inward investment TNCs are commonly offered incentives that include large tax concessions. This reduces the tax revenue earned by the state that could be spent on improving human well-being, whilst for many states the imposition of SAPs has meant that tax revenue is primarily used to service international debt repayments rather than provide a means of securing economic, social and cultural rights for the population.

The prioritisation of civil and political rights also denies the significance of the context in which human rights abuses take place. Since only individual action can be responsible for human rights violations, the structures of globalisation remain invisible when the cause of violations is sought. For example, the continued imposition of World Bank and IMF SAPs on states with an international debt burden has led to the governments of such states adopting privatisation policies for basic needs services. The result of these privatisations has been to put the cost of electricity, water and grains, education and medicines beyond the reach of the most vulnerable in society.[44] At the same time, SAPs have demanded reductions in welfare payments and government subsidies that could meet claims on the right to such basic needs. This research therefore demonstrates that the perception of human rights promoted by dominant social forces in the current period does indeed narrow the

range of rights that are seen as legitimate, allowing the structures underpinning globalisation and the trade practices of TNCs to remain unchallenged despite the detrimental consequences for both civil and political, and economic, social and cultural rights.

7.3 Has the Transition in Power Relations During the Period of Globalisation Subordinated Human Rights to the Goals of Global Economic Integration?

Drawing on the critical theory framework developed by Robert Cox, this study has been concerned with the impact that the transition from an international order towards a global order has had on our ability to promote and protect universal human rights. Central to this analysis is understanding the reconfiguration of power relations that underpin the changes brought about by globalisation. This research has identified three main features of the transition to a global order that affect the relationship between trade and human rights, namely the emergence of a global economy, the internationalisation of the state and the increase in scope of international organisations.

7.3.1 The Global Economy

The emergence of a global economy followed the increasing ability of transnational capital to develop production processes that freed TNCs and private financial organisations from the control of the state. TNCs adopted manufacturing processes that enabled much of the international trade in products to occur between subsidiaries of the same firm and beyond the managed trade regime of the General Agreement on Tariffs and Trade (GATT). The removal of an increasing volume of trade from the GATT regime allowed transnational capital to gain structural power over the state and this increase in power enabled dominant social forces to design the process of globalisation to follow a broadly neo-liberal agenda. Capital investment was also central to the development of a global economic order, so that with structural power moving in favour of capital, the state began to offer greater incentives to generate private inward investment.

The transition towards a globalised economic order has had a profound effect on development, human welfare and human rights for two main reasons. Firstly, patterns of wealth and poverty have changed so that there is increasing inequality between the rich and poor both within states as well as between states. Evidence for this is provided in the 1999 United Nations Development Programme (UNDP) Report, which states "the top fifth of the world's people in the richest countries enjoy 82% of the expanding export trade and 68% of foreign direct investment [while] the bottom fifth, barely more than 1%."[45] Similarly, since the global economy has created a core and periphery within states as well as between them, there are increasingly vulnerable groups within industrialised countries. Indeed, the UNDP states, "more than 35 million people in OECD countries remain unemployed, despite annual growth rates of 2-3% and increases in trade following the Uruguay Round of trade talks."[46] Whilst the condition of poverty does not directly violate rights set out in the UDHR, ICCPR and ICESCR, many basic needs that are afforded the status of human rights within the ICESCR, such as water and food, are now only available to those with the capacity to purchase them on the global market.

Secondly, since the structural power of capital enables many TNCs to move location in order to achieve the most cost efficient climate for investment, in order to attract capital investments states have become involved in a process of offering the lowest restraints on economic activity. Commonly referred to as a 'Dutch Auction', this process sees states bidding against each other to offer the lowest taxes, environmental regulations, health and safety legislation and worker's rights.[47] Whilst not all states have been equally constrained by the reconfiguration of power relations in the move to a global economy, for many southern states transnational capital now has a greater role in determining the human rights situation than the state.

7.3.2 The 'Internationalised' State

The second feature of the transition to a global economic order is the internationalisation of the state, which has seen all states surrender to the demands of transnational capital to a greater or lesser degree. As noted earlier in this chapter, the 'internationalised' state developed in response to the demands of increasingly powerful transnational economic actors. The new role for the state in guaranteeing freedom of movement for transnational capital differed significantly from the era of

'embedded-liberalism',[48] during which the state's role was to secure jobs, manage economic development and provide welfare to those unable to provide for themselves. Instead, under conditions of globalisation the 'internationalised' state acts to protect the interests of transnational capital by subsidising businesses with tax incentives whilst generating open markets for jobs, allowing the global market to determine national levels of economic development and reducing welfare payments.[49] Therefore, the 'internationalised' state is powerless to protect citizens from fluctuations in the global economy that may lead to violations of human rights. Nor can the 'internationalised' state regulate the behaviour of non-state actors to guarantee that their activities do not lead to human rights abuses. Again, it is vulnerable developing countries that rely on primary commodities and have a large international debt burden to service that have seen the greatest loss of autonomy in the period of globalisation. However, the recent removal of service industry jobs from the UK and USA to states such as India demonstrates how even the most powerful states cannot protect their citizens from the operations of the global economy.[50]

7.3.3 International Organisations

To understand how the broadened scope of international organisations impacts on human rights, it is useful to return to the concept of hegemony underpinning a critical theory framework. Within this view, dominant social forces aim to generate a consensus that supports the legitimacy of the hegemon's values, and the role of international institutions is central in generating 'common sense' status for the interests of the hegemonic group. The hegemonic group expresses its principles and values through regimes and international organisations in order to promote these interests as though they are beneficial to all groups that participate, and it is through the broad membership of international organisations that the elite group's leadership achieves legitimacy. During the latter stages of the post-War period, the transnational elite encouraged states to formalise international relations by joining international regimes and organisations based on agreed rules and legal enforcement measures. Since membership of international organisations requires states to adhere to a particular set of principles and practices, the expansion of interdependent relations has also ensured the global spread of neo-liberal values. International organisations have also become more autonomous during the transition

towards a globalised world order, so that despite states remaining central to their operation, professional staff operating largely beyond the requests of individual members now increasingly decide policies and procedures.[51]

Importantly for a discussion of trade and human rights, whilst states who signed up to the GATT in the post-War period were bound only by voluntary codes and practices, the provisos of WTO membership were significantly different, so that by agreeing to the WTO Uruguay Round Agreements states were bound by a single set of mandatory rules that effectively meant that states were 'in' or 'out' of the global trade system.[52] This guaranteed that the WTO would achieve a broad membership whilst at the same time member-states were committed to developing economic and trade policies that complied with WTO rules.

Since WTO rules are based on the tenets of neo-liberalism, including deregulating trade and liberalising the international economy, the WTO promotes the idea that free trade leads to a 'trickle-down' of wealth that will lead to future improvements in human rights, so that human rights can be best realised by allowing economic actors increased freedom of action. In this way, the WTO acts to legitimise the removal of state regulation over transnational capital, so that TNCs and private financial actors now operate almost free of state controls. Indeed, whilst much of the daily global trade now occurs beyond the scope of international regulation, WTO rules also serve to promote the freedom of capital, whilst regulating the trade policy of individual states. For example, the state of Massachusetts use of selective purchasing laws to prevent further public money from supporting the Ne Win regime in order to protect the human rights of the Burmese was declared illegal under WTO rules in 1998.[53]

Similarly, in order to achieve moral legitimacy for WTO rules, the WTO promotes the idea that free trade benefits human rights by leading to an exchange of moral values between trading partners. The idea that trade and human rights share a positive relationship stems from neo-liberal claims that trade 'civilises' and leads to an exchange of principles and values.[54] Trade is seen to play an 'educative role' in states where human rights are a neglected issue, so that exposure to the values of human rights is seen to lead to a demand for human rights to be protected. However, since neo-liberals claim that trade promotes human rights, they must assume that human rights violations do not result from the behaviour of those actors involved in the trading process. Despite neo-liberal claims, the research presented in Chapter

Four demonstrates that under conditions of globalisation there has been a large increase in the number of reports of trade-related human rights abuses perpetrated by TNCs. Neo-liberal claims also fail to note the documentary evidence of the damaging effect SAPs and other policies imposed by international organisations have had upon human rights.[55] Despite evidence against neo-liberal claims mounting, the idea that solutions to human rights violations can be sought through increasing trade relations has been spread through membership of the WTO. The persistence of this view can be attributed to the penetration of neo-liberal ideology into all areas of global politics, so that whilst the view that civil and political rights are the only genuine human rights has led to a narrow conception of human rights becoming the broadly accepted wisdom, the idea that the relationship between trade and human rights is positive has also become 'common sense'.

Historically, the United Nations has had a more ambivalent attitude to the relationship between trade and human rights. Whilst acknowledging the benefit that increased wealth would bring to many in the developing world, the UN has been cautious about claims made for the human rights potential of global free trade. The United Nations Human Rights Commission has therefore been keen to develop a regulatory framework to control the behaviour of TNCs in order to minimise the impact of trade on the environment and human rights.[56] However, as the evidence in Chapter Six demonstrates, since the early 1990s the UN has become more accommodating to the values of the transnational capitalist elite, so that since the UN and its agencies have begun to adopt policies that are more convergent with neo-liberal ideology there is no longer an international organisation that acts to challenge the conventional wisdom that increased free trade benefits human rights.[57]

Whilst international organisations have been central in creating the conditions that enable non-state economic actors to operate free from state controls, the actions of states in regard to foreign policy, economic policy and trade policy have been increasingly regulated through membership of international organisations. The reconfiguration of power from the state to non-state actors has impacted on human rights in two main ways. Firstly, whilst the state is responsible for protecting citizens from human rights violations under international law, the state's ability to regulate actors operating within state borders has been eroded. As has previously been noted, within many vulnerable states TNCs are now able to operate almost free from state controls. Therefore, when the trade practices employed by TNCs lead to violations of

human rights, the state has little power to protect citizens. Secondly, whilst international organisations have been central in removing barriers to the free movement of transnational capital, the state is now regulated through membership of an increasing number of international organisations and IFIs. This is illustrated by the imposition of SAPs in states that require loans to service debt repayments. These SAPs determine how a state may spend its tax revenue. SAPs also dictate how states may behave towards transnational capital yet impose no corollary on TNCs and other private investors.[58] In the current period the state has become increasingly responsive to the needs of capital, yet remains unable to regulate the very actors that are increasingly implicated in new forms of human rights violations. Therefore, the removal of economic decision-making from the state to international organisations and IFIs now prevents states from guaranteeing human rights and basic standards of living for their citizens.

7.4 Why Has the Increase in International Human Rights Legislation Not Been Met by a Reduction in Reported Cases of Human Rights Violations?

The research presented in this study suggests that in the post-War period the aims of the project to deliver universal human rights were hindered because of the dominance of neo-realist thinking, both in academic research and between policy-makers and diplomats. Foreign policy was broadly based on the principles of neo-realism, so that statespeople saw the operation of international relations occurring within an anarchical world system of competing states. During this period there was little acknowledgment that moral obligations should extend beyond state borders, and the protection of human rights was perceived as a purely national issue. Whilst in the Cold War period human rights began to emerge as a central feature of international politics, the idea that morality should extend beyond the state remained controversial, since the creation of an international human rights regime was often used as a tool of foreign policy merely to promote the competing ideologies held by the two superpowers.[59] At the same time, the ideological competition between the USA and USSR acted as a barrier to the protection of human rights.

During the post-War period human rights violations occurred primarily as a result of states' actions and whilst these human rights abuses were often severe, the

perpetrators could be easily identified. However, the structures underpinning the international order combined with the neo-realist bias in foreign policy prevented responses to human rights violations, such as humanitarian intervention, from gaining ground. Instead, in order to counter state-led human rights violations such as genocide, torture and mistreatment of political prisoners, the international response was to extend the scope of international law. This led to the formation of many of the international human rights declarations, conventions and treaties that exist today, so that much of the success claimed for international legal remedies is based upon the pre-globalisation era and the increased number of states that became party to the human rights norms emerging from the United Nations system.[60]

However, the period of globalisation has witnessed dynamic transformations in the power relations between states and non-state actors and evidence suggests that new forms of human rights violations are becoming more prevalent. Whilst the end of the Cold War saw a reduction in the denials of personal freedom that had occurred most often in socialist states and reports of state-led genocide also became less frequent with the formal democratisation of many southern states, the period of globalisation has seen an increase in reports of trade-related human rights violations. Much of the evidence gathered by NGOs and UN Agencies suggests that current trade practices as well as the policies of international organisations and IFIs are leading to violations of both civil and political, and economic, social and cultural rights.[61] However, whilst NGOs could commonly identify the regimes responsible for human rights violations in the post-war international order, both the causes and perpetrators of human rights abuses are more difficult to ascertain under conditions of globalisation. For example, the discussion in Chapter Five demonstrates how the human rights violations that occurred as a result of the Narmada Dam development project cannot be attributed to any one actor, agency, decision or policy, allowing all the participants to escape any form of redress.

Despite the emergence of new forms of human rights violations that are not state-led but occur as a result of the behaviour of transnational actors, dominant social forces continue to seek solutions through international human rights law, thus relying on a state-centric solution to an increasingly transnational problem. Indeed, many of the actors responsible for human rights violations are non-state actors that are not within the remit of an *international* legal system, so that TNCs, IFIs and other international organisations remain free to pursue their interests with little regard for

the human rights consequences. The neo-liberal approach relies on claims that the international legal framework operates through the state, so that it is the responsibility of the state to regulate the behaviour of non-state actors to prevent human rights abuses. However, the reconfiguration of power that has seen the emergence of the 'internationalised' state has eroded state power in relation to non-state actors. Similarly, since the state is constrained by the demands of transnational capital and by the requirement to attract FDI, the state has neither the will, nor ability to restrict the behaviour of TNCs, IFIs and international organisations. As noted earlier in this chapter, for many southern states the imposition of SAPs has also acted to erode the state's ability to regulate non-state actors. Instead, international organisations and IFIs have increasingly regulated state behaviour in order to impose neo-liberal policies on every national economy. The reliance on international law to protect human rights has also failed to reduce human rights abuses because not all states are equally bound by the international legal system. Powerful industrialised states have retained the ability to decide which aspects of international law to support and which to reject, whilst dominant social forces acting through international organisations and IFIs can impose the law upon more vulnerable states.[62]

The international legal system has also been co-opted by the transnational elite in order to legitimise and promote the 'common sense' of neo-liberal values, so that human rights law has failed to deliver a reduction in human rights abuses. By narrowing the definition of 'legitimate' human rights to civil and political rights that promote the tenets of neo-liberalism, including freedom of economic action, the right to own and dispose of property, free trade and limited government, the neo-liberal elite has sought to establish an international legal framework that supports the interests of transnational capital. This narrow definition of human rights within the legal approach also fails to acknowledge the violations of worker's rights, environmental rights and subsistence rights that are increasingly common in the period of globalisation. Human rights law has therefore come to support the accumulation of wealth over the redistribution of basic-needs goods and services.

Since the problem of trade-related human rights abuses has many causes and perpetrators, continuing to rely on an international legal system that applies only to states serves merely to uphold the interests of transnational capital. By continuing to rely on a state-centric approach to transnational problems, the neo-liberal elite demonstrates a lack of will to acknowledge the reconfiguration of power relations in

the move towards a globalised world order that prevent the state from undertaking its obligations under international law. The neo-liberal co-option of the international legal system has also seen human rights law come to support the rights of powerful economic actors to pursue capital accumulation at the expense of vulnerable individuals and communities.[63] The international legal approach also excludes the very actors that are increasingly implicated in new forms of human rights abuses, so that international law can be seen as part of the problem-solving agenda that seeks to mitigate the worst social and environmental impacts of the economic and political structures of globalisation without displacing those structures. Therefore, even when trade practices are linked directly to human rights violations, the common response is to strengthen international law rather than to challenge the structures of globalisation that enable trade-related human rights violations to continue.

7.5 Has the Global Promotion of Trade Become a Barrier to the Realisation of Universal Human Rights?

The understanding of the relationship between trade and human rights that has become dominant in the period of globalisation suggests that increased levels of free trade deliver improvements in human rights in two main ways. Firstly, the 'civilising' influence of trade ensures that demands for civil and political rights will emerge within states where human rights are neglected. Secondly, the increased wealth generated by such trade relations will 'trickle-down' through society and will fulfil claims upon economic, social and cultural rights. If bolstered by the support of an international legal framework, common wisdom now suggests that trade and human rights are complementary. However, this research has demonstrated several reasons for rejecting the myths of neo-liberalism.

Firstly, the narrow definition of human rights that sees only civil and political rights as legitimate, whilst subordinating economic, social and cultural rights to the status of 'aspirations' reduces the perceived severity of violations of the rights set out in the ICESCR. Human rights abuses that result in deprivation rather than direct harm are therefore commonly understood to be less important and continue to occur with little concern from global political powers.

Secondly, the prioritisation of civil and political rights *also* acts to prioritise the tenets of neo-liberalism, including freedom of economic action, the right to own and dispose of property and the importance of personal responsibility. Therefore, the understanding of human rights that dominates in the current period serves primarily to protect transnational capital by legitimising the process of capital accumulation.

Thirdly, the focus on individualism that emerges from the prioritisation of civil and political rights hides the importance of context when human rights violations occur, since it is only the free actions of individuals that can be held responsible for human rights violations. This view serves to protect structures of globalisation that are increasingly implicated in a continued failure to secure universal human rights, so that the trade practices of TNCs and the policies of international organisations and IFIs can continue regardless of their impact on the realisation of human rights.

Fourthly, since a broad consensus now agrees that trade and human rights are linked in a positive way, trade relations are seen to raise human rights standards, and the economic imperatives of globalisation are justified through appeals to the morality of free trade. Similarly, since trade does not generate immediate improvements in human rights, but instead creates the conditions through which future improvements can be secured, the neo-liberal perception of the relationship between trade and human rights creates a distraction from the negative aspects of globalisation and deflects demands for immediate human rights improvements.

Fifthly, whilst international organisations have been central in developing and increasing the volume of international human rights law, this remains an approach that excludes the very actors responsible for human rights abuses in the period of globalisation. Since international organisations continue to ignore the fact that only states can enact or be bound by the international legal system, their actions have served to promote and legitimise a legal framework that supports the interests of the transnational elite over those of individuals and communities. The international law approach also fails to acknowledge the reconfiguration of power relations between states and non-state actors in the period of globalisation that prevents states from regulating the behaviour of TNCs, international organisations and IFIs. Since private actors are excluded from legal challenges they are also free to further dominate global trade and protect the interests of transnational capital.

Lastly, the problem of trade-related human rights abuses has been largely ignored by international organisations and IFIs, so that when international organisations have become concerned with the issue, they have failed to generate any real concession towards the genuine realisation of universal human rights. Instead, the agenda is dominated by concerns of 'national interest' where national interest is defined as the ability to deliver economic growth through the creation of an economic environment conducive to capital accumulation. For example, since rules governing terms of trade at the WTO follow a neo-liberal agenda and explicitly deny the legitimacy of human rights or environmental concerns as a motivation for trade policy, WTO rules act as a barrier for the improvement of the global human rights situation.[64] Therefore, whilst the broad membership of the WTO could be used to implement policies that actively promote human rights by insisting on the adoption of International Labour Organization (ILO) Conventions for workers and for the wider environment, instead the WTO continues to promote the advantages of cheap labour and lower environmental, health and safety and labour regulations for states that need to attract FDI.[65]

7.6 Conclusion: Are Human Rights Secondary to Trade?

Since the evidence presented in this research demonstrates that modern trade practices lead directly to human rights violations, then the prioritisation of trade must act as a barrier to realising the universal protection of human rights. Therefore, this research has found that human rights are indeed secondary to trade. The neo-liberal ideology underpinning the current world order promotes the values of economic growth at the expense of all other concerns. The transnational capitalist elite that ushered in the transition towards globalisation has been instrumental in expanding the reach of free trade and promoting the myth that trade brings human rights benefits. However, the evidence presented in this research denies the validity of this claim. Instead, this research finds that the reconfiguration of power relations in the move to a global economy has eroded the power of the state to protect its citizens from the trade practices of TNCs and the policies of international organisations and IFIs, which are increasingly implicated in violations of human rights. Nor can the state intervene on behalf of those whose human rights are violated through the day-to-day

operation of the global economy. Whilst states can no longer regulate the external world to protect their citizens, the state is increasingly regulated by international organisations such as the WTO, and the IFIs that impose Structural Adjustment Programmes upon them.

The neo-liberal claim that there is a complementary relationship between trade and human rights has become 'common sense' in the current period despite the growing body of evidence to the contrary. This research suggests that the current conception of human rights that dominates international human rights law has been central in sustaining this view. The prioritisation of civil and political over economic, social and cultural rights that has dominated human rights thinking throughout the post-War period has enabled violations of economic, social and cultural human rights to remain marginal and of secondary importance. In particular, trade practices that lead to denials of workers' rights, including freedom to unionise and freedom of assembly; practices that degrade local environments and lead to loss of habitats, a means of subsistence and livelihood; as well as policies that lead to displacement, oppression, and loss of liberty and life are commonly justified by appeals to the freedom of economic action guaranteed by civil and political rights. The hegemony of civil and political rights is a theme that runs throughout this research and demonstrates how international human rights law has become a barrier to the realisation of the full set of rights outlined in the Universal Declaration of Human Rights. The co-option of the legal system by the transnational elite to promote the interests of actors that support neo-liberal values over the rights of the poor, indigenous communities and workers, demonstrates how dominant social forces prioritise trade above human rights concerns in the current period of globalisation.

Whilst this thesis chose to address questions concerning the impact of globalisation on the relationship between trade and human rights, there are wider issues to consider in regard to the impact of globalisation on other aspects of social, political and economic life. Therefore, the impact of a globalised order underpinned by the ideology of neo-liberalism on the future of democracy, accountability and the distribution of resources deserves further academic attention.

7.7 Prospects for the Future of Human Rights Provision

The evidence presented in this research suggests that the 'free trade' approach to human rights delivery has failed to meet neo-liberal expectations. Instead, the structures underpinning the globalised world order have acted as a barrier to the promotion and protection of human rights. In particular, the failure to secure human rights under conditions of globalisation has stemmed from the reconfiguration of power away from the state towards non-state actors, the co-option of international institutions by a transnational capitalist elite and the current dominance of neo-liberal ideology. What is not clear is how the future for human rights provision is to be met in an increasingly globalised world order. To deny that there is any future for improvements in the delivery of human rights is to sustain the problem-solving approach that fails to foresee the potential for change. Indeed, since the international order has now given way to a world order characterised by transnational relations, further transformation must be seen as a possibility. It is therefore worthwhile to consider areas of research that may generate the potential for change.

Firstly, whilst this research has found that the structures underpinning the current world order act to prioritise trade at the expense of human rights, the process of globalisation has also enabled a network of transnational relations at the level of civil society to emerge.[66] A growing number of global NGOs have begun to call for fair trade and fair rules at the WTO and the annual May Day protests at summit meetings of the G8 demonstrate the ability of distinct groups to unify under a common cause. There are also many grassroots NGOs whose campaigns have acted as a thorn in the side of the WTO, World Bank and IMF in recent years, and whilst these groups remain disparate and often disorganised, the condition of globalisation has enabled such groups to emerge as a social force that seeks to challenge the dominant order.[67] Although these movements have so far realised only small successes, to deny their input would be to fall foul of the criticisms made of a problem-solving approach, since social forces are instrumental in effecting global change and the global order is constantly in transition. Whilst it is too early to claim that a viable counter-hegemony will emerge from the actions of these groups, it is worthwhile to consider the prospect within further research.

Secondly, a further criticism of the dominant approach to delivering universal human rights is the continued reliance on an international legal framework

for the problem of trade-related human rights abuses. The recent development of a body of academic research that is concerned with the creation of a transnational legal framework is therefore an important development. Transnational law aims to develop the universal rights of global citizens, breaking the traditional state-centric approach to international law and bringing the operations of non-state actors within a transnational legal framework.[68] However, it is important to consider how such a legal framework could be institutionalised in the face of opposition from the dominant neo-liberal consensus, whilst the problems of cosmopolitan law highlighted by critics must also be taken into account. Although beyond the scope of this discussion, there are serious reservations about the lack of democratic accountability that individuals would have within a transnational legal system, which may lead to new relations of dependence rather than empowerment.[69] Indeed, if a framework of transnational law is to succeed in protecting vulnerable individuals from powerful transnational actors then the means of enforcement and implementation must be carefully considered. Since the state remains the most democratic unit of global politics in the current period, being the only place where popular participation is possible, then it is important that a transnational legal framework does not undermine the relationship between state and citizen.

Thirdly, although the increasing acceptance of neo-liberal values at the UN in recent years has been a worrying development for the security of human rights provision, the UN still provides a forum within which to consider the human consequences of a global order based on neo-liberal values. One way to develop an institutional framework that challenges the structures of globalisation would be to reinvigorate the debate concerning corporate conduct within the United Nations Conference on Trade and Development (UNCTAD). Indeed, whilst the process of neo-liberal co-option has already begun at the UN, for those critical of the current global order, the UN system offers the best chance of influencing future legal developments, so that as Chimni asserts,

> [i]f the global progressive forces hope to interrupt and thwart the reproduction of the relations of transnational domination then they must, among other things, think of ways and means to enhance their own role in the international law-making and law enforcement process.[70]

Fourthly, whilst the neo-liberal elite continues to promote trade as a means to secure future human rights improvements, there is little evidence to support such claims in the current period. Indeed, in order to counter the increasing number of trade-related human rights abuses, the ILO has continued to develop Conventions in regard to worker's rights, women's rights and child labour, as well as promoting and extending the membership of trade unions.[71] Similarly, the ILO has sought to clarify the behaviour of private economic actors by defining certain practices and policies that directly violate the rights set out in the UDHR, ICCPR and ICESCR. However, despite the increasing number of states that are now party to ILO Conventions on all aspects of worker's rights, the process of internationalisation undergone by the state during the period of globalisation has rendered these Conventions obsolete. As the evidence in Chapter Four demonstrates, many trade-related human rights abuses occur in states that have ratified ILO Fundamental Conventions. However, the structures of the globalised order render states unable and unwilling to charge TNCs for violations of the rights set out in these Conventions. Therefore, whilst the work of the ILO continues to provide a thorough legal framework within which those responsible for trade-related human rights abuses could be brought to account, states will need to reconsider their priorities if this framework is to impact on the protection of human rights.

Fifthly, whilst economic globalisation now allows capital to move freely around the globe to attract the most cost efficient sites for production with little consideration for the human rights consequences, the globalisation of communications has also brought information regarding production processes to the consumer. Public awareness of the human rights and environmental consequences of cheap imports has led to a consumer-led demand for 'fair trade' products in the west, so that TNCs, in particular those with a recognisable brand, have taken up the challenge of trade-related human rights abuses themselves. Whilst in recent years consumer purchasing power in the west has generated an increasing demand for goods that are produced ethically, and many high-profile TNCs are beginning to realise the profitability of a 'fair trade' strategy, relying on the goodwill of TNCs does not bode well for the future realisation of human rights. What is worrying about this approach is that when consumer interest dwindles in ethical products and moves onto the next trend, the profit motive driving the behaviour of TNCs will lead to a

resumption of trade practices that minimise costs but have a detrimental effect on human rights.

Similarly, many TNCs have claimed to operate under a strict code of conduct for some time. However, the evidence presented in Chapters Four and Six suggests that consumers should remain sceptical of TNCs claims since many corporate codes of conduct are little more than a public relations exercise. The adoption of private codes of conduct also has serious consequences for workers since TNCs often claim that trade union membership and enforcement of ILO Conventions are no longer necessary once corporate codes of conduct have been introduced.[72] Relying on the very actors that are increasingly responsible for human rights violations to control their own behaviour merely acts to consolidate the neo-liberal agenda by suggesting that such actors have the ability to regulate themselves. Allowing TNCs to remain free of an external regulatory framework, and instead regulate their own behaviour through corporate codes of conduct can therefore be seen as part of the problem-solving approach favoured by neo-liberals.

This thesis began with the idea that human rights have become a "fact of the world."[73] However, the challenges to protecting human rights under conditions of globalisation remain. The continued reliance on a legal approach that supports violations of economic, social and cultural rights if they do not conflict with economic freedoms, combined with the state's reduced capacity to protect citizens from the non-state actors responsible for human rights violations in the current period suggests that the future for human rights remains uncertain. The continued reliance on structures underpinning the global order that are themselves responsible for human rights violations does not offer any great hope for the future provision of human rights. Therefore, those who genuinely wish to secure the rights set out in the Universal Declaration of Human Rights have a long and arduous task ahead of them.

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APPENDIX 1

Universal Declaration of Human Rights
Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948

On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights the full text of which appears in the following pages. Following this historic act the Assembly called upon all Member countries to publicize the text of the Declaration and "to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories."

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore

THE GENERAL ASSEMBLY proclaims this UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2.

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a

person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3.

Everyone has the right to life, liberty and security of person.

Article 4.

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6.

Everyone has the right to recognition everywhere as a person before the law.

Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8.

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9.

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11.

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12.

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13.

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14.

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15.

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16.

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17.

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 18.

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19.

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 21.

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22.

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23.

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24.

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25.

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and

medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26.

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27.

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28.

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29.

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30.

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

APPENDIX 2

International Covenant on Civil and Political Rights
Adopted and opened for signature, ratification and accession by
General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force
23 March 1976, in accordance with Article 49

PREAMBLE

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1.

(1) All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

(2) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

(3) The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2.

(1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(2) Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

(3) Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy,

notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3.

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4.

(1) In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

(2) No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

(3) Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5.

(1) Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

(2) There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6.

(1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

(2) In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

(3) When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

(4) Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

(5) Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

(6) Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7.

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8.

(1) No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

(2) No one shall be held in servitude.

(3) (a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9.

(1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his

liberty except on such grounds and in accordance with such procedure as are established by law.

(2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

(3) Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

(4) Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

(5) Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10.

(1) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

(2) (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. 3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11.

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12.

(1) Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

(2) Everyone shall be free to leave any country, including his own.

(3) The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

(4) No one shall be arbitrarily deprived of the right to enter his own country.

Article 13.

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14.

(1) All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice;

but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

(2) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

(3) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

(4) In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

(5) Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

(6) When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated

according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

(7) No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15.

(1) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

(2) Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16.

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17.

(1) No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

(2) Everyone has the right to the protection of the law against such interference or attacks.

Article 18.

(1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with

others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

(2) No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

(3) Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19.

(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

(3) The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20.

(1) Any propaganda for war shall be prohibited by law.

(2) Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21.

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity

with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22.

(1) Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

(2) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

(3) Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23.

(1) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

(2) The right of men and women of marriageable age to marry and to found a family shall be recognized.

(3) No marriage shall be entered into without the free and full consent of the intending spouses.

(4) States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24.

(1) Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

(2) Every child shall be registered immediately after birth and shall have a name.

(3) Every child has the right to acquire a nationality.

Article 25.

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Article 26.

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27.

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28.

(1) There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

(2) The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

(3) The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29.

(1). The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

(2) Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

(3) A person shall be eligible for renomination.

Article 30.

(1) The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

(2) At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

(3) The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

(4) Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31.

(1) The Committee may not include more than one national of the same State.

(2) In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32.

(1) The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

(2) Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33.

(1) If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

(2) In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34.

(1) When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

(2) The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

(3) A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35.

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36.

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37.

(1) The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

(2) After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

(3) The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38.

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39.

(1) The Committee shall elect its officers for a term of two years. They may be re-elected.

(2) The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Twelve members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40.

(1) The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

(2) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

(3) The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

(4) The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also

transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

(5) The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41.

(1) A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked

and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

(2) The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph I of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of

any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42.

(1) (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

(2) The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.

(3) The Commission shall elect its own Chairman and adopt its own rules of procedure.

(4) The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

(5) The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

(6) The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

(7) When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on tie basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

(8) The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

(9) The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

(10) The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43.

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44.

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45.

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46.

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47.

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48.

(1) The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.

(2) The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

(3) The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

(4) Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

(5) The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49.

(1) The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

(2) For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50.

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51.

(1) Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-

General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

(2) Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes. 3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52.

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53.

(1) The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

(2) The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

APPENDIX 3

International Covenant on Economic, Social and Cultural Rights
Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27

PREAMBLE

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1.

(1) All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

(2) All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

(3) The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2.

(1) Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

(2) The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(3) Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3.

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4.

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5.

(1) Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

(2) No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6.

(1) The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

(2) The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational

guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7.

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Article 8.

(1) The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

(2) This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

(3) Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9.

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10.

The States Parties to the present Covenant recognize that:

(1) The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

(2) Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

(3) Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of

parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11.

(1) The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

(2) The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12.

(1) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

(2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13.

(1) The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

(2) The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established,

and the material conditions of teaching staff shall be continuously improved.

(3) The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

(4) No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14.

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15.

(1) The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

(2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

(3) The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

(4) The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16.

(1) The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.

(2) (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17.

(1) The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.

(2) Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

(3) Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18.

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19.

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20.

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21.

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress

made in achieving general observance of the rights recognized in the present Covenant.

Article 22.

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23.

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24.

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25.

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

Article 26.

(1) The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

(2) The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

(3) The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

(4) Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

(5) The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27.

(1) The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

(2) For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 28.

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29.

(1) Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-

General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

(2) Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

(3) When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30.

Irrespective of the notifications made under article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 26;

(b) The date of the entry into force of the present Covenant under article 27 and the date of the entry into force of any amendments under article 29.

Article 31.

(1) The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

(2) The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 26.

APPENDIX 4

Declaration on the Right to Development
G.A. res. 41/128, annex, 41 U.N. GAOR Supp. (No. 53) at 186, U.N. Doc. A/41/53 (1986).

PREAMBLE

The General Assembly,

Bearing in mind the purposes and principles of the Charter of the United Nations relating to the achievement of international co-operation in solving international problems of an economic, social, cultural or humanitarian nature, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Recognizing that development is a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom,

Considering that under the provisions of the Universal Declaration of Human Rights everyone is entitled to a social and international order in which the rights and freedoms set forth in that Declaration can be fully realized,

Recalling the provisions of the International Covenant on Economic, Social and Cultural Rights and of the International Covenant on Civil and Political Rights,

Recalling further the relevant agreements, conventions, resolutions, recommendations and other instruments of the United Nations and its specialized agencies concerning the integral development of the human being, economic and social progress and development of all peoples, including those instruments concerning decolonization, the prevention of discrimination,

respect for and observance of, hum an rights and fundamental freedoms, the maintenance of international peace and security and the further promotion of friendly relations and co-operation among States in accordance with the Charter,

Recalling the right of peoples to self-determination, by virtue of which they have the right freely to determine their political status and to pursue their economic, social and cultural development,

Recalling also the right of peoples to exercise, subject to the relevant provisions of both International Covenants on Human Rights, full and complete sovereignty over all their natural wealth and resources,

Mindful of the obligation of States under the Charter to promote universal respect for and observance of human rights and fundamental freedoms for all without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Considering that the elimination of the massive and flagrant violations of the human rights of the peoples and individuals affected by situations such as those resulting from colonialism, neo-colonialism, apartheid, all forms of racism and racial discrimination, foreign domination and occupation, aggression and threats against national sovereignty, national unity and territorial integrity and threats of war would contribute to the establishment of circumstances propitious to the development of a great part of mankind,

Concerned at the existence of serious obstacles to development, as well as to the complete fulfilment of human beings and of peoples, constituted, inter alia, by the denial of civil, political, economic, social and cultural rights, and considering that all human rights and fundamental freedoms are indivisible and interdependent and that, in order to promote development, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights and that,

accordingly, the promotion of, respect for and enjoyment of certain human rights and fundamental freedoms cannot justify the denial of other human rights and fundamental freedoms,

Considering that international peace and security are essential elements for the realization of the right to development,

Reaffirming that there is a close relationship between disarmament and development and that progress in the field of disarmament would considerably promote progress in the field of development and that resources released through disarmament measures should be devoted to the economic and social development and well-being of all peoples and, in particular, those of the developing countries,

Recognizing that the human person is the central subject of the development process and that development policy should therefore make the human being the main participant and beneficiary of development,

Recognizing that the creation of conditions favourable to the development of peoples and individuals is the primary responsibility of their States,

Aware that efforts at the international level to promote and protect human rights should be accompanied by efforts to establish a new international economic order,

Confirming that the right to development is an inalienable human right and that equality of opportunity for development is a prerogative both of nations and of individuals who make up nations,

Proclaims the following Declaration on the Right to Development:

Article 1.

(1) The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to,

and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.

(2) The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources.

Article 2.

(1) The human person is the central subject of development and should be the active participant and beneficiary of the right to development.

(2) All human beings have a responsibility for development, individually and collectively, taking in to account the need for full respect for their human rights and fundamental freedoms as well as their duties to the community, which alone can ensure the free and complete fulfilment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development.

(3) States have the right and the duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting therefrom.

Article 3.

(1) States have the primary responsibility for the creation of national and international conditions favourable to the realization of the right to development.

(2) The realization of the right to development requires full respect for the principles of international law concerning friendly relations and cooperation among States in accordance with the Charter of the United Nations.

(3) States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development. States should realize their rights and fulfil their duties in such a manner as to promote a new international economic order based on sovereign equality, interdependence,

mutual interest and co-operation among all States, as well as to encourage the observance and realization of human rights.

Article 4.

(1) States have the duty to take steps, individually and collectively, to formulate international development policies with a view to facilitating the full realization of the right to development.

(2) Sustained action is required to promote more rapid development of developing countries. As a complement to the efforts of developing countries , effective international co-operation is essential in providing these countries with appropriate means and facilities to foster their comprehensive development.

Article 5.

States shall take resolute steps to eliminate the massive and flagrant violations of the human rights of peoples and human beings affected by situations such as those resulting from apartheid, all forms of racism and racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference and threats against national sovereignty, national unity and territorial integrity, threats of war and refusal to recognize the fundamental right of peoples to self-determination.

Article 6.

(1) All States should co-operate with a view to promoting, encouraging and strengthening universal respect for and observance of all human rights and fundamental freedoms for all without any distinction as to race, sex, language or religion.

(2) All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights.

(3) States should take steps to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic social and cultural rights.

Article 7.

All States should promote the establishment, maintenance and strengthening of international peace and security and, to that end, should do their utmost to achieve general and complete disarmament under effective international control, as well as to ensure that the resources released by effective disarmament measures are used for comprehensive development, in particular that of the developing countries.

Article 8.

(1) States should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and the fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices.

(2) States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights.

Article 9.

(1) All the aspects of the right to development set forth in the present Declaration are indivisible and interdependent and each of them should be considered in the context of the whole.

(2) Nothing in the present Declaration shall be construed as being contrary to the purposes and principles of the United Nations, or as implying that any State, group or person has a right to engage in any activity or to perform any act aimed at the violation of the rights set forth in the Universal Declaration of Human Rights and in the International Covenants on Human Rights.

Article 10.

Steps should be taken to ensure the full exercise and progressive enhancement of the right to development, including the formulation, adoption and implementation of policy, legislative and other measures at the national and international levels.

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