A Human Rights Framework for Trade in the Americas

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Introduction

Thirty-four countries in the Americas—with the exception of Cuba—are in the midst of negotiating a hemispheric free trade agreement. At the time this paper is being written, civil society organizations are campaigning for the release of the draft text of the agreement. The perceived lack of transparency in the trade negotiations process has been repeatedly and widely criticized by hundreds of organizations throughout the hemisphere. Millions of people in the Americas are profoundly sceptical of the promise that the benefits of economic globalization—in particular trade liberalization—will trickle down to the poorest and most vulnerable. The lack of access to the negotiating text only accentuates their fears. They are concerned that the imperatives of trade liberalization— with the attendant processes of privatization, deregulation, financial and investment liberalization—will undermine the political will and capacity of states to fulfil the human rights commitments they have made and to undertake new ones that are long overdue.

The purpose of this paper is to look at the proposed Free Trade Area of the Americas (FTAA) through the lens of human rights. Increased trade and economic integration must not be seen as ends in and of themselves but, at best, as a means to an end. The end we are seeking to reach has exquisite expression and precise definition in international human rights law. The primacy of human rights over trade law must be recognized. Processes of economic globalization need to be tested against and guided by international human rights law. At the World Conference on Human Rights in 1993, over 170 governments agreed that the promotion and respect of human rights (civil, political, economic, social and cultural) was the first priority of governments. Yet, since that time, much more emphasis has been placed on trade and investment liberalization by the same community of states. An extensive body of international human rights law, incorporated into many national constitutions and regional inter-governmental agreements, now exists and this body of law provides an appropriate legal and normative framework for trade and investment. The policies of economic institutions must serve the cause of human rights and promoting, protecting and fulfilling human rights should be a primary objective of any trade agreement.[1]

In order to undertake this analysis in the absence of the draft agreement, we have based our study largely on the legal texts and experience of trade liberalization under the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO), on which, we presume, the FTAA will be based. On the human rights side, we have drawn extensively on the International Covenant on Economic, Social and Cultural Rights (ICESCR), and also on the key regional instruments, namely the American Convention on Human Rights and its newly effective San Salvador Protocol on Economic, Social and Cultural Rights. We have also, whenever possible, referenced the less detailed but universally applicable declarative instruments: the 1948 UN Universal Declaration of Human Rights (UDHR) and its regional counterpart: the American Declaration on the Rights and Duties of Man (ADRDM) of the Organization of American States (OAS). We believe that states have the obligation to ensure that their multilateral negotiations on trade, investment and finance do not contradict or undermine the engagements they have on human rights and that in all cases human rights instruments must be ratified before states commit themselves to a new trade agreement.

[1] See *Human Rights as the Primary Objective of Trade, Investment and Financial Policy*, Sub-Commission resolution 1998/12 E/CN.4/SUB.2/RES/1998/12 20 August 1998. This does not mean that trade institutions would take on the mandate of specialized agencies in human rights but rather that their policies would be guided by human rights treaties, their supervisory mechanisms and their jurisprudence. In that sense, we are not seeking to 'put human rights into trade' but rather to make trade consistent with human rights.

Our hope is that this paper will be read by heads of state, trade ministers and policy-makers and that it will stimulate a critical assessment of how trade policy can be subordinated to the primacy of the human rights commitments of states. The FTAA is potentially an opportunity for two estranged fields of law and practice to be brought together. We call upon those involved in negotiations around free trade in the Americas to re-examine the premises of economic policy, to reflect anew upon the human rights commitments they have made and how trade and investment could contribute to their overall realization. To this end, a broad cross section of human rights organizations in the hemisphere have agreed upon a series of key recommendations that we hope will be given serious consideration by governments.

The search for consistency and coherence between human rights and trade on the national and international levels lies at the heart of this document. Governments should view trade with respect to human rights and should not subjugate human rights to the demands of trade. The coherence we are searching for is of a legal, institutional and political nature. In this paper, we look at some specific examples of how human rights are compromised by provisions found in free trade agreements. It is in no sense an exhaustive list of the human rights problems posed by trade agreements, but merely a critical assessment of the potential impact of the FTAA on three rights: health, education and food. We conclude with a series of recommendations that are aimed at strengthening the human rights system and ensuring coherence between human rights and trade in the context of the Americas. Appendix I provides details on how various existing institutions have attempted to integrate, in a limited manner, the human rights dimension. We hope this Appendix will provide some useful background to policy-makers seeking to ensure that trade agreements contribute to the overall realization of human rights, and provide some insight into the shortcomings and strengths of existing arrangements. Appendix II includes a table documenting which states have ratified specific conventions. Here, several important gaps can be noted, not the least of which is the failure of both Canada and the US to ratify the American Convention on Human Rights.

Trade and Human Rights

While international trade liberalization has long been the subject of debate about winners and losers, only recently have organizations begun to focus on the precise relationship between trade and human rights. As international trade expands its agenda beyond setting tariffs for goods, the human rights community has grown more concerned about the impact of trade policies and the institutions that govern them. It is becoming clear that trade and investment liberalization is playing a key role in terms of redefining the role of the state, which has potentially very serious implications for the realization of human rights. Non-governmental organizations (NGOs), UN bodies and academics have begun to examine the relationship in more detail and pressure is increasing on trading organizations and their member states to take human rights into account in policy development. What kind of relationship should be established, however, is still a matter of considerable debate.

The FTAA, an initiative launched at the first Summit of the Americas in Miami (1994), is one of many regional initiatives for trade liberalization, albeit an important one, covering 34 countries with a population of 800 million people and a combined GDP of US$11 trillion. The FTAA reflects the broad contemporary trade agenda, with the many new ‘trade-related’ issues, including

chapters on investment, services, intellectual property rights and competition policy, all of which have potentially far-reaching implications on human rights. This trade liberalization agenda was given added impetus at the Santiago Summit (1998) where formal negotiations were officially launched and over the past three years about 900 trade negotiators have been hard at work coming to agreement on the text. Interestingly, while the Summits of Heads of State deal with many topics including human rights, poverty alleviation and democracy, discussions around these issues have not yet permeated the discussions on trade.[2]

Institutionally, trade negotiations have proceeded independently—and more rapidly and intensely—than discussions around other Summit topics. Trade has its own set of negotiating groups, ministerial meetings and mechanisms for consultation, whereas the other 'baskets' are taken care of by the Summit Implementation Review Group (SIRG), under the auspices of the OAS. There appears to have been a recent attempt to bring trade back into the OAS by placing the FTAA into the 'economic prosperity' basket, although the relationship of the FTAA to other summit topics, and indeed to the OAS itself, remains ambiguous. This institutional isolation of the trade agenda is really nothing new. While international human rights law and international trade law developed simultaneously in the post-war period, they followed completely separate paths. For the most part, neither discipline was interested in or even aware of what the other was doing.[3]

Advocates of the liberalization and expansion of trade systematically ignore the fundamental commitment made by states to the UN Charter. The Charter's preamble is clear about the principal mission that the international community has agreed to uphold. This mission is explicitly based on the respect of the dignity and the value of the individual and on the equality of people and nations. The protection, promotion and fulfilment of human rights and the rights of peoples constitute the primary means of reaching this objective. International and regional trade agreements and the institutions they establish are thus bound by the principles laid out in the UN Charter.[4] In the same way, the UDHR governs all other international or regional agreements, including trade agreements, for states that have made it a source of international law (through

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[2]At the Summit of Miami (1994), delegations referred to respect of human rights in the context of the economic integration process within the text of the Declaration of Principles adopted. By endorsing the Charter of the OAS, the states affirmed that the respect for democracy, human rights and cultural diversity, as well as the protection of the rights of minorities and the implementation of democratic electoral structures, contribute to the democratic process in its broadest sense. The Declaration of the second Summit of the Americas (Santiago, 1998) made explicit reference to the UDHR, the ADRDM and the need to ensure the promotion of the major instruments of human rights. In particular, the condition of women, migrant workers, and indigenous peoples received special attention. Moreover, the Declaration, subject to political pressure from a civil society interested in better understanding adn participating in the current process, took note of the requirements set forth in certain fundamental conventions of the International Labour Organization (ILO) and the need to ensure that the poorest populations would benefit from access to food resources, health care, credit and land.

[3] It is significant, for example, that the WTO is not part of the UN, and this guarded institutional autonomy is coming under challenge in new efforts to build coherence between international institutions. See *Report of Secretary General to the Preparatory Committee for the High-Level International InterGovernmental Event on Financing for Development*, UN 2001 (www.un.org/esa/ffd).

[4] Article 103 of the UN Charter stipulates that if there is a conflict between obligations of members of the UN with respect to the Charter and their obligations with respect to any other international agreement, the former prevails.

their legislation and policies).[5] Furthermore, at the 1993 World Conference on Human Rights in Vienna, over 170 governments agreed that the protection and promotion of human rights was the first responsibility of governments. Such considerations provide a powerful argument for the primacy of international human rights law over trade.

Nonetheless, the constitutive texts of the institutions of international trade, including the WTO, reveal a remarkable reticence on the part of governments to explicitly recognize that they are subject to the most fundamental doctrines of international human rights law. For example, the agreement that established the WTO explicitly refers to the fundamental principles of international trade in its preamble, but not to the fundamental character of the UN Charter.[6] Instead, the preamble meekly notes that member states "[...]Recognize[e] that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand […]." Likewise, the preamble of the Charter of the OAS provides this group of nations with a mission founded on the respect of freedom, dignity and equality of persons in peace.[7] Yet the preamble of NAFTA gives much more attention to the economic objectives of the agreement. While recognizing that NAFTA should create new employment possibilities and improve working conditions and standards of living as well as promote sustainable development, environmental protection and the fundamental rights of workers, NAFTA makes no explicit reference to any declaration or instrument of human rights emanating from the OAS, ILO or UN.

Trade and Development

Negotiations towards a free trade agreement in the Americas cannot ignore the tremendous economic disparity that exists between OAS member states (not to mention the growing inequality within different countries).[8] Vastly different levels of economic growth, population, human development, democratization and development generally make the notion of 'free trade' with the same rules for all nonsensical—unless of course there is a commitment to the right to development built into the process. It is completely unreasonable to expect small, relatively poor states to reduce tariffs, implement requirement of trade agreements, or grant market access at the same rate as an economic powerhouse like the United States. This is, to a limited extent, recognized in the FTAA negotiating process through the work of the Committee on Smaller Economies, although its work is not explicitly based on human rights. It is worthwhile, in this respect, to remind states of their fundamental obligations to respect the right of self-determination, by virtue of which "they freely determine their political status and freely pursue

[5]See Robert Howse and Makau Mutua, *Protecting Human Rights in a Global Economy: Challenges for the World Trade Organization*, Rights & Democracy, 2000, on line at www.ichrdd.ca.

[6]While the WTO enjoys many of the privileges of UN bodies and agencies, it is an autonomous entity. Likewise, in the process of regional integration, the negotiations towards the FTAA, while benefiting from the technical co-operation of the OAS and its agencies, do not formally come under the auspices of the OAS. It is difficult to think of any specialized agencies other than those specializing in trade that enjoy such complete institutional autonomy.

[7]Furthermore, Article 2 (f) and (g) of the Charter clearly sets forth the objectives of eradication of extreme forms of poverty and the economic, social and cultural development of the peoples of the Americas within the list of principles that are to govern the OAS.

[8]In terms of gross domestic product for all the Americas, the US accounts for 75%, Brazil for 6%, Canada for 5% and Mexico for 4%. That means that the other 30 countries involved in the FTAA negotiations account for less than 10% of the total productive capacity!

their economic, social and cultural development."[9] States, particularly developing countries, must have the capacity, flexibility and support they require in order to make policy choices that favour the full realization of human rights. Furthermore, states have obligations (and rights) regarding international cooperation which should be central to trade negotiations. Note, for example, the obligations under Articles 55 and 56 of the UN Charter and the obligation in the ICESCR for states to "take steps, individually and through international cooperation and assistance […] with a view to achieving progressively the rights."[10] These principles reinforce the call by the G77 at their meeting in Havana for a "new global human order aimed at reversing the growing disparities between rich and poor, both among and within countries, through the promotion of growth with equity, the eradication of poverty, the expansion of productive employment and the promotion of gender equity and social integration."[11]

An analysis of the consequences of successive generations of structural adjustment programs (SAPs) reveals the extent to which states have had their margin of manoeuvre reduced through decisions of international financial institutions. The SAPs imposed in Latin America over the past 15 years have, in fact, demanded a reduced role for the state in crucial areas of social spending that are intimately linked to their capacity to fulfil their human rights obligations. The G7 and the Organization for Economic Cooperation and Development (OECD), using the debt crisis as a pretext, have contributed to this crisis of statehood by proceeding with a radical transformation of the democratic landscape in order to 'adjust' to the demands of globalization. They have chosen to engage in a dialogue with corporations demanding liberalization instead of with their democratic constituencies. And these same states have proceeded as if international trade law were supreme and unrelated to their primary human rights commitments.

The basic aspects of human dignity, such as the right to feed oneself and to have access to food, the right to develop the human personality through education, the right to a cultural identity and the physical integrity of individuals, are threatened by the commercialization of the material and intellectual components of this dignity. How can one have access to medicines at a reasonable price and under acceptable conditions when the production of generic pharmaceutical products is restricted under the Agreement on Trade-Related Aspects of Intellectual Property Rights? How can one defend the notion of human dignity when commercial imperatives dictate that even the basic molecular structure of people is a potential commodity to be bought and sold in the international marketplace? How can one feed oneself when agri-food industries genetically determine and modify the characteristics of food, prioritizing exports to the point of starving the local market? How can a country develop economically when knowledge is patented from the outset and education is put on the market by the companies and countries that have the resources to do it? How can access to clean drinking water be preserved when the main strategy pursued by states consists of privatizing this resource essential to the realization of fundamental rights, and foreign investment threatens the ability of authorities to adopt environmental regulations to protect it? How can indigenous peoples safeguard their rights when the dominant paradigm insists on privatizing collective knowledge and negotiations on a Declaration on Indigenous Rights are stalled at both the UN and the OAS?

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[9] This is Article 1 of both the International Covenant on Civil and Political Rights (ICCPR) and the ICESCR.

[10] See Article 2, ICESCR. See also comments by Miloon Kothari in *Record of the Workshop on International Trade, Investment and Finance and Economic, Social and Cultural Rights: the Role of the Committee on Economic, Social and Cultural Rights*, Geneva, 6 May 2000 (www.unhchr.ch).

[11] See Group of 77 South Summit, Havana, Cuba, April 10-14, 2000, *Declaration of the South Summit*, UNCTAD/OSG/DP/147, Discussion Paper No. 147 on line at www.unctad.org/tad-docs/newTAD-DOCS3.asp and www.g77.org/summit/Declaration_G77 for the text of the Declaration.

More and more, research is demonstrating that women, in their roles of workers, but also as those responsible for a major part of household income-generating activities, pay a heavier price in the process of liberalization of trade and the globalization of markets.[12] Moreover, there is a rise in the phenomenon of commodification of women and girls. They have become objects of sexual and domestic trade, and too often women are being trafficked, in total impunity. Women are more often than not excluded from the benefits of rights that require financial resources in order to be implemented. Health, education, clean drinking water, transportation, and housing are increasingly considered as simply one more good or service to be put on the market. For women and girls, this signifies either exclusion or the deployment of even greater efforts to ensure basic resources for their families and communities.

Civil Society, Parliamentarians and Trade

In an increasingly stronger and more coordinated manner, citizens are challenging the current model of globalization and demanding the right to participate meaningfully in defining the new rules of the game with respect to the internationalization of trade. Parliamentarians, as the elected representatives of citizens, are also excluded to a large extent. They are confronted with a fait accompli, deprived of their crucial representative role and powerless to provide a check on executive powers. On the other hand, business is increasingly well represented at the table of international trade talks. In the FTAA process, it is the Americas Business Forum (ABF) that takes the lead in providing government negotiators with recommendations on how they should proceed to tackle the various chapters of the agreement.

This 'democratic deficit'[13] is equally dramatic in the case of state, provincial or municipal governments. Choices in matters of development, employment creation, the environment, strategies to fight poverty, or programs to increase the equality of citizens are now subject to supra-national meta-rules on which lower levels of government have barely (if ever) been consulted. In some cases, a decision taken locally and democratically constitutes an obstacle to the development of these markets.

Civil society wants not only to be heard but to be understood and respected by established international trade bodies. While there are many different views and constituencies within civil society, there is a growing consensus that globalization cannot privilege the rights of corporations over the rights of people. Increasingly, organizations are forming alliances to work on issues of common concern and proposing alternatives to the current model of globalization.[14] The advantage of using a human rights perspective is that it is built on legal standards that states are obliged to implement and to ensure respect of. Furthermore, NGOs have managed, after

[12] See *The role of employment and work in poverty eradication: the empowerment of and advancement of women*, Report of the Secretary General, UN Doc. E/1999/53 May 18, 1999, para. 40-63; United Nations, *1999 World Survey on the Role of Women in Development: Globalization, Gender and Work*; Anne Orford, *Contesting Globalization: A Feminist Perspective on the Future of Human Rights*, (1998); *Transnational Law and Contemporary Problems*, vol. 8. no. 2. 173.

[13] See *Report on the Symposium: Hemispheric Integration and Democracy in the Americas,* Rights & Democracy, 2000. Available on line at www.ichrdd.ca.

[14] A significant illustration of this is the Hemispheric Social Alliance and the documents they have produced on alternatives. See *Alternatives for the Americas*, co-published by the Canadian Centre for Policy Alternatives and Common Frontiers, 1999, currently under revision.

considerable effort, to win the right to be heard and consulted by international human rights bodies, to participate in the mechanisms designed to evaluate state compliance and, indeed, to contribute to the development of new treaties, which are openly negotiated in the UN system. There are strong indications that these gains are threatened by international trade institutions, which continue to negotiate in secret and whose approaches to civil society remain more limited.

For several years now, UN bodies have criticized the resistance of trade institutions to acknowledge, respect and promote the fundamental value of human rights.[15] Various special rapporteurs have documented the negative effects of globalization, implicating actors in global violations of human rights. The supervisory bodies of human rights conventions, including the Committee of Experts of the ICESCR, have adopted declarations in order to better clarify the relationship.[16] These initiatives, although they have not yet significantly influenced the activities of international trade bodies, have nevertheless begun to reverberate in civil society, and add weight to the arguments of those concerned about the consequences of trade liberalization on human rights.

Freedom of Expression and Civil Rights

One cannot discuss the impact of trade liberalization on human rights without mentioning, at least briefly, the exaggerated fears that seem to be taking hold of officials organizing high-level inter-governmental meetings to discuss globalization. This is leading to violations of many rights enumerated in the International Covenant on Civil and Political Rights (ICCPR), ratified by the vast majority of FTAA partners.[17] While we cannot go into detail on all the allegations of rights violations involved with respect to the organization of the third Summit of the Americas to be held in Québec City in April 2001, serious concerns have been specifically expressed about violations to Articles 9 (arbitrary arrest and detention); 12 (liberty of movement); 14 (presumption of innocence); 17 (right to privacy); 19 (freedom of expression) and 21 (peaceful assembly).[18] These rights belong to all people: to the heads of state and ministers, as well as to the protesters in the streets, and undemocratic or violent means must not be used to express opposition to those with whom we do not agree.

The Seattle Trade Ministerial of the WTO in November 1999 was a watershed in terms of international protests against globalization. In the massive street protests that took place there, tremendous coalitions embracing broad sectors of opinion joined in a massive public display of opposition to 'neo-liberal' globalization. These protests were met with excessive police force and

[15] See *The Realization of Economic, Social and Cultural Rights: Globalization and its Impact on the Full Enjoyment of Human Rights*, preliminary report submitted by J. Oloka-Onyago and Deepika Udagama, in accordance with Resolution 1999/104 of the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities, Doc. UN E/CN.4/Sub2/2000/13, June 15, 2000.

[16] See *Statement on Globalization and Economic, Social and Cultural Rights: 11/05/98.* (Other Treaty-Related Document), Committee on Economic, Social and Cultural Rights, 18th session April 27 to May 15, 1998, unedited, and *Statement of the UN Committee on Economic, Social and Cultural Rights to the Third Ministerial Conference of the World Trade Organization* (Seattle, November 30 to December 3, 1999). 26/11/99. Doc. UN E/C.12/1999/9.

[17] All but four: Antigua and Barbuda, Bahamas, St. Kitts-Nevis, and St. Lucia.

[18] Concerns have notably been expressed with respect to these rights by the Quebec Ligue des droits et libertés. Furthermore, these rights receive substantial attention in the inter-American instruments. See Articles 13, 15, 16 and 25 and Articles IV,XVII, XVIII, XI, XXII, XXV, XXVI of the ADRDM.

severe restrictions on civil liberties and violations of human rights. In a comprehensive report on the Seattle events, the American Civil Liberties Union identified a series of human rights violations. These included the creation of a 'no-protest' zone, which violated rights of free speech and assembly; chemical weapons and other forms of inappropriate force used against peaceful crowds; individual officers engaged in acts of police brutality and improper arrests and mistreatment of people in custody.[19]

Many organizations working on globalization, including youth groups, were both energized and angered by the Seattle experience and they took their protests to the World Bank and IMF meetings in Prague and Washington, as well as to various other meetings where officials were discussing issues of trade and investment liberalization, debt and structural adjustment. Many are planning activities around the next Summit of the Americas to be held in Québec City in April 2001. The vast majority of the groups involved want to peacefully demonstrate their opposition to current globalization policies. However, in many cases, governments have adopted a confrontational attitude that seeks to discredit protesters and restrict the rights of many people because a small number may plan to engage in illegal actions.[20] An atmosphere is being created around official Summits that emphasizes the exclusive nature of the meetings, further insulates democratically-elected leaders from civil society voices, intimidates people who are seeking to peacefully express their views, and provokes those prepared to engage in violent or illegal actions by providing them with a rationale. The executive branch of government is strengthened and mechanisms designed to ensure democratic accountability are weakened. Exacerbating all of this is an international press much more interested in broken windows and interesting haircuts than the substantive issues that motivate organizations to protest such meetings. The violation of civil and political rights in this instance is, in fact, not the result of trade liberalization itself, but rather the result of secrecy surrounding the negotiations and the inadequate level of dialogue existing between governments and civil societies on the fundamental assumptions upon which economic policy is based. It is worthwhile to remember in this context that freedom of expression, in both international and regional instruments includes "freedom to seek, receive and impart information and ideas of all kinds."[21] Governments should show much greater willingness to listen to people who are questioning the assumptions underlying free trade and globalization and should not adopt a confrontational stance towards segments of civil society that are opposing globalization. The fact that meetings regarding trade liberalization, structural adjustment and global economic arrangements are now consistently met with protests should serve as a call for politicians to re-examine their assumptions rather than as a call to use ever more repressive means to quell dissent.

Economic, Social and Cultural Rights: Investment Opportunities?

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[19] See *Out of Control: Seattle's Flawed Response to Protests Against the World Trade Organization*, July 2000, available at www.aclu-wa.org/ISSUES/police/WTO-Report.html

[20] A much-criticized response to the globalization protests was the announcement that a prison near Québec City with a holding capacity of 600 would be emptied prior to April 2001 in order to make room for the protesters who are expected to be arrested for actions around the Summit of the Americas. This accompanies other security measures, such as a four-kilometre wide perimeter within which official delegates will meet, safely away from civil society events.

[21] Article 13 in the American Convention, Article 19 in ICCPR.

In the examples below, we look at how the FTAA, if based on the dominant trade liberalization models, will likely have impacts on the right to health, the right to education and the right to food.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

The ICESCR, central to the UN human rights system, was adopted in 1966 and has since been ratified by 142 states, including 27 of the 34 states involved in free trade negotiations in the Americas.[22] *States parties must report every five years to the Committee on Economic, Social and Cultural Rights (a group of 18 experts), which oversees the implementation of the ICESCR. The ICESCR obliges states to take progressive measures to realize a series of rights, including the right to work, trade union rights, the right to an adequate standard of living, the right to health and education, to social security and to participation in cultural life.*

Recently, the Committee on Economic, Social and Cultural Rights adopted General Comments related to the definition of some rights among those most affected by the phenomenon of globalization of trade and capital.[23] *These General Comments spell out in more precise terms what states' obligations are with regard to the rights in the ICESCR. The rights guaranteed by the ICESCR have long been considered secondary to civil and political rights, particularly by wealthier Western countries. This is despite the legal value, equivalent to that of civil and political rights, conferred on them by the UDHR*[24] *and the reaffirmation of the concept of indivisibility and interdependence of all rights made at the World Conference on Human Rights in Vienna.*

A variety of means are expected to be deployed by states in order to meet obligations guaranteed in the ICESCR, such as right to health (Article 12), to education (Article 13 and 14) or to an adequate living standard (Article 11). As provided in General Comment no. 3, adopted by the Committee of the ICESCR in 1990,[25] there is no single method designed to enforce these rights and in many cases, the adoption of laws is only one means of implementation.[26] The state is responsible for orchestrating all the means available, in the respect of its own traditions and national resources, and for watching over situations that could undermine guaranteed rights.[27]

The ICESCR does not say the state must itself ensure the delivery of all economic and social rights. The right to education, for example, is not limited to reminding states of their obligation to ensure that each child has access to a primary education. The concept of education also signifies the availability, accessibility and maintenance of buildings, the development of educational materials, a transportation infrastructure, and mechanisms to validate the knowledge acquired by students. In most countries, community and private service providers are heavily involved in the delivery of the right to education, and some dimensions of this right will inevitably be considered as tradeable goods and services. In fact, goods and services that many societies believe should be

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[22] Aside from the US, the only states involved in FTAA negotiations that have not ratified the ICESCR are Antigua and Barbuda, Barbados, the Bahamas, Belize, Haiti, Saint Lucia, and St.Kitts-Nevis.

[23] See E/C.12/1999/5, CESCR General Comment 12, May 12, 1999, *The right to adequate food*; E/C.12/1999/10, CESCR General Comment 13, December 8, 1999, *The right to education*; E/C.12/2000/4, CESCR General Comment 14, August 11, 2000, *The right to the highest attainable standard of health.*

[24] See Lucie Lamarche, *Perspectives occidentales du droit international des droits économiques de la personne*, Brussels, Bruylant, 1995 and Philip Alston and Gerard Quinn, *The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights*, (1987) 3 *Human Rights Quarterly*, 156.

[25] See *The Nature of States Parties Obligations* (Art. 2, para. 1 of the Covenant): 14/12/90. CESCR General Comment no. 3.

[26] Except in the case of the prohibition of discrimination..

[27] See Limburg, *Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, para. 72, 1987.

primarily in the service of social protection and protected from the usual rules of market competition are increasingly pushed into the logic of international competitiveness. This is justified, in the name of efficiency, by theories of comparative advantage. Everything is treated as a potential tradeable commodity. This is particularly the case for services, which include for example, health and education.

Trade, of course, is not uniquely responsible for the increasing tendency to commodify virtually everything and the failure to take non-economic values such as equality or sustainability into consideration. Factors such as our historical attitudes towards the natural world and towards women's work, and the unequal global distribution of wealth are also crucial. But trade and trade-related agreements are key in extending the reach of market principles to vast spheres of human activity: genomes, plants and seeds used for generations, water and culture, health and education. What the General Agreement on Trade in Services (GATS) in fact does, by forcing states to identify what will be open for business and what will not in their country schedules, is to attach commercial attributes to 'public goods' and impose a strictly commercial logic on those services. This is the case even for public services that have traditionally been delivered by private actors or mixed state-private sector monopolies (e.g., energy, transportation or communications). It is the ability of the state to determine the conditions under which public goals will be realized that may be compromised in current negotiations on services, particularly in light of the stringent rules that may be applied to domestic regulations and other 'non-tariff barriers.'

Services, GATS and the FTAA

The General Agreement on Trade in Services (GATS) is a framework agreement adopted as part of the Uruguay Round in 1994 and it contains a commitment to further liberalize trade in services. Along with agriculture, it is part of the WTO's 'built-in agenda' and therefore negotiations are ongoing even though no new multilateral round of trade negotiations has begun.[28] The GATS contains general rules, such as most-favoured nation (MFN) treatment, and specific rules regarding national treatment and market access that apply only to those services that governments positively list in their country schedules. NAFTA and MERCOSUR also cover trade in services, as do a number of other bilateral or sub-regional agreements. Services are, of course, one of the nine negotiating groups under the FTAA. We can assume that the FTAA will adopt some features of the GATS and some features of NAFTA Chapter 12, although very little is known about current negotiations.[29] According to a leaked document of the FTAA negotiators dated October 1999, the scope of the agreement on services being considered under the FTAA is comprehensive.[30] The Americas Business Forum at its meeting prior to the Toronto Trade Ministerial in November 1999, stated in effect that "all services must be progressively and completely liberalized."[31] In a comment to American NGOs on services, Ruth Caplan criticizes the US top-down approach[32] as well as the inclusion of all levels of government, making local, state/provincial and federal laws vulnerable to corporate challenges.[33]

The central commitment of the states parties to the ICESCR is to be committed to acting in view of the progressive realization of all rights without discrimination. How does this commitment hold up against trade rules in services? Article1.3 (c) of the GATS exempts services provided in the exercise of governmental authority as long as they are supplied "neither on a commercial basis, nor in competition with one or more service suppliers." This definition, however, is extremely limited, when one considers how the neo-liberal economic model encourages the withdrawal of the state from many areas of activity. In fact, in most countries, for each good or service that could contribute directly or indirectly to the fulfilment of a right, the private sector is already involved. In some cases the state is completely absent, and in others there is

[28] For an excellent overview of the GATS, see Scott Sinclair, *GATS: How the World Trade Organization's New Services Negotiations Threaten Democracy,* Ottawa, Canadian Centre for Policy Alternatives, 2000.

[29] As Sherry Stephenson from the OAS Trade Unit notes, "the majority of commitments are concentrated in five service sectors, namely, financial services, telecommunications, business services, travel and tourism, and transport. There is an almost total absence of commitments, however, in the sectors of construction and engineering, distribution services, educational services, environmental services, health and social services, and recreational and cultural services. It should be noted that several of these latter sectors have *traditionally* been felt to be under the exclusive purview of the state (namely education, health and the environment) *although this conception is gradually evolving towards the applications of a more contestable approach to these services."* (our emphasis). See Sherry Stephenson, *Approaches to Services Liberalization by Developing Countries,* February 1999, (www.sice.oas.org/Tunit/studies/srv_lib/SRV2e.asp).

[30] "…should apply to all measures affecting trade in services taken by governmental authorities at all levels of government and likewise to measures taken by non-governmental authorities when acting under powers conferred to them by governmental authorities."

[31] "The FTAA services agreement should not *a priori* exclude any sector…[and] must include basic principles of free trade such as national treatment, non-discrimination, the non-requirement of local presence, and the granting of not unduly restrictive licences." The recommendations made by the Americas Business Forum to trade ministers can be found at www.abfcanada.com/.

[32] A negative list, where everything is included unless specifically exempted.

[33] See Alliance for Responsible Trade, *America's Plan for the Americas: A Critical Analysis of U.S. Negotiating Positions on the FTAA (* www.art-us.org).

complementary or competitive delivery by the state and the market. In such cases, the signatory states of the GATS must ensure that certain market conditions do not undermine the ability of corporations to profit from their commercial activities in the host country. Once a sector is covered by GATS national treatment provisions, the chances of the state being able to re-regulate or increase the public share are considerably lower. Thus, many areas that are highly regulated by states are subject to review by the WTO.

It is common for government negotiators on services to claim that public services in health and education are not at any risk from the GATS or other multilateral service agreements because they have not been included in the country schedule of commitments. This argument has been repeatedly made by Canadian officials and is important to address. Two comments are in order. The first is that the task of exhaustive identification of the various services that together contribute to human rights fulfilment is extremely complex and it is difficult to 'carve out' the various components related to health, education, water or culture. Secondly, there is a clear difference between what is said at home and what is promoted abroad. When one looks at the export priorities of the Canadian government, health and education are clearly understood as commercial goods like any other. In fact Canada shows an aggressive approach to gaining market access and eliminating 'non-tariff' barriers to trade - precisely the kinds of regulations Canadians want to keep at home. This is the case for instance with 'telehealth,' or the provision of health services through information technology, which can entail changes to many regulatory aspects of healthcare, including billing, privacy rights, licensing of professionals and liability. Furthermore, the GATS obliges governments to treat any mode of supply as equivalent to others, with no distinction between profit and non-profit providers.[34]

The negative impacts of existing trade agreements on the right to health are probably more obvious and better documented than for any other human right.[35] Although the Committee on Economic, Social and Cultural Rights has clearly stated in its General Comment 14 that "states should ensure that the right to health is given due attention in international agreements" and that states should "take steps to ensure that these instruments do not adversely impact upon the right to health," this does not appear to have been the case. There are many examples where public health policies have been negatively affected by trade agreements. Chapters on services, intellectual property rights and investment are areas of particular concern. Below, we look at some examples of how the right to health has been or could be affected through negotiations on trade in services at the WTO; by the withdrawal of legislation designed to protect human health through NAFTA's Chapter 11; and finally how access to essential medicines has been denied because of inadequate consideration of the right to health in the TRIPs agreement under the WTO.

The GATS and Health

Article 12 of the ICESCR recognizes the right of every person to enjoy the highest attainable standard of physical and mental health. In its General Comment 14 (2000), the Economic, Social and Cultural Rights Committee asserts that this right assumes the existence of interdependent and

[34] See Matthew Sanger, *Reckless Abandon: Canada, GATS and the Future of Health Care*, Canadian Centre for Policy Alternatives, 2001.
[35] See also Article 12 of the Convention on the Elimination of All Forms of Discrimination Against Women and Article XI of the ADRDM.

essential elements, the fulfilment of which will depend on conditions existing in different countries.[36] For example, facilities, goods and services and programs on public health and health care should be available in sufficient quantities in the state party.[37] For all these services related to health that are not exclusively provided by the government, the GATS general obligations apply. This means that governments cannot introduce measures "affect[ing] trade in services" that are inconsistent with the GATS. Such measures include, for example, laws, regulations, licensing standards, performance objectives, market access restrictions, or demand levels of local content.

The GATS stipulates that sectors or sub-sectors of services must be explicitly listed in each country's schedule of commitments for the GATS' ambitious market access and national treatment provisions to apply to them. But there are many services that constitute essential components to the health care system that are not strictly defined as health services. These include laundry services, information technology systems, technological services, administrative arrangements and medical insurance. Furthermore, the exceptions allowed under the GATS are much narrower than those allowed under NAFTA, which states that nothing will "prevent a Party from providing a service or performing a function such as law enforcement, correctional services, income security or insurance, social security or insurance, social welfare, public education, public training, health, and child care, in a manner that is not inconsistent with this Chapter." Although the last part of the sentence opens a real Pandora's box, it should be remembered that NAFTA does not extend the right of foreign corporations to the same treatment with regard to subsidies, as does the GATS.

General Comment 14 also provides that health care services must be equally accessible to all people in the jurisdiction of the state party. However, under the GATS, it is unclear whether or not a government has the authority to geographically assign health care services through legislation in order to ensure equality of access. NAFTA Chapter 12 and the GATS provide the possibility for a state party to derogate from the agreement for reasons of public morals, security or protection of the lives of humans and animals. Nevertheless, it is far from certain that faced with an international trade dispute panel, a rationale founded on equality considerations would hold up to scrutiny.

General Comment 14 also stipulates that economic accessibility to health care services must be ensured in order to further the right of each person to good health. Health-care facilities, goods and services must be affordable. The cost of health care services, and those of services related to improving health, must be established on the basis of equity in order to ensure that the services, whether publicly or privately provided, are affordable to all, including socially disadvantaged groups. The principle of equity demands that the poorest household not be disproportionately affected by health care expenses in relation to those that are more well off. Some states may therefore choose to keep certain subsidized services within the public sector. According to the provisions of the GATS, as soon as the state is no longer the exclusive provider of these services, there will be pressure from foreign companies seeking market access.

General Comment 14 also instructs states parties to the ICESCR to "respect the enjoyment of the right to health in other countries, and to prevent third parties from violating the right in other countries." Clearly, exporters of health services, located primarily in the US and Canada, are

[36] See E/C.12/2000/4, CESCR General Comment 14, August 11, 2000, *The right to the highest attainable standard of health*, para. 12.
[37] Idem, para. 12 (a).

targeting the most lucrative sector of the market: the middle and upper classes. As an official Canadian government document designed to brief Canadian companies seeking to export health services to Mexico states, "An increasing number of middle- and upper-class Mexicans are seeking specialized care from private institutions as well as private insurance to cover services not provided through the National Health Care system."[38] These are seen as business opportunities for Canadians and no contradiction is admitted, with a staunch and adamant defence of public health care in Canada as officials repeat *ad nauseam* that health care "is not on the table." In this regard, it would be useful for wealthier countries to consider their international cooperation obligations, and to not only protect but promote human rights. The Committee on Economic, Social and Cultural Rights has been quite explicit about this in its General Comment, stating, for example, that "investments should not disproportionately favour expensive curative health services which are often accessible only to a small, privileged fraction of the population, rather than primary and preventive health care benefiting a far larger part of the population."

Investment under NAFTA and Health

General Comment 14 adopted by the Committee on Economic, Social and Cultural Rights also specifies that certain environmental determinants, such as access to water and accessibility to and maintenance of purification facilities, are necessary for the implementation of the right to health, which must be understood in a comprehensive manner.[39] Nevertheless, it has now been repeatedly proven that NAFTA limits the ability of governments to independently and democratically determine the rules required to ensure environmental quality. Public health and environmental measures can be and have been challenged by investors who claim that such measures constitute a violation of investors' rights.

In most cases where environmental laws and regulations have been challenged, out-of-court settlements have been reached with the companies that attempted to sue the governments. In one investor-state lawsuit under NAFTA, a US waste disposal company, Metalclad Inc., sued the Mexican government for its refusal to allow it to re-open a waste-disposal facility in the state of San Luis Potosi.[40] People in the community seeking to protect their drinking water and their health convinced the Governor and finally the national government that the project should not go ahead. But under NAFTA, the dispute settlement process did not uphold the Mexican government's right to refuse. This is largely because NAFTA expanded the definition of expropriation to actually include acts "tantamount to expropriation" so that a government, by passing regulations designed to protect human health, public good or the environment, could be faced with a lawsuit for harming the 'right' of an investor to make unhindered profits. The Mexican government was obliged to pay Metalclad $16.7 million for its refusal to allow it to open a toxic waste dump! More recently, the US firm S.D. Myers successfully sued the Canadian government for lost profits when Canada instituted a ban on PCB exports, a decision that was

[38] See DFAIT (Market Research Centre and the Canadian Trade Commissioner Service), *The Health Care Products and Services Market in Mexico*, May 2000, p. 3.

[39] Also noteworthy are articles on the right to health (Art. 10) and the right to a healthy environment (Art. 11) in the San Salvador Protocol, which underline the right to "live in a healthy environment and to have access to basic public services" as well as instructing states to "promote the protection, preservation and improvement of the environment."

[40] This account draws heavily on a briefing note prepared by Gerard Greenfield for the Canadian Auto Workers.

taken in conformity with international environmental agreements. Governments are finding that such challenges have gone too far and the Canadian government has, in fact, decided to intervene in two cases to request that the NAFTA Panel decisions be overturned.

Another well-known case in which the 'rights' of investors won over the right of a government to legislate on behalf of the health of its citizens was the Ethyl case. Here, a gasoline additive, MMT, was banned in Canada (as well as in Europe and California) as a potentially dangerous neuro-toxin. This led an American company, Ethyl Corporation, to sue the Canadian government for $250 million in lost profits. There was an out-of-court settlement and the Canadian government eventually agreed to pay the corporation $13 million in damages, and perhaps even more seriously, reversed its ban on MMT and gave the company a letter stating that there was no scientific evidence that MMT posed a threat to human health or the environment. The 'chill' effect on regulators who fear policies will be struck down by international trade tribunals undoubtedly exists.

What the FTAA will include on investment is so far not clear, although the major stated preoccupation of the negotiating group has been a single-minded focus on protecting the rights of investors, and there are no indications whatsoever that these rights are being balanced against other human rights concerns. This is rather astonishing when one considers the massive public opposition to the Multilateral Agreement on Investment and the damaging record of the investor-state mechanism under NAFTA's Chapter 11. While there have been indications that the investor-state mechanism might be toned down in the FTAA[41] there is not enough information available to determine what kind of mechanism is on the table and what the impacts will be. Clearly, an adequate multilateral agreement on investment would have to do much more to balance the rights of investors with the rights of people, including providing a mechanism for civil society organizations to intervene. That would require the adoption of a human rights framework for investment.

Intellectual Property Rights and Health

General Comment 14 also states that the right to health depends on the ability of hospitals and clinics to provide drugs deemed essential, as defined by the World Health Organization's Action Programme for Essential Drugs and Vaccines. The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights, commonly known as TRIPs, was adopted in 1994 as part of the Uruguay Round. It is binding on all WTO members and a crucial aspect of WTO accession for new members. TRIPs is a clear example of the new trend in trade negotiations, which expanded the agenda of trade beyond traditional trade concerns of tariffs on goods to issues with much broader social implications, including intellectual property.[42] The protection of intellectual property is, and should be understood as, a human right. It is explicitly referred to in Article 27 of the UDHR and Article 15 of the ICESCR,[43] which state that everyone has the right to "enjoy the

[41] Canadian Trade Minister Pierre Pettigrew has, for instance, repeatedly expressed concern about the 'interpretation' of NAFTA's Chapter 11, and is therefore seeking 'clarification' with NAFTA partners.
[42] Intellectual property rights were linked to trade primarily by the US, under pressure from pharmaceutical and cultural industries, with the support of the Quad. For an overview, see Peter Drahos, *The Universality of Intellectual Property Rights: Origins and Development, in Intellectual Property Rights and Human Rights*. (WIP0 and UNHCHR), 1994.
[43] Very similar provisions exist in Art. 13 of the ADRDM.

benefits of scientific progress and its applications" and "to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he [sic] is the author."

However, TRIPs, the result of concerted lobbying by US corporations, is primarily designed as an instrument to protect the rights of multinational corporations to profit from original inventions and little, if any, human rights guidance went into its drafting. Furthermore, in an information-driven, electronically-connected world, intellectual property laws have less and less relevance to, for example, authors of creative works. It is significant to note that 97% of patents held world-wide are held by industrial countries and more than 80% of patents granted in developing countries belong to residents of industrial countries, usually multinational corporations.[44] Likewise, indigenous peoples have found existing intellectual property regimes sorely lacking when it comes to protecting traditional knowledge, be it in the realm of artistic production or medicine.[45] In terms of traditional medicines, peoples who have developed knowledge over centuries find it has been appropriated by scientists and companies, mostly from developed countries, who provide little or no compensation to the traditional custodians of this knowledge, and often operate without their consent and with little or no regard for global biodiversity concerns.[46]

An unbalanced approach to the protection of intellectual property, and particularly in the interpretation of the TRIPs through dispute settlement, has created some rather obvious conflicts between it and other human rights. Not surprisingly, the most obvious and specific of these is the conflict pertaining to the right to health. For example, patent systems under TRIPs restrict access to life-saving drugs in all countries, but particularly in the developing world, simply by raising the prices of drugs beyond the reach of most citizens. The case is particularly dramatic and well known in some countries of Sub-Saharan Africa that have been devastated by AIDS. It is only logical to argue (as South Africa, among others, has) that intellectual property rights are hurting the populations of poorest countries the most and that intellectual property rights should be balanced against other human rights concerns. At issue here is the right to health and, indeed, the right to life. This battle was fought again between G7 and G77 countries at the UN General Assembly Special Session on Social Development, where several developing countries argued that the human right to attain the highest possible standard of health should trump intellectual property rights in the TRIPs agreement. This argument was fiercely and predictably resisted by most wealthy countries, which are home to most of the pharmaceutical companies holding the patents in question.[47]

This conflict between the interests of pharmaceutical corporations and the health rights of people is currently being played out between the United States and Brazil at the WTO. The Brazilian government has had a highly effective national AIDS program, making expensive drug 'cocktails' available to virtually all known HIV-positive cases, using its own patent law, which allows for compulsory licensing in the face of a threat to public health. This AIDS programme

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[44] See Audrey Chapman, *Approaching Intellectual Property as a Human Right*, monograph, August 2000 and UNDP Report 1999.

[45] See principles that indigenous women from the Americas have defined for the protection of artistic materials at www.ichrdd.ca.

[46] See Dr. Xiaorui Zhang, *Traditional Medicine and Its Knowledge*, paper presented to UNCTAD Expert Meeting on Systems and National Experiences for Protecting Traditional Knowledge, Innovations and Practices, October 30-November 1, 2000. See also Background Note by the UNCTAD Secretariat.

[47] For an overview see www.twnside.org.sg/title/medecine.htm.

has been widely praised for its effectiveness and it is largely dependent upon domestic manufacturing to bring down the price of essential medicines so that their cost can be covered by the government.[48] Yet the US, at the behest of the increasingly discredited pharmaceutical lobby, has not only complained to the WTO about Brazil's 1996 patent law, but has also placed Brazil on the "Special 301 priority watch list," effectively threatening unilateral trade sanctions. The FTAA should unequivocally recognize that in a case of conflict between international intellectual property rights, and other human rights, notably the right to health, the latter prevails.

More generally, it can be argued that the TRIPs regime conflicts with the right to development by protecting, in an unbalanced manner, the rights of private investors over the public entitlement "to a social and international order in which the rights and freedoms set forth in [the UDHR] can be fully realized" or the right of all to benefit from scientific progress.[49] It has been argued that this interpretation of the TRIPs does not grant sufficient weight to the substantial protections offered under Article 7, which states "the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology to the mutual advantage of producers and users of technological knowledge in a manner conducive to social and economic welfare, and to a balance of rights and obligations."[50] The Sub-Commission on the Promotion and Protection of Human Rights made precisely this point in August 2000,[51] declaring that the TRIPs agreement "does not adequately reflect the fundamental nature and indivisibility of all human rights, including the right of everyone to enjoy the benefits of scientific progress and its applications, the right to health, the right to food and the right to self-determination" and called upon the WTO and governments to review the TRIPs in light of its conflicts with international human rights law.

While clearly there is wording in the TRIPs that could be more advantageously interpreted to favour a human rights agenda, there are a host of intellectual property issues in the context of free trade in the Americas that should be challenging negotiators to think in new and creative ways about the kinds of protection that should be offered. There are clearly issues surrounding the rights of indigenous peoples to safeguard the cultural heritage and traditional knowledge of their communities, which are not well served by current intellectual property regimes.[52] Indigenous peoples often seek recognition of collective rights in perpetuity rather than private rights for commercial gain over a limited period of time and the concerns of indigenous peoples cannot easily be accommodated within a narrow commercial logic. Likewise, biological diversity should be protected and negotiators should be proceeding with extreme caution when wading into the muddy waters of biotechnology, patenting of life forms and similar issues. A quite radical change from the WTO approach will be required if citizens in the Americas are to prevent what the

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[48] The price of AIDS drugs with no Brazilian generic equivalent dropped 9 % from 1996 to 2000. The price of those that compete with generics from Brazilian labs dropped 79%. See Tina Rosenberg, *Look at Brazil*, New York Times, January 28, 2001.

[49] See UDHR Article 28 and *Declaration on the Right to Development*.

[50] Article 7, Agreement on Trade-Related Aspects of Intellectual Property Rights. See also for an analysis of the misuse of Article 7 by the Panel, Robert Howse, *The Canadian Generic Medicines Panel: A Dangerous Precedent in Dangerous Times*, Journal of World Intellectual Property, July 2000, Vol. 3, No.4.

[51] See Resolution E/CN.4/Sub.2/2000/L.20.

[52] The estimated market value (1995) of pharmaceuticals derived from indigenous peoples' knowledge is $43 billion. For many countries in the Americas, crafts are an important industry, employing two million full-time workers and three million part-time workers in Mexico, for example, and worth $13 million in Peru. See documents submitted to UNCTAD by the Coordinating Body for the Indigenous Peoples' Organization of the Amazon Basin (COICA).

UNDP called "the silent theft of centuries of knowledge from developing to developed countries." Once again, there is no information available on the status of these issues in the negotiating group on intellectual property within the FTAA process.

The Right to Education

In 1999, the Economic, Social and Cultural Rights Committee adopted General Comment 13 on the right to education.[53] This Comment pays particular attention to requirements regarding the availability of educational services: buildings, toilets, clean drinking water, educational materials, training and availability of teachers, libraries, and computers. Again, it must be stressed that these requirements relate to a multitude of direct and indirect services, which—as soon as they are no longer exclusively provided by the state and are listed in the country schedule—fall under the GATS. For example, recognition of a degree from a foreign teaching establishment situated in a host country that is signatory to the GATS cannot be denied. In addition, domestic educational institutions cannot be granted the exclusive privilege of government subsidies. In this sense, the 'national public educational project' must be placed on equal footing with private initiatives.[54]

Most countries involved in FTAA negotiations have not included the education sector in their country schedules under the GATS.[55] And indeed, under the different modes of supply that services liberalization involves, trade in education services does not appear to be particularly ominous from a human rights perspective, often involving teachers or students travelling to deliver or 'consume' educational services. On the other hand, in the education field, both long-distance education (primarily through the Internet), and the establishment of a commercial presence (opening schools abroad) constitute modes of supply, which could be more problematic if a commercial logic prevails. As the international teachers union Education International remarks, "the subordination of education to market forces may well undermine its accessibility and aggravate social inequalities."[56] If the primary motive is profit for foreign suppliers of education, it will be extremely difficult for states to maintain equality of access.

Already, countries such as Chile, which have undergone structural adjustment programmes as required by the World Bank, have privatized a large portion of their educational institutions, reduced teachers' salaries and increased the teacher-student ratio. There are now more private universities (60) than state-run universities (16) and they receive more funding overall. The budget per student has also declined by 32% and has been regressively distributed between wealthy and

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[53] See E/C.12/1999/10, CESCR General Comment 13, December 8, 1999, *The Right to Education* and E/CN.4/2000/6, February 1, 2000, *Progress Report of the Special Rapporteur on the Right to Education, Katarina Tomasevski,* submitted in accordance with Commission on Human Rights resolution 1999/25. The American Declaration also has an article on the right to education (XII) and there are strong prohibitions against discrimination in education in CEDAW. With the San Salvador Protocol on Economic, Social and Cultural Rights (Article 13), violations by states of the right to education can be subject to an individual petition through the Inter-American Commission on Human Rights and the Court.

[54] See Marjorie Griffin Cohen, "Trading Away the Public System: the WTO and Post-Secondary Education" in *The Corporate Campus: Commercialization and the Dangers to Canada's Colleges and Universities*, James L. Turk (ed.), CAUT Series, James Lorimer Pub. 2000, p. 123.

[55] Countries that include some commitments are Costa Rica, Haiti, Jamaica, Mexico, Trinidad and Tobago and the US.

[56] *The WTO and the Millennium Round: What is at Stake for Public Education?* Education International and Public Services International, 1999.

poor regions of the country. For the years during which these reforms were undertaken (1982-1990), the performance of students from upper classes improved, while those from poorer sectors of the population declined.[57] With the GATS in place, and new services negotiations underway, it will be difficult for Chileans to reverse this trend. It will be even more difficult for countries like Mexico, which have made specific commitments on education (including primary and secondary education) in their national schedules.

The US is the world's biggest exporter of educational services ($7 billion in 1996), and over 55% of US colleges are now equipped to offer some form of long-distance learning.[58] The irony of these developments is that educational services in wealthier countries, having been developed through years of public subsidies, are being squeezed by reduced state funding. They are therefore turning to the private sector for additional financial support and are finding that exporting services to newly privatized markets in poor countries is the best way to turn a profit. Increasingly, corporations are active in debates around educational reform and an increasing number of educational institutions are now regarding education as a business like any other.[59]

Article 13 of the ICESCR provides extensive guarantees to the right to education, including recognizing that primary education must be compulsory and free of charge, that secondary education shall be made "generally available and accessible by every appropriate means" and that free higher education will be progressively introduced. The ICESCR clearly states that educational services must continually be improved. Marjorie Cohen[60] has pointed out the increasing dangers that the system of higher education in Canada is exposed to through the GATS and the ongoing pressure to serve the needs of private interests. Whether it is the sale in Canada of educational courses and material by computer, or the multitude of regulations to which Canadian public operators are subjected,[61] Cohen eloquently demonstrates that as soon as higher educational facilities are forced to add a private dimension to their development and funding strategies, they indirectly submit the education sector to the general rules of GATS. From the moment that the educational service providers' lobby can convince Canada (but also any other country) to add specific components of education to the GATS schedule (which is not yet the case in Canada), more serious risks will be run.

The third and fourth paragraphs of Article 13 of the ICESCR stipulate that the protection of the right to education must not be interpreted as signifying the prohibition of individuals or corporations from introducing, founding or directing private educational establishments intended to promote, for example, distinct cultural or religious values. Some would be tempted to see the possibility of foreign operators doing this as a good idea. However, this freedom cannot in any way entail undermining of the ability of the state to adopt public standards of education. Placing a private foreign operator in the position of the operator of a distinct and private education system is an indirect means of denying the state its prerogative not to subsidize all forms of education. Yet this is one of the foreseeable effects of GATS.

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[57] See Carlos Mauricio Lopez, *The Effects of 15 Years of Neoliberal Policies on Public Education in the Americas*, monograph, October 1999, pp. 9-10 and private correspondence with the Alianza Chilena por un Comercio Justo and www.undp.org/hdro/oc14b.htm.

[58] See *The WTO and the Millennium Round: What is at Stake for Public Education?*, EI and PSI, 1999.

[59] See for example, www.wemex.org.

[60] Supra, note 37.

[61] For example educational content, conditions for granting degrees, registration numbers, size and location of institutions, cultural content, access to scholarships and educational subsidies, tax exemptions.

Another issue with respect to higher education and access to it is that of affirmative action. For minority groups to have access to higher education and to succeed requires the establishment of a set of conditions specifically designed for them. There are two issues at stake here. The first is how to safeguard a strategy of affirmative action based on funding methods that would have to be provided to all commercial operators (domestic and foreign) of higher education. Should not the state determine which programs, which regions, and which degrees should be favoured without running the risk of trade penalties for committing discrimination against foreign operators? The second issue is that of the ability of governments to impose contractual obligations with respect to affirmative action on its suppliers. In this respect, the Agreement on Government Procurement (AGP) [62] does not allow a government that has integrated this requirement into its contracts to discriminate against suppliers that are nationals of a state that does not subject them to such a requirement. This would necessarily have an effect on educational programs exported to the contracting state. While paragraph 33 of General Comment 13 states that affirmative action in education does not constitute discrimination, it unfortunately has not addressed these crucial trade challenges to affirmative action programmes.

Interestingly, education was the major theme of the heads of state when they met in 1998 at the Santiago Summit of the Americas. There, they identified education as the key to progress and promised a plan of action based on the principles of equity, quality, relevance and efficiency. While many of the goals identified in the plan of action of Santiago are laudable (although they stop short of having a human rights perspective), it is not difficult to detect a trade agenda behind some of the language that is ostensibly on education. For example, there is reference to the promoting of "access to and use of the most effective information and communication technologies in education systems, with special emphasis on computers" and working on the availability of teaching materials with the private sector. This agenda seems to have gathered considerable speed in the time between the Santiago and Québec City Summits. The education basket has been re-named 'human connectivity,' and the connection with the market—with e-commerce and long-distance learning—is all the more explicit. It is also more closely tied to the technologically-advanced countries with a comparative advantage in that area.

The Right to Food: The Case of Mexican Corn

The right to food is included in the ICESCR under Article 11 which recognizes the right of everyone to be free from hunger and explicitly calls for international cooperation "…to ensure an equitable distribution of world food supplies in relation to need." The Committee on Economic, Social and Cultural Rights has suggested in its General Comment 12 on the Right to Food that states "should in international agreements whenever relevant, ensure that the right to adequate food is given due attention and consider the development of further international legal instruments to that end." Asjborn Eide, former UN Special Rapporteur on the Right to Food and Freedom from Hunger, has suggested that our future food supply and its sustainability might well depend on putting farmers' rights on firm footing.[63] Issues of food security, self-sufficiency, the appropriate role and regulation of agribusiness, concerns around the use of genetically modified

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[62] The AGP is an optional agreement of the WTO.

[63] See Asjborn Eide, *The Realization of Economic, Social and Cultural Rights: The Right to Food and to be Free from Hunger*, E/CN.4/Sub.2/1999/12, 28 June 1999.

crops and the use of subsidies are all enormously contentious issues when discussing agricultural trade. It has long been argued by those seeking to defend the interests of developing countries in international trade that rapid trade liberalization puts developing economies at a disadvantage and strengthens the position of larger economic actors, namely transnational corporations headquartered in industrialized countries. When this happens in agricultural trade, there are direct consequences for food security, the human right to food and the rights of farmers who produce that food. The experience of corn farmers in Mexico following the introduction of NAFTA is familiar to small farmers in many industrialized and developing countries.

Agriculture was liberalized under NAFTA, which was a matter of considerable debate at the time it was being negotiated. US agribusiness posed an obvious threat to Mexico's small-scale corn production and a 15-year period of gradual reduction in tariff-free quotas was planned in order to facilitate the adaptation. For various reasons, related to the bailout following the 1994 Mexican peso crisis, the Mexican government chose to waive these measures, allowing massive tariff-free imports of US corn, which caused a dramatic drop in domestic prices and put many corn farmers in great economic peril.[64] Note that corn is a staple of the Mexican diet and many different varieties are recognized in Mexico, which is considered the global centre of genetic diversity in corn.[65] In many regions, indigenous people have been the custodians of this diversity, using "a long-standing system of sustainable production through complex resource management schemes incorporating sophisticated knowledge of soil properties and the genetic characteristics of different corn varieties."[66] Production of white corn accounts for 63% of total agricultural volume in Mexico and 2.5 to 3 million people are directly engaged in corn production. When families are included, an estimated 18 million people are dependent on corn for their livelihoods. The vast majority are small land holdings, many operating collectively under the *ejido* system.

It is now widely accepted in Mexico[67] that NAFTA was a crucial part of an economic policy mix that is to blame for the post-1994 stagnation of corn production. Massive imports from the US subsidized agriculture industry have, in fact, led to reduced corn production in Mexico. Many small producers now are unable to make a living and have joined the ranks of the migrant labourers or the unemployed. The social fabric established around the small corn farms has been compromised, leading to less sustainable forms of agriculture as many move towards the cultivation of cash crops for export (cut flowers, fruit and vegetables). For many Mexican subsistence farmers, it has meant the destruction of a way of life, including collective forms of work and extended families. The massive imports of US corn have also worsened Mexico's trade balance with the US.

Trade liberalization and export-driven growth tends to favour very large agricultural firms and eliminate programs of supply management that favoured the family farm and a higher degree of food self-sufficiency. Similar tendencies can be seen in fisheries. As the National Farmers Union

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[64] This account draws on Alejandro Nadal, Issue Study number 1, *Maize in Mexico, Some Environmental Implications of NAFTA*, Study for the Commission on Environmental Cooperation. See www.cec.org and an updated study by the same author at www.panda.org.

[65] The definition of food security by the Food and Agriculture Organization includes the notion of "culturally appropriate food" and it is doubtful that the US imports of no. 2 corn, which Mexicans use as animal feed, would meet this definition.

[66] Alejandro Nadal, p. 144.

[67] Camara de Diputados, Comision de Agricultura, *¿Cuanta Liberalización Aguanta la Agricultura? Impacto del TLCAN en el sector agroalimentario.*

in Canada has pointed out, in a quest for greater access to foreign markets of Canadian agricultural exports, Canada has sacrificed the interests of farmers and the policies and agencies that support them.[68] The impact of trade liberalization on food security in Mexico is all the more dramatic. According to Mexican government statistics, 158,000 children under the age of five die every year from diseases related to malnutrition, putting Mexico—an OECD country—at the same level as many countries in Sub-Saharan Africa with only a tenth of Mexico's per capita GDP. From January 1995 to June 1996, consumption of basic foods (corn, beans and wheat) dropped by 29%, bringing many Mexicans under the minimum caloric intake requirements established by the World Health Organization.[69] While trade in corn is clearly not the main issue involved in the financial crisis that hit Mexico in the mid-90s, neither was it, in any way, part of the solution. When Mexican farmers from Chiapas protested the dumping of cheap US imports in November 1996, three of them actually paid for their protests with their lives.

Food is a basic human right. It is not a simple matter to show how trade liberalization can threaten this right, even in a case like that of Mexican corn, where the negative impact is widely acknowledged. However, heavy reliance on imports undoubtedly affects a country's food security, as countries in Southeast Asia experienced following the financial collapse of the 1990s. In response to the disastrous impact of NAFTA on domestic production, Mexican organizations have demanded that NAFTA be renegotiated to exclude the production and distribution of basic foods, and are fighting for the inclusion of the right to food in the national constitution.

At the World Food Summit in Rome in 1996, the world's attention was focused briefly on the absurdity of the fact that 800 million people in the world lack enough food to meet their basic nutritional requirements, yet the problem is not with food supply but with its distribution. The world trading system, both regionally and internationally, has to be part of the solution rather than part of the problem. There are many international organizations now working on the issue of the right to food, including the Food and Agricultural Organization (FAO), UNICEF, the World Health Organization (WHO), the World Food Programme (WFP), and the NGO Initiative on establishing a Code of Conduct on the Right to Food has garnered world-wide support. However, the WTO and regional institutions continue to work in isolation of the initiatives, frequently undermining the ability of states to focus on agricultural polices geared toward ecological sustainability, recognition and respect for both farmers' rights and the right to food.[70]

Other Considerations

There are many other rights that are threatened under regional trade liberalization talks that we can only mention in passing here. The right to culture is certainly an area of concern. Many countries rely on state policies to defend and develop their cultural production, particularly when the population base is too small to compete with large American or European producers. Regulations, subsidies and tax cuts are essential to the development of the arts, and Mexican and Canadian cultural activists have found the so-called 'cultural exemption' in NAFTA largely

[68] The National Farmers Union Submission to the House of Commons Standing Committee on Agriculture and Agri-Food on the World Trade Organization Negotiations, November 26, 1998. See also www.nfu.ca.
[69] See Steven Suppan and Karen Lehman, *Food Security and Agricultural Trade Under NAFTA*, IATP, July 1997 at www.iatp.org.
[70] See, for instance, the work of the Institute on Agriculture and Trade Policy at www.iatp.org or the Food First Information and Action Network at www.foodfirst.org.

toothless. Since NAFTA was signed, for example, Mexico's domestic film production has dropped to a quarter of what it was previously. Likewise, Canadian measures designed to stimulate and support a domestic magazine industry have been struck down by the WTO. A growing network of cultural organizations has founded the International Network for Cultural Diversity, which has the specific mandate to stop governments from entering into agreements that will constrain local cultures and the policies that support them.[71]

Likewise, biotechnology and the increasingly private dimension of research into the natural world, including human beings, pose a whole series of challenges to the notions of human rights and human dignity. Indigenous peoples' rights have certainly not received adequate consideration from states, either in terms of supporting nation-to-nation trading relationships or in terms of their rights over their own cultural and biological heritage. Serious concerns remain regarding the competitive pressure that is placed on states to lower their labour standards and violate core labour rights or environmental laws in order to attract investment. There has been virtually no attention paid to the issue of the specific impacts that trade liberalization will have on women. Increasingly, the willingness and the ability of states to respect existing legislation and to enact improved domestic legislation is subjected to the scrutiny of the market and international trade law. Scarce resources in poor countries are being devoted to implementing the agreements of the multilateral trading system, while other crucial issues like judicial reform and poverty alleviation are not receiving the resources they require. Meanwhile, very little attention is paid to the scrutiny of the human rights commitments of states, even when the impact of trade liberalization on the realization of rights is explicitly mentioned. It is time that market and trade law became subordinate to the primary obligations of states to protect, promote and fulfil their human rights obligations. Some recommendations on how this could be done are found in the concluding chapter.

Conclusions and Recommendations: Trade Agreements FOR Human Rights

Building consistency between human rights and trade will require vision and political leadership. Until now, states have been much more willing to put political and financial resources towards economic liberalization goals than they have towards strengthening human rights institutions. Consider the fact, for example, that 900 people are involved in the negotiations of the FTAA, while the Inter-American Commission on Human Rights is literally starved for resources, with a staff of only 41 (including contractual employees). Resources in Geneva are even more inequitable, with over 500 people working at the WTO, while the 18-member Committee on Economic, Social and Cultural Rights has only a tiny staff of two people. Yet both are charged with serving the needs of more than 140 governments and assessing their compliance with their respective agreements. There is an enormous difference between the resources, procedures and compensation available to a group or individual who has been a victim of a human rights violation and the resources, procedures and compensation available to victims of 'unfair trade practices.' It is inconceivable that democratic governments are contemplating new mechanisms to protect the economic 'rights' of investors, but are failing to support the adoption of an Optional

[71] Private correspondence with Janet Creery and Gary Neil, Canadian Conference of the Arts.

Protocol on Economic, Social and Cultural Rights that would help protect the economic rights of their citizens. Unfortunately, however, we live in a world where it is much more serious to break the rules of the WTO than it is to violate human rights.

The following recommendations address issues related to (a) the process of trade negotiations; (b) the architecture of trade agreements themselves; (c) redressing the balance: strengthening the human rights system; and finally (d) urgent matters to be addressed before FTAA negotiations proceed.

(a) The Process of Negotiations

i) The draft agreement should be immediately released and civil society organizations should be invited to comment on it.

ii) National consultations through parliamentary committees should feed into a multilateral process of review of the draft agreement.

iii) A permanent consultative mechanism for civil society participation should be established. Trade negotiations should take place in the same open manner in which UN treaties are negotiated, with full access for civil society organizations to inter-governmental discussions.

iv) States should formally agree to respect the civil and political rights all citizens, and in particular the members of social movements opposing the dominant model of economic globalization. Meetings of ministers and heads of state should not be accompanied by exaggerated security measures that undermine civil society-government dialogue.

(b) The Architecture of the FTAA

An explicit reference to a body of human rights instruments that the members of the FTAA would agree to ratify and respect is essential. States should formally recognize the primacy of such instruments in the case of a conflict between international human rights and international trade law. Usually, trade agreements uphold the possibility for a state to promote domestic measures as long as these measures do not undermine the very purpose of the agreement. If human rights protection is one of the goals of the trade agreement, then state actions designed to further the respect, promotion and fulfilment of human rights would not run the risk of falling into the category of "unduly trade restrictive" practices. The incorporation of a list of human rights instruments, regional as well as international, in the FTAA agreement would also create an interpretative body of human rights law for trade disputes. Even given the current gaps in ratification, the FTAA should explicitly refer to the obligation its members have now to support and implement the principles in the UDHR, the ADRDM and the ILO Declaration on Fundamental Principles and Rights at Work.

i) The FTAA should refer to a basic threshold of human rights instruments and incorporate language to ensure that its trade provisions and interpretation are

consistent with the rights enumerated in these agreements and their progressive realization.[72] Equivalent attention should be given and appropriate procedures designed to implement both the trade and human rights aspect of the agreement. The following treaties should constitute the basic corpus of instruments:

At the international level:

- International Covenant on Economic, Social and Cultural Rights
- International Covenant on Civil and Political Rights
- Optional Protocol to the International Covenant on Civil and Political Rights
- Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the Abolition of the Death Penalty
- International Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Elimination of All Forms of Discrimination against Women
- Optional Protocol to the Convention on the Elimination of Discrimination against Women
- Convention on the Rights of the Child
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
- ILO Convention concerning Freedom of Association and Protection of the Right to Organize (87)
- ILO Convention concerning the Application of the Principles of the Right to Organize and to Bargain Collectively (98)
- ILO Convention Concerning the Abolition of Forced Labour (105)
- ILO Forced Labour Convention (29)
- ILO Discrimination (Employment and Occupation) Convention (111)
- ILO Equal Remuneration Convention (100)
- ILO Worst Forms of Child Labour Convention, 1999 (182)
- ILO Indigenous and Tribal Peoples Convention (169)

At the inter-American level:

- American Convention of Human Rights “Pact of San José, Costa Rica”
- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights “Protocol of San Salvador”
- Protocol to the American Convention on Human Rights to Abolish the Death Penalty
- Inter-American Convention on Forced Disappearance of Persons
- Inter-American Convention to Prevent and Punish Torture
- Inter-American Convention on International Traffic in Minors
- Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women “Convention of Belem Do Para”

ii) States that have not yet done so should immediately undertake steps to ratify the above-mentioned instruments. Benchmarks should be fixed on ratification progress and governments should examine the possibility of refusing or suspending

[72] A similar approach could be used for environmental agreements, although we have not developed that idea here.

membership privileges when adequate and timely progress on ratification of human rights instruments is not made. The European experience of requiring ratification could be used as a model. While there is already a great deal of consensus on the above-mentioned instruments and the majority of FTAA states have already ratified them, such a procedure, linked to the FTAA, would provide clear and common standards from which states would not be able to derogate. It is particularly urgent in this respect that the US join the international human rights community by ratifying the key instruments and that Canada show its commitment to the inter-American system of human rights protection by ratifying the American Convention on Human Rights and its Protocol on Economic, Social and Cultural Rights.

iii) The Inter-American Commission should undertake a study on the impact of regional economic integration on human rights and should attend meetings of the Trade Negotiations Committee in order to be properly appraised of developments and to intervene. The Commission could delegate this work to a rapporteur or a group of independent experts, whose reports would be public. The expertise of the Committee of Experts on Economic, Social and Cultural Rights in Geneva should be sought, as well as others within the UN system specialized in the impact of globalization on human rights.

iv) The jurisprudence of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights should be considered in dispute settlement processes under the FTAA.

v) A Trade Policy Review Mechanism (TPRM)[73] should be created within the FTAA. Its mandate should include, among other objectives, an assessment of each state's compliance with human rights standards in the elaboration of trade policy. This process should explicitly include participation from civil society organizations and specialized human rights agencies.

(c) Redressing the balance: strengthening the human rights system

i) States should take steps to redress the serious imbalance between the financial resources they devote to human rights and those they devote to economic liberalization at the national, regional and multilateral levels.

[73] The current mandate of the TPRM is defined in Annex III of the WTO agreement as follows, "…to contribute to improved adherence by all members to rules, disciplines and commitments made under the Multilateral Trade Agreements and, where applicable, the Plurilateral Trade Agreements, and hence to the smoother functioning of the multilateral trading system, by achieving greater transparency in, and understanding of, the trade policies and practices of members. Accordingly, the review mechanism enables the regular collective appreciation and evaluation of the full range of individual members' trade policies and practices and their impact."

ii) The Inter-American Commission and Court on Human Rights require strengthening in order to accomplish their respective mandates, in addition to tackling the new challenges posed by regional economic integration. Their funding should be immediately and significantly increased.

iii) The Inter-American Commission, when reporting to the General Assembly of the OAS each year, should include a summary of its evaluation of the impact of regional economic integration on human rights. It should include recommendations on developing increased coherence between the FTAA and the regional system of human rights protection, identify obstacles to reaching the goal of consistency and formulate recommendations to the General Assembly and to whatever supervisory body the FTAA creates. Civil society should participate in the process of report preparation and be provided an opportunity to comment on the relevant national and regional authorities.

iv) States that have not yet ratified the ICESCR should undertake steps to do so immediately. States parties to the ICESCR should support the urgent adoption of the Optional Protocol on Economic, Social and Cultural Rights.

(d) Matters of urgency

i) A committee of independent experts should be struck in order to examine the potential impact of the FTAA on human rights. Specific rights meriting special attention include the right to self-determination, the right to development, the right to health, the right to food, the right to education, core labour rights, the right to culture, the right to an adequate standard of living and environmental rights. Special attention should be paid to the potential impact of trade liberalization on gender equality and indigenous peoples' rights. This committee should report to the OAS General Assembly. Ministers of trade, among others, should be obliged to respond to the recommendations. FTAA negotiations should be put on hold until this study is completed.

ii) The FTAA should ensure that the right to health is not compromised under intellectual property provisions.

iii) The FTAA should under no circumstances reproduce the investor-state mechanism of Chapter 11 of NAFTA, which permits private companies to sue governments for lost profits.

Appendix 1: Pieces of the Puzzle: Human Rights Monitoring, Complaint Mechanisms and Trade Agreements

There is no satisfactory model, at either the international or regional level, that recognizes the fundamental nature of all human rights norms and guarantees their primacy over trade objectives. The WTO, for example, provides for some modest possibilities to integrate a human rights 'dimension' into the decision-making process. Another example would be the 'side agreements' of NAFTA, designed to promote specific human rights, in particular, labour rights and the environment. Other models put a greater emphasis on participatory consultative structures to address the 'social dimension' of trade, as in the case of the MERCOSUR Social Declaration adopted in 1998. But in all these cases, the models are incomplete: they take only some human rights into account, which runs counter to the principle of the indivisibility of all human rights referred to in the 1993 Vienna Declaration. None of them explicitly uses a human rights framework, i.e. referring to international human rights law as the ultimate objective of trade. In that sense, they all fall short of what the human rights community would like to see.

For the most part, human rights instruments, particularly those that protect and promote economic, social and cultural rights, lack effective complaint mechanisms by which the negative impacts of trade liberalization could be addressed. The most flagrant example is the failure of states to adopt the Optional Protocol to the ICESCR. On the other hand, some regional instruments do provide an interesting model that recognizes the primacy of human rights. Such is the case of the recent Additional Protocol to the European Social Charter Providing for a System of Collective Complaints of the Council of Europe and the Protocol to the Inter-American Convention on Economic, Social and Cultural Rights (Protocol of San Salvador) of the OAS. Although these models are far from perfect, they do offer an opportunity to address the issue of the human rights consequences of trade liberalization by providing a complaint mechanism—even though this is not what they were originally designed to do.

In the following section, we examine four different 'human rights-trade integration' models in light of six indicators. The mechanisms we look at are Article XX of the GATT, the side agreement on labour under NAFTA, MERCOSUR's participatory mechanism and the additional protocol to the European Social Charter (ESC). The six indicators we have chosen are as follows:

1) *The human rights covered*: Which rights are covered? Are universality and indivisibility recognized or does the instrument address only a select list of rights?
2) *Reference to international human rights instruments*: Are international or regional human rights standards used or is the language more vague?
3) *The democratic, participatory dimension*: At what stages is civil society involved and how?
4) *Autonomy of the mechanism*: Is the institutional procedure defined appropriate for the adjudication of human rights issues?[74]
5) *Legal accountability and compensation*: Does the enforcement provide for the possibility of adequate remedies or compensation for victims of human rights violations?
6) *Accessibility*: How accessible are the mechanisms to victims of human rights violations or to their civil society representatives?

[74] This indicator reflects the concern expressed by many (including Rights & Democracy) that human rights should be first interpreted by human rights bodies, whose decisions should then be respected and taken into account by trade dispute bodies.

Human Rights as an Ingredient in Trade Disputes: The Case of the GATT

The theme of trade and moral exception is not new, but the creation of the WTO raised new interest in an old provision: Article XX of GATT 1947. According to this article, which deals with 'general exceptions' to the 1947 agreement, certain domestic standards do not constitute impediments to the liberalization of international trade and to the raising of tariff barriers if, for example, they are necessary to protect public morals (paragraph (a)), if they are designed to prohibit the entry of products of prison labour (paragraph (e)), or if they relate to the conservation of exhaustible natural resources (paragraph (g)). As some authors have stated, Article XX of the GATT was interpreted very restrictively before the adoption of GATT 1994.[75] Most likely inspired by the most recent decisions issued by the Appellate Body of the WTO, an increasing body of literature proposes that recourse to Article XX of GATT 1947 be used to ensure that, in the case of a trade dispute in which domestic measures run contrary to GATT 1994, human rights and environmental rights are protected. [76]

The WTO Appellate Body has thus agreed to give a progressive meaning to paragraph (g) (protection of exhaustible natural resources) of Article XX in order to legitimize certain domestic measures designed to protect species. [77] Since then, there has been an attempt to see how certain other domestic measures or provisions, which appear to be incompatible with GATT 1994 rules, could be justified in accordance with the exception constituted by protection of public morals.[78] The first time the 'public health' exception was used was in a trade dispute over asbestos imports between the EU and Canada. Unfortunately, the reasoning used was not based on human rights norms and while *amicus curiae* briefs by civil society organizations were solicited during the appeals process, and many public health organizations and others made submissions, none were accepted.[79]

The recourse by dispute settlement bodies to updated principles of interpretation that take into account the fundamental character of some human rights (particularly with respect to the environment), in order to legitimize domestic policy that runs contrary to the principles of the GATT constitutes a partial response to the need to harmonize trade and human rights. But one could also assert that the exceptional occasions under which certain human rights are evoked 'against' trade do not satisfy the demand imposed by the necessity to respect all human rights in all circumstances. Thus, according to the indicators we chose, when we attempt to outline the specifics of the WTO 'trade dispute' model, we note the following:

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[75] Howse and Mutua cite the decisions in the *Thai Cigarettes* (1990) and *Tuna Dolphin* (1994) cases in this regard. In these cases, the panels deemed that only the impossibility for the complaining party to demonstrate that an alternative measure was available in order to limit inconsistencies with the 1947 GATT trade principles would justify recourse to Article XX of the GATT. See Robert Howse and Makau Mutua, *Protecting Human Rights in a Global Economy: Challenges for the World Trade Organization*, Rights & Democracy, 2000 (www.ichrdd.ca).

[76] See Steve Charnovitz, *The Moral Exception in Trade Policy* 38 (1998) *Va. J. Int'l. L.*, Christoph T. Feddersen, *Focusing on Substantive Law in International Economics Relations: the Public Morals of GATT's Article XX(a) and "Conventional" Rules of Interpretation*, 7 (1998) *Minn. Journal of Global Trade*, 75, and Anthony G. McGrew, "Human Rights in a Global Age: Coming to Terms with Globalization" in *Human Rights Fifty Years On*, Tony Evans (ed.). Manchester University Press, 1998, 189, p. 201 and following.

[77] See WT/DS58/AB/R (October 1998).

[78] See Steve Charnovitz, *The Moral Exception in Trade Policy*, Supra.

[79] International Centre for Trade and Sustainable Development, Bridges, Nov-Dec 2000, p. 1.

Human rights *potentially* covered	‣ Environment, protection of *fundamental* or *core* labour rights, prohibition against forced labour, protection from some of the worst forms of exploitation of child labour
Reference(s) to human rights instruments in the trade agreement or to human rights interpretations as an authoritative source of interpretation of trade agreements	‣ NIL
Democratic and participatory dimension	‣ WEAK. Intervention from civil society depends on the existence of 1) a dispute submitted before a trade panel by a state and 2) the willingness of the panel to accept briefs submitted by representatives of civil society.
Autonomy of the mechanism from a pre-existing trade dispute	‣ NIL
Legal accountability for violations to human rights and availability of compensation	‣ Potential *indirect* accountability depending on a)whether the exporting state will be forced to respect human rights in order for its products to enter the importing state territory, and b) whether the importing state's trade practices that seem to be ‘protectionist’ or ‘discriminatory’ are validated on human rights grounds.
Accessibility of intervention, communication or complaint mechanisms in the case of human rights violations	‣ Intervention potentially ACCESSIBLE to NGOs or unions, which can pilot strategies before the WTO. These types of measures may come under fire as being protectionist strategies, as they are often designed to block the import of products from less developed countries where there are greater risks of rights violations or environmental damage. So far unsuccessful.

Human Rights as a Specific Dimension of Trade Agreements:

The Case of NAFTA

The two Cooperation Agreements to NAFTA, in the areas of environment and labour, are a unique model. They are, above all, agreements of cooperation in matters in which the domestic legislation of states parties to the principal trade agreement , i.e. NAFTA, are not constrained by any supra-national standard recognized by international law. [80] To the contrary, the parties to the North American Agreement on Labour Cooperation (NAALC), as an example, commit themselves to fully respect the other parties' sovereignty and laws in such matters. NAALC treats labour as issues of principle that the states parties to NAFTA recognize as being in their interest to work on together. In the diverse types of cooperation developed in this agreement, there is a certain degree of involvement from civil society, trade unions and experts from the three states, and they could also be invited to form national consultative committees. NAALC ultimately assigns responsibility for cooperation among the states to the Council of Ministers and the Secretariat, which decide on actions to be taken.

NAALC also provides a complaints mechanism, in which parties may submit communications in order to request reviews or cooperative consultations regarding the practices of other NAFTA partners. The National Administrative Offices (NAO) of the agreement are responsible for judging the admissibility of these communications. However, if the consultation is unfruitful at the ministerial level, the NAO that has received the communication on the labour legislation of another state party may choose to request the establishment of an Evaluation Committee of Experts, and eventually an Arbitral Panel. The committee or panel's decision, if upheld by the Council of Ministers, could lead to trade sanctions.

At this level, the agreement provides that only issues that concern the systematic practices of a state party to the agreement and which relate to trade among the states parties may be examined. The agreement excludes from such an examination matters related to working conditions and those that involve subjects that are not submitted to regulatory control by the two parties involved in the dispute. In the case of labour, the civil societies of the three states parties to the agreement have resorted to the procedure of communications provided for under the NAALC, and the assessment of strategies resulting from these communications merits serious examination.[81] The case of pregnancy tests being forced on workers or job applicants working for maquiladora-type Mexican industries is interesting.[82]

In 1996, Human Rights Watch issued a report on discrimination against women in the Mexican maquiladora sector that showed that women applying for work were routinely forced to submit to humiliating pregnancy tests, and that pregnant women were subjected to various forms of

[80] Note that the eighth paragraph of the Preamble of the North American Agreement of Environmental Cooperation reads as follows: REAFFIRMING the *Stockholm Declaration on the Human Environment* of 1972 and the *Rio Declaration on Environment and Development* of 1992. This is as close as both Cooperation Agreements to NAFTA get to referring to international standards.

[81] See www.naalc.org/english/publications/pccharten.htm for a summary prepared by the Canadian Secretariat of the NAALC and www.naalc.org/english/infocentre/NAALC.htm for the text of the agreement.

[82] Since the initial submission of this communication to the American NAO, The International Labour Conference adopted, in June 2000, C183*, Maternity Protection Convention*, *2000*, in which Article 9(2) explicitly prohibits requiring pregnancy tests when a woman applies for employment. This Convention is now open for ratification.

discrimination.[83] Since only women get pregnant, such practices constitute discrimination according to international human rights law, compromising equality in the workplace and access to employment. The Mexican government claimed that its own labour law did not protect women who were seeking employment but only those who already had been hired and that therefore these practices did not run counter to the equality provisions of its own labour law. In response, Human Rights Watch joined forces with the Asociación Nacional de Abogados Democráticos and the International Labor Rights Fund and lodged a complaint against Mexico under the NAALC.

As previously mentioned, the purpose of the NAALC is not to ensure conformity with international human rights standards (under which such pregnancy testing would constitute a clear violation of the right to privacy and the right to equality), but rather to ensure that each of the NAFTA parties apply its own labour laws. The outcome was therefore disappointing, as the investigation initiated by the US National Administrative Office only examined the situation of women who were subject to on-the-job discrimination and not the practice of screening women for pregnancy in the hiring process. Had the standard referenced in the process been the appropriate international instrument, namely the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the result would likely have been much different.[84]

As is evident from the communications submitted to date before the three NAOs, and this despite a clear dominance of complaints based on the violation of fundamental labour rights and the inherent limits of the NAALC, the agreement has also made it possible to raise issues concerning the protection of child and migrant workers, industrial accidents, working conditions and even discrimination. With respect to the formal sector, in cases where it has been transformed into export-driven production, the NAALC has proven to be a useful tool, although its reach depends entirely on the will of the parties to cooperate. An analysis of indicators that take the human rights contained in this agreement into account can be summarized as follows. This table does not highlight the fact that civil society was not consulted with respect to the signing of the NAFTA itself.

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[83] *No Guarantees: Sex Discrimination in Mexico's Maquila Sector*, Human Rights Watch, 1996, on line at: www.hrw.org/hrw/reports98/women2/Maqui98d-10.htm#P1090_240132.

[84] Such discrimination also violates several other international instruments ratified by Mexico, including the ICCPR, the Inter-American Convention on Human Rights and ILO Convention (111) Discrimination (Employment and Occupation) 1958. CEDAW did in fact raise the issue when examining Mexico's compliance with the Convention. See Human Rights Watch, Mexico: *A Job or Your Rights: Continued Sex Discrimination in Mexico's Maquiladora Sector,* 1998, on line at www.hrw.org/hrw/reports98/women2/.

Human rights covered	‣ Principles related to labour: ‣ Freedom of association and right to collective bargaining; ‣ Right to strike; ‣ Prohibition of forced labour; ‣ Protection of children and youth in the workforce;* ‣ Minimal labour standards;* ‣ Prohibition of discrimination in employment;* ‣ Gender pay equity;* ‣ Health and safety;* ‣ Worker's compensation benefits;* ‣ Protection of migrant workers;* * considered as technical labour standards that can be examined by the Evaluation Committee of Experts or eventually the Arbitral Panel.
Reference(s) to human rights instruments in the trade agreement or to human rights interpretations as an authoritative source of interpretation of trade agreements	‣ NIL
Democratic and participatory component	‣ STRONG with respect to the ability to submit a communication and the possibility of being invited to participate in the work of each national consultative committee; WEAK with respect to follow-up of communications.
Autonomy of the mechanism from a pre-existing trade dispute	‣ Communication admissible without the existence of a trade dispute but must concern a corporation producing commercial goods that are in trans-border circulation.
Legal accountability for violations to human rights and availability of compensation mechanisms	‣ WEAK. Impunity for the industry responsible for violation of rights. Possibility of commercial sanctions against a state. No compensation provided for victims, although this eventuality is not excluded with respect to the final output of the communication.
Accessibility of intervention, communication or complaint mechanisms in the case of human rights violations	‣ STRONG (communications)

Democratic Participation and the Social Dimension of Regional Trade Agreements: The Case of MERCOSUR

MERCOSUR (*Mercado Común del Sur*) was created in 1991 and comprises Brazil, Paraguay, Uruguay, and Argentina. This regional trade agreement is under the ultimate responsibility of a council formed of external affairs ministers of the states parties to the agreement. In 1998, following the work of a tripartite subcommittee[85] made up of the Council of Ministers in 1991, the Council adopted the Social Declaration of MERCOSUR. Articles 1, 2 and 3 of this Declaration uphold the right to equality in the labour force, in addition to equality between women and men. Articles 5, 8, 9, 10 and 11 of the Declaration uphold the value and respect of fundamental labour rights (prohibition of forced labour, freedom of association and of negotiation) and Article 4 guarantees equality between migrant and national workers. In accordance with Article 6 of the Declaration, the states parties are committed to promoting the elimination of child labour and the adoption of special measures of protection for this type of work.

The Declaration also sets forth the commitment of states to promote a search for negotiated solutions to labour conflict (Article 12), the development, protection and increase of employment (Articles 14 and 15), vocational training (Articles 16 and 17) and the maintenance of labour inspection services (Article 18). Article 20 of the Declaration provides for the creation of a regional social and labour commission, whose functions can be summarized as expressing the desire of states to establish a mechanism of cooperation in the social and labour fields, in a tripartite arrangement.

The evaluation of the Declaration, based on the six criteria previously established, reveals the following:

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[85] Sub-group no. 11 on labour relations, employment and social security, which is based on the work of eight committees: individual labour reports, collective reports on labour, employment, vocational training, occupational health and safety, labour sectors and labour principles. See the International Labour Organization, Oficina Regional para América Latina y el Caribe, documento de Trabajo no. 28, 1996, Carlos Anibal Rodriguez and José Miguel Ramos Gonzalez*, La seguridad y Salud en el Trabajo en los Procesos de Integración en América Latina*, on line at www.ilolim.org.pe/spanish/260ameri/publ/docutrab/dt-28/index.shtml and *Las normas laborales en los acuerdos de integración en las Américas*, Adolfo Ciudad Reynaud, Lima, Oficina Regional, 1999, on line at www.ilolim.org.pe/spanish/260ameri/publ/docutrab/dt-110/index.shtml. This study presents an interesting comparative table highlighting the diverse levels of consideration of human rights and labour rights by the various bilateral and multilateral trade agreements throughout the Americas. See also Bruno Podestá, *Dimensión social y participación en los procesos de integración: la Union europea, la comunidad Andina y el Mercosur*, Analisis Laboral, vol. XXII, no. 251, May 1998, p. 12. In a recent communication, Jonas Zoninsein states that trade unions in the countries of the Southern Cone have a unique position with respect to MERCOSUR because for a long time many of them have been in favour of such an agreement. See J. Zoninsein, *Western Hemispheric Integration and Labour Standards: Preliminary Notes for a Post-Seattle Agenda*, Summer Institute 2000, Robarts Centre for Canadian Studies, York University, Canada.

Human rights covered	‣ Right to gender equality in the workforce; ‣ Fundamental labour rights (prohibition of forced labour, freedom of association and negotiation); ‣ Equality between migrant and national workers; ‣ Elimination of child labour.
Reference(s) to human rights instruments or to human rights interpretations as an authoritative source of interpretation for the purpose of cooperation	‣ NIL
Democratic and participatory component	‣ Enshrine the right of representative workers and employers associations to participate in the negotiated construction of the social dimension of the MERCOSUR trade agreement.
Autonomy of the mechanism from a pre-existing trade dispute	‣ Consultation or cooperation is not linked to a pre-existing trade dispute.
Legal accountability for violations to human rights and availability of compensation mechanisms	‣ NONE. This is a cooperation procedure aimed at promoting the social dialogue.
Accessibility of intervention, communication or complaint mechanisms in the case of human rights violations	‣ NIL.

The Council of Europe and the System of Collective Claims Based on the European Social Charter

The Council of Europe was created more than 50 years ago in the wake of the Second World War. The adoption of the European Convention of Human Rights (a regional equivalent to the ICCPR was followed by the adoption in 1961 of the European Social Charter (ESC).[86] The ESC is not really a regional equivalent to the ICESCR and it is often referred to as a 'worker's rights' charter. The driving force behind these developments was not the need for human rights as a counterbalance to the potential negative consequences of trade developments at the European level. On the contrary, development, reconstruction and human rights were then seen as forming a coherent and integrated project. In fact, the ESC more recently proved capable of addressing not only a more all-encompassing definition of economic and social rights but also, the crucial question of economic and social rights justiciability in the new context of a broader Council of Europe.

In 1995, the Council of Europe adopted the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints.[87] This Protocol is now in force and has been used on ten occasions.[88] It may be ratified by the member states of the Council of Europe that

[86] ETS no. 35.
[87] ETS no. 158, in force July 1998.
[88] See Council of Europe, Examination of collective complaints, list of complaints registered, on line at www.humanrights.coe.int/cseweb/GB/GB3/GB30_list.htm.

have ratified the ESC[89] (1961, Charter of Turin). It should be noted that since the adoption of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, the Council of Europe also adopted the Revised Social Charter,[90] in which economic and social rights not provided for under the original Charter of Turin are guaranteed. Many are hoping that the impressive patchwork made up of the ESC and its Protocols is moving toward a more effective integration of human rights.

Domestic and international employers' and workers' associations and other national and international non-governmental organizations may thus file claims under the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints. Claims must be based on either provisions in the Charter of Turin or in its first Protocol when state members have ratified it.[91] Claims are first examined by the Committee of Social Rights composed of independent experts. After deciding on the admissibility of the claim, the Committee proceeds with an examination of submissions by the parties concerned, by the other states parties to the Protocol and by international employers' or workers' associations. The Committee then drafts a report containing conclusions regarding respect or non-respect of the Charter. This report is then sent to the Committee of Ministers of the Council of Europe, which, on the basis of the report, adopts a resolution and, if the conclusions of the Independent Committee of Experts are negative, addresses a recommendation to the state implicated. As the claims already submitted to the Committee of Social Rights reveal, recourse to the Protocol has been made essentially to condemn violations related to collective bargaining rights, but also with regard to the prohibition of forced labour, child labour, discrimination and working conditions.

The effectiveness of the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints is nevertheless checked for two reasons: rights recently guaranteed by the revised Social Charter,[92] whose adoption was subsequent to the Protocol Providing for a System of Collective Complaints, cannot be the subject of such a claim. In addition, states parties to the ESC and its protocols or to the revised Charter have the strange privilege of being able to choose which numbered provisions in these instruments they intend to be bound by.[93]

The following table highlights the importance of human rights instruments such as the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints which guarantees economic, social and cultural rights and for which enforcement does not depend directly on a pre-existing trans-border trade relationship or the existence of a trade dispute:

[89] ETS no. 35.
[90] ETS no.163.
[91] ETS no. 128.
[92] Especially with regard to the rights of disabled people, the right of all nationals of the contracting parties to gainful occupation in the territory of any one of the other contracting parties, the right of workers and their associations to consultation, the right of elderly persons to social protection, the right to dignity at work, the right to protection against poverty and social exclusion, and the right to housing.
[93] Article 20 of the ESC stipulates that states when ratifying, must declare, at the least, that they consider themselves bound by five of the following articles of Part II of this Charter: Articles 1 (right to work), 5 (right to organize), 6 (right to bargain collectively), 12 (right to social security), 13 (right to social and medical assistance), 16 (right of the family to social and legal protection) and 19 (right of migrant workers to protection and assistance); in addition to those articles, states must also consider themselves bound by such a number of articles or numbered paragraphs of Part II of the Charter as they may select, provided that the total number of articles or numbered paragraphs by which they are bound is not less than 10 articles or 45 numbered paragraphs.

Human rights covered	‣ All economic and social rights guaranteed by the European Social Charter (1961) or its Protocol (1988), subject to the provisions accepted by the state party.
Reference(s) to human rights instruments or recourse to human rights tribunals	‣ STRONG. The recourse is derived from a human rights instrument;
Democratic and participatory component	‣ Enshrines the right of worker associations and NGOs to initiate a claim in the case of violations of rights guaranteed by the Charter or its first Protocol. This first Protocol, when ratified, guarantees the right of representative associations of workers to consultation within the undertaking.
Autonomy of recourse or intervention with respect to a pre-existing trade dispute	‣ TOTAL. Issued from a human rights instrument of the regional European system of protection of human rights.
Legal accountability for violations to human rights and availability of compensation mechanisms	‣ STRONG but submitted to the decision of the Council of Ministers of the Council of Europe. The Social Rights Committee recommendation is not a judicial decision.
Accessibility to recourse or to measures	‣ STRONG

The Additional Protocol to the European Social Charter Providing for a System of Collective Complaints is totally independent of any aspect of trade or trade disputes. The fact that it was not designed in a trade context does not mean that it cannot be used to denounce human rights violations as consequences of new trade patterns. This regional instrument as well as the interpretations and conclusions that can emerge from the Social Rights Committee are not binding on regional or international trade institutions. Nevertheless, the increasing interdependency between the EU and the Council of Europe shows that regional integration and trade integration and liberalization and human rights can go hand in hand.

The Additional Protocol to the European Social Charter Providing for a System of Collective Complaints is an instrument still lacking in the ICESCR. But it is also the enriched counterpoint to the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, the Protocol of San Salvador. Like the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, the Protocol of San Salvador also provides the possibility of submitting claims to the Inter-American

Commission for Human Rights in the case of violations to the right of collective bargaining or the right to education, guaranteed by Article 13 of the Protocol. [94]

Of course, the degree of maturity of instruments of human rights capable of guaranteeing useful recourse in international law is varied. The ICESCR is probably the most complete document with respect to setting forth the economic, social and cultural rights of people. However, its enforcement is weak and completely dependent on the procedure of periodic reports submitted by states parties to the ICESCR.

Conclusion

The state of development with regard to human rights instruments that protect economic, social and cultural rights leads us to conclude that the problem is not so much the model or the possibility for states to adopt effective instruments to protect economic, social and cultural rights, but the political will to increase legal accountability in order to respect guaranteed rights and to punish violations of them. The human rights system requires strengthening in order for it to be seen as a superseding and authoritative instance by trade institutions. Without such progress, we run the risk of subjecting human rights institutions to the rules and imperatives of trade rather than making our trading arrangements subject to human rights norms. This risk is even more obvious when the analysis of human rights requirements relies solely on the capacity of trade bodies to interpret the weak references to human rights usually incorporated in trade instruments. Our short analysis shows that trade agreements, as well as cooperation agreements as side agreements to trade deals, systematically fail to explicitly recognize the primacy and the authority of human rights instruments. In fact, the survey of models derived from trade institutions is unsatisfactory and confines domestic measures necessary to enforce human rights to the status of exception or exemption. A human rights framework for trade agreements would be very different.

[94] Article 19.6 of the Protocol of San Salvador which contains guaranteed rights comparable to those of the European Social Charter or the Revised Charter, significantly limits the types of violations for which complaints may be channellled to the Inter-American Human Rights Commission.

Appendix II: Ratification of Key Conventions and International Human Rights Instruments by Country

Country	ICESCR	ICCPR	Opt. Protocol	CEDAW	CERD	Ame. Conv.	San Salvador Protocol
Antigua & Barbuda				*	*		
Argentina	*	*	*	*	*	*	
Bahamas				*	*		
Barbados	*	*	*	*	*	*	
Belize		*		*			
Bolivia	*	*	*	*	*	*	
Brasil	*	*		*	*	*	*
Canada	*	*	*	*	*		
Chile	*	*	*	*	*	*	
Colombia	*	*	*	*	*	*	*
Costa Rica	*	*	*	*	*	*	*
Cuba				*	*		
Dominica	*	*		*		*	*
Dominican Republic	*	*	*	*	*	*	
Ecuador	*	*	*	*	*	*	*
El Salvador	*	*	*	*	*	*	*
Grenada	*	*		*		*	
Guatemala	*	*	*	*	*	*	
Guyana	*	*	*	*	*		
Haiti		*		*	*	*	
Honduras	*	*		*		*	
Jamaica	*	*	*	*	*	*	
México	*	*		*	*	*	*
Nicaragua	*	*	*	*	*	*	
Panama	*	*	*	*	*	*	*
Paraguay	*	*	*	*		*	*
*	*	*	*	*	*	*	*
Saint Lucia				*	*		
St. Kitts & Nevis				*			
St. Vincent & Grenadines	*	*	*	*	*		
Suriname	*	*	*	*	*	*	*
Trinidad & Tobago	*	*	*	*	*	*	
Uruguay	*	*	*	*	*	*	*
USA		*			*		
Venezuela	*	*	*	*	*	*	