

# **Humanology and Human Rights: The Challenge of the Global Trading System**

## **Executive Summary**

In the entire discourse on human rights it is often forgotten that “rights” is a sequential issue, for the prior issue is rights for whom? Who qualifies for those rights? Who defines the “humans” ? Who are included and excluded from the definition of the “human”, and why? This paper seeks to argue that the study human society from the perspective of inclusion and exclusion of sections of humanity from its definition - - *humanology* for short – and the advocacy for the oneness of all humanity, is as important a challenge as the advocacy for human rights. In this kind of world, then, “fairness” as a concept organising world trade is often not fully understood. Critical to this discussion is the distinction between humanitarian laws and trade laws – the first is a response to challenge to authoritarian or arbitrary rules of governance, while the second is essentially a codification of mercantile law in which the powerful extract what they can and the weak yield what they must. The paper explores the challenges this poses to anybody working in the area of a “fair” trading system.

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# **Humanology and Human Rights: The Challenge of the Global Trading System**

## **Introduction**

The paper starts out with this broad narrative. Though of course connected, Humanity and Human Rights are two distinct issues. The human rights discourse is based on its claim to universality. But that universality is not automatically conferred on the people who are supposed to enjoy those rights. A switch of discussion from human rights to why there is a hierarchy of human beings shifts the debate away from principles and standards to the realm of material and social reality. This does not diminish the significance of the universality of human rights. But the struggle for humanity – for recognition as human beings -- at the level of politics and power is a much more and difficult battle than the battle to establish the universality of human rights.

The essay offers three explanations to this insider-outsider phenomenon in human history -- casteism and racism; economic explanation; and civilizational encounters. It argues that the present divide between the North and the South has historical antecedent going back to the 16<sup>th</sup> century. The North-South divide, though it appears Manichean, is real. All three explanations of the insider-outsider phenomenon are reflected in this North-South division. It is also reflected in many aspects of contemporary international relations, including trade, which then is the subject of the second part of the essay.

Against the background of the above broad narrative, the objective of the second part is to draw upon contemporary trade theory and practice in order to show how the North/South dimension, once again, forms a fundamental aspect of international relations. This is not to say that there are no contradictions within the North or the South. These are not monolithic geographic configurations. But the civilizational

(arising out of past colonial encounter), the racial/casteist, and the economic considerations continue to fissure the world. In this kind of world, then, “fairness” as a concept organising world trade is often not fully understood. Critical to this discussion is the distinction between humanitarian laws and trade laws – the first is a response to challenge to authoritarian or arbitrary rules of governance, while the second is essentially a codification of mercantile law in which the powerful extract what they can and the weak yield what they must.

The example of the manner in which the US has handled the cotton issue in recent trade negotiations is a case in point. Africans lose something like \$250 million a year because of the depressant price effect of US subsidies on cotton. All talk of human rights by the North is hypocritical. This discussion is preceded by a normative discourse on issues related to the concept of fairness, dumping and countervailing measures, subsidies, and the question of standards.

In the last part the essay focuses on three issues: regulating norms in the domain of international trade; regulating power in the domain of international trade; and drawing out the challenge to global civil society and citizen action. Since trade law contravenes humanitarian law, it must be subjected to the principles of humanity. The paper modifies Rawlsian concept of “fairness as justice” as providing some conceptual tools, and draws upon the study by the U.N. Commissioner on Human Rights on the impact of trade liberalisation on the poor as examples of how to move forward. Finally, it offers five specific suggestions to civil society for citizen action in the realm of trade and development.

## **Part I: Humanology and Human Rights**

### **A. Humanity and Human Rights are two distinct issues**

This is not as abstract an issue as the above words might appear to imply. The question of identity is a real, concrete, everyday issue of immediate relevance to millions of people on earth. In our own day, the war in Iraq has epitomised the very core of the issue of identity and the definition of who is “human”. Who defines humanity in Iraq? It sounds like a rhetorical question, but the answer is not as obvious as it might appear. It might appear that it is the occupation forces of the United States and the United Kingdom that have “the authority” to define humanity in Iraq. Not so. The American and British soldiers might have thought (or made to believe by their superiors) that they have the authority as occupation forces to define who is human and who not. And indeed in their routine beat amongst Iraqi prisoners, the soldiers might believe -- truly believe, with heart and soul -- that the Iraqis are somehow sub-human (not Christian and not nearly white enough) and (so) they do not deserve the normal rights of human beings. They carry out daily humiliation of Iraqi prisoners, it would appear with a nodding official connivance, and with impunity. But sooner or later they are exposed, ironically by the photographs taken by the soldiers themselves -- such is their sense of impunity. The humanity of the prisoners was reaffirmed by a horrified global opinion that strongly disapproved of this behaviour, especially, the graphic display of a naked Iraqi prisoner dragged like a dog by a chiding female American soldier pointing mockingly at the exposed genitals of her sub-human victim. The world public opinion re-established the definition of the Iraqis as

“human”. In the denial of their humanity by the American soldiers their humanity is restored, affirmed, by the world at large.

The above narrative is not an expression of “anti-Americanism”. That is a separate issue. The above is only one of the worst cases of what in fact is a general, regular, pattern of human behaviour. It is the worst case that often demonstrates the validity of a common observation -- which is, that in our daily relationships we routinely behave and relate to other people as if there was a hierarchy of humanity, some more equal than others. Throughout the colonial period, for example, the colonised were treated as people of inferior status, a behaviour pattern that got so ingrained in the culture of the colonised that in daily life too -- even today -- it is not uncommon to find, for example, a waiter in a restaurant in an African city first serving a white customer in preference to people of other colours.

It is not just a question of war. Of course, wars have a tendency towards dehumanising people. Wars within nations (civil wars) can be as dehumanising as those between nations. Wars also discriminate; they victimise women and children more than adult men. But what happens in a situation like Iraq or Afghanistan is more than war’s degenerative effects. What happens there is partly related to war, but the war itself and the dehumanisation that is going on there is more structured than conjunctural. It is embedded in culture and history, and not simply an aspect of war aberration.

Human rights discourse is based on its claim to universality. But that universality is not automatically conferred on the people who are supposed to enjoy those rights. And it is not simply a question of the colonisers and the colonised, the black and the white, the North and the South, the Christians and the Muslims, the men and the women. Within each of these communities -- as extant identifiable human groups -- people behave in their daily lives as if there are hierarchies of humanities, some more human than others. If at the *international* level, the Iraqi situation symbolises one of the worst case scenario of denial of humanity to a section of the human race, then at the *national* level, its analogue is the case of India where to this day there are millions of people denied basic human rights because they are “untouchables”, dalits, subalterns, and for all practical purposes, outside the pale of humanity.

The argument (at this stage) is not about the universality of human rights in *principle*, but about why the *practice* is at such variance from the principle. The question is why there is, in real life situations, a hierarchy of human beings, some more equal than others. *The importance of this question is that it takes the debate away from principles and standards on to the realm of material reality, of social reality.* From a subject of ethics and law, human rights become a subject of sociology and political economy. If the dalits in India are treated as if they belong to a sub-species of humanity outside the concourse of human rights, then the question is as much sociological and political as one of ethics and law. If the Iraqi prisoners are treated as if they are somehow sub-human, then it is necessary to look into the dynamics of international relations -- in other words, the global material social and political conditions -- which create a situation in which they find themselves as people getting less than human treatment.

No amount of advocacy on behalf of human rights can obliterate this reality. No one can brush aside the hard fact that human beings perceive themselves -- and others -- as falling into different categories, some deserving of more rights than others.

This is not an argument against the universality of human rights -- although this universality too is not an uncontested terrain. But whatever the argument for or against the universality of human rights, there is no denying that without certain principles that enshrine and establish the universal character of human rights there would simply be no argument about it in global discourse. If human rights were relative to each community, then the Africans would have their own code of rights, Asians their own, the Europeans their own, the Christians their own, the Muslims their own, and so on. Within these communities there would be debate about its principles and practice, but as between them -- in their interactions -- there would be no argument. "He is an Iraqi or a Muslim, not one of us, and so not entitled to our code of human values." And the debate ends there. But, although the above line of thinking, and reasoning, is the general tendency in the minds of most people, this is not condoned in principle. Since the universality of human rights is one of the organising principles of humanity, it becomes possible to put to question instances of its derogation (as in the case of the Iraqi prisoners, or of dalits in India).

The principle is important. But the struggle for human rights cannot be fought primarily at the level of the principle, or at the level of ideas. The struggle primarily is at the political and social levels. At the start of this essay it was argued that for the greater part of the history of North/South relations, it is the adjective 'human' that has been more contentious than the noun 'rights'. *The universality of human rights is an easier (or less difficult) battle to fight than the universality of humanity.* The first is a matter of principle, the second a matter of power. The first battle, the one of principle, has strong doctrinal allies (among them the documents of the French Revolution, the English Bill of Rights, and the American Constitution -- documents from within the heart of the present-day Empire). But the second battle, that in the realm of power, has few allies -- except, of course, the very people who are deemed by the powerful to be "outside" the realm of humanity, those who are defined as sub-human by those in power, those whose entire cosmology is envisioned through the darkened lenses of the world after 9/11.

## **B. Three Explanations To The Insider-Outsider Phenomenon**

Why is this so? Why are some humans less human than others? Any number of explanations -- from sociological to psychological to religious -- have been advanced as explanation. But they fit into three broad categories.

- a) Casteism and racism
- b) Economic explanation
- c) Civilizational explanation

The first two are widely discussed and need not detain us for long. The tendency to hierarchies human beings as deserving differential rights, depending on real or perceived location within the hierarchy, cuts across north/south, racial, religious, national, gender and cultural divides. There are people within the same race, gender,

or even the same religion, that treat “their own kind” (as it were) as if some are lower or higher than others. Casteism (division of people into castes) is not just an Indian phenomenon; it has its specific variants in all climes, cultures and locations. The most bigoted expression of this kind of differentiation in recent times was the system of apartheid in South Africa. There the ruling group/caste used religion to rationalise the division of human beings into higher and lower categories. As we know, the absurdity of the whole project became so manifest that even the churches in Europe, eventually, distanced themselves from it.

The second explanation lies in the economy. Indeed, this is the most persistent cause of division amongst human beings into lower and higher categories. Take the example of farm workers in Zimbabwe. During the colonial period they were not recognised as "human". They had no rights, and were subjected to arbitrary treatment by the farm owners with almost complete impunity. This is well documented. The question is: how has the situation changed since independence? There is no gainsaying the fact that the condition of the farm workers, at the economic level, has not changed very much. Whilst their formal human rights are recognised, their economic and social existence, for all practical purposes, remains precarious and “sub-human”. For example, most farm workers are left to find their own means to basic necessities of life such as food, health, housing and cleanliness. Farm workers grow food, but they are among the most food-deficient sections of the nation. On the education front, whilst the post-independence government achieved a remarkable success in the communal areas, the farm workers were mostly neglected. When the land issue came to the fore, and the government devised resettlement schemes for communal farmers, the farm workers were once again ignored. In a study this author conducted in Zimbabwe, we found that up to 60 percent of the farm workers have no permanent home, or land to return to. Thus, some of the most deprived and impoverished sections of the citizenry in Zimbabwe are the farm workers. They have "rights" only in name.<sup>1</sup>

It is the third explanation, civilizational, that needs to be exposed a bit more energetically because it is always placed under the carpet for a whole lot of reasons into which we need not go here, except to say that it is among the most sensitive and explosive explanations.

When the American theorist Samuel Huntington talked about the clash of civilizations, he was almost universally reviled.<sup>2</sup> People fear self-fulfilling possibilities of acknowledging something like this as part of contemporary reality. Similarly, in the days following the 9/11 incident when President Bush talked about the crusades, he was persuaded by wiser counsels to tone down the religious rhetoric, and his language (and official US position) subsequently changed to distinguishing between as “good” and “bad” Muslims.

To be sure, a careless use of civilizational categories, especially in public discourse, can arouse strong feelings that could be divisive of humanity. If intellectual honesty and political integrity demands recognition of this factor as part of present reality, then this must be done in order to fight against it rather than to endorse it – a point to which we shall return when we discuss the North/South divide as a real, not imaginary, fact of contemporary world.

Intellectual honesty demands that we do not sweep under the carpet unpleasant facts of life. One exemplary model of this kind of scholarship is the British historian Arnold Toynbee, in his monumental work, *A Study of History*. Unlike Huntington he talked about not clash but “encounters” between civilizations, but he did not flinch, shy away, from drawing attention to some of its worst aspects.<sup>3</sup>

### **C. Historical antecedent to the present North/South divide**

In the same fashion as discourses that project civilizational clashes are quickly put under the carpet, those that project North/South divide in contemporary world are also instinctively and almost universally denied. There is, for example, a quick retort made that says something like, “yes, but there is a ‘north’ in the South, and a ‘south’ in the North.” And, indeed, there is truth in this qualification of an otherwise too black and white imagery of the present world.

And yet, underlying all qualifications one can make to this binary divide, the reality of the North/South division cannot be denied. Like in the cold war era where the “East/West” category had become a significant reference point, the North/South has become the most significant reference point of the time we are living through. One scholar who has extensively written on the subject is the Ugandan Dani W. Nabudere. He argues that the modern phase of globalisation had begun in the 16<sup>th</sup> century (to be precise 1492 to 1650s ) with the Christian crusade to universalise its faith.<sup>4</sup> The objective of the 16<sup>th</sup> century Papal Bulls, for example, was to give religious blessings to Portuguese and Spanish merchant companies to spread Christianity and stop Islam in its tracks. With religious conquest also went the conquest of long distance trade.

In order to set the record right it must be added that even in those days there were heroic people who protested and shouted against the inhumanity of the Crusades, especially the description of people of another race as “sub-human” and therefore candidates for physical extermination. Among them, for example, was Bartolome de las Casas, the Spanish Bishop of Chiapas in Guatemala. Don Bartolome spent a large portion of his life fighting for the rights of native peoples of the New World. His father was a merchant who sailed with Columbus on his second voyage to the Americas. He served in a Spanish militia against Moorish rebels in Grenada, and as chaplain in the conquest of Cuba. When he saw atrocities against the Indians, he renounced his *encomienda* (land and other titles) in 1514, and devoted the rest of his life defending the human rights of the Indians. His appeals to the Kings of Spain were, however, largely ignored or defeated.<sup>5</sup>

Arguments made on behalf of human rights are usually either ignored or twisted in order to serve “the spirit of the times”, which from 1492 to 1650s was that of Christian Universalism and the conquest of long-distance trade. Today’s “spirit of the times” is the universalism of Western culture (including norms of democracy and human rights), and the conquest of global resources in the name of globalisation. But, and this is important, like in the 15<sup>th</sup> to 17<sup>th</sup> centuries, there is today opposition to this not only in the “South” but also among brave people (including politicians and civil society) in the South -- a point to which we shall come later.

### **D. North/South Divide As An Embedded Phenomenon Of Contemporary Times**

The distinctive reference point of our times is the global North/South divide. This is not simply a whim of imagination, but part of even official discourse. Sometimes the North/South divide is sometimes referred to as “the poor countries and the rich

countries”, or by yet another euphemism, “the industrialised countries and the developing countries.” All these refer to the same phenomenon.

For example, the UNDP in its Human Development Report, 1996 makes the following observation:

*The world has become more polarized, and the gulf between the poor and the rich of the world has widened even further.*

Of the \$23 trillion global GDP in 1993, \$18 trillion is in the industrial countries -- only \$5 trillion in the developing countries, even though they have nearly 80% of the world's people. The poorest 20% of the world's people saw their share of global income decline from 2.3% to 1.4% in the past 30 years. Meanwhile, the share of the richest 20% rose from 70% to 85%. That doubled the ratio of the shares of the richest and the poorest -- from 30:1 to 61:1. The gap in per capita income between the industrial and developing worlds tripled, from \$5,700 in 1960 to \$15,400 in 1993. Africa, says the Report, is the hardest hit. Twenty countries in Africa have a per capita income lower today than 20 years ago.<sup>6</sup>

The universality of human rights is endorsed and celebrated even as the material and social conditions of their observance and implementation worsen. The world today is indeed more unequal than before. The North/South chasm has widened, not narrowed, over the last 50 years. The insider/outsider phenomenon of contemporary North/South divide has all the three elements discussed earlier, namely:

- the caste/racial divide
- the economic divide, and
- the civilizational divide

Of course, most people will deny the first and the last aspects of the present North/South divide, and focus only on the economic dimension, even as they would probably also deny the North/South divide itself. But, as earlier stated, the world is a complex web of history, culture and ideology, but despite its complexity it is textured dominantly with “the spirit of the times” which can last for two, three or four hundred years.

The person most easily identified as projecting the North/South divide as (more or less) determining all other relationships is, of course, the late Edward Said. A giant of a thinker and a prolific writer, Said cut through the miasma of art, literature, philology, history and philosophy of earlier centuries to expose a single thread that ran through the entire period of colonial relations. He coined the term *Orientalism* as a systematic (though often unconsciously organised) body of Western thoughts, perspectives, and ideological biases towards the orient imaged as inferior and alien -- the "Other". The Orient is seen as “separate, eccentric, backward, silently different, sensual, and passive”. Said argued that the single most powerful accomplishment of the Orientalist scholars was to provide an ideological rationalisation for the conquest and subjugation of the south -- a vast geographic area, but one which could be imaged as a prototypical single unit -- a biological inferior that is culturally backward, peculiar, and unchanging. Out of a vast literature emanating from the West Said knits a powerful and sophisticated discourse showing how the imagery of the Orient is

laced with notions of power and superiority, the feminine and weak Orient, a defenceless and unintelligent whole awaiting the dominance of the West.<sup>7</sup>

These stereotypical notions of the Orient are deliberately cultivated and projected to provide the foundations for ideologies and policies of the West towards the South.

Writes Said:

*The hold these instruments have on the mind is increased by the institutions built around them. For every Orientalist, quite literally, there is a support system of staggering power, considering the ephemerality of the myths that Orientalism propagates. The system now culminates into the very institutions of the state. To write about the Arab Oriental world, therefore, is to write with the authority of a nation, and not with the affirmation of a strident ideology but with the unquestioning certainty of absolute truth backed by absolute force.*<sup>8</sup>

He continues:

*One would find this kind of procedure less objectionable as political propaganda -- which is what it is, of course -- were it not accompanied by sermons on the objectivity, the fairness, the impartiality of a real historian, the implication always being that Muslims and Arabs cannot be objective... This is the culmination of Orientalism as a dogma that not only degrades its subject matter but also blinds its practitioners.*<sup>9</sup>

This is powerful stuff. Whether one agrees with Said or not, it is impossible to deny that it has a certain amount of contemporary resonance about it. To lace the imagination of the Western readers, the “South” is imaged in the mainstream Western media as “corrupt, authoritarian, and an undisciplined lot” whose only rational fate is to be conquered and disciplined along lines compatible with Western notions of democracy, the rule of law, and standard of behaviour and cultural-ethical norms. Read, for example, what the London *Financial Times*’ Martin Wolf (a mainstream and respected economist, one not known for hyperboles) writes. Under the caption “*Failed States are a danger we cannot afford to ignore*”, Wolf quotes the Washington-based Centre for Global Development which puts the matter succinctly:

*The fundamental foreign policy challenges of our time - terrorism, transnational crime, global poverty and humanitarian crises - are diffuse and complex, with widely varying causes. Yet a common thread runs through all of them. They originate in, and spread to and disproportionately affect developing countries where governments lack the capacity, and sometimes the will, to respond.*<sup>10</sup>

Failed states, Wolf continues (now expressing his own views), display three "capability gaps" -- failures to ensure security, to meet the basic needs of citizens, and to maintain political legitimacy. Wolf goes on to commend the Bush administration's “imaginative” Millennium Challenge Account (MCA) that provides additional assistance to the best, not the worst, performers. The idea is to reward not the weak and the needy, but those that conform to the will of the United States. “The World Bank's strategy of giving most help to countries with good policies and institutions

has much the same effect". The challenge, Wolf writes, is called "*nation-building*". And he adds:

*What is being demanded here is revolutionary: a reconsideration of the basis of the world's political order. Acceptance of the sovereignty of governments rests on the assumption that they possess a reasonable degree of benevolence and competence. The US has decided that it cannot, in the modern age, tolerate the survival of malevolent governments.*<sup>11</sup>

This is Orientalism in our own time. All diversity in the South is wiped out with the stroke of a pen. Wolf's three "capability gaps" of "failed states" -- failures to ensure security, to meet the basic needs of citizens, and to maintain political legitimacy -- have the flexibility of application in virtually every country in the South, including those (like India or China) that might delude into thinking that, somehow, they are safe because they fulfil Western standards of "successful" states. If the security or strategic interests of the West are threatened, India or China, just as Iran today, could fit into the flexible definition of a "failed state" that is unable to "meet the basic needs of citizens". Only yesterday the suave, sophisticated, foreign minister of the liquidated state of Iraq was addressing the United Nations in New York's pristine environment, only to find himself in jail today because America decided that he was leader of a "failed" state. Urbanity and sophistication of culture are no insurance against imagined or perceived infidelity to the strategic interests of the Empire.

Is this being alarmist? Is this argument going too far? Possibly. But the import of the argument is not to raise shackles among the unwary in the South. This is not, as it were, a warning to the leaders of the South to watch what they say and do, in case they get labelled as leaders of a "terrorist" or "failed" state. It is rather to argue that behind all the urbane niceties of international diplomacy and economic liberalism lies the heavy hand of the Empire that can decide, at the stroke of a pen, that any part of the Orient is fair game when the strategic and economic interests of the Empire are under threat.

It is in the context of historical and contemporary reality of our times that the dichotomy North/South -- despite its reductionist, Manichean, simplicity -- has ideological validity, one that can easily yield to a policy decision by the West to interfere anytime in the affairs of the South. Listen to Martin Wolf again:

*The post-colonial assumption that national sovereignty would prove compatible with international stability and widely shared prosperity has proved wrong. Where national sovereignty is a label for anarchy or predation, it does not deserve to be sacrosanct.*<sup>12</sup>

## **E. Reaffirmation of the Universality of Humanity and of Human Rights**

No amount of advocacy on behalf of human rights can obliterate the reality that there are insiders and outsiders in the realm of humanity. No one can brush aside the hard fact that human beings perceive themselves -- and others -- as falling into different categories, some deserving of more rights than others.

This, and here we want to make an important point, the above is not an argument against the universality of human rights -- although this universality too is not an uncontested terrain. Whatever the argument for or against the universality of human rights, there is no denying that without certain principles that enshrine and establish universal character of human rights there would simply be no argument about it in global discourse. From Las Casas, the 16<sup>th</sup> century priest who fought (and lost) the battle to protect the human rights of the Indians in the Americas to those who fought against apartheid in our own times, the universality of human rights is the essential underlying principle of humanity itself.

All the same, the universality of human rights must be reaffirmed even as the world today is indeed more unequal than before, more deeply divided between and within nations. The display of adherence to human rights, especially its ostentatious display by the powerful (both at the national and global levels) becomes more vacuous, phoney and hypocritical. But for those who have no power, those who are "the outsiders", the universality of human rights is one of the thin reeds they must clutch on to in order to save them from drowning completely.

#### **F. Drawing Attention to a Wrong In Order To Right It**

The recognition of an extant phenomenon, however, is not the same thing as its acceptance. Edward Said's analysis of Orientalism was not aimed at validating it. On the contrary, his explicit purpose was to draw attention to this phenomenon in order to fight against it. In the same vein, to draw attention to the North/South dimension of our times is not to endorse the division of our world into the north and the south. The purpose of drawing attention to it is so that the leaders of our time (from both the North and the South) are cautioned against making it the basis for dividing humanity along lines of the "insiders" and the "outsiders" for whom different norms of human rights apply because they are hierarchically in two separate compartments.

It is in the context of this wider concern that those who draw attention to the cold war or colonial origins of contemporary malfeasance in the global community must be commended for their work. For example, much of what is going wrong in the former Soviet Union countries (in Russia under the rule of the newly emerged kleptocrats, or in Chechenya) can be traced back to the years of the cold war and the manner in which Eastern and Central European countries finally surrendered to the power and ideology of the West.

In the same vein, many of the present "wrongs" in the South are traceable to the colonial or the cold war period. Prominent among writers of this genre of analysis is Mahmood Mamdani. One common thread that runs through his writings is the mapping out -- in characteristic scholarship -- the origins of some of contemporary problems (African or global) to past decades and past centuries. Thus, in his *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*, Mamdani traces the obstacles to democratization in post-independence Africa to the legacy of colonialism -- "a bifurcated power that mediated racial domination through tribally organized local authorities, reproducing racial identity in citizens and ethnic identity in subjects."<sup>13</sup> In his *Good Muslim, Bad Muslim: America, The Cold War, And The Roots Of Terror*, he traces the rise of contemporary political Islam to the American

government's indirect, post-Vietnam-era sponsorship of terrorist leaders in South Asia, Indochina and Africa as a way of dealing with the perceived threat of spreading Soviet influence in these regions. Hence, he argues, the West categorisation of Muslims as "good" (secular, westernised) and "bad" (primitive, fanatical) is both distorted and dangerous.<sup>14</sup> Though he does not use the term Orientalism, the analytical underpinning draws down from the same phenomenon as analysed by Edward Said.

Said's and Mamdani's contributions to scholarship goes beyond the academic, for their writings have strong humanist as well as policy implications. *The North/South or colonised/coloniser dichotomies are put in black and white Manichean terms not because there aren't shades of grey, but because the worlds of the powerful and the powerless create hierarchies of the insiders who enjoy human rights and outsiders whose rights are recognised only to the extent that those who have the power will it.* In graphically and clinically dissecting Orientalism, Said is fighting against its resurgence in contemporary times. In showing the cold war and colonial roots of the problems of contemporary Africa and the world, Mamdani is cautioning against repeating the errors of the past. The tragedy is that history does not teach lessons to those in power -- power not only corrupts; it also blinds.

### **G. The Boundaries Of Human Rights Domain: Illustrative Case Of Nuclear Weapons**

Precisely because much of the discussion on human rights is conducted in the realm of principles, and how practice fits with or departs from principles, that it has become predominantly a discourse between lawyers and constitutionalists. To be sure, this is an important dimension.

But there are all manner of issues and problems outside these legalistic confines that cry out to be within the domain of the subject. Why, for instance, should the question of the possession of nuclear weapons be limited only to the dimension of the peace and security? Why should not the matter be brought within the purview of human rights? What gives the United States, the United Kingdom and Israel the right to possess nuclear weapons but not Korea or Iran? Is it because the British, the Americans and the Israelites are civilized people who would presumably use nuclear weapons with "wisdom and discretion", but the North Koreans and the Iranians might use them for "terrorist" purposes?

Nuclear weapons are not a subject of this paper, but consider the above proposition seriously for a moment. If a poll were to be taken on this question in the West, the answer would likely to confirm the image of the people of the USA, UK and Israel as "civilised" and those of Korea and Iran as inclined towards "terrorism". How much would this be a result of the constant propaganda that is hammered into the heads of the people of the West, and how much on account of their own fears that feed their prejudices is difficult to say. But there is no gainsaying that a poll of this kind, especially in the post 9/11 context, would in all likelihood bear out the above prediction.

Once again it is an insider-outsider issue – the USA, the UK and Israel are “the insiders”, and the Iranians and the Koreans are “the outsiders”. The binary divide is not mythical; it is real. This is how most people in the West do think, and that thinking (whether manipulated by the state and media, or out of personal conviction) has practical and profoundly political consequences. This Manichean world-view is an echo of Edward Said’s Orientalism with a modern face.

One interesting qualification to this binary divide, however, is that some countries from the South can (temporarily) qualify to be an “associate member” of the “insiders”. For example, on the Iraq issue, Uganda is an (associate) member of the “coalition of the willing” and so within the “insider” circle. But this is only temporary, and the membership comes with qualifications and conditions. In any case, it is doubtful, in this instance, that Uganda would get the green light (from the West) to develop nuclear capacity of its own. Its participation on the side of the United States on the Iraq War does not bring Uganda within the “civilised” ambit of humanity. The US-UK Empire can’t be sure that with a change in regime, Uganda would not become a “failed state”, and exhibit terroristic inclinations.

The nuclear issue is only a passing, illustrative, example as far as this paper goes. The matter of central concern in this paper is the issue of international trade. Part One of this paper was a necessary contextual and theoretical exercise because the debate on international trade is almost always couched in so much technical and economic jargon that the larger dimension is lost, a context without which it is impossible to understand the technicalities and practices in the realm of international trade.

## **Part II: The International Trading System -- A Normative Discourse**

Trade is not an end in itself. At the normative level trade is usually presented as a means to some higher values or goals. In modern discourse these values or goals are captured in one word – development.

### **A. Trade As Means To Human Development**

Of course, development as a goal defies definition. In our own times, development is conjugated with the adjective “sustainable”, expressing generally the interest and concerns of those who seek to challenge mindless growth that destroys the environment and human habitat thus depriving future generations of their fair share of “global commons”. This opens up a whole range of issues that have engaged theoreticians and environmental activists for now more than a decade (since and before the Rio Conference in 1992).

Another much quoted definition is that given by the Nobel Laureate, A.K.Sen. He defines it as follows:

*Development can be seen ... as a process of expanding the real freedoms people enjoy. Focusing on human freedoms contrasts with the narrower views of development, such as identifying development with the growth of gross national product, or with the rise in personal incomes, or with*

*industrialization, or with technological advance or with social modernization.*<sup>15</sup>

Sen goes on to elaborate:

*Freedoms are not only the primary ends of development; they are also among its principal means. In addition to acknowledging, foundationally, the evaluative importance of freedom, we also have to understand the remarkable empirical connection that links freedoms of different kinds with one another. Political freedoms (in the form of free speech and elections), help promote economic security. Social opportunities (in the form of education and health facilities) facilitate economic participation. Economic facilities (in the form of opportunities for participation in trade and production) can help to generate personal abundance as well as public resources for social facilities. Freedoms of different kinds can strengthen one another.*<sup>16</sup>

Definitions are useful, but they have their limitations and traps. Sen's definition begs the question: what is freedom? Sen's own understanding of it falls within the dominant Western liberal-humanitarian paradigm that goes back, genealogically speaking, to the English philosophers such as John Locke, J.S. Mill and Jeremy Bentham, and political economists like Adam Smith and Thomas Ricardo. Of course much has happened since the days of Locke and Ricardo, and, having seen the inequalities and poverty of our times, Sen does not place as much emphasis on market forces as his English precursors did. And so he writes:

*It is characteristic of freedom that it has diverse aspects that relate to a variety of activities and institutions. It cannot yield a view of development that translates readily into some simple 'formula' of accumulation of capital, or opening up of markets, of having efficient economic planning (though each of these particular features fits into the broader picture). The organising principle that places all the different bits and pieces into an integrated whole is the overarching concern with the process of enhancing individual freedoms and social commitment to help bring that about.*<sup>17</sup>

## **B. The Problem with the Normative Approach Abstracted From Reality**

The problem with this approach -- the essentialist approach (i.e. defining the essence of a phenomenon) -- is that it is abstract, and it is alienated from both history and the extant economic and power reality on the ground. Of course, one would have no problem agreeing with Sen that development cannot be translated into a simple formula of "accumulation of capital, or opening up of markets, of having efficient economic planning". But the fact of the matter is that those are exactly the kinds of things (accumulation of capital, etc.) that are taking place in reality on the ground. Adding "individual freedoms and social commitment" does not take us far. It is a kind of addition -- to take a serious, not frivolous, view of the matter -- that President Bush makes in the case of Iraq and Iran and North Korea. . Definitions are one thing, power politics and the demands of the accumulation of capital another. One cannot wish the latter realities away simply because they do not fit into ideational definitions. On the contrary, definitions enable linguistic tricks that make it appear as if actions conform to them.

In some ways the debate with philosophers like A. K. Sen is like the debate with human rights activists. Human rights are a fine thing in principle, but the differentiation of humanity into lower and higher species, some enjoying more rights than others, is another matter. Discussion on the normative plane of principles is important, but when the practice is at variance with the principles it is necessary to look at reality in the face, and to ask the question: why is it that humanity is configured into hierarchies of people where some enjoy more human rights than others? From the normative or ethical plane we need to shift our comprehension to the level of society and political economy. Why do things happen the way they do?

What *is* and what *should be* is an old debate. As with human rights theorists, so with development theorists. It is fine to define development as you wish, but when “development” over the last fifty years has produced increasing polarity between the rich and the poor, between the North and the South, and has increased the numbers of the poor from millions to billions (as the world’s population has expanded), then it is necessary to look at the reality a little more closely rather than get distracted by ideational definitions of development.

### **C. Parallel Trajectories of the Evolution of Humanitarian Law and Trade Law**

Humanitarian law and trade law have been moving in almost parallel terrains, indeed, to be even more correct, in almost opposite trajectories. The gap between them is widening, not narrowing. And this is so because the humanitarian law has developed largely in response to the challenges of power, and the need to control the exercise of authoritarian or arbitrary power at the national level, whereas trade law has developed largely in response to the demands of accumulation of capital at the global scale. Thus, the humanitarian law has gradually evolved into the Universal Declaration of Human Rights and a score of other legal instruments enshrining the basic principles of humanity. Trade law, by contrast, has gradually evolved into an iniquitous and highly discriminatory trade regime that is now being forced upon the countries of the South by the World Trade Organisation (WTO).

Earlier it was argued that arguments made on behalf of human rights are either ignored or twisted to serve “the spirit of the times.” Thus, in the time of Don Bartolome Las Casas, pleas made on behalf of human rights were ignored, and the spirit of the times upheld that Indians were pagan sub-humans who had no right to rights. In our own time, human rights are used (abused) by the global imperium to impose its will, for example, on the people of Iraq to service its own ends of accumulation of power and control over global resources. Nonetheless, we also observed that despite obvious discrepancy between the principles of human rights and the practice on the ground, it is necessary to endorse, to affirm, the universality of human rights. It is the only measure we have for questioning derogation of state and imperial behaviour from principles of humanity. And it is the only reed the poor and the vulnerable have from being otherwise totally drowned. We thus saw, as one piece of evidence of this, that while the imperial power robbed the Iraqi prisoners of their humanity, a vigilant caring world not only restored their humanity but also rebuked the Empire.

In the domain of international trade, on the other hand, power rules almost unhindered, almost unchallenged, embellished by the ideology of the so-called freedom of the “market forces”. Thus (as we shall see later) when there is a challenge to trade practices, it comes not from within the trade law but from the domain of human rights and humanitarian law. In other words, the humanitarian and trade laws are two different species of “laws”. The humanitarian law, despite weaknesses, draws inspiration from certain human principles; trade law on the other hand is inherently iniquitous and draws from mercantilist practice, as the following examples will illustrate.

#### **D. The Question Of Fairness In International Trade Discourse**

The concept of fairness has strong normative resonance. These days, a number of civil society organisations use the concept to draw attention to the manner in which free market forces have produced unacceptable, unfair, consequences for the people of the South. For example a 2002 study by the British charity, Oxfam<sup>18</sup> (with a foreword by A.K. Sen, honorary President of Oxfam) concretely showed how double standards employed by the West in its trading relations with the South has increased poverty in the South. Following that report Oxfam started its so-called “Fair Trade Campaign.”

But this use of the concept of fairness by NGOs is a relatively recent development, and it has nothing to do with trade law as it has evolved and enforced. Historically, “fairness” in trade law owes itself almost entirely to the practice of the United States, and it has to do principally with the concepts of “fair competition” and “levelling the playing field”. The theory that informs fairness in international trade is the free market theory, which argues that under conditions of free competition the most efficient producer prevails, and the national and world’s resources are most optimally allocated. Unfair trade then is that which hinders the free flow of goods, services and capital. The logic of this argument, of course, is that trade (and movement of capital) must be fully liberalised in the interest of “fairness.”

In its trade practice, the US distinguishes between offensive and defensive kinds of unfairness claims. Defensive unfairness claims arise when foreigners have “unfair” trade barriers against US exports, and offensive unfairness claims arise when foreigners “dump” their products into the US market, which are then subject to anti-dumping and other countervailing measures.

Of course, like all such concepts, “fairness” under US law and practice is defined so broadly, and opportunistically, that it has no real meaning, or possibility of application, outside of US trade theory and practice. In the early years after its industrialisation, but especially after the Second World War, the US (like England in the 19<sup>th</sup> century) used fair trade concept to pry open foreign markets to US manufactures. In late 1960s and 70s, however, when Japan became globally competitive, and Japanese imports into US began to hurt local industry, the US government charged Japan of practising “unfair” trade. The Tokyo Round of trade negotiations resulted in rewriting, under pressure from US industry, of the AD/CVD laws.

The classic case of the abuse of fairness/unfairness concept in US trade practice relates to the steel industry. For nearly three decades following the Second World War, the US steel dominated the market, and the US refused to accept the argument that the size of its companies gave it an undue advantage over other competitors. Then, in the 1970s and 80s, when the Japanese companies grew in size, the US claimed that the Japanese Keiretsu were too large, and thus size gave the Japanese companies an “unfair” advantage in steel trade. Later the argument on “unfair trade” became more sophisticated. First it was that the Japanese steel had advantage because of higher fixed costs; later it was argued that Japanese state “unfairly” intervened in the financial markets and provided cheap credits to its large corporations; and so on. As Robert Hudec says, fairness concept under US law is so broad that “being foreign itself seems unfair.”<sup>19</sup>

In more recent times, the Bush administration slapped a tariff of Xxx % on steel imports for three years on the grounds that they caused “injury” ( a technical term) to local steel industry. The EU whereupon imposed its own tariffs, and Russia countered by imposing an import ban on chicken legs from the US. The EU further argued that the US had failed to show that imports were the primary cause of damage to its steel industry. The US steel manufacturing had simply become inefficient and uncompetitive in the global market. Backed by Brazil, Japan and Korea the EU sought remedy from the disputes settlement body of the WTO, but the judicial machinery of the WTO grinds slowly, and a final ruling could take as long as two years. The WTO says that when a country takes a safeguard action (as the US did on steel), it must normally offset that measure by lowering tariffs on other products or allowing other countries to raise their tariffs. The EU asked for more than \$2bn in compensation, saying that if the US refused, it would be entitled to retaliate within three months after the US applied the tariffs. The US claimed that only a WTO dispute panel could resolve these competing interpretations, and that the EU therefore had no right to retaliate immediately. And so on and so forth.<sup>20</sup>

The steel case (and there are hundreds of such cases) illustrates the absurdity of the application of the concept of “fairness” in international trade. Trade theory and practice have nothing to do with the concept of fairness as ordinary people understand the term. It has to do with the defending one’s territory and market against competition from foreign countries, domestic job protection, and now, under the WTO, legalistic argumentation, procrastination and retaliation – in short trade wars.

### **E. Dumping and Countervailing Measures in International Trade Law**

Dumping is another concept in international trade law that raises hackles among those who believe in “fair” trade. Dumping, by definition, by its very sound, sounds “unfair”. It is such a nasty sounding word. And, indeed, at one time or another most nations have complained against the injury to their local industry as a result of dumping of foreign goods in their markets. Jagdish Bhagwati says that trade law accommodates two ideas on “fair trade” -- one is countervailing duties (CVDs) and the other is anti-dumping.<sup>21</sup>

And yet it is not as simple a matter as it appears on first sight. Technically, dumping takes place when you export into my market goods at prices lower than your cost of production. But even this latter concept is contested. The very concept of “cost of

production” in international trade is a minefield of definitions; there is interminable debate on what costs are included or excluded from the definition. For example, how does one build support given by the state in the form of infrastructural facilities -- such as roads, telecommunications, electricity and other “externalities” -- into the cost?

Furthermore, there are really no objective criteria or rules by which anti-dumping measures might be instituted in trade practice. These measures are used in all kinds of circumstances. As the above cited case on US practice on steel shows, if imports from outside hurts local industry, even if the local industry has ceased to be competitive by all rules of international competition, then a charge of dumping is levelled against the foreign exporter. Anti-dumping or countervailing measures are demanded by industry to protect against foreign competition. The odd thing in US practice is that “unfair advantage” due to dumping never has to be defined or demonstrated; legal remedy under anti-dumping is granted once "injury" is proved by local industry. There is no objective way of measuring the cost of dumping.

In more recent times, furthermore, anti-dumping measures have simply become a means used by the industrialised countries against imports from the developing countries. For example, cheap labour gives the developing countries a cost advantage over the industrialised countries (just as technology gives the industrialised countries advantage over the developing countries). However, although there are no rules against “cheap labour” in trade law, this becomes an argument in the hands of the rich countries (used, more often by the trade unionists in the North than by their bosses) charging the developing countries of “unfair” advantage. Their exports thus become cases of “social dumping.”

It is for this reason that the ICFTU, acting largely on behalf of the trade unions in the rich countries, would want “labour standards” to be put on the agenda of the World Trade Organisation. One attractive (or rather seductive) feature of the WTO is that its sanctions machinery can be invoked in cases of injury. And so if the issue of “cheap labour” can be put on the agenda of the WTO, the workers in the North can take their brothers and sisters in the South (through their respective governments) to the WTO panel of dispute settlement on grounds of “social dumping”, and thus protect their jobs against competition from their proletarian fraternity of the South.

## **F. Subsidies as a Case of Unfair Trade Advantage**

Then there is the whole vexed question of subsidies in international trade -- yet another minefield of definitions and unfair trade practices. Although subsidy in trade discourse has acquired a pejorative connotation, actually there is nothing wrong in governments using subsidies as a social policy (for example, to enable the poor access health facilities), or to buy time for local industry to acquire strength to withstand competition from imports (the infant industry argument).

Subsidy, however, has acquired such a bad name mainly because it has been used (abused) as a weapon by the rich countries to protect their industries and jobs against competition from the “cheap” products of the South. Of course, the best known example is that of the massive subsidies (running into billions of dollars every year)

that rich countries (especially the EU, the USA and Japan) give to their agriculture. It is an issue that has marred trade negotiations under the WTO (agriculture was not part of the GATT regime previously) ever since the WTO was created.

Under GATT, however, pressure to define subsidy started when the US decided in the 1970s to apply CVDs – Countervailing Duties. The question was: how do you treat infrastructure support (roads, rails, energy, etc.) provided by the governments to their industry? Do they constitute a subsidy to industry? The balance of opinion of trade theorists was that infrastructure should be excluded from the definition of subsidy. The first definition of subsidy in international trade law came with the Uruguay Round Agreements -- the Subsidies code. The full text is full of technicalities, but, essentially, the code limits the concept of subsidy to "financial contribution by a Government."

But, as usually happens in such cases, definitions open up a Pandora's box of worms. For what constitutes "financial contribution"? Definitions get elastic as lawyers try to squeeze as much benefit out of them as their trade negotiators demand in situations where vested (so-called special) interest groups lobby their governments for action and protection.

Once again, as is usually the case in international trade practice, it is the poor countries of the South that are the most hurt. First, they usually do not have the financial (budgetary) strength to provide what are called allowable subsidies. Thus, for example, under the Agreement on Agriculture in the WTO, countries are allowed subsidies under the so-called "blue and green boxes" to agriculture (there is no need to go into technicalities here). However, these are subsidies that only the rich countries have the capacity to provide. The countries of the South (especially, the Least Developed Countries) face serious impediments to provide subsidies to their agriculture, including not only budgetary constraints but also prohibitions against subsidies imposed on them under the IMF's Structural Adjustment Programmes. Secondly, when issues of subsidies become matters of dispute under the WTO, there is hardly any country in the South (barring big ones like India and Brazil) that can afford the cost of litigation and lawyers' fees -- in spite of the creation (recently) of a mechanism within the WTO to help them with free or subsidised legal counselling.

The net effect of all this is that WTO-legalised subsidies constitute a major case of unfair trade advantage that the North has over the South, except that it is not understood to be "unfair" because it is allowed under the WTO trade regime. The interesting thing is that in return for the removal or reduction of these subsidies, the rich countries have been able to extract further concessions from the poor countries. Under trade negotiations nothing is given for nothing -- everything has a cost. The agricultural sector (as observed earlier) was excluded under the GATT, and was under the WTO regime principally under pressure from the so-called Cairns group of agriculture exporting countries (led by Australia). In return for this "concession", not only the Cairns countries but the entire South had to pay the price of including the TRIPS (Trade-Related Intellectual Property rights) as part of the WTO regime. TRIPS was brought in by the US under pressure from its own transnational corporations – especially those in the pharmaceutical industry. The South had hoped that in return for accepting (under pressure) TRIPS within the WTO, they would get

concessions in the textile and agriculture sectors, but they have waited for now ten years in vain.

Every time the South asks for the removal of unfair trade advantages that the rich countries of the North enjoy under the URAs (an agreement that was negotiated almost entirely by the North), the South has to make further concessions. Thus, for example, during the Doha Round of negotiations of the WTO in 2001, the EU agreed to begin to consider reducing subsidies to its agriculture over a non-specified period; in return it was able to secure a concession from the poor countries to include the so-called Singapore four issues of Competition Policy, Investment Policy, Government Procurement and Trade Facilitation (once again there is no need to get into the technicalities) on the agenda of the WTO. This is the issue that (with agriculture) became the stumbling block to the successful conclusion of the fifth WTO conference in Cancun in September 2003.

## **G The Debate over Standards**

The standards debate has many dimensions. If one is not careful to know the differences between these, one could easily fall into a trap.

Standards, like fairness (but unlike dumping and subsidies), have a positive resonance. People instinctively favour high to low standards, excellence to mediocrity. There are standards in health, in education, in the environment movement, in the labour movement, in social practice, in governance, and so on. But once again, like the concept of fairness, standards denote one thing in ordinary parlance and quite another in trade theory and practice.

The issue of labour standards has been partially discussed above. It has been one of the major planks of the ICFTU to introduce labour standards in the WTO. Its arguments are well-known. Basic human rights, the ICFTU argues, includes the “core labour standards” and these must be respected by all international organisations including the WTO. Instances of violations of core labour standards, including forced labour and slavery continue to survive, discrimination at work places is rampant, and child labour is on the increase. The WTO already has responsibility to enforce intellectual property rights. Why should it be denied responsibility for the protection of physical labour if it is already involved in protecting intellectual labour? The adherence to the core labour standards would not eliminate trade advantage; on the contrary, the growth of trade and consumer markets would stimulate domestic and foreign investment, and thus employment. Improvement in observance of workers' rights acts as incentive to raise productivity through investment. And finally, the ILO, which is responsible for labour standards, is an inadequate organisation; it sets standards, but it has no mechanism for enforcement, or if such exist, it does not work efficiently. The WTO has teeth, and it can enforce labour standards through its dispute settlement system.

On the face of it the argument looks persuasive, especially when it is couched in the language of human rights. But there are many traps in the argument that one should be aware about. Leave aside the argument about TRIPS -- how it (unfairly) got into the WTO as a result of pressure from the US multinationals, and its effect now of

monopolising technology in the hands of the TNCs, and acting as a barrier against the transfer of technology to the South. Leave aside also the argument that the observance of labour standards would bring foreign investment to the South -- there is no such evidence; on the contrary the evidence shows the opposite, namely, that foreign investment comes to take advantage of cheap labour in the South.

The principal argument against bringing labour standards into the WTO is that the linking of practically any issue with trade within the WTO framework (whether it is labour, or the environment, or social standards, or issues of governance) necessarily subordinates these issues to the demands of trade. Why? Because that is the nature of the beast -- the WTO. Once issues of this kind are subjected to the priorities of trade, then those that have economic and financial muscle and market power (the big players in the WTO) use their power to turn all these “standards packages” to their advantage and at the cost of the countries of the South. The logic of the market is such that putting labour standards into WTO would necessarily make these a means of protectionism that industrialised countries would use against the developing countries. This has been the experience with linking environment with trade, for example.

Linking labour standards to trade would also make labour conditions subservient to considerations of trade and not serve the interest of labour (certainly not labour in the South), as the ICFTU imagines or argues. Furthermore, there is also a misunderstanding about the nature of the disputes settlement mechanism of the WTO. Experience shows that it is mostly used by the developed countries, partly because they have many more cases to bring to the WTO panels. Also, the rich countries can afford the exorbitant fees of the lawyers to keep them for years fighting legal battles, when the poor countries of the South cannot do so.

Therefore, what appears from a human rights perspective to be a fair demand that trade must be subjected to the core labour standards turns out, in the WTO or broadly in the international trade context, to be a misplaced judgement, based on a misunderstanding of what trade and the WTO are all about.

It is important to introduce a note here to the effect that this is not a purely North/South issue. Within the South, too, there are countries that would want to bring labour standards within the purview of the WTO for their own reasons. For example, South Africa, though a relatively small economy compared to the countries of the West, is a giant in southern Africa. It has high-labour cost industry and agriculture, and faces the same kind of “cheap labour” disadvantage in relation to countries in its north (such as Zimbabwe, Zambia and Mozambique) that, in the global context, the North faces in relations generally to the South. One way to keep out “cheap labour” products of its neighbours out-competing its own products in its domestic market is to insist that the countries in its north observe certain labour standards that, South Africa hopes, would raise the cost of labour in those countries. This way it can not only protect its domestic market from outside competition, but also protect its employment.

The irony of the concrete case of South Africa, one might add however, is that it is not countries in the SADC region that creates problems for it, but rather its premature trade liberalisation at the global level that is creating a threat to its industries and employment (for example, from beef and cereals and sugar-based imports from Europe). Within the regional framework, South Africa then uses regional trade

agreements (including SACU and SADC) to export its goods and services into the neighbouring countries in order to compensate for some of the losses it suffers from premature liberalisation at the global level.

One more rider needs to be added before this section is closed. It is to say that the above is not an argument against standards – environmental, labour, social, governance, corruption, or whatever. Standards are important. For example, within the environmental sphere the movement of civil society and NGOs concerned with the protection of the environment have effectively used environmental standards and human rights issues to fight against logging, mining, oil exploration, construction of big dams, and so on. These are important battles. All that is argued here is that if standards arguments are introduced within the trade context, especially in the WTO framework, they will, for sure, be used by the North against the South in ways in which the South will have neither the laws nor the disputes settlement mechanism of the WTO to protect their interests.

Standards is first weapon of the strong against the weak in the battle to capture markets, and it is the last refuge again also of the strong against the weak for protection of their market from “cheap” labour and low-environment products of the South. Within the trade context the standards argument is a trap one must be wary about.

## **H The Cotton Issue and the Issue of Equity**

At the Fifth Ministerial Conference of the WTO in Cancun in September 2003, four West African cotton producing countries of Benin, Burkina Faso, Mali and Chad sought to get the WTO to consider the case of their cotton industry on which depend, directly or indirectly, the livelihood of the bulk of their populations. They argued that the subsidies given by cotton producer countries of the North, especially the US, cut world cotton prices by at least 25 per cent causing serious problems for their small and vulnerable economies. The US gives its farmers huge domestic support for agriculture. It was raised to a record \$180 billion over a 10-year period under the 2002 Farm Bill, including \$3 billion for cotton farmers.

Although the four countries took the initiative to bring the case of cotton, it is an issue that affects many other countries in Africa and the third world. For example, at its peak, the cotton industry was Tanzania's largest employer, with 14 textile and spinning mills, employing nearly 35,000 people. As a direct result of the impact of trade liberalisation, most of the factories have closed down, and today its contribution to the national economy is insignificant.

A study conducted by the International Cotton Advisory Committee (ICAC) in 2002 has shown that one of the major crops adversely affected by agricultural subsidies US and Europe was cotton in Africa, where farmers lost about \$250 million annually. The study, titled "Production and trade Policies Affecting the Cotton Industry", says that the losses incurred by Africa's cotton sector were directly related to the subsidies by the West.

The Cancun conference failed to take off the ground for other reasons, but not before the four West African states had made their point. It was widely recognised that in the interest of equity and fairness, the rich countries, especially the US (for whom cotton is a tiny issue compared to its GDP), should eliminate subsidies that were depriving the livelihood of millions of poor peasants in African countries. The matter, however, was unresolved. The US rejected the West African initiative, twisting the debate around the issue of “sectoral support” to the textile industry to Africa under the Africa Growth and Opportunities Act (AGOA).

The cotton initiative of the four West African countries has the support of the African Union, the LDC group and the ACP group. These countries met in Mauritius in July 2004 (as G90 countries -- an alliance of these small countries was forged at the Cancun conference), and one of the paragraphs in the draft resolution called for strong support for the cotton case. The meeting, however, was attended by Robert Zoellick, the United States Trade Representative. On the last day, when the resolution finally came for adoption, the chairman of the Africa group, the Minister from Rwanda, backed by the Ambassador of Uganda (two close allies of the US in the Iraq war) argued that the cotton paragraph be removed because “it won’t fly”. A compromise draft was eventually worked out, and brought to Geneva as a basis for further negotiations.

In Geneva, at the start of the General Council meeting of the WTO in July, the Africa Group put forward its proposal that included the following: that all forms of cotton export subsidies are eliminated by date of implementation of the Doha results; more than average reductions in domestic support on cotton, and complete elimination of all forms of trade distorting support on cotton by a specific year; a cotton agreement shall be implemented on an early harvest basis starting in 2005, and a date for total elimination of cotton subsidies shall be determined by the next Ministerial irrespective of progress in the rest of agriculture negotiations; technical and financial assistance to meet the needs of cotton developing-country producers; and a working group on cotton to be established.

During the week, Bob Zoellick held a marathon all-night 12-hour meeting with some of the West African countries on the cotton issue. By the end of the negotiations, the cotton issue was more or less dismissed in the so-called July package of the WTO. The four West Africa countries had been “persuaded” to give up their original demand that cotton be treated as a stand-alone issue. They “agreed” that it could be considered within the agriculture negotiations, but be treated as of “special status”. It is clear that despite claims made by the WTO officials, the US has clearly won out. In a compromise text clouded by technicalities, it was agreed that while product specific AMS support (Aggregate Measure of Support plus permitted *de minimis* plus the Blue box payments) is to be capped in aggregate and reduced in overall terms, there is no requirement for specific product cuts, including for cotton.

## **Part III Conclusions: Implications for Normative Theory, Public Policy and Citizen Action**

### **A. The Argument Summarised**

Before we draw conclusions, it would be useful to summarise the discussion so far. The paper started out as a broad narrative on human rights arguing that a distinction must be made between humanity and human rights. Though of course connected, Humanity and Human Rights are two distinct issues. The human rights discourse is based on its claim to universality. But that universality is not automatically conferred on the people who are supposed to enjoy those rights. A switch of discussion from human rights to why there is a hierarchy of human beings shifts the debate away from principles and standards to the realm of material and social reality. This does not diminish the significance of the universality of human rights -- human rights allow derogation from them to be questioned; and they are provide a thin reed, however weak, for the poor and the vulnerable to clutch on to. But the struggle for humanity – for recognition as human beings -- at the level of politics and power is a much more and difficult battle than the battle to establish the universality of human rights.

The essay offers three explanations to this insider-outsider phenomenon in human history -- casteism and racism; economic explanation; and civilizational encounters. It argues that the present divide between the North and the South has historical antecedent going back to the 16<sup>th</sup> century. The North-South divide, though it appears Manichean, is real. All three explanations of the insider-outsider phenomenon are reflected in this North-South division. It is also reflected in many aspects of contemporary international relations, including trade, which then is the subject of the second part of the essay.

Against the background of the above broad narrative, the objective of the second part was to draw upon contemporary trade theory and practice in order to show how the North/South dimension, once again, forms a fundamental aspect of international relations. This is not to say that there are no contradictions within the North or the South. These are not monolithic geographic configurations. But the civilizational (arising out of past colonial encounter), the racial/casteist, and the economic considerations continue to fissure the world. In this kind of world, then, “fairness” as a concept organising world trade is often not fully understood. Critical to this discussion is the distinction between humanitarian laws and trade laws – the first is a response to challenge to authoritarian or arbitrary rules of governance, while the second is essentially a codification of mercantile law in which the powerful extract what they can and the weak yield what they must.

The example of the manner in which the US has handled the cotton issue is a case in point. The livelihoods of millions of African peasants is treated in a cavalier fashion by the US that is bent on continuing with the subsidies for its cotton farmers. In financial terms alone (leaving aside other indirect costs), Africans lose something like \$250 million a year because of the depressant price effect of US subsidies on cotton. All talk of human rights by the North is hypocritical. The Africans (just like the Iraqis) are humans of a lesser level than the Americans or the Europeans. This is the last example in the second part of the essay, preceded by a normative discourse on

issues related to the concept of fairness, dumping and countervailing measures, subsidies, and the question of standards.

What, then, are the implications of the above analysis for normative theory, public policy, and citizen action?

## **B. Regulating Norms in the Domain of International Trade**

The goal of normative intervention is to provide a value system that can subject international trade to certain agreed humanitarian principles. Clearly, trade law itself cannot provide this normative framework. On the contrary, trade law is destructive of the human principle. It is anti-humanitarian. If the world has become polarised between the rich and the poor, and if this polarisation is continuing apace, then it must be clearly recognised that this is not an accidental outcome of some mysterious forces. No amount of diversion from a clear grasp of reality (such as the Millennium Development Goals of the United Nations, or President Bush's Millennium Development Account, or Prime Minister Blair's Africa Commission) can set aside the hard reality on the ground. These inspired (and probably well-meant) diversions cannot brush aside the fact that the present mercantile global system is inherently iniquitous and polarising. Amartya Sen (quoted above) puts into a broader context the tendency towards the accumulation of capital, or opening up of markets, or having efficient economic planning. The reality on the ground, however, is that capital accumulation and market access are the two most powerful forces that are at the root of creating a bifurcated world of the rich and the poor.

Therefore, one has to look outside of trade theory to define a normative framework that can subject the polarising and unequalising tendency of global trade. The Universal Declaration of Human Rights, with all its weaknesses and limitations, provides one of the best normative frameworks that could be used to challenge the inherently iniquitous tendencies of free market liberalising world trade. The other is a concept of fairness that resonates with a common person's understanding of it, as opposed to the trade theorists and practitioners understanding of it. Let us look at this first.

## **C. Justice as Fairness: Modifying Rawls**

The English philosopher, John Rawls, has given us certain concepts that could be a useful starting point. Coming as he does from the Western liberal tradition, Rawls' views do carry certain biases and prejudices that stem from this tradition. For example, Rawls gives priority to liberty over equality, and does not adequately address the question of inequalities in wealth and power leading to inequalities in the exercise of liberties. But notwithstanding these limitations, his concepts of the "original position" and the "differential principle" do provide an exciting and fertile ground for further thought on the normative plane.

In Rawls' imagined "original position", individuals are subject to a "veil of ignorance" so that in devising principles of justice they have practically no knowledge of the self – their sex, status, class, colour, religion, strength, intelligence or their conception of the good.<sup>22</sup> By this process, Rawls arrives at two principles of justice

and two priority rules for institutions, leading to the following very important normative principle. All social primary goods, he argues – liberty and opportunity, income and wealth, and the bases of self-respect – are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favoured.”<sup>23</sup> Though the above principles appear to savour of egalitarianism, Rawls denies this motivated his theory. What he is opposed to is institutionalised inequalities, unless these are “to the advantage of the least favoured”.

Of course, Rawls himself cannot escape from his condition. In his *The Law of Peoples* he argues that the difference principle does not apply between nations or in what he calls “hierarchical” societies.<sup>24</sup> Here is where Rawls is prisoner of his own cultural limitations. However, consistent with his liberalism, he would not brook intervention on the part of liberal states into the affairs of “hierarchical” societies however much these offend liberal sensitivities.

If Rawls’ ideas are modified in some ways, they can offer a good basis for the concept of “fairness” in international discourse. We accept that part of liberal ethics which argues that basic human rights are inherent in individuals. However, to push this to the level that denies that societies are more than the sum of individuals is methodological individualism that cannot stand either empirical or ethical test. No individual is born outside society, nor can she exist, materially or spiritually, outside of the material or social production and reproduction of life. We would thus argue that like individuals, communities and nations too have inherent rights. Implicit in Rawls’ theory of non-intervention in his *Law of Peoples* is the notion of national self-determination, but he refrains from formulating it as an explicit principle. One consequence of this is that he is unable to extend, to stretch, the principles of justice obtained in an “original position” to the community of nations.

What Rawls is unable to do because of methodological limitations, we now do. Following from him, let us imagine an “original position” comprising of nations. In this condition and under a “veil of ignorance” they seek to arrive at fundamental principles of justice. They are ignorant about their character, strength, location, religion, ethical norms, and all such attributes that would, in Rawls’ words, “tempt them to exploit social and natural circumstances to their own advantage.”

Placed thus, nations would then, I argue, agree to principles of justice as fairness along lines similar to those arrived at by individuals in Rawls’ “original position”. In other words, Rawls’ two principles and two priority rules will apply as between nations as they apply as between individuals. Each *nation* will have “an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.” Also, to quote directly from Rawls, “Social and economic inequalities are to be arranged so that they are both: (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity.” Furthermore, “justice is lexically prior to the principle of efficiency and to that of maximizing the sum of advantages; and fair opportunity is prior to the difference principle.”

His “General conception” will also apply as between nations, namely, that “All social primary goods – liberty and opportunity, income and wealth, and the bases of self-

respect – are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favoured. Is this outlandish, is it “going too far” to extend principles of justice arrived at between individuals to nations? I suggest it is not. Already, even in the real world of today, there is a generally accepted principle that the Least Developed Countries (LDCs) should be treated to an “unequal distribution” of global social goods (tariff reductions, debt remissions, technical assistance, etc.) in their favour. Similarly, at the 1992 Rio Summit on “Environment and Development” the principle of “common and differentiated responsibility” was accepted as an allocative principle. The entire global community accepted a common responsibility towards the environment. However, the developing countries were to have a lesser degree of responsibility, and were to be assisted with finance and technology to meet their obligations. Also, under GATT the principle of “Special and Differential Treatment” for the developing countries was an accepted principle until it was undermined by the Uruguay Agreements and the WTO.

#### **D. UDHR as A Codified Set of Principles to Challenge Trade Law**

Earlier it was suggested that the Universal Declaration of Human Rights provides a body of principles that could be applied to trade law and practice to show how the latter derogate from the principles of humanity, and what corrective measures might be taken to protect human rights.

One recent application of this idea was the 2002 study undertaken by the UN High Commissioner for Human Rights (UNHCHR). The Report by Commissioner Mary Robinson, 'Globalization and its impact on the full enjoyment of human rights' (E/CN.4/2002/54) is a landmark study that sets a good precedent for similar studies in the future.<sup>25</sup> The Report underscored the “*concurrent responsibility*” of WTO member states to protect and promote human rights as well as implement trade rules and that norms and standards of human rights provide a legal framework to protect social dimensions of globalization.

Referring to a recent FAO study on the effects of agricultural trade liberalization on fourteen developing countries the Report noted a.o. that the tendency to consolidation of farms, while contributing to increased productivity, has also led to displacement and marginalisation of farm labourers, created hardship for small farmers and food-insecure populations, in a situation where there are few safety nets. The FAO study, the High Commissioner noted, has also brought out the implications of trade liberalization affecting availability, accessibility or sustainability of food supplies, and the effects on local food products in smaller countries.

There are also likely to be long-term and unsustainable balance of payment problems that could negatively affect ability of states to promote the right to development. According to the FAO study, in 11 out of the 15 countries studied, the total value of food imports grew more rapidly than value of exports in 1995-1998, compared to 1990-1994. A more comprehensive WTO study too has brought out the growing negative trade balances in agricultural products in 59 of the 107 non-OECD countries. On the Agreement on Agriculture, the Report says:

*In spite of the inclusion of several S&D measures for developing countries, the AoA does not yet sufficiently take into account, the highly varying fields of development of the agricultural sectors between countries and of the people whose livelihood depends on agriculture.*

The Report advocated the application of the human rights principle of non-discrimination to trade law, especially “affirmative action for the poor.” “Under human rights law,” the Report stressed, “the principle of non-discrimination does not envisage according equal treatment to everyone in all cases.” Affirmative action is necessary in some cases to protect vulnerable people and groups. While S&D treatment under trade law is a positive step, “the High Commissioner encourages the introduction of measures that go beyond long transition times and ‘best endeavour’ commitments and calls for targeted and enforceable treatment.” The Report welcomed the Doha Ministerial Declaration’s commitment to make S&D an integral part of the rules and disciplines of the AoA, so as to be operationally effective and enable developing countries the flexibility to take into account food security and rural development objectives.

On the question of “National Treatment” the Report noted that international trade law envisages equal treatment for nationals and non-nationals, whether they are poor farmers or large agro-business or industrial firms. Comments the Report: “Treating unequals as equals is problematic for promotion and protection of human rights and could result in institutionalization of discrimination against the poor and marginalised.”

The UNHCHR made specific recommendations on agriculture and food security under the WTO, summarised below:

1. Develop a specific legal framework for social dimensions of agricultural trade liberalisation.
2. States should undertake Human Rights impact studies of agricultural trade liberalization, especially on food security.
3. The AoA makes no distinction between different types of agricultural activity. The vulnerable should be protected. The developing countries should be able to use tariffs and subsidies and the S&D provisions in AoA should protect subsistence farmers from trade-distorting effects of international trade.
4. More targeted food aid programmes, such as food-for-work programmes.
5. The AoA is unfair. There is therefore a need for a just, social and international order in the field of trade liberalization and for fair trade.
6. Acceding countries should enjoy full S&D rights.

## **E. Regulating Power in the Domain of International Trade**

Human Rights principles enshrined in the concept of justice as fairness (defined above) and the UDHR can provide a normative framework to regulate trade law and trade practice. The problem, however, is not the enactment of principles, or even an agreement on them among reasonable people, but their enforcement. And here the hubris of the imperial nations is the biggest problem. The English historian Arnold Toynbee talked about “the Mirage of Immortality” that “Universal States” savour in their dealings with smaller nations. He also analysed the consequences of “Encounters between Civilizations” identifying four specific aspects of these, namely, “Dehumanization, Zealotism, Herodianism and Evangelism”.

These are prophetic remarks. While Noam Chomsky, the untiring critic of US imperial policy, has a profound understanding of the hubris of US power, Toynbee draws a more general picture of what happens to imperial nations in their encounters with other civilisations. The US arrogance of power (no matter who is in the Presidential seat or in the Congress), and the inability (or unwillingness) of lesser nations to chain this Goliath, is a serious indictment of contemporary civilization, not made any the less serious by Toynbee’s reflection that imperial arrogance happens to be the general score of history of all civilizations.

Once again, the United Nations, with all its limitations and shortcomings, is the only institution we presently have that can bring the nations of the world to try and chain the Goliath, to try and modify the unilateralist tendencies of the US within some kind of a multilateral framework, and to subject its actions to scrutiny under norms of justice and humanity. As earlier stated, the United Nations was scandalised by stories of dehumanising treatment meted out to Iraqi prisoners. While the US robbed the prisoners of their humanity, the wider community of nations and peoples around the world condemned the US and restored and reaffirmed their humanity.

In the long run, a global adversarial power has to emerge that can challenge the might of the USA, and restore some kind of a balance of power. Whether China would be that power, or a coalition of countries in the South (for example, China, India, Brazil) is anybody’s guess.

What we do know from recent experience is that when the middle ranking third world countries get together and speak with one voice, they can make a difference. Thus, for example, at the Fifth WTO Conference of the WTO a group of 20 middle-ranking countries of the South (led by Brazil, India, China and South Africa) were able, on that occasion at least, to stop the big powers (the US and the EU) in their effort to impose an agreement on agriculture without adequate consultations with the South. Some of these “victories”, however, turn out to be temporary, when in subsequent round of negotiations (as happened in July 2004 in Geneva), there is the usual horse-trading yielding an outcome that, for all intents and purposes, endorses the position of the big powers. Usually sacrificed in such negotiations are the interests of the smaller and weaker nations of the international community, as happened, for example, on the issue of cotton in Geneva.

The only other option for the South is to gradually and systematically disengage itself from the dominant Western global system, and re-engage in it some time at a future date from a position of unity and relative strength. For the truth of the matter is that as long as the South remains a part of the present global system, embedded as it is in a structured and asymmetrical relationship with the North, it is impossible to change the relationship. The present Cotonou negotiations between the African, Caribbean and Pacific (ACP) countries and the European Union is a good testimony of this observation. The European Union not only drives the whole process, but is able to secure the agreement of the ACP countries to an almost predictable outcome that will tie the ACP as dependent satellites of the EU.

However, this is another debate, one that is increasingly drawing the attention of intellectuals and activists in the third world.

## **F. The Challenge to Civil Society and Citizen Action**

We face a complex situation. The civil society is an amorphous mass of people -- trade unions, peasant movements, the so-called non-Governmental Organisations (NGOs), and intellectuals -- that, in this day and age, are expected to perform miracles by addressing problems that range from protecting forests to getting their governments accountable to democratic principles of governance, and fighting the imperial system, all at the same time. The civil society is not only divided nationally and regionally, but also ideologically and politically.

Having made this caveat, it is necessary nonetheless to define what parts of this amorphous body of citizens can do nationally, regionally and globally, in the area of helping to regulate international trade so that it is more responsive to the concerns of the poor, and to the principles of human rights. Already, of course, there are networks of mostly NGOs that are able to get together and put up programmes of activity that range from addressing specific trade issues (such as agriculture, TRIPS, and so on), to building the capacity of their governments (mostly in the South) to better negotiate in the international trade fora, such as the WTO and Cotonou.

These civil society bodies are often organised at the international level, and do have occasional successes, as during the campaign against the Multilateral Agreement on Investments (MAI) in the late 1990s, and at the third meeting of the WTO at Seattle in 1998, and the fifth meeting at Cancun in 2003. But these are rare moments, and these "successes" are quickly reversed by the big powers. Thus, the "success" of Seattle was reversed at Doha, and that at Cancun was partially reversed in Geneva in July 2004.

For all that, and given that most of them work under serious human and financial constraints, their efforts must not be slighted. Their occasional successes might be, and have been, reversed. Nonetheless, they have played an important role in putting to question the ways of the big powers, and of the WTO Secretariat, that cynically manipulate the trading system to the selfish benefit of the powerful, and at the cost of the weaker members of the society of nations.

Power can only be bridled by counter power. The US power (located as it is primarily in the corporate world) can only be checked either by the power of the people in the

country itself (by a thoroughgoing internal democratic revolution), or by a global power (like China, or a coalition of forces of the South and the North) that might come up on the future horizon. This is a long haul. In the meantime, the “global civil society” (as defined above) can do the following five things in the area of international trade:

One, they can continue to draw the attention of the world’s people to the inequities of the present system of globalisation and trade liberalisation, and particularly the fact that contemporary trade law and practice violate basic principles of humanitarian law.

Two, they can fight against bigotry, narrow mindedness, racism, sexism and all expressions of injustice and unfairness in the present global system, and affirm the principle of oneness of humanity.

Three, they can support institutions such as the United Nations the Food and Agricultural Organisation, the International Labour Organisation, the United Nations Development Programme, and the United Nations Commissioner on Human Rights in advancing the cause of human rights, justice and fairness in the global trading system.

Four, they can put to question the reigning orthodoxy embodied in the neo-liberal economic theory, and its implementation by the IMF, the World Bank and the governments of the South that are forced to accept them because they are too weak to do otherwise.

Finally, in opposition to the currently dominant neo-liberal development models, they can provide concrete alternative paradigms that are both visionary and yet practical.

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<sup>1</sup> Zimbabwe’s example is given only because I live there. The condition of farm workers and rural peasants all over the third world is pretty much the same as in Zimbabwe.

<sup>2</sup> Huntington, Samuel, *The Clash of Civilizations*,

<sup>3</sup> Toynbee, Arnold, *A Study of History*,

<sup>4</sup> Nabudere, Dani W., *Globalization, the African Post-colonial state, Post-traditionalism and the New World Order*.

<sup>5</sup> See Tuck, Jim, *Bartolome De Las Casas: Father Of Liberation Theology (1474 - 1566)*; and Keen, Benjamin, *The Legacy of Bartolomé de Las Casas*

<sup>6</sup> UNDP, *Human Development Report, 1996*, New York: Oxford University Press, 1996

<sup>7</sup> Said, Edward, *Orientalism*

<sup>8</sup> *Ibid*, p.

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<sup>9</sup> *Ibid*, p.

<sup>10</sup> *Financial Times* June 9, 2004

<sup>11</sup> *Ibid*

<sup>12</sup> *Ibid*

<sup>13</sup> Mamdani, Mahmood, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism*. See also his “When does a settler become a Native? Colonial roots of citizenship in Equatorial and South Africa.”

<sup>14</sup> Mamdani, Mahmood, *Good Muslim, Bad Muslim: America, The Cold War, And The Roots Of Terror*

<sup>15</sup> Sen, Amartya, *Development as Freedom*, 1999, p.3

<sup>16</sup> *Ibid*, p. 10

<sup>17</sup> *Ibid*, p. 297

<sup>18</sup> Oxfam, *Rigged Rules And Double Standards: Trade, Globalisation, And The Fight Against Poverty*, 2002

<sup>19</sup> Hudec, Robert E., “Mirror, Mirror on the wall: The concept of fairness in US Foreign Trade Policy”, in his *Essays on the Nature of International Trade Law*, Cameron, 2000.

<sup>20</sup> *Financial Times*, London, March 14, 2002

<sup>21</sup> Bhagwati, Jagdish, *The World Trading System at Risk*, Princeton, 1991

<sup>22</sup> Rawls, John. 1972. *A Theory of Justice*. Oxford: Oxford University Press. I would contend that the device of “original position” to work out principles of justice in the abstract is preferable to other alternative ways of doing this such as game theories and the prisoners’ dilemma matrix. Game theories and PD matrices are devoid of normative content, and can at best predict “rational” behaviour, rationality being defined in purely selfish or functional terms.

<sup>23</sup> *Ibid*, p. 302-303

<sup>24</sup> Rawls, John. 1993. “The Law of Peoples” from *On Human Rights*, Shute & Hurley (eds.), Basic Books Inc.

<sup>25</sup> UN High Commissioner for Human Rights (UNHCHR), *Globalization and its Impact On The Full Enjoyment Of Human Rights* (E/CN.4/2002/54)