

Socio-Economic Rights
What Relevance in an Era of Globalization?

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Abstract

The thesis presents some reflections regarding the potency of socioeconomic rights in an era of globalisation. Showing how human rights can serve as tools in transformative struggles, the paper points out the role of socio-economic rights when dealing with one of the primary tragedies of our time – poverty.

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1. Presentation of Topic

1.1 Problem Formulation

The purpose of this thesis is to examine socio-economic rights in the context of the contemporary international legal order. The main theme in accessing this debate will be to consider what is at stake when determining the normative content of the human rights regime and of socio-economic rights within it. Considering that the human rights movement is relatively young; at least in the sense of an international movement and debate, and taking into account how the reality in which rights operate have rapidly and radically changed over a short period of time, it is critical to consider what purposes human rights serve at present and are to serve for the future.

In order to access of the debate relating to socio-economic rights, a rather broad understanding of human rights law within the larger structures of international law and politics is required. Therefore the paper initially describes some characteristics and functions – as well as some of the relevant historical and political background – of international law, human rights law and socio-economic rights.

The thesis focuses on the perspective of the least well off and will therefore especially consider the way in which socio-economic rights have been used in advocating the interests of poor countries and people and in the agitation for poverty-reduction. Human suffering related to poverty is a global tragedy, and when considering the future role of socio-economic rights, the question is what implications the process of economic globalisation holds for the future functions of the human rights doctrine. The concluding theme will be to consider the normative implications of the socio-economic human rights regime in the context of the world economic order; i.e. how individual liberty and economic globalisation can be combined with equality and socio-economic rights; the right of others to an adequate standard of living.

Realizing that the area of examination is fairly wide, it is not the ambition of this thesis to present a comprehensive survey that comprises all aspects and points of views. The assignment will be to merely give some thoughts and reflections upon a subject where much is open, thus could be tackled from several angles.

1.1.1 Meaning of Socio-Economic rights

Socio-economic rights are part of the so called second generation of human rights, as established in the International Covenant on Economic, Social and Cultural Rights of 1976. The first generation of human rights is established in the International Covenant on Civil and Political Rights of the same year. Rights such as the right to work, the right to just and favourable conditions of work, the right to form and to join trade unions, the right to social security, the right to an adequate standard of living, the right to physical and mental health and the right to education belong to the category of socio-economic rights. Rights of this character are also to be found in other human rights documents; global documents such as the Universal Declaration of Human Rights and the Convention of the Rights of the Child as well as regional agreements like the African Charter on Human and People's Rights and the European Social Charter. Thus, the rights listed in the socio-economic charter are simply examples of socio-economic rights. Essentially, they can be interpreted as to cover basic needs of human beings. Cultural rights, such as the right to participate in cultural activities and the right to enjoy benefits of scientific progress, are usually dealt with in relation to civil and political rights and will not be included in this survey.

If separating different kinds of rights into categories, one could distinguish between *social and economic rights* and those rights referred to as civil and political rights, which would include *personal rights* (life, liberty, security, property, privacy, freedom from torture), *legal rights* (due process, equal protection under the law), and *political rights* (participation, voting, suffrage, assembly). A fifth category would be *collective rights* (ethnic self-determination, minority rights).¹ In some contexts all rights, but perhaps more so as regards to socio-economic right, are at least in some aspects to be regarded as collective rights.

Distinguishing between social and economic rights can sometimes be difficult, as most of the socio-economic rights include both economic and social concerns and as the rights of primary social character commonly have important economic implications and vice versa. However, looking at the covenant of socio-economic rights, article 6-8; among other the right to work, to favourable conditions of work, the right to form and join trade unions and the right to wages necessary for a decent standard of living are usually referred to as economic rights.

¹Gauri, V: "Social Rights and Economics: Claims for Health Care and Education in Developing Countries", in Alston, P and Robinson, M: "Human Rights and Development", p 69.

Article 11-14 have more the character of social rights and include the right to social security, the right to an adequate standard of living; including adequate food, clothing and housing, the right to enjoy the highest attainable standard of physical and mental health and the right to education. Some of the rights, as for instance those in article 11 on adequate housing and food, are often regarded as social welfare rights since they address primarily the least well off and are cited to the purpose of reducing poverty.²

1.2 Outline

Section two provides some introductory remarks clarifying the role of international law and human rights law in the international arena, section three examines the development of human rights law with a focus on socio-economic rights, previous to and within the framework of the United Nations and section four considers the formal relationship between the two sets of rights, primarily as regards to the development of implementation and enforcement mechanisms. These sections provide an important background for the main themes of the paper which are developed in section five and six. Thus, section five investigates the contemporary relevance of socio-economic rights, i.e. the reality which socio-economic rights addresses and contrasts this to an insight of the major attitudes towards socio-economic rights. Ultimately, the section envisages the potency of socio-economic as tools for transformative struggles. Section six builds upon this theme, as it examines socio-economic rights in relation to globalisation and mainly the contemporary international economic order. It develops the theme of what socio-economic rights could or ought to contribute to within this order.

1.3 Methodology and Material

For the completion of this thesis, information from a variety of sources, mainly books and articles, have been gathered and studied. Courses in international law, attended at the University of Glasgow during 2005-2006 in lectures held by Dr. Akbar Rasulov, offered much inspiration for the composition of the paper.

² Steiner, H: "Social Rights and Economic Development: Converging Discourses?", 4 Buffalo Hum. Rts. L. Rev. 25, 1998, pp 27-28.

2. Human Rights Law in the International Arena

International concern for human rights protection is one of the most dominant characteristics of contemporary international relations and global politics. The human rights doctrine provides the modern-day discourse for solving the moral and political problems of our time.

Human rights law is essentially an ordered body of principles which elevates the importance of individual rights and responsibilities in relation to the state and the state's responsibilities and rights towards the individual. The body of principles is incorporated in the international legal framework and therefore reflects the principles and the characters of international law. In order to understand what the system of human rights can offer, we have to see the system clearly.³ The first part of this section underlines the importance of thinking of human rights in an international context and in relation to international law. Secondly, some characteristics of international law are clarified, where its dynamic nature is stressed. Thirdly, the section addresses the main principles of international law, sovereignty and equality, and comments upon how human rights law has contributed to a modification of the meaning of these principles.

2.1 Human Rights Law – an International Movement

Even though the human rights framework traditionally have focused first and foremost on the conditions within states and on obligations of states, it is important to recognise that human rights law draws its legitimacy from international standards, as it is the result of an international movement that has taken place in the international arena. The importance of international standards is that they establish an agreed objective, a minimum standard to ensure that all people are protected in key areas of their lives. These standards do not represent the end goal for states to obtain. The end goal could for instance be to create a society, where certain rights are protected to a large extent and where both governments and other entities and members of society are adequately accountable to standards set by that particular society in accordance with due democratic process, which is something that reaches further than obtaining the minimum goals of the human rights doctrine.⁴ Although it would be

³ Robinson, M; "What Rights Can Add to Good Development Practice", in Alston P, and Robinson M: "Human Rights and Development", p 38.

⁴ Id, p 32.

possible to study human rights law solely from the view of a particular state; its implementation, status and so on within that state; the result would often be misleading if the international aspects are ignored. Human rights involve international law and global institutions which influences the internal development of states. The movement's aspiration of universal validity also necessitates the study of international law.⁵ Moreover, what is local and what is international is reciprocally influential and increasingly intertwined, so the perspectives cannot for many reason and from many perspectives be separated. For instance, not just states can at present be held responsible for human rights protection, as so many other entities, such as international organisation, transnational companies and non-governmental organisations are involved in activities which may affect human rights of people. Studying human rights law must therefore necessarily involve a major ingredient of international law including relevant connections to international features of historical and political aspects.

2.2 The Dynamic Nature of International Law

The traditional character of international law was largely of formal nature, concerning issues of common interests of states such as matters of jurisdiction of states, immunities of diplomats and their property and the law of war. Acknowledging the values and life of the individual and the worth of human beings has changed the character of international law. Emphasising the individual as the ultimate unit of all law has strengthened the ethical bases of international law.⁶

International law is a subject of constantly increasing significance. Today even the most powerful states recognise international law; there is virtually not any state that could or would, at least not officially, ignore the presence of international law. At the same time, whilst challenged with a continuously changing reality, this legal discipline develops itself organically and adjusts to its context to a much greater extent than other branches of law. The legal framework is everything but a frozen construct of rules. Instead, international law has come to be one of the most dynamic, fluid and fast-moving legal disciplines of today. Therefore the connection to and the influence of other disciplines, such as politics, ethics and economics, on the substantive content of this branch of law is evident, and the autonomy of

⁵ Steiner, H and Alston, P: "International Human Rights in Context: Law, Politics, Morals", pp 56-57.

⁶ Lauterpacht, H: "International Law and Human Rights", in Steiner, H and Alston, P: "International Human Rights in Context: Law, Politics, Morals", p 147.

international law is only relative. When considering which the goals of the international and domestic communities ought to be and how these objectives can be realised it is crucial to keep this in mind.

2.3 Human Rights and Sovereignty

Human rights law has contributed to a radical change in the conventional meaning of sovereignty. The human rights doctrine has emerged as the appropriate criterion for evaluating political systems and governmental structures all over the world.

Until recently international law took no or very little note of individuals. The international legal order was created to govern the relationship between states, and states were the fundamental units and the sole origin, interpreter and enforcer of international norms. International law relied upon two fundamental legal principles to govern the relationships and power distribution among states; those of sovereignty and equality. Sovereignty meant that the ruler over a state had exclusive power over the territory of the state and the subjects within (internal sovereignty) and was to have no higher authority to depend on in the international arena (external sovereignty or independence). The meaning of equality was for all states to be legally equal on the international level regardless of size, wealth, strength, religion and so on; there was to be no hierarchy among the states. The result of these principles was that states became the fundamental units in an international legal order which was horizontal. The main general obligation was to respect the sovereignty of others, with the purpose to keep the nations “peacefully apart” rather than “actively together”. If they interacted in any way, such as in the case of sending diplomats or signing treaties, international law was formed to govern these relationships. The billiard ball metaphor is useful for the understanding of these relationships, according to which states are to be regarded as billiard balls whose inside we cannot see, all formally equal, interacting only on the periphery or from the outside when their paths meet. Obviously, this picture has not ever entirely correspond to the reality of state relations, as for instance powerful states have continuously had a stronger say. Nevertheless, it was on these bases the international legal framework was established. Furthermore, the

principles have clearly left traces in many of the rules and principles of the current international legal system, perhaps even constituting the inner logic of the system.⁷

Human rights ideals have radically challenged the main principles of classical international law. As the world became more and more integrated and inter-dependent, the interest of the individual increasingly came to cut across the national borders to be visible in the international arena. Consequently, the claim of the state to unqualified exclusiveness in the field of international relations could no longer be maintained. This development changed the role of the state; its legitimacy, limitations and duties, in the exercise of power, as the state is of no higher value than its component parts; human rights law are superior to the law of the sovereign state.⁸ The doctrine has in effect altered the internal distribution of power between the state and its citizens, when providing individuals with rights towards the government that are recognised in the eyes of international law. What goes on inside the borders of a state is no longer a matter solely of the state, but one of international concern.

3. Socio-Economic Rights: Historical and Political Background

This section investigates the historical and political background of human rights law with a focus on socio-economic rights. The intention is to elucidate some explanations to the normative content of human rights law by illustrating some of the issues at stake when deciding upon and settling for a certain content of rights doctrine. Some themes appear as relevant. Firstly, the section examines how international law came to consider individuals. Secondly, the focus on the individual is investigated as regards to the connection to western liberalism. Thirdly the origins of socio-economic rights are briefly commented upon. Thereafter, the legal and political developments from the creation of the United Nations and onwards will be described, focusing on socio-economic rights.

⁷ Abi-Saab, G: "The Changing World Order and the International Legal Order: the Structural Evolution of International Law Beyond the State-Centric Model, in Steiner, H and Alston, P: "International Human Rights in Context: Law, Politics, Morals", pp 577-579.

⁸ Lauterpacht, H: "International Law and Human Rights", in Steiner, H and Alston, P: "International Human Rights in Context: Law, Politics, Morals", p 148.

3.1 The Development of the Individual as a Subject of International Law

The horizontal nature of international law may be surprising especially when considering the close ties of both domestic and international law to morality and natural law. However, the fact that what went on inside the borders of a state was a matter exclusively of domestic jurisdiction and that states took very little note and rarely expressed any concern of the situation within other states had its explanations. Up until most recently, the law governing individual life and international law simply did not come together.⁹ Concerns for nationals in another state met many obstacles, since all information and concerns were filtered through the state system and diplomatic sources. Violations of what we now refer to as human rights was either not known outside the state borders or if known, they evoked from other states at the most polite, diplomatic expressions of regret. Human values were not the business of diplomacy. In this respect, to interfere in the internal sphere of another state was fairly controversial. Also, very few states had moral concerns or recognised human rights of their own people, why violations of civil and political rights and even less the economic and social rights caused little or no stir outside the state borders.¹⁰

However, concerns for individuals were not ever entirely closed out from the areas of international law or from the international political system. It came to matter in some ways how a state treated its nationals at a rather early stage when a nation's treatment of its nationals affected the interests of other states. Such was the case regarding the treatment of diplomats as well as businessmen of other states and their property. Subsequently, in the nineteenth century states abolished slavery and slave trade and began to pursue agreements to make war less inhumane. After the First World War, concerns of human beings were confirmed in several League of Nations programmes as regards to for instance the protection of minorities of workers. The International Labour Organization was set up and launched a range of programmes, among these minimum standards for working conditions. However, it is doubtful that these aspirations were the product of any genuine human rights concerns. More likely is that states attended to what went on within other states when it affected their own political and economic interests. Laws on war reflected the concerns of states for its own nationals in wars and perhaps their willingness to go to war. In the age of growing

⁹ Henkin, L: "International law; Politics, Values and Functions", in Steiner, H and Alston, P: "International Human Rights in Context: Law, Politics, Morals", p 127.

¹⁰ Id, p 129.

mercantilism, powerful states wanted to secure the safety of its nationals and their property when exporting people, goods and capital to other countries. Mistreatment of minorities threatened world peace, but these rules were only applied by powerful states towards nations defeated in war in order to protect its nationals when staying in those territories. Improvement of the conditions for labour was capitalism's response and defence against the spread of the ideologies of socialism arising out of the Russian Revolution when establishing itself in Europe. Furthermore, if states wanted to improve labour conditions at home they could not do so unless other states followed, since it would increase its costs of production and thus make its products less competitive. Evidently, there are reasons to believe that it was the political and economic self-interest of states rather than humanitarian motives that was the driving force behind the most previous developments towards the individual becoming a subject of international law.¹¹ The ideas of rights that emerged during the enlightenment in the seventeenth and eighteenth centuries, expressed by among others Locke and Rousseau did have a profound impact on the development of human rights. However, these ideas considered constitutionalism and dealt first and foremost with the problem of excessive use of governmental powers. These ideologies targeted domestic realities, thus initially came to primarily influence the development within individual states. At that time, the ideas did not easily transfer into international political and legal system.¹² Therefore, on the international scene, state sovereignty came to prevail for some time to come.

3.2 Connection to the Liberal Tradition of Western Thought

Considering the content of the human rights discourse and the way that the human rights doctrine developed, mainly after the creation of the United Nations, most observers of various religions and cultures agree on the fact that the movement, with its language of rights and its emphasis on the individual, has its origins in the liberal tradition of western thought and is closely related to the liberal state. According to Locke, it was the duty of the government, when people joined together in a civil society, to in accordance with a so called social contract protect their human rights (natural rights, given by nature) such as life, liberty and property. To protect the natural rights of the people was the sole justification for the existence of

¹¹ Id, pp 127-128.

¹² Id, p 129.

political power.¹³ Thus, the main element of the liberal tradition is its accentuation of the liberty, dignity, autonomy and right to self-realization of the individual. The emphases on the individual give rise to the claim for basic justifications for the state; the consent of the individual is crucial for its legitimacy. As a result, governmental powers are limited.¹⁴

This historical context of human rights has frequently been referred to in order to facilitate the qualification of some rights as *negative* rights (or liberty rights); requiring a hands off or non-interference policy of governance, since governments shall not interfere in the life and sphere of the individual (freedom from). Negative rights have been contrasted to *positive* rights (or welfare rights); requiring affirmative action from governments (freedom to). Civil and political rights have been considered to be negative and socio-economic rights to be positive. While civil and political rights did not require any action from governments but to leave the population alone for instance physically, socio-economic rights depended on financial expenditures, hence relied upon the finances of the state.¹⁵ The division between positive and negative rights has often been cited with the intention to demonstrate the superiority of civil and political rights over socio-economic rights, saying that only negative rights constitute genuine rights. Accordingly, as the human rights doctrine developed much weight has been offered to this distinction and the focus has generally been on civil and political rights. Many have suggested that the emphasis on political rather than economic rights reflects a bias in favour of western wealthy nations. Perhaps in recent times the focus has been on political rights because of them being more compatible with the limited government of the laissez faire type of governance which has been so strongly promoted in the international arena subsequent to the fall of communism. To some, socio-economic rights pose a challenge to this liberal construct, when requiring a more activist, interventional state.

However, it is difficult to see that the human rights doctrine because of its origins would favour a certain type of governance. Actually, the doctrine is in effect compatible with any type of governance which honours the respect of the individual in certain key areas of her life. It does not regard governance in the sense that it would favour the rights being secured by public or private entities, as long as the state can ensure their maintenance in regulations or in other ways. Examining the human rights documents and realizing their un-specific nature, it

¹³ Van der Vyver, J D: "The Concept of Human Rights: Its history content and meaning", Acta Juridica 10, 1979, pp 11-12.

¹⁴ Steiner, H and Alston, P: "International Human Rights in Context: Law, Politics, Morals", pp 361-362.

¹⁵ Id, p 181.

becomes apparent that much of their interpretation and so their content is continuously determined by the needs and the desires of the particular community in which they are to function. The focus will undoubtedly be on those rights which fit a society at a particular time.

The critique towards the human rights movement on the basis of being of western, liberal character often seems as exaggerated. Furthermore, at least in the past its western origins have been cited in order to excuse human rights violations of mainly civil and political character with arguments of cultural relativism, claiming that because of the rights being western, they cannot be applied in the same way in non-western states. Sometimes the primacy of socio-economic rights in some cultures has been emphasised. Certainly, the values, claims, ideals and interests expressed in rights language are not exclusive to the western tradition. The notion that the human being is worthy of respect is a belief that recurs throughout history. A system of norms, processes and institutions that protects human dignity is an ideal that is recognized in all cultures of the world, although it sometimes has been put forward in other manners, such as in a language of duties and responsibilities.¹⁶ Hence, there is room for arguments of “plural foundations”; that the human rights regime can be built upon a variety of philosophical foundations and is common to many if not most cultures and societies. The bases can be secular or religious as long as sharing the view that human beings are especially important in the cosmos and deserve special treatment. One could also argue that human rights do not have, nor that it needs a foundation but that they are freestanding moral ideals or common agreements among states.¹⁷

When it comes to the liberal political tradition, it renders possible not just one form of government. The term liberal is often associated with the laissez faire school of governance of liberal economics. However, different liberal traditions holds various forms of governance which often include a more active state where socio-economic or welfare rights are deeply rooted alongside civil and political rights in what is known as the modern regulatory welfare-state.¹⁸ Such welfare-states must provide for the individual a possibility of self-realisation, which renders both negative and positive conceptions of freedoms and rights necessary, as

¹⁶ Id, p 361.

¹⁷ Gauri, V: “Social Rights and Economics: Claims for Health Care and Education in Developing Countries”, in Alston, P and Robinson, M: “Human Rights and Development”, p 68.

¹⁸ Steiner, H and Alston, P: “International Human Rights in Context: Law, Politics, Morals”, p 362.

well as requiring a pluralist society.¹⁹ Consequently, much is open when it comes to the meaning of the liberal tradition and liberal state about for instance what ought to be the role of the government, the privileges of the individual, the proper design of property rights and so on. Indeed, questions of the relationship between liberalism and capitalism have been debated for a long time and will continue to be debated in the context of a post cold war world of globalisation in relation to the creation of a global market economy.²⁰ However, there is now a growing recognition that there is not just one form of the liberal state and not just one “right” way of running the economy, locally as well as globally. Crucially, traditionally on the local state level but increasingly also on the global level, when there are alternatives and choices, democratic political processes should be at the centre of decision-making.²¹

3.3 Origins of Socio-Economic Rights

The historical background of socio-economic rights is less certain. Virtually all religious traditions offer support to the rights by emphasising a concern for the poor and oppressed and for those who cannot look after themselves.²² Secular justifications for socio-economic rights usually depend on the selection and defence of a set of basic needs, primary goods or essential human capabilities. In political and philosophical theory, ideas and theories of among others Thomas Paine, Karl Marx, Immanuel Kant and John Rawls have provided important input to the ideas of socio-economic rights. The political programs of the nineteenth century, introducing ideas of the modern welfare state, have also provided foundations for socio-economic rights.²³ During the 1880s, Chancellor Otto von Bismarck of Germany launched social insurance programmes for old age, job-related accidents and medical costs. The Fabian socialists in Great Britain partly built on Bismarck’s model when creating its welfare state at the start of the 1900s. In the US, the New Dealers created major welfare programmes during the 1930s and 1960s.²⁴ Constitutional precedents are also for example the Mexican Constitution of 1917 and the first and subsequent Soviet Constitutions and the 1919 Constitution of the Weimar Republic in Germany.²⁵ Common for the creators of the welfare

¹⁹ Ibid.

²⁰ Id, p 363.

²¹ Stiglitz, J: Preface to “Making Globalization Work”, at xv.

²² Steiner, H and Alston, P: “International Human Rights in Context: Law, Politics, Morals”, p 242.

²³ Id.

²⁴ Kelly, D: “A Life of One’s Own: Individual Rights and the Welfare State”, in Steiner, H and Alston, P: “International Human Rights in Context: Law, Politics, Morals”, p 257.

²⁵ Steiner, H and Alston, P: “International Human Rights in Context: Law, Politics, Morals”, p 242.

state is the belief that the social provision of goods, such as food, shelter, jobs, education, pensions, medical care etc, shall be treated as a right of every member of society, rather than as an act of charity.²⁶ Accordingly, while the notion of rights initially served two functions according to the classical liberals of the enlightenment; to legitimate government and to control it, the concept of welfare rights reflects a more expansive view of the role of government; usually by implementing social welfare programmes of a redistributive character.²⁷

In international law, the most obvious starting-point for socio-economic rights was the establishment of the International Labour Organisation, with its goals to promote worker's rights in guaranteeing "fair and humane conditions of labour". ILO adopted minimum standards in a wide range of issues that now would be labelled as socio-economic rights, such as hours of work, right to organize trade unions, forced labour, minimum working age, weekly rest, sickness protection and accident insurance. The Great Depression in the 1930s gave raise to claims for protection of the unemployed and full employment policies.²⁸

3.4 The United Nations Charter and the Origins of the Human Rights Movement

It was within the framework of the United Nations that the human rights movement came to fully develop itself. The organization has since it was founded stimulated and spurred the movement, and its importance for the emergence and the development of human rights standards can hardly be overestimated.

The UN Charter of 1945 builds on precedents of the Nuremberg Judgements which gave the human rights movement a powerful impulse.²⁹ The Charter has rather little to say about human rights, but the scattered references given throughout the text have been accorded significance as a point of departure for the entire movement. Human rights appear in the Charter as goals and aspirations of the United Nations, posing no obligations upon member states.³⁰

²⁶ Kelly, D: "A Life of One's Own: Individual Rights and the Welfare State", in Steiner, H and Alston, P: "International Human Rights in Context: Law, Politics, Morals", p 257.

²⁷ Id.

²⁸ Id.

²⁹ Steiner, H and Alston, P: "International Human Rights in Context: Law, Politics, Morals", p 137.

³⁰ Id, pp 137-138.

Several socio-economic goals appear in the UN Charter. For instance it is a goal of the United Nations, in the purpose of avoiding war, to promote social progress and better standards of life in larger freedom and to employ international machinery for the economic and social advancement of all peoples.³¹ During the drafting of the Charter, various suggestions, provided with considerable support, were made for the inclusion of full employment as a commitment of all member states. The strongest version was named the “Australian Pledge” and call on the members to take action both on an international and national level to secure “improved labour standards, economic advancement, social security and employment for all who seek it”. These propositions were opposed by the US on the grounds that such rights would interfere in the domestic, economic and political affairs of states. Agreement was finally reached on Article 55 (a) of the Charter which says that the United Nations: “With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples...” shall promote: “...higher standards of living, full employment, and conditions of economic and social progress and development”. Article 55 (b) calls for “...solutions of international economic, social, health and related problems; and international cultural and educational cooperation”. The US did not at the time oppose socio-economic rights per se. Indeed, President Roosevelt showed his support for those rights in his Speech State of the Union in 1941 and then listed such rights to submit to the United Nations which came to be highly influential in the preparation of the first draft of the Universal Declaration in 1947.³²

Attempts to include a bill of rights in the Charter failed, and the intention was instead that such bill would follow. For this purpose the Economic and Social Council established the Commission on Human Rights in 1946. The Commission presented a declaration of rights to the General Assembly in 1948; the Universal Declaration of Human Rights, which was adopted in the same year by 48 of the 56 member states. It was a political and moral document, since aspirations to make it a legally binding had failed.³³ It is in some respects the constitution of the entire human rights movement and has remained the single most cited and broad-based human rights instrument, permeated by an idealistic and enthusiastic spirit. The Universal Declaration includes civil and political rights as well as socio-economic rights

³¹ United Nations Charter, Preamble.

³² Steiner, H and Alston, P: “International Human Rights in Context: Law, Politics, Morals”, p 243.

³³ Id, p 138.

(article 22 and the following articles). The plan was to use the Declaration as a foundation to other treaties, more specific and with binding elements, but it would last no less than 28 years before any such treaties would enter into force. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were finally approved by the General Assembly in 1966 and entered into force in 1976 when having attained the number of ratifications necessary.³⁴

3.4.1 Creating the Covenants of Rights

Initially, the ambition was to create one single covenant of rights and between 1949 and 1951 the Commission worked on the creation of a single draft. However, differences in attitudes led to the Commission and the General Assembly agreeing upon a separation of the provisions into two documents in 1951.³⁵

Those in favour of the drafting of one single covenant argued that all human rights should be of equal status, to be protected and promoted just the same. The rights were interdependent and interrelated and could therefore not be clearly separated into categories or placed into a hierarchy of values. Civil and political rights would be insignificant without economic and social rights, and economic, social and cultural rights could not be ensured without civil and political rights. Those in favour of the drafting of two separate documents argued that because of the rights being of different character, they needed different kinds of implementation at the national level. Civil and political rights were enforceable, justiciable and of an “absolute” nature, thus could be implemented immediately. Social, economic and cultural rights on the other hand were not of such character and were therefore to be progressively implemented. Civil and Political rights were rights of the individual towards the state; against unlawful and unjust action of the state (“negative” in the sense that the state was not to interfere with the individuals), while social, economic and cultural rights required positive action from the state (“positive” in the sense that they demanded for state to take positive action to promote them). While civil and political rights were “legal” rights and could best be implemented by the creation of a good offices committee, economic, social and cultural rights were to be thought of as “programme” rights and could best be implemented by the establishment of a system of periodic reports, even if it was recognized that this separation could not be valid for all rights

³⁴ Id, p 139.

³⁵ Id, p 139, pp 244-245.

in all legal systems.³⁶ A large part of the argument that civil and political rights could be implemented immediately while socio-economic rights could be implemented only gradually had to do with state expenditures. While respecting the former required no substantial costs for governments (i.e. only requiring states to abstain from action) the later did so significantly.³⁷

Those who were in favour of having two documents also claimed that many states might be willing to ratify the covenant on civil and political rights, but not the covenant on socio-economic rights. By separating the rights into two documents, states which had problems in implementing economic and social rights could choose to ratify only the document on civil and political rights. This would prove to be an incorrect assumption, as in practically all cases, states came to ratify both of the covenants.³⁸ The only state which would be likely to ratify only the covenant on civil and political rights would be the US, which stands out as a very special case, having not yet ratified the treaty of socio-economic rights.

3.4.2 The Rights Debate Conceal an Ideological Conflict

The debate over the relationship between the two sets of rights has reflected ideological conflicts and revealed clashes of interest and political struggles among states in various ways at different times. Often it has been a part of or in the shadow behind larger debates concerning human rights and development, something which has been discussed ever since the first UN World Conference on Human Rights in Teheran in 1968. One statement of the Teheran Conference for example declares that "...the achievements of lasting progress in the implementation of human rights are dependent upon sound and effective national and international policies of economic and social development".³⁹ The debate regarding the relationship between the two sets of rights carries a lot of ideological baggage and is linked to some of the most basic political choices in a society.

A formal consensus on the interdependence principle; the fact that the two sets of rights are "indivisible, interdependent, and interrelated", has ever since the adoption of the Universal

³⁶ UN Doc. A/2929 (1955) at 7.

³⁷ Gordon, J: "The Concept of Human Rights: the History and Meaning of its Politization", 23 Brook J Int'l L 689 1997-1998, p 711.

³⁸ Id, p 713.

³⁹ The Proclamation of Teheran, para. 13, in Final Act of the International Conference on Human Rights, UN Doc. A/CONF.32/41, 1968.

Declaration been at the heart of the human rights doctrine. Both the preamble of the covenant of civil and political rights and of socio-economic rights declare that in accordance with the Universal Declaration “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” and vice versa. This position has been confirmed in a countless number of resolutions and documents since, and is a notion to which all governments continue to pay lip-service. However, this formal consensus masks a deep and enduring disagreement over the proper status of economic, social and cultural rights.⁴⁰

3.4.2.1 Cold War Debate

Prior to the final adoption of the Universal Declaration, the debate over the relationship between the two sets of rights had become a casualty of the cold war. The communist states abstained from voting on their adoption by the General Assembly on the grounds that the socio-economic provisions were inadequate.⁴¹ During the cold war the debate continued both between the western democracies and the communist states. Primarily, the western nations and non-governmental organizations charged the communist world with violating rights of mainly civil and political character, for instance on the grounds that their judicial and electoral processes were inadequate or oppressive. The Soviet Union and the communist states would respond that in their view, economic and social rights such as health care, education, employment and economic equity were far more important. The communist states asserted that their understanding of human rights differed due to different political and ideological structures,⁴² using arguments of cultural relativism. They accused their western critics for purporting to offer a “universal” standard, which in fact reflected western first world societies with highly developed political systems but also great economic disparities. The western states argued that it was the Soviet and not them that offered a theory which was self-serving; reflecting the communist view of human rights and that the political rights were insignificant compared to economic benefits. Accordingly, each party accused the other for claiming to set forth a universal standard of basic rights when the rights were in fact self-serving, thus not

⁴⁰ Steiner, H and Alston, P: “International Human Rights in Context: Law, Politics, Morals”, p 237.

⁴¹ Id, p 238.

⁴² Id, pp 367-368.

applicable to all and not valid.⁴³ With the collapse of the Soviet Union, most of the debate in the mentioned form naturally came to an end.

3.4.2.2 North-South Debate

At least since the 1970s, the debate over the relationship between the two sets of rights has taken on an important north-south perspective between developed and less developed countries.⁴⁴ Also in this context cultural relativism exists. To the relativist the human rights instruments and their pretension towards universality show the arrogance of cultural imperialism of the west; given its traditional urge to universalize its political ideology, liberalism, and its faith, christianity. In the wake of decolonization, which peaked in the late 1960s, the claims of self-determination were followed by and combined with emerging demands of economic development goals. These claims were brought to the top of the international agenda by a numerically dominant group of developing countries. The resentment over the experiences of colonization and the resistance of colonial powers to accept responsibility and recognize continuing obligations towards the peoples concerned was never far beyond the surface when these concerns translated into demands that greater attention be paid to socio-economic rights. In association with this claim was also the demand that colonialism be recognised as gross violations of international law and that development co-operation should be seen as entitlements rather than as acts of charity.⁴⁵ Most of the western states agreed with the proposition that socio-economic rights had been accorded insufficient attention by the United Nations, but did not see how this was relevant in terms of there own practise, such as in forming legal obligations to provide transfers of capital, technology and other goods and services. The US, under President Carter was open to many of the claims and goals and some of the means contained in the demands for the establishment of a new international economic order.⁴⁶

Since 1977, when first recognised by the Commission, many of the claims of the developing world have been brought forward under the rubric of “right to development”, acknowledged by the General Assembly in the 1986 Declaration on the Right to Development. Even though

⁴³ Gordon, J: "The Concept of Human Rights: the History and Meaning of its Politization", 23 Brook J Int'l L 689, 1997-1998, pp 694-695.

⁴⁴ Steiner, H and Alston, P: "International Human Rights in Context: Law, Politics, Morals", p 238.

⁴⁵ Alston, P: "Revitalising United Nations work on Human Rights and Development", Melb. U. L. Rev. 216 1991-1992, pp 218-219.

⁴⁶ Id, p 219.

the Declaration in itself merely obliges states to “...take steps, individually or collectively, to formulate development policies with a view to facilitating the full realization of the right” and that “...effective international co-operation is essential in providing developing countries with appropriate means and facilities to foster their comprehensive development”,⁴⁷ the right to development is for developing countries closely related to a claim for some form of global distributive justice.⁴⁸ The discussions in relation to this right is complex and brings together many important themes, including the relationship between the two sets of rights; first and foremost with a claim that economic, social and cultural rights has been largely neglected by human rights organs, and other topics such as the legal foundation of rights, the basis for recognition of new rights, the link between human rights and democratic governance, responsibility for assistance of states with lack of resources, the relationship between individual and collective rights and so on.⁴⁹

Under the adage “basic needs strategy”, the west supported by a fair number of third world states raised issues of equity and distribution in the 70s; if not in terms of their own practice, at least in terms of human rights doctrine in the United Nations context. The International Labour Organization, the World Bank and other agencies supported and promoted this strategy, which suggests a particular vision of economic and social rights, not necessarily corresponding with that of some of the other third world states. In addition, all western states shared the view that respect for civil and political rights was necessary for the achievement of human development.⁵⁰

The international community has underlined the importance of a right to development on many occasions, for instance in a statement from the 1993 Vienna World Conference on Human Rights saying that the right is “...a universal and inalienable right and an integral part of fundamental human rights”. Several working-groups have been established by the Commission since the adoption of the declaration in order to clarify its content and its implications and many reports have been produced on the subject. Despite all efforts, there is little agreement about the concrete content and the practical consequences of the right.⁵¹ During the 1980s the Regan Administration had replaced President Carter in office,

⁴⁷ The Declaration on the Right to Development, Article 4.

⁴⁸ Steiner, H and Alston, P: “International Human Rights in Context: Law, Politics, Morals”, p 1326.

⁴⁹Id, p 1319.

⁵⁰ Alston, P: ”Revitalising United Nations work on Human Rights and Development”, *Melb. U. L. Rev.* 216 1991-1992, p 219.

⁵¹ Steiner, H and Alston, P: “International Human Rights in Context: Law, Politics, Morals”, p 1325.

immediately adopting a hard line towards the claims of the third world and opposing the very concept of socio-economic rights. Eastern-European countries were strong supporters of the right which again added west-east rivalry to the north-south tensions. The north maintained that socio-economic be taken seriously but still did not accept that it would have any implications for their own policies towards the third world, in particular in terms of aid and trade, while the south yield for concessions from the north but was unwilling to accept any constraints on its own freedom of action. The debate therefore became relatively unproductive.⁵²

The right to development maintains a complex and controversial part of the human rights doctrine. In 1999, the UN's independent expert on the right to development told the Commission that "...every state which recognized the right to development was obliged to take positive action to assist the citizens of other states in realizing those rights". Some commentators have gone further by for instance advocating for eliminations of debt burdens, claims for aid and so on in the name of the right to development. Others argue that the right is altogether without foundations in international law. Evidently, the content and implications of the right to development are still far from clear. Nevertheless, the claims in relation to the right to development frequently overlap with and are typically related to many of the provisions in international law regarding socio-economic rights, such as in the covenant on socio-economic rights, the UN Charter and the Universal Declaration.⁵³

4. The Relationship between the Two Sets of Rights

The two covenants came to reflect the diverging opinions of the debate as described in the previous section (3.4.1), constituting a compromise between those in favour of one and those in favour of two documents. On the one hand, the countries declared their dedication to the interdependence principle; meaning that the two sets of rights are interdependent and interrelated, thus can neither logically nor practically be separated and should be respected and promoted just the same. On the other hand, a formal imbalance between the two sets of rights appears in favour of the civil and political rights. This section describes the relationship between the two sets of rights. The formal imbalance embedded in the two documents is

⁵² Alston, P: "Revitalising United Nations work on Human Rights and Development", *Melb. U. L. Rev.* 216 1991-1992, p 220.

⁵³ Steiner, H and Alston, P: "International Human Rights in Context: Law, Politics, Morals", p 1326.

described, as it appears in the obligations of the covenants and in the implementation and enforcement mechanisms. Moreover, the issue of enforcement of socio-economic rights will be tackled in the section of justiciability.

4.1. The Obligations of the Covenants

The first imbalance has to do with the nature of the obligations of the parties. The general obligation of the covenant of civil and political rights requires member states to undertake: to "...respect and to ensure..." the rights of the charter, whilst the obligation in the socio-economic covenant requires states to "...take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.". Looking at the specific obligations, the rights of the civil and political charter are presented in terms such as "everyone has the right to..." or "no one shall be...", while the socio-economic rights are presented with terms like "State Parties recognize the right of everyone to..." These formulations have been subject of critique, as the convention on civil and political rights calls for immediate implementation and compliance by all states while the convention on economic, social and cultural rights calls for progressive realization and since the realization of socioeconomic rights depends on the availability of resources.⁵⁴

The imbalance of the two sets of rights runs through and is maintained in most contemporary human rights documents, UN documents as well as regional human rights instruments. The interdependence principle is usually referred to, but when looking more closely at the documents an imbalance appears most often nevertheless. One example from the European Union show that while applicants for membership of the Council of Europe must undertake to ratify the European Convention on Human Rights, they are not required to commit in any way to the European Social Charter which is the European Convention's counterpart to the covenant on socio-economic rights.⁵⁵

⁵⁴ Id, p 246.

⁵⁵ Id, p 249.

4.2 Implementation and Enforcement Mechanisms

Civil and political rights are also favoured due to structural unevenness in compliance and enforcement mechanisms; some appear in the documents and some has developed over time. While a supervisory body was established in the covenant on civil and political rights,⁵⁶ the Human Rights Committee, no body was provided for in the covenant of socio-economic rights to consider compliance by state parties. There is an Optional Protocol to the covenant on civil and political rights concerning enforcement, adopted at the same time as the two covenants, which has no counterpart in the socio-economic charter. Under the Optional Protocol, individuals can claim violations of rights under the covenant of civil and political rights, if domestic remedies have been exhausted. The claim shall be brought to the Committee, which then brings the claim to the attention of the state party which must, within six months, provide a written explanation or statement regarding the remedial action taken by that state.⁵⁷ In 1970, a procedure for dealing with human rights complains was established by the Economic and Social Council (the 1503 procedure), authorizing the Commission on Human Rights to examine human rights complains from individuals or non-governmental organizations. Before then, the Commission had claimed to have no authorization to deal with such complaints.⁵⁸ The Commission can put pressure on states where a “...consistent pattern of gross and reliably attested violations of human rights” exist. Its record on human rights protection is poor partly due to the political pressure put on it.⁵⁹ The Human Rights Committee, established by the covenant on civil and political rights, was not set up until in 1976 to review state reports and to intervene on human rights complaints, from victims or third parties acting on behalf of the victims according to a procedure in the Optional Protocol. Even if the procedure had some flaws, the control-mechanism represented the first step to reinforce the effectiveness of civil and political rights.⁶⁰

The covenant on socio-economic rights does not provide for the establishment of a supervisory body, nor does it contain any mechanism to receive and investigate claimed violations. The compliance-mechanism available consists of a report system, according to which state parties submit reports on the measures adopted and the progress made in

⁵⁶ The International Covenant on Civil and Political Rights, Art 28.

⁵⁷ First Optional Protocol to the International Covenant on Civil and Political Rights, Art 2 and 4.

⁵⁸ Delmas-Marty, M: “Global law: A Triple Challenge”, p 13.

⁵⁹ Dixon, M and McCorquodale: ”Cases and Materials on International Law”, p 199.

⁶⁰ Delmas-Marty, M: “Global law: A Triple Challenge”, p 14.

achieving the rights of the covenant.⁶¹ Only in 1985 did the UN Economic and Social Council pass a resolution to create the Committee on Economic, Social and Cultural Rights as a supervisory body to review the annual reports of states on compliance. The body can however be dissolved by a simple majority vote, hence having an uncertain status. It can issue general comments but does not have the authority to deal with individual complaints. It was not until 1996 that a draft for an optional protocol providing for such procedure was presented. The protocol was met with resistance, why it will probably last many years until the draft will become final.⁶²

When it comes to implementation mechanisms and judicial enforcement, another imbalance appears, as the covenant on civil and political rights requires states to “develop the possibility of judicial remedy” (art 2(3b)) while there is no equivalent provision in the covenant on socio-economic rights. However, article 8 of the Universal Declaration states that “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.”, which arguably applies to socio-economic rights as well as civil and political rights. The covenant of socio-economic rights says that governments must use “all appropriate means” in order to put them into effect, and does not specify the meaning of this other than that it includes “particularly the adoption of legislative measures” (art 2(1)). Even so, this provision could reasonably be interpreted as requiring the provision of judicial remedies.

4.3 Justiciability of Rights

Some critics of socio-economic rights claim that even though the covenant on socio-economic rights is binding, what is binding is an aspirational standard; an ideal goal which parties must work towards but not necessarily achieve. How hard states work to obtain this goal is a matter they determine themselves in accordance with their resources and national priorities. There is no standard under the covenant by which another nation or organization can judge the validity of a nation’s economic priorities.⁶³ Therefore, socio-economic rights concerns more what is desirable than what is actually justiciable. However, the suggestion that socio-economic rights are goals and aspirations rather than real, justiciable rights can clearly be questioned. The

⁶¹ The International Covenant on Economic, Social and Cultural Rights, Art 16.

⁶² Delmas-Marty, M: “Global law: A Triple Challenge”, pp 14-15.

⁶³ Gordon, J: “The Concept of Human Rights: the History and Meaning of its Politization”, 23 Brook J Int’l L 689, 1997-1998, p 710.

covenant on civil and political rights and the covenant on socio-economic rights are equally authoritative legal instruments. Thus, it is the Universal Declaration together with the covenant on civil and political rights, as well as the covenant on socio-economic rights which constitute the International Bill of Human Rights. Furthermore, in accordance with the interdependence principle and fundamental to the human rights doctrine, all human rights are interdependent and interrelated, must be treated with the same emphasis and shall be respected and promoted just the same. There is to be no chronology or hierarchy among rights or any pretext of certain rights conditioning other. The covenants necessitate one and other, which means that there can be no civil and political rights without socio-economic rights and vice versa.

Some of the critique of socio-economic rights even go as far as saying that it is an insult to insist on socio-economic rights as being human rights when there is no realistic prospect of them being upheld, as hundreds of millions of people on the planet suffer from malnutrition and vulnerability to disease and starvation. Only the advanced countries can fulfil these luxury rights (holidays with pay, free higher education, continuous improvements of living standards). Even those rights which seem more fundamental, such as nutrition, health care and sanitation cannot be defined legally; at what level should these rights be considered as violated? While it is reasonable to require from states not to torture their citizens, it is not obvious that we can require them to guarantee them all livelihood, adequate housing and a healthy environment.⁶⁴ The response to such critique is that human rights most urgently need to be asserted and defended, both theoretically and practically, where they are most denied. The language of rights must always be thought of in the context of every-day life of human beings and the problems they face, as it for instance would be impossible to imagine a right to clean air in a pre-industrial society.⁶⁵ The problem of finding specific definitions and criteria is common for all human rights, as they all constitute minimum standards that are not specified to a large extent in the documents. What the right to a fair trial means will surely differ from one country to another, even if at some standard the requirements must be considered to be met. A minimum agenda for socio-economic rights aims to secure those basic material conditions of human activity, including the right to food of an adequate nutritional value, to clothing, to shelter, to basic health care, to clean water and sanitation, to

⁶⁴ Beetham, D: "What Future for Economic and Social Rights?", 43 *Political Studies* 41, 1995, in Steiner, H and Alston, P: *International Human Rights in Context: Law, Politics, Morals*", p 255.

⁶⁵ *Id.*, pp 255-256.

education at least at a primary level and to some standards of working conditions and wages and so on. In any case, to establish breaches of socio-economic rights when girls are discriminated against in access to education, when children die through lack of food or clean water or when people sleep rough because they have no access to housing are perhaps not that difficult.

The argument that socio-economic are less justiciable since they require state expenditures is not persuasive, as the maintenance of all rights does depend on financial means. In fact, the preservation of civil and political rights require large outlays, as the upholding of for instance police forces, prisons, a judiciary system and the organization of parliamentary elections are not inexpensive. Moreover, for instance the freedom from torture requires states not only to abstain from the use of torturing individuals, but also to act affirmatively to prohibit and prevent non-state actors, for example paramilitary death-squads from engaging in these activities and to intervene to bring to an end to these practises. At the same time, there are socio-economic rights that do not require state expenditures, such as the implementation of minimum wage standards, parental leave requirements, child labour laws and agrarian reforms. Also, there are many preventive health measures that can be implemented at low or no cost.⁶⁶ The state is responsible for the protection and promotion of all rights. Neither civil and political rights, nor socio-economic rights are free of costs or self-generating; they need legislation, promotion and protection which all require resources.⁶⁷

4.3.1 Emerging Paradigms of Judicial Enforcement of Socio-Economic Rights

There is often a reluctance of dealing with social inequalities in courts, from both political and legal personnel, mainly because of the extensive scope and difficult character of the decisions involved. Nevertheless, there are several examples of domestic laws and constitutions dealing with the protection of socio-economic rights. A national constitutional right to education and health care is recognised in some 187 countries. Out of 165 countries with available written constitutions, 116 made reference to a right to education and 73 to a right to health care. 95 countries stipulated a right to free education and 29 to free health care and services for at least

⁶⁶ Gordon, J: "The Concept of Human Rights: the History and Meaning of its Politization", 23 Brook J Int'l L 689, 1997-1998, p 711.

⁶⁷ Id, p 712.

some part of the population.⁶⁸ Even in the US, the right to education is recognised by the constitution of many of the states.

New paradigms of judicial enforcement of socio-economic rights are emerging in many liberal states, challenging many of the previous assumptions and the preoccupation with civil and political rights. The approaches to implementation and enforcement of socio-economic vary, but some methods are for instance the application of non-enforceable directive principles of state policy, constitutional entrenchment in a bill of rights, protection of socioeconomic rights through civil rights guarantees and enforcement at the state level in a federal system.⁶⁹ The directive principles approach was launched in India. The Indian constitution includes directive principles for state policy which contain most socio-economic rights. The provisions were originally of non-judicial character, but have developed to become enforceable in courts in so called public interest litigation or social action litigation.⁷⁰ Since the early 1980s, Indian courts have adjudicated socio-economic rights through creative interpretation of the Indian Bill of Rights, read in conjunction with these non-justiciable constitutional commands, or directive principles. The Indian example indicates that the Indian social contract sought to establish a different kind of relationship between the individual and the society than that represented by the limited government paradigm, suggesting a more active role for governments in securing basic needs of citizens.⁷¹ For instance, Article 39 of the Indian constitution declares that “The State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to adequate means of livelihood”, “that the ownership and control of the material resources of the community are so distributed as best to subserve the common good” and “that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.”⁷² According to Article 41, “The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.”⁷³ Article 43 mandates that “The state

⁶⁸ Gauri, V: “Social Rights and Economics: Claims to Health Care and Education in Developing Countries” in Alston P, and Robinson M, “Human Rights and Development”, p 66.

⁶⁹ Woods, J: “Emerging Paradigms of Protection “Second Generation” Human Rights”, 6 Loy. J Pub. Int. L. 103 2004-2005, p 104.

⁷⁰ Steiner, H and Alston, P: “International Human Rights in Context: Law, Politics, Morals”, pp 283-285.

⁷¹ Woods, J: “Emerging Paradigms of Protection “Second Generation” Human Rights”, 6 Loy. J Pub. Int. L. 103 2004-2005, pp 104-105.

⁷² INDIA CONST. art. 39.

⁷³ Id. art 41.

shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure...⁷⁴ Since the 1980s, the judges of the Indian Supreme Court have declared that the judiciary has a responsibility to address the vast poverty and misery of India. Cases have concerned among other things minimum wage, human trafficking, forced labour, clean and safe working environments, free legal services and medical services for treatment of serious injuries. Moreover, the court has declared among other things that the constitutional rights are enforceable towards the government as well as private actors, for instance in the case of forced labour and minimum wages.⁷⁵

In South Africa, socio-economic rights are enacted in the constitution as fundamental rights guaranteed the citizens and enforceable towards the government. The rights are not structurally of lower status, but are subject to the availability of public resources. Nevertheless, many important cases have been issued on the grounds of socio-economic rights in areas such as the right to health, education, housing and poverty.⁷⁶

It is without doubt that neither effective remedies of a judicial nature nor legislation will be sufficient in the achievement of socio-economic rights, or even play the same central role as they do in relation to civil and political rights.⁷⁷ Major redistribution of economic and social goods will not be won in courts. Nevertheless, not denying the limitations of the rights discourse and judicial enforcement in relation to socio-economic rights, the possibility to make governments accountable by laws and constitutions, when for instance failing to take all steps, within the constraints of resources, to ensure social rights to a minimum income, housing, education, health care etc, ought to be considered. The provisions could be made effective by allowing both individual and group action of for example homeless people in court to be enforceable towards governments and by also giving control mechanisms to the judiciary for the fulfilment of socio-economic rights.⁷⁸ This would open another front in the ongoing struggle for the millions of poor people to realise fully the dream of human dignity. As all legal rights are social construct, i.e. the result of social struggle; particular demands

⁷⁴ Id.

⁷⁵ Woods, J: "Emerging Paradigms of Protection "Second Generation" Human Rights", 6 Loy. J Pub. Int. L. 103 2004-2005, pp 106-108.

⁷⁶ Id, p 111 ff.

⁷⁷ Steiner, H and Alston. P: "International Human Rights in Context: Law, Politics, Morals, p 248.

⁷⁸ Fabre, C: "Constitutionalising Social Rights", 6 J. Polit.Phil.263, 1998, p 283.

made on an organised society in particular historical times and places and ultimately represent values that society has agreed to prioritize, the demand for judicial enforcement of socio-economic rights can play a central role in the organisation and mobilisation of the marginalised and disempowered,⁷⁹ locally as well as globally.

5. Socio-Economic Rights: Relevance and Attitudes

This section considers the contemporary relevance of socio-economic rights. It examines the current context of socio-economic rights, i.e. the status of socio-economic rights for people on the planet, which is the reality that these rights address. Thereafter some existing attitudes towards socio-economic right are studied, of the international community in general as well as of some important actors on the international arena; non-governmental organisations, the international business society and development and trade organisations. The section reveals a reality which hardly can be understood by people from western countries, but is valid for most people on the planet, and a response which perhaps not to the greatest extent corresponds to the scope of the problems.

5.1 What Relevance of Socio-Economic Rights: Current Context of Human Rights

The World Bank defines poverty as living on less than \$2 a day and extreme poverty as living on less than \$1 a day (adjusted to account for differences in purchasing power across countries). The proportion of the developing world's population living in extreme economic poverty has fallen from 28 percent in 1990 to 21 percent in 2001 and was almost halved over 1981-2001 from 1.5 billion to 1.1 billion.⁸⁰ The number of people living on less than \$2 a day has fallen from 67 percent in 1981 to 53 percent in 2001.⁸¹ The Millennium Development Goals Report of 2007 claims to have made a clear progress in achieving the goal of reducing poverty by half by 2015, but that their realization will ultimately depend on the aid commitments of the developed countries.⁸²

⁷⁹ Woods, J: "Emerging Paradigms of Protection "Second Generation" Human Rights", 6 Loy. J Pub. Int. L. 103 2004-2005, p 128.

⁸⁰ Chen, S and Ravallion, M: "How Have the World's Poorest Fared since the Early 1980s?", World Bank Research Observer, vol 19, nr 2, p 151, available at www.worldbank.org/poverty.net.

⁸¹ Id.

⁸² Millennium Development Goals, at <http://www.un.org/millenniumgoals/>, Millennium Development Report, pp 6-7, available at <http://www.un.org/millenniumgoals/pdf/mdg2007.pdf>.

However, even though the percentage of people living in poverty is falling, the absolute number is rising due to growth in the world's population. The number of people living below \$2 a day has risen from 2.4 billion to 2.7 billion and there has been a marked accumulation of people living just above the \$1 line.⁸³ Also, the performance in poverty reduction differs heavily between different time-periods and different regions. The greatest progress in reduction of extreme poverty was in the early 1980s and had to do with a sharp drop in extreme poverty in China due to reforms in the aftermath of the socialist rule, when changing the economic system including the structure of agricultural production. During 1987-1993 the number of people living on less than \$1 a day stayed roughly consistent, at around 1.2 billion. The 1990s was marked by more progress due to the developments in China and India.⁸⁴ Looking at regions, the greatest progress has certainly been witnessed in China, India and East and South Asia. In China, 400 million less was living in extreme poverty in 2001 than 20 years earlier.⁸⁵ Excluding China, extreme poverty fell from 32 percent to 23 percent over 1981-2001 but the total number of poor people rose from 850 million to 880 million.⁸⁶ In South Asia the number of poor has fallen from 475 million in 1981 to 430 million in 2001, from 52 percent to 31 percent. The accumulation of people living between \$1 and \$2 a day is particularly striking in South and East Asia, where this number accounts to 1.2 billion.⁸⁷ Outside Asia, there is less sign of progress in overcoming poverty. The number of poor people increased in Latin America, where the poverty rate has been relatively consistent over time, 10 percent for \$1 a day and 25 percent for \$2 a day. In the Middle East and the North African region, the 1980s marked a downward trend in poverty, but the rate stabilized in the 1990s at around 2 percent for the \$1 line and slightly over 20 percent for the \$2 line. In Eastern Europe and Central Asia both the incidence of poverty and the number of poor people rose in the 1990s compared with the 1980s. Few people live below \$1 a day in these regions, but the poverty rate by the \$2 a day standard rose from about 2 percent in 1981 to 20 percent in 2001.⁸⁸ In Sub-Saharan Africa, the incidence of poverty has fluctuated around 45 percent for the \$1 a day line and 75 percent for the \$2 a day line. The number of poor people almost doubled over 1981 to 2001, from 164 million to 316 million. The share of the world's

⁸³ Id.

⁸⁴ Id, p 162.

⁸⁵ Id, p 154.

⁸⁶ Id.

⁸⁷ Id.

⁸⁸ Id, p 155.

population living in extreme poverty in Africa rose from 11 percent to 29 percent over 1981-2001.⁸⁹

Despite the progress of reducing poverty in some regions, the current socio-economic context for a debate about economic and social rights nevertheless confirms a shocking reality with half of the population on the planet, nearly three billion people, living on less than two dollars a day and more than one billion people living on less than one dollar a day.⁹⁰ Out of 2, 2 billion children in the world, one billion lives in poverty, that is every second child.⁹¹ 30,000 children die each day due to poverty. That is about 210,000 children each week or just under 11 million children under five years of age, each year.⁹² One in five people in the developing world, some 1.1 billion people, lack access to water. Almost half of the total population of the developing countries, about 2, 6 billion people, lack basic sanitation.⁹³

Another context of socio-economic rights is the growing gap between the rich and the poor, among and inside countries which have occurred during the twentieth century to present.⁹⁴ An analysis of long-term trends show that the distance between the richest and poorest countries was about: 3 to 1 in 1820, 11 to 1 in 1913, 35 to 1 in 1950, 44 to 1 in 1973, 72 to 1 in 1992.⁹⁵ In 1960, the 20 percent of the world's people in the richest countries had 30 times the income of the poorest 20 percent; in 1997; 74 times as much.⁹⁶ Almost 90 percent of the world's wealth is currently held in North America, Europe and high-income Asian and Pacific countries, such as Japan and Australia.⁹⁷ Personal wealth is distributed so unevenly across the globe that the richest two percent of adults own more than 50 percent of the world's assets while the poorest half hold only 1 percent of the wealth.⁹⁸ The GDP of the poorest 48 countries (a quarter of the world's nations) is less than the wealth of the world's three richest *individuals* combined.⁹⁹ The richest 50 million people in Europe and North America have the

⁸⁹ Id, p 156.

⁹⁰ www.worldbank.org/povertynet, <http://povertymap.net/>.

⁹¹ "The State of the World's Children - Childhood under threat", UNICEF 2005, available at <http://www.unicef.org/sowc05/english/>.

⁹² "The Progress of Nations 2000", UNICEF publication, available at <http://www.unicef.org/pon00/immu1.htm>.

⁹³ 2006 Human Development Report, UNDP, pp 33-34.

⁹⁴ 1999 Human Development Report, UNDP, pp 38-39.

⁹⁵ 2000 Human Development Report, UNDP, p 6.

⁹⁶ 1999 Human Development Report, UNDP, p 36.

⁹⁷ Giles, C: "Richest 2 % hold half the world's assets", Financial Times, 2006, available at <http://www.ft.com/cms/s/41470ec0-845b-11db-87e0-0000779e2340.html>.

⁹⁸ Id.

⁹⁹ Ramonet, I: "The Politics of Hunger", Le Monde Diplomatique, 1998, available at <http://mondediplo.com/1998/11/01leader>.

same income as 2.7 billion poor people. The slice of the cake taken by 1 percent is the same size as that handed to the poorest 57 percent.¹⁰⁰ In 2001, the world's 497 billionaires registered a combined wealth of \$1.54 trillion, well over the combined gross national products of all the nations of sub-Saharan Africa (\$929.3 billion) or those of the oil-rich regions of the Middle East and North Africa (\$1.34 trillion). It is also greater than the combined incomes of the poorest half of humanity.¹⁰¹ The combined wealth of the world's 200 richest people hit \$1 trillion in 1999; the combined incomes of the 582 million people living in the 43 least developed countries are \$146 billion.¹⁰² Patterns of consumption show the same inequality as 20 percent of the population in the developed nations consumes 86 percent of the world's goods.¹⁰³ A mere 12 percent of the world's population uses 85 percent of its water.¹⁰⁴ When it comes to export and trade, the benefits from these activities is everything but evenly distributed among nations and it is clear that countries do not take part in the global trading-regime on the same conditions. It is a reality today that the 48 poorest countries account for less than 0.4 per cent of global exports.¹⁰⁵ The least developed countries share of export fell from 3 percent in the 1950s, to 0, 7 percent in the 1990s and the share in agriculture exports decreased from 3, 3 percent in the 1970s to 1, 5 percent in the 1990s.¹⁰⁶ Meanwhile developed countries spend over \$300 billion on agricultural subsidies each year.¹⁰⁷ The top fifth of the world's people in the richest countries enjoy 82 percent of the expanding export trade and 68 percent of foreign direct investment; the bottom fifth, barely more than 1 percent.¹⁰⁸ Since 2000, the developing world has actually been a net exporter of capital to the advanced economies, as developed countries borrow money cheaply from poorer ones for the financing of the welfare systems of the north, which really would be needed for their own development.¹⁰⁹ Such vast global inequalities must be kept in mind as one of the contexts when examining socio-economic rights. If this development continues, we run the risk of

¹⁰⁰ Elliot, L: "A cure worse than the Disease", the Guardian, 2002, available at <http://www.guardian.co.uk/debt/Story/0,2763,636624,00.html>.

¹⁰¹ Cavanagh, J and Anderson, S: "World's billionaires take a hit, but still soar", the Institute for Policy Studies, 06-03-02.

¹⁰² 2000 Human Development Report, UNDP, p 82.

¹⁰³ 1998 Human Development Report, UNDP, p 2.

¹⁰⁴ 2006 Human Development Report, UNDP, pp 33-34.

¹⁰⁵ 2000 Human Development Report, UNDP, p 82.

¹⁰⁶ "Globalization and the Least Developed Countries", Conference Background Paper, Istanbul July 2007, pp 8-9, available at <http://www.undp.org/poverty/event-istan.htm>.

¹⁰⁷ Wolfensohn, J: "Some Reflections on Human Rights and Development", in Alston P, and Robinson M, Human Rights and Development, p 24.

¹⁰⁸ 1999 Human Development Report, UNDP, p 31.

¹⁰⁹ World Bank "Global Development Finance: Harnessing Cyclical Gains for Development" (Washington DC, World Bank 2004) 7.

creating a world of global apartheid, where the distance between the rich and the poor is so large that there will be no prospects of finding common grounds for collaboration.¹¹⁰

Yet another context of socio-economic rights is the aspect of global priorities. An example of global spending from 1998 show that 8 US billions was spent on cosmetics in the United States, 11 US billions was spent on ice cream in Europe, 17 US billions was spent on pet foods in Europe and the United States, 35 US billions was spent on business entertainment in Japan, 50 US billions was spent on cigarettes in Europe, 105 US billions was spent on alcoholic drinks in Europe, 400 US billions was spent on narcotic drugs in the world and 780 US billions was the amount of military spending in the world. These expenditures can be contrasted to some examples of the costs of realisation of some of the socio-economic rights. The estimated costs to achieve universal access to basic social services in developing countries is for instance: basic education for all would cost 6 US billions, water and sanitation for all would cost 9 US billions, reproductive health for all women would cost 12 US billions and basic health and nutrition would cost 13 US billions.¹¹¹ Looking at these statistics, the world does not seem to be united in supporting human rights and development objectives. It appears as though a lack of focus makes up a large part of the problem.¹¹² The centre of attention lies often elsewhere, something that has become increasingly legible since 9/11. Developed countries has since then been focusing on the war on terror and on issues of state security while millions of other people on the planet continue to be at daily risk from violence, disease and poverty; worrying about where the next meal will come from, how to acquire medicine for a dying child, how to avoid the criminal with a gun, how to manage the household as a ten year old AIDS' orphan and so on.¹¹³

5.2 Attitudes towards Socio-Economic Rights

The international community has clearly failed to address and respond to systematic causes of human rights violations of socio-economic character.¹¹⁴ Paradoxically, the rise in human rights consciousness has not been accompanied by similarly dramatic improvements in the

¹¹⁰ De Feyter, K and Gómez Isa, F: "Privatization and Human Rights", p 11.

¹¹¹ 1998 Human Development Report, UNDP, p 37.

¹¹² Wolfensohn, J: "Some Reflections on Human Rights and Development", " in Alston P, and Robinson M: "Human Rights and Development", p 24.

¹¹³ Robinson, M "What Rights Can Add to Good Development Practice", in Alston P, and Robinson M: "Human Rights and Development", p 25.

¹¹⁴ Steiner and Alston: "International Human Rights in Context: Law, Politics, Morals", pp 237-238.

lives of most people.¹¹⁵ Poverty, with all its effects, is undisputedly the most fundamental source of suffering on the planet and is perhaps the greatest existing obstacle to the realization of human rights for all.¹¹⁶

An indication of the attitudes of the international community towards socio-economic rights becomes evident when considering the responses that violations of different types of rights give rise to. Breaches of socio-economic rights continue to be tolerated in a way that would have been unthinkable if they occurred to the same extent in relation to civil and political rights, as such breaches would be met with expressions of repulsion, horror and outrage and with calls for immediate remedial action. However, when it comes to socio-economic rights, breaches continue to be tolerated. Despite the official rhetoric, violations of civil and political rights continue to be treated as though they were far more serious and intolerable than massive and direct denials of socio-economic rights. In addition, there is a clear resistance of characterizing the problems that exist as gross and massive denials of economic and social rights, even if it is difficult to understand how the situation can reasonably be portrayed in any other way.¹¹⁷

Evidently, the profound connection between human rights and economic deprivation has not figured notably in western human rights agendas. Focusing on individual liberties, whilst largely ignoring the material causes of human rights deprivations, has fundamentally restrained the realisation of human dignity for the world's population and made the meaningful enjoyment of civil liberties in effect impossible. The link of civil and political rights to peace and democracy is more recognised, but peace and democracy in turn depends on addressing economic disparity and lack of development. In an environment of poverty and neglect, democracy and peace cannot survive.¹¹⁸ Addressing exclusively civil and political rights effectively downgrades the significance of socio-economic rights. It is for instance often asked whether civil and political rights is or is not “conductive to development”. Thinking of development in the context of real life situations of people and the freedoms they enjoy, and thinking of development as a process of expanding human freedoms, this question is defectively formulated. It misses the crucial understanding of political freedom as being a

¹¹⁵ Donoho, D: “Human Rights and Development in the 21st Century: The Complex Path to Peace and Democracy: Themes from the 2000 Goodwin Seminar”, 25 *Nova L. Rev.* 395 2000-2001, p 403.

¹¹⁶ *Id.*

¹¹⁷ UN Doc. E/1993/22, Annex III, para 5 and 7.

¹¹⁸ *Id.*, pp 404-405.

part of development itself. Different kinds of freedoms interrelate with one and another so that freedom of one type can help the advancement of freedom other types. Perhaps the total undermining of the prejudice of socio-economic rights as a luxury and secondary to civil and political rights has contributed to the success of the East Asian economies, starting with Japan. These economies comparatively early went for the massive expansion of education and health care *before* they broke the restraints of general poverty.¹¹⁹

Accordingly, not far beyond the surface of the interdependence principle, attitudes towards the status of socio-economic rights continue to range from one extreme to another. At one end, there is the view that they socio-economic rights do not constitute rights, but merely goals. Treating them as rights would undermine the freedom of the individual and would provide an excuse to downgrade the importance of civil and political rights. It would justify large-scale interventions in the economy, necessitate large governments and even socialism. At the other end, the more unusual opinion that socio-economic rights are superior to civil and political rights; of what use is the right to free speech and political action to those who are starving and illiterate? Variations on these extremes exist in diplomatic and academic discourse in a numerous ways. Many, perhaps most, governments now take an intermediate position, realising that a reasonable and effective government and well-funded state is a prerequisite for the protection of all rights. Common is also that governments consider the two sets of rights to be of equal status but failing to maintain this vision in their legal systems and in their actions in the international arena, with the result of an enduring hesitant approach towards socio-economic rights.

5.2.1 Non- Governmental Organisations

Quite clearly and obvious to all observers, the most prominent international non-governmental organizations dedicated to human rights, Amnesty International and Human Rights Watch, have traditionally had a clear focus on civil and political rights. Despite Amnesty International's claimed commitment to all rights of the Universal Declaration and its dedication to the interdependence principle, its substantive commitment is to civil and political rights. The organization has not explicitly rejected the notion of socio-economic rights, rather it has not identified, investigated or addressed in any manner those actions or

¹¹⁹ Sen, A: "Development as Freedom", p 35.

failures to act which would constitute violations of socio-economic rights. Human Rights Watch have had the same focus, with a mandate which addresses civil and political rights, defending freedom of thought and expression, due process of law and equal protection of the law and documenting murders, disappearances, torture and so on.¹²⁰

However, there are some signs of change, since both of the organizations in the recent years have slightly broadened their focus towards a more active involvement in the promotion of socio-economic rights. Amnesty International has even, in 2003, changed their mandate in order for them to do so. Some new organizations have also formed to work exclusively with these rights, one example being the Centre for Economic and Social Rights.¹²¹

Moreover, the problem remains that the largest and most powerful international non-governmental organizations, which set the agenda of the entire so called international civil society, are based almost exclusively in the west, using almost exclusively western personnel, even though their work is directed towards the south. These organizations have access to the world's political centres, utilize resources from the United Nations, have access to the powerful western media and increasingly cooperate with the arms of governments concerned with foreign affairs. Non-governmental organizations of developing countries are often more committed to socio-economic rights or self-determination than to civil and political rights and operate at the bare margins of these structures.¹²²

5.2.2 The International Business Society (excerpt from a debate)

The responses of the international business society, when confronted with the changes of the agendas of the NGOs, indicate the attitudes of the international business society towards socio-economic rights. For instance a leader article in the Economist Magazine¹²³ concluded that socio-economic rights did not qualify as human rights and criticized Amnesty International for focusing also on these rights. Among other things, it was argued that "...few rights are truly universal, and letting them multiply weakens them"; "Food, jobs and housing

¹²⁰ Gordon, J: "The Concept of Human Rights: the History and Meaning of its Politization", 23 Brook J Int'l L 689 1997-1998 p 714-717.

¹²¹ Robinson, M: "What Rights Can Add to Good Development Practice", in Alston P, and Robinson M: Human Rights and Development, p 30.

¹²² wa Mutua, M: "The Politics of Human Rights: Beyond the Abolitionist Paradigm in Africa" 17 Mich. J. Int'l L. 591, (1996), p 605.

¹²³ Munoz, C: "Stand up for your rights", the Economist, 2007-03-22, available at http://www.economist.com/opinion/displaystory.cfm?story_id=8888856

are certainly necessities. But no useful purpose is served by calling them “rights”.”; and “For people in the poor world, as for people everywhere, the most reliable method yet invented to ensure that governments provide people with social and economic necessities is called politics. That is why the rights that make open politics possible—free speech, due process, protection from arbitrary punishment—are so precious.” The author expressed regret over the content and implications of economic rights not being clear like in the case of civil and political rights; “It is hard enough to determine whether such a right has been infringed, let alone who should provide a remedy, or how.” In another article¹²⁴ it was argued that the changes had made Amnesty International “...less effective overall”. The author criticized Amnesty’s campaigns of “Poverty and Human Rights” and “Economic Globalisation and Human Rights” and its support for the World Social Forum which it claims to “...hold(s) annual anti-capitalism shindigs.” The columnist worried that the organization is becoming unavoidable political and intervenes too much in domestic sphere of the states, saying: “Perhaps unavoidably, the stance taken by Amnesty’s increasingly autonomous national chapters in the domestic affairs of their countries is decidedly political.” and: “Amnesty may to some extent be the captive of its need to keep a mass membership enthused with new and compelling causes, even at the cost of narrowing its appeal to those with unfashionably positive views about America or global capitalism.” The columnist seemed to prefer if the organisation would continue with its most meaningful activity; writing letters, something which the author was concerned would be neglected with the shift in focus. The author was more positive towards the changes made by the Human Rights Watch, since; “It keeps classic human-rights questions at the centre of its activities and gives only modest attention to other concerns. On weapons, for example, it campaigns to limit the use of cluster bombs, but not against the arms trade in general.” and was pleased to see that the organization “...steers clear of general hand-wringing about poverty or poor public services.” The columnist was worried of the advancement of social and economic rights, saying: “Some wonder if Ms Khan has been too keen to impress constituencies in what NGO-niks call the “global south”: code for developing countries, where opinion—at least among the elite—supposedly favours economic development over a “northern” concern for individual rights.”

The responses to these points of views concerns came immediately. Amnesty International referred to the Universal Declaration and the interdependence principle and claimed that “The

¹²⁴ Simonds, D: “Many rights, some wrong”, the Economist, 2007-03-22, available at http://www.economist.com/world/international/displaystory.cfm?story_id=8888792.

right to adequate food, the highest attainable standard of health and education are as much human rights as are freedom of expression or the right to a fair trial.” The stand of the organisation in response to the arguments of the Economist was: “It is widely recognised that nobody can enjoy their civil and political rights unless their economic, social and cultural rights are also respected, protected and fulfilled. Similarly, people cannot enjoy their economic, social and cultural rights unless their civil and political rights are also respected.”¹²⁵ The Centre of Economic and Social Rights concluded, in a letter to the Economist, that the articles “...reeks of nostalgia for the days of the Cold War, when the fight against communism kept economic and social rights off the mainstream human rights agenda.” and that: “The reunification of human rights since then seems to have entirely passed you by.” The letter continues: “Understanding freedom from preventable hunger and disease as a matter of rights is to recognize that these are as essential to human dignity as freedom of expression or conscience. Expanding civil and political freedoms is indispensable to combat poverty, but on its own cannot remedy the chronic levels of deprivation which continue to shock the conscience of humanity.” Amnesty’s shift in focus is commented by arguing that: “Rather than being lambasted for diluting its focus, Amnesty International is to be commended for embracing a more holistic vision of human rights, and lending the credibility of its brand and the mobilising power of its worldwide membership to the efforts to make economic and social rights a reality.”¹²⁶

5.2.3 Development and Trade Organisations

5.2.3.1 The World Bank and the International Monetary Fund

The World Bank and the International Monetary Fund (IMF) have rarely stood far from controversy. Since established by the Bretton Woods agreements of 1944, the organisations have assumed specific and mutually exclusive sets of economic and monetary functions in the context of the emerging post-war international order. The charters of the Bank and Fund were rooted exclusively in political realism, not including any of the ideals, values and ethics characterising the UN Charter, drawn up one year later. Given the international financial institutions being classified as specialised agencies of the UN, the fact that the goals and

¹²⁵ “Economic social and cultural rights are human rights”, available at <http://web.amnesty.org/pages/economist-response-index-eng>.

¹²⁶ “The wrong sort of rights? CESR response to Economist article on economic and social rights”, Available at <http://cesr.org/node/772>.

ideals of the UN, including human rights, have been entirely absent from the agendas of these organisations may be surprising. In their relatively short lives to date, human rights law has had only marginal influence on the research, policy and operational activities of the Bank and Fund.¹²⁷ However, the traditional attitude towards human rights as well as the clear distinction that the Bank and the IMF have made between economic and non-economic factors has become difficult, if not impossible to sustain in practice, given the scope and character of the current activities and responsibilities of the institutions.¹²⁸

Neither were the democratic aspirations and the ideal of equality of states embodied in the founding texts of the organisations, as ownership and control was reserved to a small number of economically dominant states. Unlike the un-weighted system used by the UN, decision-making in the World Bank and the IMF is based on member's share of the capital, hence reflects the economic importance of the countries involved, thus creating a certain bias in favour of richer countries and arguably penalising the developing countries.¹²⁹ The hope of the Keynes's, that they could be operated as autonomous, technocratic institutions, separated from national politics and governments failed, with the result of a rather close control by national governments.¹³⁰ The asymmetries in decision-making power clearly contradict the argument, still sometimes put forward, of the institutions being a-political.

The main mandates and responsibilities offered to the World Bank are to function as an ordinary bank, albeit directed towards the developing countries and focusing on areas such as poverty reduction, structural reform and social development. The Bank has been described as the most important international development agency and according to its articles of agreement among other things work towards the objective of raising productivity, the standard of living and conditions of labour in member countries.¹³¹ With a \$30 billion annual lending capacity, it is the world's largest source of development assistance. The Bank has the capacity to in effect prerequisite loans and investment from both public and private sources. It is the single most prolific and influential source of research and policy on development issues.¹³² The importance of the IMF derives from it being the world's central organization for

¹²⁷ Darrow, M: "Between Light and Shadow, the World Bank, the International Monetary Fund and International Human Rights Law", pp 1-2.

¹²⁸ Id, p 28.

¹²⁹ Acocella, N: "Economic Policy in the Age of Globalisation", p 380.

¹³⁰ Darrow, M: "Between Light and Shadow, the World Bank, the International Monetary Fund and International Human Rights Law", p 10.

¹³¹ Id, p 9.

¹³² Steiner, H and Alston, P: "International Human Rights in Context: Law, Politics, Morals", p 1334.

international monetary cooperation. Its main responsibilities are to oversee the international financial system and to ensure its stability, mainly through its technical advisory services, which provide guidance to its members on macro-economic and financial policies, and through assisting countries in financial crises. Also the activities of the IMF are currently directed towards the developing countries. The institution was during the 1970s and 1980s for developed countries marginalised when replaced by a much looser set of international monetary arrangements, including the privatisation of balance of payments services, the evolution of flexible exchange rates out of control of the IMF, diminishing importance of the Fund as a source of reserve creation and the developments towards regional monetary arrangements. When industrialised countries turned elsewhere for finance, the Fund was left with the low income countries that had nowhere else to go, thus taking on responsibilities as a development agency.¹³³ The World Bank and the IMF share their common origins, the connections to the UN, the common institutional inheritances, the dominance by the major industrial powers and a growing convergence and overlap between their development mandates.¹³⁴ Membership in the IMF prerequisite membership in the World Bank, the intention being to oblige countries to agree to standards in the monetary field as a condition for receiving the benefits of Bank membership, such as obtaining finance for development projects.

The classical position of the World Bank and the IMF about their role in relation to human rights is that their Articles of Agreement and their functions concern exclusively economic and financial issues and therefore do not accommodate for a larger role and responsibility in relation to human rights. The objectives of the international bill of rights could only be achieved at the expense of the obligations of the Bank and Fund according to their mandates. This position is primarily rooted in the belief in economics as separated from other disciplines and phenomenon as well as in the conception of development as a purely economic phenomenon; that economics would function best if kept separated from politics and other disciplines. Human rights as well as other disciplines such as environmental concerns are regarded as non-economic and political. Emphasising these concerns is believed to politicise the institutions and undermine their ability to work with governments.¹³⁵

¹³³ Darrow, M: "Between Light and Shadow, the World Bank, the International Monetary Fund and International Human Rights Law", pp 30-31.

¹³⁴ Id, p 3-4.

¹³⁵ Steiner, H and Alston, P: "International Human Rights in Context: Law, Politics, Morals", p 1334.

The financial institutions have never denied the importance of rights; rather they have not comprised them in their own activities, as regarding them as political. Therefore human rights are viewed as being of indirect importance of their work and it is continuously argued that the development activities and financial advice services can enhance human rights protection in member states. Naturally, it is socio-economic rights that most directly are of relevance for the work of the institutions. If projects and policies are implemented correctly, it will result in better socio-economic conditions among the member states. However, in the 1990s several studies were made regarding the relationship between civil and political rights and development, with the result of an emphasis of these rights and a growing recognition of the interdependence principle among the staff of the Bank.¹³⁶

The classical view of mainly the Bank was challenged in the late 1960s and early 1970s. The prevailing consensus on development thinking was seriously questioned to the extent that the institution experienced a serious legitimacy crisis. Up until then, development had been defined exclusively in terms of growth, in accordance with the classical view of the Bank of other ideals as political. The emphasis on growth and the theory of “trickle down” economics; the belief that the growth in the economy will eventually benefit everyone in the society, including the poor, had continuously been embraced by the international financial institutions as well as by other development organs. Vast problems of persisting poverty along with increasing affluence, increasing unemployment and increasing ecological disasters despite increasing production brought development defined in terms of growth to disrepute. The institutions adherence to the position that they had no mandate to deal with such issues was challenged. Human rights advocates argued that the Bank was obliged to play a positive role in support of human rights in the development projects it supported. They argued in terms of equity that the Bank should adopt a human rights agenda which supported economic policies to maintain basic needs such as health, shelter, education and clothing as well as an agenda for environmental protection.¹³⁷ The critique led to a shift in the Bank’s agenda towards a greater concern for issues such as equity and environmental protection. The basic needs approach led to elevating poverty reduction to the top of the agenda of the Bank. In practise,

¹³⁶ Darrow; M: “Between Light and Shadow, the World Bank, the International Monetary Fund and International Human Rights Law”, pp 19-20, p 22.

¹³⁷ Gathii, J: “Human Rights, the World Bank and the Washington Consensus: 1949-1999”, 94 *Am. Soc’y Int’l L. Proc.* 2000, p 145.

the approach generated mixed results, partly because of failures to include stakeholder participation and related civil and political rights.¹³⁸

In the 1980s, the market was again in focus. The World Bank and the IMF launched programmes of “structural adjustment”, providing policy-based loans intended to help developing countries achieve certain objectives, typically growth in their economy, pursued by improvement in living standards. As practised by the institutions, the programmes involved liberalisation of prices, trade and exchange followed by “public enterprise reform”; read privatisation, and “financial and banking sector reform” along with requirements that borrowers adopt policies on foreign investment deregulation, cuts to government spending on health and education, labour market deregulation, lowering of the minimum wage and a focus on the production of goods for export rather than on local production.¹³⁹ Despite a claimed rise in global per capita GDP, the programmes were unsuccessful and remained deeply controversial for actually deterring growth, development and human rights and for resulting in adverse effects on the environment, lack of distributional equity, failure of “conditionality”, poor cost-effectiveness, and difficulties with evolution of outcomes as well as objectionable political and ideological biases.¹⁴⁰ Accordingly, the programmes imposed were criticised for further aggravating, if that is even possible, the state for socio-economic rights.¹⁴¹

In the late 1980s, the human rights advocates reached its central conflict with the Bank’s classical position. The dominance of the market over the state in development thinking then had peaked with the socially disastrous agreements of the World Bank, the IMF and the US Treasury Department known as the Washington consensus. The agreements privileged the market as the centre of economic decision-making and the private sector as engine of growth that would bring developing countries from their isolation towards an integrated market economy. The policies of the Washington consensus focused on minimising the role of the government, emphasising privatisations (selling off government enterprises to the private sector) – also in areas providing basic services such as health, education and housing, trade and capital market liberalisation (elimination of trade barriers and other obstacles to the free flow of capital) and deregulation (elimination of regulations on the conduct of

¹³⁸ Darrow, M: “Between Light and Shadow, the World Bank, the International Monetary Fund and International Human Rights Law”, pp 14-15.

¹³⁹ Id, pp 39-40, pp 14-15.

¹⁴⁰ Id, p 15.

¹⁴¹ De Feyter, K and Gómez Isa, F: “Privatisation and Human Rights in the Age of Globalisation”, p 14.

businessmen).¹⁴² Hence, the doctrine meant scaling back the powers of the state, as governments were not to interfere with markets.

The basic needs approach and the critique of development defined as economic growth had sought to transform the Bank's traditional conventions by defining welfare demands in terms of basic needs and rights which could be argued in relation to the state and institutions of development. By formulating these claims in terms of rights, as opposed to needs, human rights activists wanted to add weight to the arguments when applying the moral credibility associated with human rights struggles. However, the Bank was not persuaded that the rights rhetoric had anything to add to their development programmes. Consequently, by the end of the 1980s, the development programmes justified as part of the Bank's basic needs development strategy were quickly being eroded and replaced by elements of the Washington consensus.¹⁴³ Rights activists responded by lobbying for basic needs as a central part of development initiatives, but also for the Bank to put in place and encourage social safety nets to mitigate the suffering caused by the reform processes of the Washington consensus. They argued that the doctrine was so focused on the potential of the private sector and on liberating the accumulation of wealth from all political controls, including those related to income distribution embraced in the provision of social services, that calling for a change in the agenda was no longer realistic. Any proposal to free the accumulation of wealth was not politically arguable.¹⁴⁴ Realising this, human rights advocates settled for a lesser agenda of human rights protection in the financial institutions, which led to the doctrine of good governance. Human rights activists continued to argue basic needs and basic rights from governments and institutions of development, but with the aim of getting human rights on the bandwagon of the Washington consensus. This meant that the human rights advocates sought to find compatibility with the economic policies of the financial institutions rather than demanding them to adopt an approach to development that was more humane. Hence, human rights activists aligned themselves with the economic policies and often required that any human rights agenda must be consistent with the economic and financial mandate of the institutions.¹⁴⁵ The good governance doctrine is also often referred to as the adoption of a post-Washington consensus. The term refers to a realisation of the inadequacies of the very

¹⁴² Gathii, J: "Human Rights, the World Bank and the Washington Consensus: 1949-1999", 94 *Am. Soc'y Int'l L. Proc.* 2000, p 145.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

simplistic Washington consensus as a framework for thinking of development policy, according to which a more balanced approach towards the role of the government and of the market is declared.

The good governance doctrine and the adoption of the post-Washington consensus helped to yet again maintain a focus on poverty reduction in the development institutions as well contributing to an increased focus on the public sector and the institutional dimensions of development. However, the concepts were also manipulated in advocating the interest of the global capital rather than the interest of the peoples in the developing countries.¹⁴⁶ Seen against the basic needs and basic rights initiative of the earlier period, the good governance doctrine was marked by a concession for a limited role of human rights within the institutions and had the effect of severely constraining the human rights agenda.¹⁴⁷

During the 1990s, some shifts could be seen at least in the official rhetoric, as human rights was emphasised as being ends of development rather than means and as individuals was recognised at the centre of the development process. The increased attention to human rights, the recognition of the links between human rights and development and the to some extent re-evaluation of the nature and ingredients of development took in the World Bank mainly place during the presidency of James Wolfensohn (Bank president during 1995-2005). He articulated the challenge as creating a new global balance and for human rights to be at the heart of that challenge. Some of the outcomes due to the shift in policy are that the Bank now defines its lending policies in relationship to human rights and that it has introduced policies on poverty reduction together with the UN.¹⁴⁸ The most significant example of recent is the dedication of the World Bank and the IMF alongside other UN institutions to the Millennium Development Goals, set out in the 1990s and adopted and presented in the Millennium Declaration of 2000. The Declaration has been signed by 189 countries and includes the target of reducing by half the proportion of people living on less than one dollar a day and the number of people suffering from hunger by 2015.¹⁴⁹ The IMF and the World Bank have also launched a series of strategies for poverty reduction, among others the Poverty Reduction

¹⁴⁶ Darrow, M: "Between Light and Shadow, the World Bank, the International Monetary Fund and International Human Rights Law", pp 16-17.

¹⁴⁷ Gathii, J: "Human Rights, the World Bank and the Washington Consensus: 1949-1999", 94 *Am. Soc'y Int'l L. Proc.* 2000, p 146.

¹⁴⁸ Robinson, M: "What Rights Can Add to Good Development Practice", in Alston P, and Robinson M: "Human Rights and Development", p 31.

¹⁴⁹ Millennium Development Goals, at <http://www.un.org/millenniumgoals/>, Millennium Development Report, pp 6-7, available at <http://www.un.org/millenniumgoals/pdf/mdg2007.pdf>.

Strategy Papers, and cooperate closely in the work with the strategies. The extent and pattern of recognition of human rights in the official rhetoric of the World Bank and the IMF is however only very selectively and marginally recognised in a practical programmatic context and the Bank seem to take only limited account of its own research.¹⁵⁰ The Millennium Development Goals are certainly signs of progress in development thinking in the international financial institutions; placing poverty reduction on top on the agenda and to some extent the individual at the centre of the development process. When it comes to the relationship between human rights and poverty, the Declaration registered some progress, but did not clearly resolve the issue, as poverty is far from explicitly referred to as a human rights violation.¹⁵¹

In principle, the institutions withhold their classical view, maintaining that human rights protection is beyond their mandate and that human rights are essentially of merely indirect importance for their work. The official position of the IMF remains that explicit engagement with human rights and even poverty as an overarching goal is beyond its mandate and beyond its expertise, but that its policies and activities can have a positive effect indirectly on human rights of people. According to the IMF, macro-economic foundations provide the necessary enabling environment for the realisation of all human rights.¹⁵² Despite some dedication to “high quality growth” and “equity through equality of opportunity”, the importance of economic growth was still in the mid-2000 fiercely argued by commentators from different quarter of the Bank and Fund, including influential researchers at the Bank, in a manner which clearly reflected the long-discredited premises of trickle down economics.¹⁵³

Despite an expanded mandate of the international financial institutions as development agencies, their policies continue to exclude human rights. There are no goals of human rights protection at the centre of their activities and there is a reluctance to adopt any responsibility when human rights is affected negatively by their activities. Human rights ideals continue to be recognised as political to a large extent by the international financial institutions and the institutions generally appears to remain convinced that the most effective macro-economic design is in the basic ingredients of the neo-liberal economic prescriptions and continue to

¹⁵⁰ Darrow; M: “Between Light and Shadow, the World Bank, the International Monetary Fund and International Human Rights Law”, p 25.

¹⁵¹ De Feyter, K and Gómez Iza, F: “Privatization and Human Rights”, p 151.

¹⁵² Darrow; M: “Between Light and Shadow, the World Bank, the International Monetary Fund and International Human Rights Law”, p 63.

¹⁵³ Id, p 15.

claim that socio-economic rights best be addressed indirectly through a stabilised, privatised and liberalised economic base, which is regarded as appropriate for ensuring growth. Much of the substance of the Washington consensus is still advocated to a large extent by the institutions.

Essentially, because the Bank and Fund continue to regard human rights as only indirectly relevant to their policies and not yet assuming any direct liability in social and human rights areas activities, human rights maintain in the background. Maintaining human rights as social issues means overlooking the economic aspects of human rights and ignoring the macro-economic relevance of rights.

5.2.3.2 The World Trade Organisation

Alongside the World Bank and the IMF, the Bretton Woods agreements envisaged the establishment of the International Trade Organisation. The ITO was set up to be a UN body and a forum for cooperation in trade policy, containing provisions relating to full employment, fair labour standards and economic development.¹⁵⁴ However, the ITO never came into being due to refusal of the US and other countries to sign the agreement (the Havana Charter). Instead of the ITO, the General Agreement on Tariffs and Trade was signed in 1947. The GATT was intended to be valid only temporarily, but came to govern trade relations until 1995, when the World Trade Organisation came into being to replace the agreement. The WTO now constitutes the forum for multilateral trade negotiations and implementation of trade agreements. It has a strong institutional identity, a permanent structure as well as a mechanism for dispute resolution.¹⁵⁵

The debate concerning human rights in the GATT/WTO system is much similar to that regarding the World Bank and the IMF. Like the World Bank and the IMF, the GATT/WTO regime developed quite independently from non-trade values, including human rights. Human rights were far from the agendas of the trade ministers when discussing trade agreements in the various rounds of negotiations. Nonetheless, member states have through Article XX the right to protect objectives other than trade, such as to protect public morals, human, animal or

¹⁵⁴ Charnovitz, S: "The Globalization of Economic Human Rights", 25 *Brook. J. Int'l L.* 1999, pp 115-116.

¹⁵⁵ Acocella, N: "Economic Policy in the Age of Globalisation", p 385.

plant life, human health and the conservation of exhaustible resources.¹⁵⁶ Most of the specific proposals relating to human rights and the WTO concern the breadth and possible expansion of Article XX. However, to date human rights are regarded at the most as one of many exceptions, or so called non-trade values, from the more primary obligations of liberalising trade.¹⁵⁷

Common for the rounds of trade negotiations, whether in Uruguay, Singapore, Geneva, Doha, Cancun or Hong Kong, is many issues being put on the table, to be subject of a complex process of bargaining among the states. By having enough issues on the table, it is hoped that negotiators can find a set of trade agreements that will make every country feel better off.¹⁵⁸ However, the outcomes have rarely been in the interests of the developing countries.

The main principles of the GATT were for member states to eliminate trade discrimination and quotas and reduce tariffs gradually (the principle of non-discrimination) and to treat foreign products in the same way as domestic goods (the most favoured nation principle). Nevertheless, the GATT treaty mainly focused on the liberalisation of trade in manufactured goods. When it came to the areas of importance for developing countries, mainly agriculture and textiles, strong limits (quotas) on a country-by-country, product-by-product basis remained. At the same time, agriculture remained highly protected and subsidized in developed countries. The comparative advantage clearly was in the hands of the advanced industrial countries.¹⁵⁹ The sectors covered by GATT were then gradually expanded in a range of negotiation rounds.

Most of the trade agreements to date were signed during the Uruguay Round. The negotiations were initiated in 1986, mainly due to pressure from the US and Japan, and finalised in 1994 with the creation of the WTO and the entering into force of the agreements signed during the round of negotiations. The result of the Uruguay round was mainly a further reduction of duties on manufactured goods, a ban on other protectionist barriers, the inclusion of new sectors within the multilateral cooperation framework (mainly agriculture, textiles and clothing, services, intellectual property, foreign investment and environment, competition).¹⁶⁰

¹⁵⁶ General Agreement on Tariffs and Trade, Oct 30, 1947, art. XX (a).

¹⁵⁷ Gathii, J: "international Justice and the Trading Regime", 19 Emory Int'l L. Rev. 2005, p 1422.

¹⁵⁸ Stiglitz, J: "Making Globalization Work", p 75.

¹⁵⁹ Id.

¹⁶⁰ Acocella, N: "Economic Policy in the Age of Globalisation", pp 383-384.

The Marrakech agreement of 1994 manifested the result of the Uruguay round. It was based on what came to be known as the “Grand Bargain”, in which developed countries agreed to lower their barriers for agriculture and textiles imports from developing countries. In return, developing countries agreed to reduce tariffs and accept a range of new rules and obligations on intellectual property rights, investments and services. Afterward, many developing countries felt that they had been misled into agreeing to the Grand Bargain. Developed countries did not keep their side of the deal, as textile quotas would remain in place for a decade and no end to agricultural subsidies was in sight. The trade agreements of the Uruguay Round were unfair and asymmetric, not in favour of the interests of the developing countries. The poorest countries were actually worse off, the sub-Saharan region losing some \$1.2 billion a year. Seventy percent of the gains from the global trading regime went to the developed countries, some \$350 billion annually.

A new round of negotiations was launched by the trade ministers in Doha in 2001, focusing especially on agricultural products, textiles, services, direct investment, government procurement and intellectual property rights.¹⁶¹ The developed countries promised to make the talks a “development round”, as they would surrender to some of the demands and interests of developing countries. The developing countries were hesitant to enter the negotiations, fearing that the result would be another unfair trading regime being foisted on them, leaving many of them actually worse off like the last one had. Their scepticism about the promises made at Doha proved to be justified as the negotiations evolved over the following years, and the talk of “development round” proved to be simply rhetoric. Talks among the trade ministers in Cancun and Hong Kong were marked by a refusal of cutting back on agricultural subsidies in the developed world; in 2002 the US even doubled theirs. The developed countries continued to push their agenda of reduced tariffs and opening of markets from the developing countries for goods and services they wanted to export. They even wanted to impose new demands on the developing countries. In Hong Kong the US agreed to open their markets to African cotton producers, but the offer was worth little since the US is the world’s largest cotton exporter due to huge cotton subsidies, thus hardly a major importer of cotton.¹⁶² Concerning services, the area of liberalisation was mainly in the area of skill-intensive services, not unskilled labour services, yet again the comparative advantage was to the advanced industrial countries. The way in which intellectual property rights was

¹⁶¹ Acocella, N: “Economic Policy in the Age of Globalisation”, p 387.

¹⁶² Stiglitz, J: “Making Globalization Work”, pp 79-80.

strengthened undoubtedly benefited the developed countries. The costs paid by developing countries, in human lives and health, became apparent only later, as medicines were taken off the market and developed countries began to patent traditional indigenous knowledge.¹⁶³

Developed countries now impose far higher, on average four times higher, tariffs against developing countries than against developed ones, even after having received the so-called preferences to developing countries. Rich countries have cost poor countries three times more in trade restrictions than they give in total development aid.¹⁶⁴

5.2.4 Prospects for Equality in Global Markets

In short, free trade arrangements do not exist in international economic relations of today. If the agreements concerned free trade and nothing else, and confirmed only obligations of lowering barriers of trade among countries, they would be rather straightforward and extend to about one single page. The agreements existing today are far more complex than that. In part, free trade has not worked because we have not tried it. Trade agreements up to date have been neither free nor fair. Instead, they have been asymmetric, opening up markets in developing countries to goods from the advanced industrial countries without full reciprocation, putting developing countries at disadvantage and leaving them worse off than they would be with a truly free and fair trading regime.¹⁶⁵ The US and the EU have perfected the art of arguing for free trade while at the same time promoting trade agreements which protect them against imports from the developing countries. The advanced industrial countries have the advantage of setting the agenda in a way which represent their comparative advantage, having unbalanced agreements in mind from day one of the negotiations.

Special interests are largely to blame. Trade ministers see the interests of their “clients”, being the corporations in their countries, shaping the agenda to benefit these interests, often even at the expense of the average citizen in their own country. Policy-makers frequently confuse these interests with the national interests or the interests of the global trading regime. The aspiration is not to find agreements based on principles but on a balancing and bargaining

¹⁶³ Stiglitz, J: "Making Globalization Work", pp 76-78.

¹⁶⁴ Stiglitz, J: "Making Globalization Work", pp 76-78.

¹⁶⁵ Id, p 62 and Stiglitz, J: "Making Globalization Work" lecture World Affairs Council, 070313.

among various interests.¹⁶⁶ Thus, like the trade ministers of the WTO see to the interests of the business community within their countries, which would like to see new markets open up for their products, while maintaining barriers to protect their own companies, the finance ministers of the IMF share the same agenda, having close ties to the financial community. Moreover, even though the work of the organisations is currently directed towards the developing world, the organisations are led by representatives from developed nations which do not speak for the developing countries, neither are they required to have any experience of the developing world. The developing countries are for the most part left voiceless.¹⁶⁷

Even if trade agreements were truly free, fair and liberal, it is not certain that all countries would benefit. Furthermore, it is far from certain that all people would benefit, even if their countries did.¹⁶⁸ Liberal trade policies, as opposed to protectionism or autarky, are founded scientifically on the theory of the advantages of specialisation at the international level. The main idea was emphasised by David Ricardo, saying that if two countries have different relative abilities to produce two goods, both will be better off if each specialises in producing the good whose cost is comparatively lower, which makes the total costs of production lower (the comparative cost principle). The theory suffers from many limitations, among other things due to its static, simplistic nature and the assumption of full employment. Subsequent theories incorporate the Ricardian principle, but adopt more realistic hypothesis of scale economics and imperfect competition. The arguments for protectionism are largely based on the limitations of the Ricardian principle.¹⁶⁹ Accordingly, in contrast the hypothesis of protectionism is mainly based among other things on the so called “infant industry argument” which has been presented at least since John Stuart Mill in favour of protectionism. He argued that given the existence of infant industries, a temporary imposition of protective tariff was justified, as the superiority of one country over another in a branch of production often arises only from having begun it sooner, hence having a present superiority of acquired skill and experience. A country that protects an infant industry may acquire the same skills and experience over time, thus enabling it to compete on equal footing.¹⁷⁰ Tariffs result in

¹⁶⁶ Stiglitz, J: “Making Globalization Work”, p 79.

¹⁶⁷ Stiglitz, J: “Globalization and its discontents”, pp 18-20.

¹⁶⁸ Stiglitz, J: “Making Globalization Work”, p 62.

¹⁶⁹ Acocella, N: “Economic Policy in the Age of Globalisation”, pp 343-344.

¹⁷⁰ Id, pp 348-351.

higher prices, which enables new industries to cover their costs, invest in research and make other investments in order to be able to stand on their own feet.¹⁷¹

A constant feature of the history of economic development appears to be that countries became successful in part because of protectionism. The infant industry argument was popular in Japan in the 1960s as well as in Europe and the US in the nineteenth century. Britain and the US are the countries that have most aggressively used protection and subsidies. In Britain, Oliver Cromwell made the use of English vessels mandatory for all the country's imports and exports through the Navigation Act of 1651, which proved to be a powerful instrument for advancing English economic power against the superior Dutch. Only when having established its hegemony, Britain adopted and promoted free trade.¹⁷² In protecting their industries, the Americans were going against the suggestions of such eminent economists as Adam Smith and Jean Babtiste Say, who saw the countries future in agriculture. The Americans knew that Britain had reached the top through protectionism, and so they had to do the same if they were to succeed in the international market. When Britain preached free trade towards the US, the US President Ulysses Grant replied that "within 200 years, when America has gotten out of protection all that it can offer, it too will adopt free trade". Between the Civil War and the Second World War, the US was literally the most heavily protected economy in the world. After the Second World War, when the US had reached the top, it too started to "kick away the ladder" by preaching free trade and forcing it upon the less developed countries.¹⁷³ Even if the UK and the US are the most prominent examples, in fact, virtually all of today's developed countries developed behind protectionist barriers, and actively used interventionist industrial, trade, and technology policies aimed at promoting their new infant industries against the competition from the established industries of the more advanced countries. States like Germany, France, (with the mercantilist policies of Colbert), Italy, Japan and Korea are well known in this respect. But even Sweden has strategically used tariffs, subsidies cartels and state support for R&D to develop key industries, especially textile, steel and engineering.¹⁷⁴ Some exceptions, like the Netherlands and Switzerland, did maintain free trade since the late eighteenth century. However, these countries did not need protectionism, since they were already so far ahead in their development. Also, the Netherlands did apply

¹⁷¹ Stiglitz, J: "Making Globalization Work", p 71.

¹⁷² Acocella, N: "Economic Policy in the Age of Globalisation", p 343.

¹⁷³ Chang, H J: "What is wrong with the "Official history of Capitalism"", in Fullbrook, E: "A guide to what's wrong with economics", p 285.

¹⁷⁴ Ibid, pp 285-286 and Acocella, N: "Economic Policy in the Age of Globalisation", pp 343-344.

protectionist measures during the seventeenth century in order to develop its maritime and commercial industries. Furthermore, Switzerland and the Netherlands refused to introduce patent laws until 1907 and 1912 respectively, despite international pressure, and freely stole technologies and ideas from abroad.¹⁷⁵ Contrary to the conventional wisdom, the historical fact is that the developed countries did not develop on the basis of the policies that they now recommend to, and often force upon, the developing countries.¹⁷⁶ Understanding the economic history correctly is crucial in order to get a more realistic picture of what will work and what will not. Even if protectionism may not be the most appropriate response to the current international economic structures, it is still crucial to get the economic history right, in order for the developing world to be able and allowed to make more informed choices.¹⁷⁷

Consequently, even if trade barriers were to be brought down symmetrically, not everyone is equally in a position to benefit from the new opportunities. The advantages of the people and companies in the developed countries are easy to realise, as for instance new markets open up for their products. The developing countries on the other hand must overcome many obstacles before being able to take part in and benefit from global trade, such as lacks of infrastructure, lack of knowledge and education, lack of social safety-nets and so on. Even if trade does follow, economic theory of liberalisation predicts that there will be winners and there will be losers. The winners could compensate the losers in theory, but in practise this almost never happens. If all the benefits go to a few at the top, then trade liberalisation leads to rich countries with poor people and even those in the middle may suffer.¹⁷⁸

While it may be difficult to describe precisely what a fair global trade regime would look like, it is clear that the current arrangements are not fair. There are undoubtedly arrangements which would favour developing countries and truly live up to the epithet of a development round. Such reforms could include allowing trade barriers in developing countries, as opposed to in developed ones. Countries often need time to develop in order to compete with foreign companies and may therefore temporarily need to protect their nascent industries. If developing countries are to “catch up” with the knowledge and technology and to transform their economies from agriculture to industry, such protectionism may be temporarily

¹⁷⁵ Chang, H J: “What is wrong with the “Official history of Capitalism””, in Fullbrook, E: “A guide to what’s wrong with economics”, p 286.

¹⁷⁶ Id, p 280.

¹⁷⁷ Id, p 287.

¹⁷⁸ Stiglitz, J: ”Making Globalization Work”, p 63.

necessary. Thus, the WTO rules should be re-written so that the developing countries are to be treated differently to a greater extent, being allowed to adopt policies that are more suitable to the conditions in their countries. They should be able to use tariffs and subsidies more actively, if they choose they would like to do so.¹⁷⁹ At the same time rich countries should simply open up their markets to the least developed countries without reciprocity and without economic and political conditionality. They could continue more rapidly with liberalisation among themselves, which would make them also benefit. The middle-income countries should open up their markets to the least developed countries and should be allowed to enter into agreements with one another without extending them to the rich countries, so that they need not worry that imports from these countries would damage their nascent industries. In short these trade policies can be summarised as replacing the principle of “reciprocity for and among all countries – regardless of circumstances” with the principle of “reciprocity among equals, but differentiation between those in distinctly different circumstances”. The EU has taken some steps in this direction when in 2001 opening its markets to the poorest countries without demanding political or economic concessions.¹⁸⁰ Other trade reforms which would benefit developing countries is liberalising migration of labour flows for un-skilled workers, not just for high-skilled workers and allowing for developing countries to have less stringent intellectual property regimes. The conditions attached to bilateral and multilateral assistance must also be abandoned, as there is no single set of guidelines for economic development. This would allow them to develop faster. In the long run it would also benefit the developed countries. It would increase their trade and investment opportunities, as the prerequisites for the Ricardian principle and specialisation on the international level would be fulfilled. Sadly, that the developed countries cannot see this is a tragedy of our time.¹⁸¹ The bias in favour of developed nations, by which the industrial and service sector are more liberalised than agriculture and other sectors important to developing countries must be addressed alongside organisational and procedural reforms towards transparency and democracy which will give all members fair representation and involvement in decision-making.¹⁸²

¹⁷⁹ Id.

¹⁸⁰ Stiglitz, J: “Making globalization work”, pp 82-83.

¹⁸¹ Chang, H J: “What is wrong with the “Official history of Capitalism””, in Fullbrook, E: “A guide to what’s wrong with economics”, pp 287-288.

¹⁸² Gathii, J: “The High Stakes of WTO Reform”, 104 Mich. L. Rev. 2005-2006, p 1365.

5.2.4.1 Human Rights Law - Frameworks for Transformation

Demands for a more equitable international economic order have recently often been founded on human rights law, and in particular on socio-economic rights as recognised under international law. Certainly, the international economic regime does not live in splendid isolation under the current international system. One cannot deny that for instance agreements of the WTO, perhaps the decisive component of the international economic order, and other international financial documents, in particular of the UN system, should be read consistently with the other treaty obligations of a state party.¹⁸³ Potential conflicts between socio-economic rights and trade agreements are easy to foresee. For example a decision of a state not to provide subsidies to poor farmers may satisfy the state's WTO obligations, but would arguably violate the obligations of the covenant on socio-economic rights, mainly the right to food. Cotton subsidies in Europe and the US could be illegal as they affect the human rights of millions of farmers in West and Central Africa. The intellectual property regime of the WTO, protecting the drug companies of the West, could possibly be accurately disregarded in respect of the right to health of poor people. Third countries that deny less-developed countries the benefit of a non-proprietary pharmaceutical regime could be in violation of the international human rights regime which extends to not only citizens of ones own country, but to citizens of other countries as well. To a certain extent, the WTO system is a project in the making and a rather flexible regime. It has some fixed rules, but also provides a mechanism to establish further arrangements. Considerations of the socio-economic impact of the trade regime obligations are not necessarily disregarded in the WTO system. Consequently, in what way and to what extent socio-economic rights should influence future international trade regimes remains to a large extent entirely open.¹⁸⁴ When the values and goals of the trading regime clashes with interests of human rights and welfare, arguably the values of human rights should not be sacrificed to world trade and should be protected in the trading regime.¹⁸⁵ The rights of the least well off not to be pushed into deeper poverty and to get a fair share of the gains of trade is arguably rooted in human rights law or at least in a human rights agenda in a globalised economy of the twenty-first century.

¹⁸³ Sajo, A: "SocioEconomic Rights and the International Economic Order", *International Law and Politics*, 35:221, 2002, p 227.

¹⁸⁴ *Id*, pp 229-230.

¹⁸⁵ Fox, E: "Globalisation and Human Rights: Looking out for the Welfare of the Worst Off", *N.Y.U. J. Int'l L. & Pol.* 2002-2003, p 206.

It is sometimes felt that human rights, democracy and free markets naturally come in one package. Examining this idea, it becomes clear that these global projects, spurred in the process of globalisation, do influence one and other, but remain separate, and the influence can be both constructive and harmful. Sometimes, as we have seen, the very process of implementing free market reforms involves the trumping of rights, when for instance taking away the rights of workers to organise, doing away with minimum wage regulations or cutting back in sectors such as health and education. Privatisations, deregulations, minimal governments and the reliance on the free market dramatically reduce the state's ability to act. Sometimes, such reforms are enacted undemocratically, despite the effects they have on people in the countries. Free markets does not necessarily arrive in the company of increased rights and democracy, often it can be quite the opposite.¹⁸⁶ The most basic aims of human rights projects such as equality and dignity can be powerfully affected by decisions of market design and economic policy.¹⁸⁷ In the new economic order, the subsidiary role of the state and the pre-eminence of the market are accompanied by a transformed image of the place and the responsibilities of the individual. Welfare and well-being have become private concerns, as individuals are expected to seek their fortune and secure their welfare in the market largely independent of the state. While the state has responsibilities towards the very least well off, extensive redistribution or "intervention" is regarded as both unwise and illegitimate. The market is sure to strike back at those states that unwisely choose to implement such policies.¹⁸⁸ In this respect, if human rights, democracy and free markets were to constitute a package in the global arena of present, then human rights and democracy have become simply labels to a certain package, rather than tools for social transformation. The idea of a package is then promoted to justify certain kinds of social, political and economic change while blocking others.¹⁸⁹ Only those rights which suit the economic policies will be accepted and promoted.¹⁹⁰ So far, the critique of the current market model has led to only reconstruction and renewal of the model itself, in the sense of increasing reference being made to participation, equity for women, safety nets for the most disadvantaged, rule of law, human

¹⁸⁶ Nyamu, C: "Human Rights, Democracy and Free Markets: Is It a Package?" 93 Am. Soc'y Int'l L. Proc. 1999, p 121.

¹⁸⁷ Rittich, K: "Transformed Pursuits: The Quest for Equality in Globalized Markets", Harvard Human Rights Journal, Vol. 13, 2000, p 236.

¹⁸⁸ Rittich, K: "Transformed Pursuits: The Quest for Equality in Globalized Markets", Harvard Human Rights Journal, Vol. 13, 2000, p 235.

¹⁸⁹ Ibid, p 123.

¹⁹⁰ Alston, P: "The Myopia of the Handmaidens: International Lawyers and Globalization", 8 Eur. J. Int'l L. 1997, p 442.

rights and so on. However, the idea of the market as the measure and limit of policy and regulatory initiatives remains intact and at the heart of development policy.¹⁹¹

6. Socio-Economic Rights and the Contemporary International Economic Order

The debate over socio-economic rights now takes place in the context of an ongoing process of globalisation which includes the spread of market economy in the creation of a global economic order, affecting virtually all states and people on the planet. The political nature of the debate is as evident now as ever before. So far, the impact of globalisation on the concepts and application of human rights has meant a focus on civil and political rights at the expense of socio-economic rights which have been virtually excluded in the process.¹⁹²

Subsequent to the fall of communism, free-market economic solutions have been promoted and embraced as the best prospect to generate improved standards of living and to ensure socio-economic rights. If that quest proves to be ineffective the pressure in many societies to authoritarian alternatives will be immense. It will also give rise to large-scale movements of people and flows of refugees.¹⁹³ Humanity is facing many great challenges in dealing and coming to terms with extensive poverty and other problems of humanity such as environmental deterioration and violence in this new global system.

This section scrutinises the phenomenon of globalisation. It focuses on what implications globalisation holds for the realization of socio-economic rights. The section describes the phenomenon, which now constitutes our reality, firstly by unfolding the reasons for the current developments and the main elements of the process, secondly by comparing the current international system of globalisation to that of the cold war. The section then addresses the attitudes towards globalisation in its current path, which tend to reveal the attitudes of both nations and peoples, towards the role of the government and the role of the market as well as the weight they attach to social justice and other non-economic values. Finally, the section addresses the relationship between poverty and globalisation in relation to claims for social justice and socio-economic rights on the international level.

¹⁹¹ Rittich, K: "Transformed Pursuits: The Quest for Equality in Globalized Markets", Harvard Human Rights Journal, Vol. 13, 2000, p 236.

¹⁹² McCorquodale, R and Fairbrother, R: "Globalization and Human Rights" 21 Human Rights Quarterly, 1999, 735, pp 763-6.

¹⁹³ Statement to the World Conference on Human Rights on behalf of the Committee on Economic, Social and Cultural Rights, UN Doc. E/1993/22, Annex 3.

6.1 Globalisation - A Multidimensional Process

Globalisation is generally understood as a process in which what is local and what is global increasingly becomes connected and interwoven, to the extent that the distinction between the levels is reduced or close to eliminated in certain areas. Throughout history such developments have taken place in various forms at different times. Globalisation results in increasing global connectivity, integration and interdependence in various spheres, such as in the economic, social, cultural, political, legal and ecological fields. Some of the developments are welcomed almost everywhere, such as the international flow of ideas and knowledge, the sharing of cultures, global civil society and the global environmental movement. However, it is in the economic field that globalisation is currently first and foremost apprehended. It may be defined as the broadening and deepening linkages of national economies into a worldwide market of goods, services and capital. The last decades have witnessed dramatic increases in the volume and variety of cross-border transactions, trade linkages, cross-border capital flows as well as radical changes in form, structure and location of production which have resulted in a growing economic interdependence of countries worldwide. This is also the controversial component of globalisation; i.e. the economic form of globalisation now apprehended, including the rules which govern the global economic order and the market economy, the way in which these rules are created and the institutions which create these rules.¹⁹⁴

The current era of globalisation has mainly two causes; technological progress and deliberate policy choices.¹⁹⁵ Globalisation has been realizable due to the technological progress experienced in areas such as information technology, transportation services and energy providence that render the connection and integration of peoples and markets possible to a degree that has never been witnessed before. The process has been driven by economic policy, which has primarily concerned gradually eliminating the obstacles to international trade, such as after the conclusion of the Uruguay Round of trade negotiations which provided additional reductions and extended the areas of trade.¹⁹⁶ An additional boost to globalisation came from the opening of the former communist bloc countries to trade and international investment at the end of the 1980s.¹⁹⁷

¹⁹⁴ Stiglitz, J: "Globalization and its discontents", p 10.

¹⁹⁵ Acocella, N: "Economic Policy in the Age of Globalisation", p 427.

¹⁹⁶ Id, p 428.

¹⁹⁷ Id, p 429.

Even though globalisation revolve to the greatest extent around the economic factors, the other elements and dimensions must be kept in mind for a complete picture and a full appreciation of both the ramifications and the possibilities offered by this process. One key problem is that we tend to think of economic globalisation as the only existing form of globalisation and also the only feasible form of globalisation, when actually we have experienced, are experiencing and will experience various forms and shapes of globalisations.¹⁹⁸ One of the fundamental problems we face when discussing economic globalisation is also the widespread belief in its inevitability, that it is a sort of indomitable quasi-natural process; a technical and scientific reality that sooner or later will end up imposing itself throughout the world. This belief is mistaken and is really nothing but an attempt to naturalize the current form of globalisation. It is important to see that globalisation in the sense of the current international economic order is a system that has been created, and is constantly created, by certain ideologies, decisions and interests which now mostly derive from the reverence of the market. The process of globalisation is disputable and open to political changes. There are legitimate alternatives to the current course which must be discussed in order to direct the process to the ends we find preferable; if we want to enhance its current positive effects and minimize its negative effects.¹⁹⁹

An example that shows the political nature of globalisation and its paths is the recognition of the fact that the process affects only selected areas. The focus is on liberalization and deregulation of the economic system while other areas are not affected, the most striking example being the mobility of workers between countries. Liberalization in this area has been met with major resistance among states and is therefore not carried out on the international level. When it comes to the question of immigrants coming to developed countries in search of work and a decent life, it is evident that they are virtually excluded and ignored on social, legal and political levels.²⁰⁰ Moreover, the liberalisation process on the international level can be compared with those on the regional levels, within regional organisations of collaboration and integration, such as the European Union, which neither exclusively concern economic processes, nor are they inevitable processes.

¹⁹⁸ De Feyter, K and Gómez Iza, F: "Privatization and Human Rights", pp 10-11.

¹⁹⁹ Id, pp 11-12.

²⁰⁰ Id, p 12.

6.2 Globalisation – the Current International System: From Division to Integration

Since the process of globalisation now affect so many aspects of the international reality, it can actually be thought of as an entire system, a system which in effect has replaced the Cold War system as the defining international system; encompassing its own unique logic, rules, pressures and incentives.²⁰¹ The elements of the globalisation system sharply contrast those of the Cold War, elements which in both eras affect the domestic politics, commerce and foreign relations in virtually every country of the world. The Cold War system had its own structure of power in the balance between the US and the Soviet Union. It had its own rules, as in foreign affairs, neither superpower would encroach on the other's sphere of influence. In economics, less developed nations were focusing on their national industries, developed countries on export-led growth, communist countries on autarky and western economies on regulated trade. The dominant ideas of the Cold War were communism and capitalism. The demographic trends confirmed a movement of people from the east to the west. The perspective on the globe was that it was divided into the communist, the western and the neutral group, all countries belonging to one of them. The defining technologies were the nuclear weapons and the second industrial revolution in some of the countries. The central measurement was the throw weight of nuclear missiles, and the defining anxiety was of nuclear annihilation.²⁰²

While division was the main feature of the Cold War system, the overarching characteristic of globalisation is integration. The world has become an increasingly interwoven place. The globalisation system is not static, like the Cold War system was, but a dynamic ongoing process where the integration of markets, states, individuals, organizations etc takes place to a degree never witnessed before and enabling all to reach around the world farther, faster, deeper and cheaper. Whether you are a country or a company, your opportunities and threats much depends on to whom you are connected. Therefore, while the main anxiety of the Cold War system was the fear of a well-known enemy that you could see, to be detected by radar, the anxiety in the globalisation system is fear of an enemy you cannot see, coming from within and to be exposed by the x-ray machine. While the defining measurement of the Cold War was weight (particularly the throw weight of missiles), the measurement of the globalisation system is speed; speed of commerce, travel, communication and innovation. The

²⁰¹ Friedman, T: "The Lexus and the Olive Tree", pp 6-15.

²⁰² Id.

technologies of globalisation are for instance computerization, digitalization and the internet. The demographic pattern of globalisation is a movement of people from rural areas and agricultural lifestyles to urban areas and urban lifestyles. The dominant idea of globalisation is free-market capitalism. The belief is that the more you open your economy to free trade and competition, the more efficient and flourishing your economy will be. Globalisation means the spread of free-market capitalism to virtually every country in the world. The economic rules of globalisation therefore revolve around opening, deregulating and privatising your economy in order to adjust it to the international economic system, to make it more competitive and to attract foreign investment.²⁰³ Adjustment means for the state to adopt some political and economic measures, including: making the private sector the primary engine of its economic growth, maintaining a low rate on inflation and price stability, shrinking the size of its state bureaucracy, maintaining as close to a balanced budget as possible, if not a surplus, eliminating and lowering tariffs on imported goods, removing restrictions on foreign investments, getting rid of quotas and domestic monopolies, increasing exports, privatizing state-owned industries and utilities, deregulating capital markets, making its currency convertible, opening its industries, stock and bond markets to direct foreign ownership and investment, deregulating its economy to promote as much domestic competition as possible, eliminating government corruption, subsidies and kickbacks as much as possible, opening its banking and telecommunications systems to private ownership and competition and allowing its citizens to choose from an array of competing pension options and foreign-run pension and mutual funds.²⁰⁴ Once a state adjusts to the new international economic order by implementing these reforms, it will be greatly rewarded by the global trading regime, as resulting in a significant growth in the economy.

The Cold War was a world of friends and enemies. Globalisation turns all friends and enemies into competitors. The Cold War system was built exclusively on nation-states, balanced at the centre by two super-states, the US and the Soviet Union, and encompassing a drama of confronting states, balancing states and aligning with states. The structure of power in the globalisation system regards not just states, but also individuals, companies, markets and other entities in a rather complex balance.²⁰⁵

²⁰³ Id.

²⁰⁴ Id, pp 104-105.

²⁰⁵ Id, pp 6-15

6.3 Attitudes towards Globalisation in its current form

Positions for or against the current form of globalisation are often taken on ideological leanings or gut feelings and it is clear that the notion of globalisation, even though it affects all people on the planet, still is not universally understood.

Many argue that economic globalisation means that economic relations have become more independent from political controls and consequently political sovereignty has declined. Some celebrate this new era as the liberation of the capitalist economy from the restrictions and distortions that political forces have previously posed upon it. They maintain that the process is favourable for all people and all states. Therefore, as the process is economically favourable for states, it will result in an improved status of socio-economic rights of people. Others worry about a reduced role of the state and lament globalisation as the closing of the institutional channels through which workers and citizens can influence and contest the cold logic of capitalist profit.²⁰⁶ Liberalisation, privatisation and deregulation spawned by neo-liberal globalisation effectively reduce the role of the state in economic and social systems, leaving sectors previously managed by the public sector in the hands of the market. Accordingly, this process weakens human rights protection in countries, since especially the maintenance of socio-economic rights depends on the state. When hearing the arguments of these spokesmen, one often wonders if they are even speaking of the same thing.

Attitudes towards globalisation as it has been managed so far tend to reveal the fundamental beliefs and attitudes of nations and people concerning the role of the government and the role of the market as well as the importance they attach to social justice and the weight they attach to non-economic values. Those who place less importance on reducing inequality are often of the belief that governments are to play a minor role in a society since their actions are too costly and may even be counterproductive. They claim that markets, by themselves, without government intervention, are efficient. The best way to help the poor and to reduce inequality is therefore to let the economy grow and somehow the benefits will trickle down to the poor. Even though economic research has undermined these theories, the beliefs of the conservative free-market optimists have interestingly persisted. Those who, on the contrary, are worried about poverty and disturbed with inequalities tend to be more sanguine about the possibilities

²⁰⁶ Preface to Hardt, M and Negri, A: "Empire", at vi.

of governmental interventions. They tend to think that markets by themselves do not always produce efficient outcomes. For instance, free markets, as they strive for short time economic profits, tend to result in producing too much pollution and too little basic research. They also see the enormous costs of not dealing with the problem, i.e. the social consequences such as alienation, violence and social conflicts. The perspectives on the importance of dealing with inequality and poverty are also reflected in differences in views about their origins. Those who are less concerned tend to think of wealth as a reward for hard work and believe that redistribution of income not only takes away incentives for work and savings but is almost immoral, as it deprives individuals of their just rewards. Those who are concerned about these problems see much of the distribution of wealth as arising out of luck; the luck of being born with good genes or with rich parents (the “sperm lottery”) or the luck of buying a piece of real estate in the right place at the right time. Ultimately, those who are less concerned about inequality and more concerned about economic efficiency are less concerned with non-economic values such as social justice, the environment, cultural diversity, universal access to health care and consumer protection.

The beliefs and attitudes towards globalisation show how much it matters to whom we entrust key aspects of economic decision-making, since the beliefs result in entirely different sets of economic policies which affect the role of the government and central authorities, the role of the market and the preservation and scope of basic non-economic values in the system.²⁰⁷ Globalisation is now the field on which some of our major societal conflicts play out.²⁰⁸

6.4 Achieving Socio-Economic Rights: Promises and Returns of Globalisation

6.4.1 Globalisation and Poverty

In short, the debate concerning globalisation in its current form seem to reflect the views of people towards the role they attach the government and possibilities of governmental intervention as well as their general attitudes towards and the market and what emphasis to place on values and equity. Most agree that the process so far has contributed to a lesser role of governments in favour of the market, which some find positive and some negative. Those who advocate a lesser role of the government attach most of the recent economic growth in

²⁰⁷ Preface to Stiglitz, J: "Making Globalization Work", at xvi-xvii.

²⁰⁸ Id, at xiv.

countries such as China, India and South East Asia to liberalisation and globalisation in its current form. Those who advocate a larger role of governments are sceptical to what effect globalisation has had on economic growth, or rather development, among countries and within countries, and the effect free trade and improper liberalisation imposed on developing countries has had, and worry more of larger inequalities. While the advocates of globalisation in its current form are of the opinion that the international financial institutions shall keep distributive issues away from trade, those who are more concerned with equality see the potential for these institutions and the rules they create to govern some aspects of globalisation and make sure that the process benefits the poor as well as the rich.²⁰⁹

Certainly, there are many answers to the question of why so many of the people on the planet are living in poverty. The role of globalisation in its current form has to be examined alongside other possible explanations such as corruption, internal conflicts, lack of democracy and deficient political leaderships. Even if it is often assumed, and in the most abstract way true, that the result regarding the change in global inequality can be interpreted as telling us whether globalisation leads to widening or shrinking income differences, the casual link between economic globalisation and global inequalities is very difficult to establish.²¹⁰ For instance there is an intense debate regarding whether openness is to blame for increasing wage and income differences, in the US as well as in poor countries. Some of the leading research on the subject indicates that so is the case, other do not and claim that there are other explanations for the inequalities.²¹¹ Moreover, while there is a general agreement on the size of global inequalities, there is a general disagreement about the recent directions of change of global inequality.²¹²

Nevertheless, the demand that the current international economic regime prevents, or at least does not contribute to, human misery is legitimate even if the global economic order is not the cause, or not the primary cause, of the malaise that translates into the deprivation of millions of their fundamental human dignity. If the current regime does not function in a way which benefits most people, the question is how globalisation can be managed in order to work for more and more people. The task is not only to see and evaluate what is currently done and

²⁰⁹ Barr, M and Avi-Yonah, R: "Globalization, Law and Development: Introduction and Overview", 26 Mich. J. Int'l L. 2004-2005, p 2.

²¹⁰ Milanovic, B: "Global Income Inequality: What it Is and why it Matters", World Bank Policy Research Paper 3865, 2006, p 21, available at www.worldbank.org.

²¹¹ Id.

²¹² Id, p 14.

how the contemporary international economic regime functions, but also to see what is not done that could be done to benefit developing countries and poor people and how the international economic regime could function, in order to make sure that all that all possible measures against poverty are in place and that decisions that would benefit the poor are taken. Arguably this is not the case today.

6.4.2 Globalisation and Sovereignty

Accordingly, the debate about globalisation is a debate that includes mixed elements concerning among other things economic theory, political theory and morals/ values. It may be so, that the process of globalisation has changed the reality for human beings so quickly and so radically that it is in fact difficult to clearly see and apprehend the current reality. While the system of the cold war was easier to grasp, the system of globalisation does not seem to be. Therefore the debate is often misleading and full of misunderstandings, often taking the shape of for and against as described.

However, if we were to not limit ourselves to these traditional conceptions of sovereignty and actually see in what ways a new global order, with a new logic and structure of rules, is currently emerging before our eyes, the picture and our opinions might change and open our eyes somewhat. Elementary economics tells us that globalisation is a potentially beneficial process. The process of globalisation in itself is neither good nor bad. As an economic process, it is value neutral, even if there are many concerns about the impact it may have on an ideological basis.²¹³ It is certainly true that the sovereignty of nation-states has declined as the process of globalisation has been carried out. The primary factors of production and exchange in areas such as money, technology, people and goods, move with increasing ease across national borders, which necessarily means that states have less and less power to regulate these flows and to impose authority over the economy. However, the decline of sovereignty of nation-states does not mean that sovereignty as such has declined.²¹⁴

A new political order is emerging in connection with the processes of economic globalisation. The nation-state is decentring but is relocated within a large, diverse and shifting field of

²¹³ Lal, D: "Globalization, Imperialism and Regulation", 2000, available at <http://www.econ.uncla.edu/workingpapers/wp810pdf>.

²¹⁴ Preface to Hardt, M and Negri, A: "Empire", at vi.

other sites of initiative and authority.²¹⁵ This description is valid also for the most powerful states, which should no longer be thought of as supreme and sovereign authorities, neither outside nor within their own territory.²¹⁶ The pressure and promises of internationalisation is in fact felt in both large and small nations as well as in the developed and the developing regions.²¹⁷ The new international system does include elements of exploitation and domination, which did not end with the fall of colonialism.²¹⁸ But what is important to recognise is that we often talk about global relations in terms of north and south and first world and third world, a distinction which is still to a great extent valid in many respects but not entirely. The hierarchies are complex and cannot fully be grasped through categorisations like these. As a matter of fact, we now find the first world in the third and the third world in the first. Even if there are still powerful states, no state can stand on top of the global order of today and no state can form the centre of an imperialist project.²¹⁹ The new international order has no territorial centre of power. It does not rely on fixed boundaries or barriers. Rather, it is a decentred and deterritorialising form of rule which constitute the current rules of the game.²²⁰

Therefore, our political task is not to simply resist the process itself, but rather to recognise the various elements of the process and to redirect them towards new ends.²²¹ When considering the role of the government and other central authorities, the role of the market and the importance of values, it is necessary to allocate the debate to the relevant, i.e. international, level. It is possible to construct alternative political organisations of global flows and exchanges. New democratic forms can be created and new forms of power can be exercised.

Some people claim that global inequalities are irrelevant and that even the calculation of global inequality is a lunacy. They argue that it is merely a number. There is no addressee to whom this mere number matters because there is no global government and there is no global civil society. To them, only national inequalities matter. Demands for justice and equality can only be advocated on the state level, because they become the stuff of political discourse.

²¹⁵ Marks, S: "Three Concepts of Empire", *Lei. J. Int'l L.*, 16, 2003, p 903.

²¹⁶ Preface to Hardt, M and Negri, A: "Empire", at viii-xiv.

²¹⁷ Kennedy, D: "Receiving the International", *10 Conn. J. Int'l L.* 1994-1995, p 2.

²¹⁸ Marks, S: "Three Concepts of Empire", *Lei. J. Int'l L.* 16, 2003, p 903.

²¹⁹ Preface to Hardt, M and Negri, A: "Empire", at vii-xiv.

²²⁰ *Id.*, at vii-xiv.

²²¹ *Id.*, at xv.

National inequalities are used to form political parties, platforms and to organise interest groups.²²² While there is a well-developed framework to deal with injustices within countries, such frameworks does not exists internationally. Moreover, the lack of empathy for people across national borders adds to the difficulties, as empathy is felt only within groups such as the family, the neighbourhood or the state at the most. Similar concern for strangers is much lower, if it exists at all.²²³ Another reason cited for the irrelevancy of global inequality, and domestic inequality as well, is that only changes in absolute income matter to the poor and rich alike. According to this view, only the improvements of the material conditions of people are important, people do not care about climbing up the income distribution ladder. Therefore, it does not matter if the income gap between an average American and an average African increase. In any case, the average African is a bit less poor. This hypothesis evidently assumes that our income relative to the income of others does not matter. The hypothesis is at odds with psychological studies that invariable show that people do not care only about their absolute dollar income, but also about where they stand in the social pyramid and as well whether they think their position is fair.²²⁴

Global inequalities matter. Arguably, they are ethical issues; distributional justice within a nation and in the world as a whole is the same thing.²²⁵ The moral duty to extend principles of justice outside nation borders can be based on many grounds, for instance because it is morally arbitrary to confine our concern for justice to within a nation state, or because inequalities within one state can sometimes be traced to a second state or a foreign entity, or perhaps because individuals within one state have a moral duty not to participate in domestic injustices that in turn result in injustices to non-citizens abroad and that might result in the subordination of the less advantaged or an unequal possession of wealth.²²⁶

Another way to elucidate why global inequalities matter, and will come to matter more and more, is that when people observe each other and interact, it is no longer simply a national yardstick that they have in mind when they compare their standard of living with others, but an international or global one. Globalisation increases the awareness of inequalities, and

²²² Milanovic, B: "Global Income Inequality: What it Is and why it Matters", World Bank Policy Research Paper 3865, 2006, p 25, available at www.worldbank.org

²²³ Gathii, J: "International Justice and the Trading Regime", 19 *Emory Int'l L. Rev.* 2005, pp 1407-1408.

²²⁴ Milanovic, B: "Global Income Inequality: What it Is and why it Matters", World Bank Policy Research Paper 3865, 2006, p 25, available at www.worldbank.org

²²⁵ *Id.*

²²⁶ Gathii, J: "International Justice and the Trading Regime", 19 *Emory Int'l L. Rev.* 2005, p 1415.

thereby makes the aspiration level among poor people change to the extent that they may no longer be satisfied with small increases in their own real income, if they know that others gain much more. Therefore, even if globalisation were to raise everyone's living standard, it could aggravate, rather than moderate, feelings of deprivation among the poor.²²⁷

The process of globalisation is in this respect no different from the development of nation states. Before the creation of the nation state, people lived in isolated, mutually separated villages where inequality and income distribution was not an issue; people almost ignored each others' existence and ways of life. But once nation states came into being, national inequality became an issue. People then started to compare their own standard of living with others and also made judgements of whether their position was fair or not. Globalisation may lead to global inequality being an issue. It is difficult to envisage that a fully free exchange of goods, technology and information, transfer of capital and some freedom in movement of individuals can go on for a long time without creating global polity and requiring decision-making processes at the global level.²²⁸ As citizens now belong to more than just their own states, they are connected to regional bodies that affect and influence their lives and to international organisations, like the WTO, whose treaties directly affects them, just as they may share the goals of the UN in the promotion of global peace. Increased flows of global commerce and social and cultural interconnectedness give rise to claims for justice across national boundaries through regional, global and other supranational bodies.²²⁹

While the supporters of an exclusively private sector driven globalisation may resent the idea of for instance vesting tax-raising authority for the first time in history into a global agency, they cannot fail to notice that the very process they support undercuts, in an ironic twist, their own position. It does so by rendering the gap more obvious, and the fairness of the existing global distribution, more questionable.²³⁰ Thus, where rules, policies, and players embed trust and confidence into a shared value of concern, especially for the weakest, the integrity of the global trading system is strengthened. Where the opposite is true, this integrity is called into question and potentially threatens to undermine its very essence.²³¹ The advocates of

²²⁷ Id, p 26.

²²⁸ Id, pp 26-27. See the article, p 27 ff, for example of rules for global redistribution, beyond development aid towards a progressive system.

²²⁹ Gathii, J: "International Justice and the Trading Regime", 19 Emory Int'l L. Rev. 2005, p 1412.

²³⁰ Milanovic, B: "Global Income Inequality: What it Is and why it Matters", World Bank Policy Research Paper 3865, 2006, p 30, available at www.worldbank.org

²³¹ Gathii, J: "International Justice and the Trading Regime", 19 Emory Int'l L. Rev. 2005, p 1418.

globalisation in its current path will ultimately realise, that their self-interest lies with supporting some form of global action to deal with both poverty, and inequality.²³²

Transformative social and political projects of our time must be pursued in a global field.²³³ Worries that the international order cannot provide a forum for politics are misplaced and appear as based on the assumption that some sort of politics (consumer protection, social policy, environmental regulation) are only possible at the national level or required a form of state or sovereignty which tragically the international order cannot provide. The international economic regime does not reduce the realm of the political and globalisation does not necessarily have to mean a shift from the public to the private; that commerce unavoidably will be strengthened and that the state and central authorities will loose out.²³⁴

Hoping that public international law will eventually catch up with the private, in the creation of an international public order; with newly created institutions or a world government is not realistic at present. As the international market is constructed by the political background norms of private law, it is the politics of the private we must address.²³⁵ The new global configuration contains within it new possibilities for redistributive change. International law and institutions can and do lend support in the realisation of these; they help to shape it just as it in turn shapes them.²³⁶ Just as international law can help to sustain global relations of exploitation and domination, it can also be used to transform those relations.²³⁷ Here, the potency of international law is more significant than the impotence.²³⁸ If human rights are attended to in the context of the extreme disparities between the first world and the third world and between poor and wealthy people, socio-economic rights have what it takes to offer support for redistributive change. And the current global financial system is all that is needed.²³⁹

²³² Milanovic, B: "Global Income Inequality: What it Is and why it Matters", World Bank Policy Research Paper 3865, 2006, p 30, available at www.worldbank.org

²³³ Rittich, K: "Transformed Pursuits: The Quest for Equality in Globalized Markets", Harvard Human Rights Journal, Vol. 13, 2000, p 231.

²³⁴ Kennedy, D: "Receiving the International", 10 Conn. J. Int'l L. 1994-1995, pp 2-5.

²³⁵ Id, pp 24-25.

²³⁶ Marks, S: "Three Concepts of Empire", Lei. J. Int'l L. 16 (2003), p 903.

²³⁷ Id, p 904.

²³⁸ Id.

²³⁹ Lal, D: "Globalization, Imperialism and Regulation", 2000, available at <http://www.econ.uncla.edu/workingpapers/wp810pdf>.

7. Concluding remarks

This paper has concerned socio-economic rights where the rights have been studied in mainly a historical and political context with the intention to elucidate the underlying political struggles in relation to the human rights doctrine. Claims of the developing states and of poor people have commonly been brought forward in relation to socio-economic rights, but the pre-eminence of civil and political rights, maintained in among other things formal imbalances in human rights documents and imbalances which have developed in relation to implementation and enforcement mechanisms, reflects a bias in favour of wealthy western nations. Further adding to this picture is the clarification of the current relevance of socio-economic rights; when examining the context which these rights addresses, as well as the attitudes towards socio-economic rights among the global community as a whole and of some prominent actors. Finally the thesis has evaluated the role of human rights in relation to the process of globalisation, where the emphasis on civil and political rights has been sustained due to the spread of the laissez faire form of governance and the model of minimal government associated with it.

The paper stresses the supremacy of civil and political rights as not being reasonable when considering the real life situations of people on the planet and the realities they face. The ideal and abstract entities called rights cannot hold a content which is to a large extent autonomous from these concrete life situations, or we will have a version of human rights that simply mirror the politic and economic doctrine, favouring some at the expense of others, rendering human rights struggles contributing to nothing. At present, conflicts over basic values such as socio-economic rights take place in the international arena. Opinions about globalisation in its current form reveal general attitudes to markets, governments and values, but the process of globalisation does not necessarily mean that governments and central authorities will loose out in favour of deregulated economic processes. A greater attention to socio-economic rights and a genuine recognition of the interdependence-principle would better correspond to the reality in which rights operate. In our time, the human rights movement must work to ensure that development occur in such way that all persons and groups share in the production of goods and distribution of benefits. Socio-economic rights can and do offer support for transformative struggles. In the end, advocates of the new international system will also realise that their self interest lies in addressing poverty and inequalities.

8. Bibliography

Literature

- Acocella, Nicola: *“Economic Policy in the Age of Globalisation”*, Cambridge, Cambridge University Press, 2005.
- Alston, Philip and Robinson, Mary: *“Human Rights and Development”*, Oxford, Oxford University Press, 2005.
- Darrow, Mac: *“Between Light and Shadow, the World Bank, the International Monetary Fund and International Human Rights Law”*, Oxford, Portland, Hart Publishing, 2003.
- De Feyter, Koen and Gómez Isa, Felipe: *“Privatization and Human Rights in the Age of Globalisation”*, Antwerpen Oxford, Intersentia, 2005.
- Dixon, Martin and McCorquodale, Robert: *“Cases and Materials on International Law”*, New York, Oxford University Press, 2003.
- Delmas-Marty, Mirelle: *“Global law: A Triple Challenge”*, Ardsley, New York, Transnational Publishers, 2003.
- Friedman, Thomas: *“The Lexus and the Olive Tree”* New York, Anchor Books, 2000.
- Fullbrook, Edward: *“A guide to what’s wrong with economics”*, London, Wimbledon Publishing, 2004.
- Hardt, Michael and Negri, Antonio: *“Empire”*, Cambridge, Massachusetts, Harvard University Press, 2000.
- Sen, Amartya: *“Development as Freedom”*, Oxford, Oxford University Press, 1999.
- Steiner, Henry and Alston, Philip: *“International Human Rights in Context: Law, Politics, Morals”*, Oxford, Oxford University Press, 2000.
- Stiglitz, Joseph E : *“Globalization and its discontents”*, London, Penguin, 2002.
- Stiglitz, Joseph E: *“Making Globalization Work”*, New York, W. W. Norton & Company, 2007.

Articles

- Abi-Saab, Georges: *“The Changing World Order and the International Legal Order: the Structural Evolution of International Law Beyond the State-Centric Model”*, in Steiner, Henry and Alston, Philip: *“International Human Rights in Context: Law, Politics, Morals”*, Oxford, Oxford University Press, 2005.
- Alston, Philip: *“Revitalising United Nations work on Human Rights and Development”*, 216 Melbourne University Law Review, 1991-1992.
- Alston, Philip: *“The Myopia of the Handmaidens: International Lawyers and Globalization”*, 8 European Journal of International Law, 1997.
- Barr, Michael and Avi-Yonah, Reuven: *“Globalization, Law and Development: Introduction and Overview”*, 26 Michigan Journal of International Law, 2004-2005.
- Beetham, David: *“What Future for Economic and Social Rights?”*, 43 Political Studies 41, 1995, in Steiner, Henry and Alston, Philip: *“International Human Rights in Context: Law, Politics, Morals”*, Oxford, Oxford University Press, 2000.
- Cavanagh, John and Anderson, Sarah: *“World’s billionaires take a hit, but still soar”*, the Institute for Policy Studies, 06-03-02.
- Chang, Ha-Joon: *“What is wrong with the “Official history of Capitalism””*, in Fullbrook, Edward: *“A guide to what’s wrong with economics”*, London, Wimbledon Publishing, 2004.

Charnovitz, Steve: "*The Globalization of Economic Human Rights*", 25 Brooklyn Journal of International Law, 1999.

Chen, Shaohua and Ravallion, Martin: "*How Have the World's Poorest Fared since the Early 1980s?*", The World Bank Research Observer, vol 19:141-169, nr 2, fall 2004, available at www.worldbank.org/povertynet.

Donoho, Douglas Lee: "*Human Rights and Development in the 21st Century: The Complex Path to Peace and Democracy: Themes from the 2000 Goodwin Seminar*", 25 Nova Law Review, 2000-2001.

Elliot, Larry: "*A cure worse than the Disease*", the Guardian, 2002-01-21, available at <http://www.guardian.co.uk/debt/Story/0,2763,636624,00.html>.

Fabre, Cecile: "*Constitutionalising Social Rights*", 6 Journal of Political Philosophy, 1998.

Felner, Eitan "The wrong sort of rights? CESR response to Economist article on economic and social rights" Available at <http://cesr.org/node/772>.

Fox, Eleanor: "*Globalisation and Human Rights: Looking out for the Welfare of the Worst Off*", 35 New York University Journal of International Law and Politics, 2002-2003.

Gathii, James: "*The High Stakes of WTO Reform*", 104 Michigan Law Review, 2005-2006.

Gathii, James: "*Human Rights, the World Bank and the Washington Consensus: 1949-1999*", 94 American Society of International Law Proceedings, 2000.

Gathii, James: "*International Justice and the Trading Regime*", 19 Emory International Law Review, 2005.

Gauri, Varun: "*Social Rights and Economics: Claims for Health Care and Education in Developing Countries*", in Alston, Philip and Robinson, Mary: "Human Rights and Development", Oxford, Oxford University Press, 2005.

Giles, Chris: "*Richest 2 % hold half the world's assets*", Financial Times, 2006-12-05, available at <http://www.ft.com/cms/s/41470ec0-845b-11db-87e0-0000779e2340.html>.

Gordon, J: "*The Concept of Human Rights: the History and Meaning of its Politization*", 23 Brooklyn Journal of International Law, 1997-1998.

Henkin, Louis: "*International law; Politics, Values and Functions*", in Alston, Philip and Robinson, Mary: "Human Rights and Development", Oxford, Oxford University Press, 2005.

Kelly, David: "*A Life of One's Own: Individual Rights and the Welfare State*", in Alston, Philip and Robinson, Mary: "Human Rights and Development", Oxford, Oxford University Press, 2005.

Kennedy, David: "*Receiving the International*", 10 Connecticut Journal of International Law, 1994-1995.

Lal, Deepak: "*Globalization, Imperialism and Regulation*", 2000, available at <http://www.econ.uncla.edu/workingpapers/wp810pdf>.

Lauterpacht, Hersch: "*International Law and Human Rights*", Steiner, Henry and Alston, Philip: "International Human Rights in Context: Law, Politics, Morals", Oxford, Oxford University Press, 2000.

Marks, Susan: "*Three Concepts of Empire*", 16 Leiden Journal of International Law, 2003.

McCorquodale, Robert and Fairbrother, Richard: "*Globalization and Human Rights*" 21 Human Rights Quarterly, 1999.

Milanovic, Branco: "*Global Income Inequality: What it Is and why it Matters*", World Bank Policy Research Paper 3865, 2006, available at www.worldbank.org.

Munoz, Claudio: "*Stand up for your rights*", the Economist, 07-03-22, available at http://www.economist.com/opinion/displaystory.cfm?story_id=8888856

Nyamu, C: "*Human Rights, Democracy and Free Markets: Is It a Package?*" 93 *American Society of International Law and Process*, 1999.

Ramonet, Ignacio: "*The Politics of Hunger*", *Le Monde Diplomatique*, November 1998, available at <http://mondediplo.com/1998/11/01/leader>.

Rittich, Kerry: "*Transformed Pursuits: The Quest for Equality in Globalized Markets*", *Harvard Human Rights Journal*, Vol. 13, 2000.

Robinson, Mary: "*What Rights Can Add to Good Development Practice*", in Alston Philip, and Robinson Mary: "*Human Rights and Development*", Oxford, Oxford University Press, 2005.

Sajo, Andras: "*SocioEconomic Rights and the International Economic Order*", *International Law and Politics*, 35:221, 2002.

Simonds, D: "Many rights, some wrong", *the Economist*, 2007-03-22, available at http://www.economist.com/world/international/displaystory.cfm?story_id=8888792.

Steiner, Henry: "*Social Rights and Economic Development: Converging Discourses?*", 4 *Buffalo Human Rights Law Review*, 1998.

Van der Vyver, Johan D: "*The Concept of Human Rights: Its history content and meaning*", *Acta juridica* 10, 1979.

Wolfensohn, James: "*Some Reflections on Human Rights and Development*", in Alston, Philip and Robinson, Mary: "*Human Rights and Development*", Oxford, Oxford University Press, 2005.

wa Mutua, Makau: "*The Politics of Human Rights: Beyond the Abolitionist Paradigm in Africa*" 17 *Michigan Journal of International Law*, 1996.

Woods, Jeanne M: "*Emerging Paradigms of Protection "Second Generation" Human Rights*", 6 *Loyola Journal of Public Interest Law*, 2004-2005.

International instruments, reports etc

United Nations Documents

Charter of the United Nations

Universal Declaration on Human Rights, GA Resolution 217 A (III), 1948

International Covenant on Economic, Social and Cultural Rights, G A Resolution 2200A (XXI), 1966

International Covenant on Civil and Political Rights, G A Resolution 2200A (XXI), 1966

Optional Protocol to the International Covenant on Civil and Political Rights, G A Resolution 2200A (XXI), 1966

UN Doc. A/2929, 1955

The Proclamation of Teheran, UN Doc A/CONF.32/41, 1968

Declaration on the Right to Development, G A Resolution 41/128, 1986

Statement to the World Conference on Human Rights on behalf of the Committee on Economic, Social and Cultural Rights, UN Doc. E/1993/22

UN Human Development Report, 1998, UNDP, available at <http://hdr.undp.org/en/reports/global/hdr1998/>

UN Human Development Report, 1999, UNDP, available at

http://hdr.undp.org/reports/global/1999/en/pdf/hdr_1999_ch1.pdf

UN Human Development Report, 2000, UNDP, available at <http://hdr.undp.org/en/reports/global/hdr2000/>

UN Human Development Report, 2006, UNDP, available at <http://hdr.undp.org/en/reports/global/hdr2006/>
Millennium Development Goals, available at <http://www.un.org/millenniumgoals/>

Millennium Development Report, available at <http://www.un.org/millenniumgoals/pdf/mdg2007.pdf>.

“The State of the World’s Children - Childhood under threat”, UNICEF 2005, available at
<http://www.unicef.org/sowc05/english/>.

“The Progress of Nations 2000”, UNICEF publication, available at <http://www.unicef.org/pon00/immu1.htm>.

“Globalization and the Least Developed Countries”, Conference Background Paper, Istanbul July 2007,
available at <http://www.undp.org/poverty/event-istan.htm>.

Other

General Agreement on Tariffs and Trade

The Constitution of India, available at http://india.gov.in/govt/constitutions_india.php

www.povertymap.net/

www.worldbank.org/povertynet

World Bank “*Global Development Finance: Harnessing Cyclical Gains for Development*”, Washington DC,
World Bank, 2004 7.

Amnesty International, Publication: “*Economic social and cultural rights are human rights*”, available at
<http://web.amnesty.org/pages/economist-response-index-eng>.

Stiglitz, J.”*Making Globalization Work*” lecture World Affairs Council, 070313, available at google video.