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**SOCIO-ECONOMIC RIGHTS
UNACHIEVABLE FOR THIRD
WORLD PEOPLES IN THE
GLOBAL ECONOMIC ORDER**

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ABSTRACT *ECONOMIC RIGHTS UNREALISABLE IN THIRD WORLD*

Under the International Covenant on Economic, Social and Cultural Rights (ICESCR), states are obliged to respect, protect and fulfil socio-economic rights. In the globalised world economy that has developed since the ICESCR was drafted, many states are unable to do so. The state is in decline and transnational corporations have become powerful social and economic actors. In the Third World even the most basic of rights, the right to be free from hunger, can not be advanced. Transnational control of agricultural land for export, coupled with growing unemployment, displacement and rising prices has meant that food is inaccessible for many. Indebted, shrunken Third World states have neither the means to provide for the right or an real ability to regulate to protect their people against violations by transnational corporate actors. The capitalist system and the corporations and consumers who benefit are implicated, but the lack of real options for resolution within the present economic framework, mean that socio-economic rights are rendered unachievable in many regions of the world.

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The text of this paper (excluding contents page, footnotes, bibliography and annexures) comprises approximately 13,295 words.

¹ International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted by UNGA resolution 2200(XII) 16 December 1966, entering into force 3 January 1976.

² Universal Declaration of Human Rights (UDHR) adopted by the United Nations General Assembly (UNGA) on 10 December 1948.

³ ICESCR above at 24.

⁴ ICESCR above at 11.2.

1 SOCIO-ECONOMIC RIGHTS UNREALISABLE IN THIRD WORLD

Pursuant to the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹ states are obliged to respect, protect and progressively facilitate and provide for the realisation of socio-economic rights. Under article 28 of the Universal Declaration of Human Rights (UDHR)² "everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized".³ It is clearly implicit in article 28 that the practical value and possible achievement of human rights obligations is limited by social, political and economic context.

Since the drafting of the ICESCR, international trade and investment has opened up markedly. The decline of the state in the social and economic sphere has been matched by the ascent to power of global corporate and financial interests. This has profound implications for the realisation of socio-economic rights, especially in the Third World. This essay examines the achievability of socio-economic rights in the new world order by focusing on the right to be free from hunger⁴, the most basic form of the most basic right, to food. If this right is rendered unrealisable, it is arguable that socio-economic rights in general have become unachievable in the poorer regions of the world.

Hunger and poverty is widespread in the Third World, yet transnational corporations now control whole industries and production spheres, including agriculture. By creating economic conditions which have resulted in the handing over of vast areas of land to transnational corporate interests, states have failed to respect or protect their citizens basic rights, including access to food an essential requirement for freedom from hunger. People have been displaced from their lands and jobs, rendering them less able or unable to grow or purchase their own food. Domestic access to food has been severely limited, because transnational food production is geared towards the export market, and domestic prices have increased. Third World states are unable to facilitate or directly provide food.

¹ International Covenant on Economic, Social and Cultural Rights [ICESCR] adopted by UNGA resolution 2200(XXI) 16 December 1966, entering into force 3 January 1976.

² Universal Declaration of Human Rights [UDHR] adopted by the United Nations General Assembly [UNGA] on 10 December 1948.

³ UDHR above art 28.

⁴ ICESCR above art 11.2.

The expanding reach of private corporations has also led to the transnationalisation of rights violations by corporate interests. But Third World states hold massive development debts, denying them control over social and economic policy, including the ability to impose strict regulations on corporate activity to protect their citizens from transnationals violations. The corporations themselves cannot be held accountable under international law.

First World states and powerful capitalist interests, determined to protect their high standards of living and massive profits have a vested interest in maintaining this economic order. Many states are arguably unable even to safeguard basic socio-economic rights in the present social and international order. There are no realistic options for the resolution of this dilemma, rendering the advancement of socio-economic rights in the poorest nations far from achievable.

II HUMAN RIGHTS AND SOCIO-ECONOMIC OBLIGATIONS

This part introduces human rights as standards and guarantees of state action, and their dependence on political and economic context for realisation. States are charged with the responsibility at international law to safeguard rights, presupposing an international order where states are able to protect and fulfil rights. Socio-economic rights guarantee the provision of a social or economic good by the state and under the ICESCR, States Parties must take steps towards their progressive achievement, to the maximum of available resources. Basic rights guarantee the fulfilment of basic needs, which are necessary for the enjoyment of all rights. Safeguarding basic rights is therefore a minimum state obligation.

This section concludes by detailing the extent of state obligations for the socio-economic and most basic human right, the right to food, in its most basic form, freedom from hunger. State duties of respect, protection, facilitation and provision are unqualified with respect to the right to food, assuming individuals have tried to meet their food needs. There can be no limitations, consistent with socio-economic rights and the general welfare, on the inalienable right to be free from hunger. Nor is justified to deny access to food or the means to obtain it, or to fail to protect access from removal by others.

A Human Rights

Human rights emerged out of the natural rights discourse and liberal philosophy of the seventeenth, eighteenth and nineteenth centuries.⁵ As crystallised in the UDHR and two rights Covenants, the ICESCR and International Covenant on Civil and Political Rights (ICCPR), human rights are grounded in a conception of the individual as inherently valuable and autonomous in their own right. Human rights have been described as “paramount moral rights”⁶, spelt out by States, as limits on their actions towards individuals.⁷ As Donnelly asserts, human rights “provide a moral standard of national political legitimacy... emerging as an *international* political standard of legitimacy.”⁸ Shue states that “a right provides the rational basis for a justified demand for actual enjoyment” of the thing we have a right to.⁹ Rights can be described as “socially guarantees against standard threats” that oblige duty-holders to create or preserve institutions to avoid deprivation, protect against deprivation by others, and fulfil the substance of the right of persons deprived.¹⁰

Zalaquette points out that “normative formulations [of which rights are an example] are the result of long processes of elaboration and struggle.”¹¹ Calling a norm a ‘right’ is a step towards giving it operative form as an enforceable entitlement. This does not mean that it is realised automatically, but that there is a means of demanding and ensuring that the norm is put into practice.¹² How the norm is actualised and whether it can be actualised depends on political and economic structures and the policies and values that are promoted within those structures.¹³ Thus, rights are also an economic and political

⁵ G Haragopal and K Balagopal “Civil Liberties Movement and the State in India” in Manoranjan Mohanty and Partha Nath Mukherji (eds) *People's Rights: Social Movements and the State in the Third World* (Sage Publications, New Delhi, 1998) 353, 353.

⁶ Jack Donnelly *International Human Rights* (2 ed, Westview Press, Colorado, 1998) 19.

⁷ A positivist view of human rights, assumes that they can be taken away as well as created. A naturalist would maintain that human rights originate in human nature and that the State simply ‘names’ or acknowledges that concept: Upendra Baxi “The State and Human Rights Movements in India” in Manoranjan Mohanty and Partha Nath Mukherji (eds) *People's Rights: Social Movements and the State in the Third World* (Sage Publications, New Delhi, 1998) 335, 337-338.

⁸ Donnelly above 20 (emphasis added).

⁹ Henry Shue *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy* (Princeton University Press, New Jersey, 1980) 15.

¹⁰ Shue above 17.

¹¹ Jose Zalaquette “The Relationship between Development and Human Rights” in Asbjorn Eide et al (eds) *Food As a Human Right* (United Nations University, Tokyo, 1984) 141, 150.

¹² Zalaquette above 150-151.

¹³ Zalaquette above 150-151.

shield. Human rights are needed and *asserted* "principally when they are not effectively guaranteed by national law and practice."¹⁴ Shue says that rights are "a restraint upon economic and political forces that would otherwise be too strong to be resisted."¹⁵

In legal theory operative rights always correlate with obligations.¹⁶ If there is no obligation, the right is inoperative and unenforceable at a normative level - it is at most a 'moral' right.¹⁷ In the middle of the twentieth century, the state was seen as the primary barrier to the realisation of individual rights.¹⁸ As the sole subjects of international law, states drafted and signed human rights documents obliging them to safeguard individual 'rights.' Both states and individuals may be subject to positive and negative obligations under these documents, but States Parties are primarily responsible for the provision of a right, and only states can be held responsible for violations.¹⁹ This conception of responsibility presupposes a world order where states are able to carry out their promises to protect and fulfil rights.

B Basic Socio-economic Rights

1 Socio-economic Rights and the ICESCR

Social and economic rights assert a right to a certain social good and a right to State assistance and non-interference in the achievement of that good. Robertson points out that the "thinking underlying the pursuit of economic and social rights is based on a view of society as an organisation designed and directed for certain purposes."²⁰ This presupposes the existence of a 'director'. The *achievement* of socio-economic rights is "inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, orientated

¹⁴ Jack Donnelly *International Human Rights* (2 ed, Westview Press, Colorado, 1998) 19.

¹⁵ Henry Shue *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy* (Princeton University Press, New Jersey, 1980) 18.

¹⁶ Zalaquette above 147.

¹⁷ Zalaquette above 147.

¹⁸ This very Western liberalistic conception of society is inimical to a notion of 'state' or more broadly 'community', as *enabling* the expression of a just social order.

¹⁹ Zalaquette above 148.

²⁰ Bernard Robertson "Implementing Economic, Social and Cultural Rights" Unpublished paper given at the International Research Public Law Conference, 4-5 April 2001, Wellington, 4.

to the eradication of poverty and the fulfilment of human rights for all.”²¹ It requires “a commitment to social integration, solidarity and equality” and includes “tackling the question of income distribution.”²²

The conception of rights and the content of the obligations laid out in the ICESCR, lay obligations for the fulfilment of socio-economic rights at the feet of states. Donnelly asserts that the political system underlying the United Nations (UN) rights instruments is a liberal democratic welfare state model.²³ A ‘liberal’ state exists to “create the conditions needed to realize the rights of its citizens”.²⁴ In democratic systems, the political authority of government comes from the people. In a ‘welfare’ state “economic and social rights extend well beyond the right to property”²⁵ and must at minimum require the state to safeguard and work to fulfil basic needs. In ratifying the ICESCR, States Parties are acknowledging their legal “responsibility to promote better living conditions for its people”²⁶ and to work towards the realisation of these ‘welfare’ rights.

2 State Obligations under the ICESCR

Each State Party, under article 2.1²⁷

undertakes to *take steps*, individually and through international assistance and co-operation, especially economic and technical, *to the maximum of its available resources*, with a view to *achieving progressively the full realization* of the rights recognized in the present Covenant *by all appropriate means*, including particularly the adoption of legislative measures.

Socio-economic rights do not have to be achieved immediately, rather their full realisation must be progressively achieved. The CESCR indicates that ‘progressively’

²¹ Committee on Economic, Social and Cultural Rights (CESCR) “The Right to Adequate Food” *CESCR General Comment 12* 12/5/99 E/C.12/1999/5 para 4 (emphasis added).

²² A. Eide and A. Rosas “Economic, Social and Cultural Rights: A Universal Challenge” in A. Eide, C. Krause and A. Rosas (eds) *Economic, Social and Cultural Rights* (Martinus Nijhoff Publishers, Dordrecht, Netherlands, 1995) 17.

²³ Jack Donnelly *International Human Rights* (2 ed, Westview Press, Colorado, 1998) 155.

²⁴ Donnelly above 155.

²⁵ Donnelly above 155.

²⁶ G. Haragopal and K. Balagopal “Civil Liberties Movement and the State in India” in Manoranjan Mohanty and Partha Nath Mukherji (eds) *People’s Rights: Social Movements and the State in the Third World* (Sage Publications, New Delhi, 1998) 353, 354.

²⁷ ICESCR art 2.1 (emphasis added).

“imposes an obligation to move as expeditiously as possible towards that goal.”²⁸ However states are obliged to take steps towards realisation *immediately* and to the maximum of their available resources.²⁹ Steps that can immediately be taken include the legislative removal of discrimination and the development of policies and practices directed at the achievement of the right.³⁰

The direction to take steps ‘to the maximum of available resources’ makes the advancement of economic and social rights in a country dependent on the level of resources at the hands of the State. This does not mean that rights can simply be abused, if resources are inaccessible, nationally or internationally. The Limburg Principles state that “State Parties are obligated, regardless of economic development, to ensure respect for minimum subsistence rights for all.”³¹ By the inclusion of the words ‘through international assistance and co-operation, especially economic and technical’ the drafters clearly envisaged that poorer countries would need external economic and technical assistance to advance socio-economic rights.³² If the state is unable to take steps, it must show that requests for international support were unsuccessful. If States take or omit actions that have the effect of derogating from socio-economic rights progression, they are in violation of the Covenant.³³

Oshaug et al say that the UN anticipated that human rights standards “would go through a process of normative clarification and gradual national implementation” in the law of individual states, but that, especially regarding the economic, social and cultural rights, this has not happened.³⁴ It is however clear that the only way to ensure socio-economic rights in the long term is to rebuild the self-reliance of the poor, within an economic order that supports this self-reliance. This requires a focus first and foremost on the

²⁸ CESCR “The Right to Adequate Food” *CESCR General Comment 12* 12/5/99 E/C.12/1999/5 para 14.

²⁹ Bard-Anders Andreassen, Alan Smith and Hugo Stokke “Compliance with Economic and Social Rights: Realistic Evaluations and Monitoring in the Light of Immediate Obligations” in Asbjorn Eide and Bernt Hagtvet (eds) *Human Rights in Perspective: A Global Assessment* (Basil Blackwell Ltd, Oxford, 1992) 252, 256.

³⁰ Andreassen et al above 256.

³¹ Andreassen et al above 257.

³² Andreassen et al above 257.

³³ Arne Oshaug, Wenche Berth Eide and Asbjorn Eide “Human Rights: A Normative Basis for Food and Nutrition-relevant Policies” (1994) 19(6) *Food Policy* 491, 513.

³⁴ Oshaug et al above 493.

establishment of basic rights. This is a first step in moving towards progressive realisation of all the rights in the ICESCR.³⁵

3 Basic Rights

One theory of human rights derives them from human needs. A point in history has been reached where it is agreed that morally all human beings should have access to fulfilling their basic needs. Food, water, shelter, basic health care and perhaps security³⁶ and companionship,³⁷ are all basic needs. Donnelly posits that pursuant to the theory that derives human rights from human needs, *basic* human rights include the right to life, food and protection against cruel or inhuman treatment.³⁸ Shue more broadly labels the basic 'subsistence' rights the right to adequate food, unpolluted air and water, clothing, shelter and "minimum preventive public health care".³⁹ Andreassen et al add employment and education⁴⁰ and would prioritise within basic rights, the establishment of the production and access to food, preventive health care, secure food-productive employment, and food and health-productive education.⁴¹ All of these are interdependent, and all - especially access to food - are linked with the fulfilment of the others.⁴²

Basic rights "provide some minimal protection against utter helplessness against those too weak to protect themselves."⁴³ Donnelly describes the fulfilment of basic rights as conditions needed for physical and mental health, but inadequate to provide for a life of *dignity*, asserted to be the basis for the broader grouping of *human* rights.⁴⁴ The realisation of basic rights gives an individual "a decent chance at a reasonably healthy and

³⁵ Andreassen et al above 260-261.

³⁶ Buckingham would include security, and leave out health care: Donald Buckingham "A Recipe for Change: Towards an Integrated Approach to Food under International Law" (1994) 6 Pace Int'l L. Rev. 285.

³⁷ Jack Donnelly *International Human Rights* (2 ed, Westview Press, Colorado, 1998) 20.

³⁸ Donnelly above 20.

³⁹ Henry Shue *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy* (Princeton University Press, New Jersey, 1980) 23.

⁴⁰ Bard-Anders Andreassen, Alan Smith and Hugo Stokke "Compliance with Economic and Social Rights: Realistic Evaluations and Monitoring in the Light of Immediate Obligations" in Asbjorn Eide and Bernt Hagtvet (eds) *Human Rights in Perspective: A Global Assessment* (Basil Blackwell Ltd, Oxford, 1992) 252, 260.

⁴¹ Andreassen et al above 260.

⁴² Andreassen et al above 261.

⁴³ Henry Shue *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy* (Princeton University Press, New Jersey, 1980) 18.

⁴⁴ Jack Donnelly *International Human Rights* (2 ed, Westview Press, Colorado, 1998) 20-21.

active life of more or less normal length".⁴⁵ Without this chance, individuals are unable to enjoy other rights, even the right to life itself.⁴⁶ Thus basic rights are not only "a social guarantee to fulfil a basic need"⁴⁷, their fulfilment is a precondition to the realisation of all other rights.⁴⁸ As such, they are "everyone's minimum reasonable demands upon the rest of humanity",⁴⁹ the "line beneath which no one is to be allowed to sink."⁵⁰

If states are unable to progressively advance freedom from hunger, the most basic content of the most basic human right, the right to food, then the realisability of all basic rights, all socio-economic rights, and perhaps even all human rights is highly questionable. The state has extensive obligations regarding the right to food and freedom from hunger.

C The Right To Food

1 The Importance and Content of the Right to Food and Freedom from Hunger

There is no doubt that adequate food and water are the most basic human needs. Hunger and dehydration causes great human suffering, sickness and death, and malnutrition denies full development and participation in society.⁵¹ It is the 'ultra-poor', people who use at least 80% of their income or resources to get food, and yet eat at least 20% less than FAO and WHO recommendations⁵², that "suffer sharply higher infant and child mortality, raised risks of being unable to perform as workers in adulthood, and possibly, although this is controversial, increased risk of mental inadequacies in surviving infants and children, than others."⁵³

⁴⁵ Shue above 23.

⁴⁶ Shue above 24-25.

⁴⁷ Dinah Shelton "The Duty to Assist Famine Victims" *Symposium: International Law and World Hunger* (1985) 70 Iowa L.Rev. 1309, 1317.

⁴⁸ Shelton above 1318.

⁴⁹ Shue above 19.

⁵⁰ Shue above 18.

⁵¹ Jacobo Schatan and Joan Gussow "Cultural and Ecological Considerations in the Right to Food" in Asbjorn Eide et al (eds) *Food As a Human Right* (United Nations University, Tokyo, 1984) 110, 111.

⁵² Michael Lipton "Food Production and Poverty" in Barbara Harriss-White and Sir Raymond Hoffenberg (eds) *Food: Multidisciplinary Perspectives* (Blackwell Publishers, Oxford, 1994) 130, 137. Lipton says approximately 15% of Africans and Asians are 'ultra-poor'.

⁵³ Lipton above 137.

The right to 'adequate food' embodied in the ICESCR is the most basic human right.⁵⁴ The realisation of the right to adequate food, and freedom from hunger and malnutrition, are recognised in the Universal Declaration on the Eradication of Hunger and Malnutrition (UDEHM) as necessary for an adequate standard of life and for life itself.⁵⁵ The Committee on Economic, Social and Cultural Rights (CESCR), a panel of experts appointed to oversee the implementation of the ICESCR, has affirmed that "the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights enshrined in the International Bill of Human Rights."⁵⁶ The UDEHM proclaims that "every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties."⁵⁷

Several commentators assert that the right to food is part of the right to life embodied in the ICCPR.⁵⁸ Sucharitkul has said that the realisation of the right to life in the Third World context "presupposes freedom from hunger, or the right to food, and freedom from disease or the right to good health".⁵⁹ Baehr argues that the right to life should not be separated from the three basic economic rights: to food, housing and health care.⁶⁰ Just as the right to life is split into first, conditions supporting life and second, a life of

⁵⁴ ICESCR art 11:

1 The States Parties... recognize the right of everyone to an adequate standard of living for himself and his family including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right...

2 The States Parties... recognizing the fundamental right of everyone to be free from hunger...

⁵⁵ Universal Declaration on the Eradication of Hunger and Malnutrition [UDEHM] adopted by the World Food Conference of the UNGA and endorsed by UNGA Res 3348 (XXIX) 17 December 1974.

⁵⁶ CESCR "The Right to Adequate Food" *CESCR General Comment 12* 12/5/99 E/C.12/1999/5 para 4. The socio-economic rights contingent on the right to adequate food include the right to an adequate standard of living: ICESCR art 11.1, the right to a standard of living adequate for health and well-being: UDHR art 25.1, and the right of all children to a standard of living adequate for their physical, mental, spiritual, moral and social development: Convention on the Rights of the Child adopted by the UNGA 20 November 1989 art 27 cited in A Eide "The Right to an Adequate Standard of Living Including the Right to Food" in A Eide, C Krause and A Rosas (eds) *Economic, Social and Cultural Rights* (Martinus Nijhoff Publishers, Dordrecht, Netherlands, 1995) 89. The right to food also underpins article 1.2 of the ICESCR, that "[i]n no case may a people be deprived of its own means of subsistence" and right of peoples to self-determination, which includes the right to "freely pursue their economic, and cultural development".

⁵⁷ UDEHM above art 1.

⁵⁸ Dinah Shelton "The Duty to Assist Famine Victims" *Symposium: International Law and World Hunger* (1985) 70 *Iowa L.Rev.* 1309, 1318. Sompong Sucharitkul "A Multi-dimensional Concept of Human Rights in International Law" (1987) 62 *Notre Dam L. Rev.* 305, 315. Peter Baehr *Human Rights: Universality in Practice* (St Martin's Press, New York, 1999) reviewed by Daniel Reich (2000) 25 *Yale J. Int'l L.* 533, 540.

⁵⁹ Sucharitkul above 315.

⁶⁰ Baehr above 540.

dignity, so the right to food is divided into freedom from hunger and the right to adequate food.

Freedom from hunger, the most basic part of the right to food, is the only right described as 'fundamental' in the UDHR, ICESCR or ICCPR.⁶¹ Tomaleski describes the right to be free from hunger as the *absolute* standard forming part of the right to food.⁶² It is the first 'tier' of the right and a 'minimum norm'⁶³ for which international minimum standards can be clearly defined.⁶⁴ Access to food is essential to freedom from hunger.⁶⁵ Andreassen et al suggest that access to food is also the best indicator of a group's capacity to meet their basic rights, or 'subsist'.⁶⁶

Different measures of the numbers of people without access to adequate food - chronic hunger, inadequate food and malnutrition - tell the same story: hunger is widespread. More than 840 million people - 20% of all human beings - are chronically hungry, most in developing countries.⁶⁷ It is estimated that 1 billion people daily do not have enough to eat.⁶⁸ In 1984 it was said that 1.5 billion people suffer some form of malnutrition because they did not have enough food.⁶⁹ It is however clear that there is more than enough food in the world to feed everyone.⁷⁰

The CESCR's General Comment on the right to adequate food states that a core component of the right is having the means to feed yourself or to purchase food

⁶¹ Anthony Kearns "The Right to Food Exists Via Customary International Law" (1998) 22 Suffolk Transnat'l L. Rev. 223.

⁶² Katarina Tomasevski (ed) *The Right to Food: Guide Through Applicable International Law* (Martinus Nijhoff Publishers, Dordrecht, 1987) XVII referred to in Donald Buckingham "A Recipe for Change: Towards an Integrated Approach to Food under International Law" (1994) 6 Pace Int'l L. Rev. 285, 292-293.

⁶³ Buckingham above 293 referring to Rene Guldenmund, "SIM Right too [sic] Food Conference: A Synthesis of the Discussion" in Philip Alston and Katarina Tomasevski (eds) *The Right to Food* (Martinus Nijhoff Publishers, Boston, 1984) 215, 218.

⁶⁴ Tomasevski referred to in Buckingham above 292-293.

⁶⁵ CESCR "The Right to Adequate Food" *CESCR General Comment 12* 12/5/99 E/C.12/1999/5 para 6.

⁶⁶ Bard-Anders Andreassen, Alan Smith and Hugo Stokke "Compliance with Economic and Social Rights: Realistic Evaluations and Monitoring in the Light of Immediate Obligations" in Asbjorn Eide and Bernt Hagtvet (eds) *Human Rights in Perspective: A Global Assessment* (Basil Blackwell Ltd, Oxford, 1992) 252, 262.

⁶⁷ CESCR above.

⁶⁸ Donald Buckingham "A Recipe for Change: Towards an Integrated Approach to Food under International Law" (1994) 6 Pace Int'l L. Rev. 285, 289.

⁶⁹ Jacobo Schatan and Joan Gussow "Cultural and Ecological Considerations in the Right to Food" in Asbjorn Eide et al (eds) *Food As a Human Right* (United Nations University, Tokyo, 1984) 110, 111.

⁷⁰ Frances Moore Lappe, Joseph Collins and Peter Rosset *World Hunger: 12 Myths* (2ed) (Earthscan Publications, London, 1998) 8.

produced elsewhere.⁷¹ Access to food must be secure and sustainable in the long-term for all including the young, disabled, ill and disaster-struck. It must be physical accessible and economically accessible, meaning that other basic needs must also be within your means.⁷² The right is not met if the purchase of adequate food consumes resources needed for the other basic needs of adequate shelter and medical care.⁷³ Access to food must not require a person to forgo other human rights such as freedom from slavery and forced prostitution and the right not to be evicted from indigenous land.

The second 'tier' of the right⁷⁴ is that accessible food must be of sufficient quantity and nutritional quality for physical and mental growth, development and activity, as well as safe and free from contamination or toxins.⁷⁵ The third tier of the right imports the relative notion of cultural acceptability.⁷⁶

2 State Obligations

Under the ICESCR, States Parties must take *appropriate* steps to *ensure* that the right to adequate food is realised.⁷⁷ The ICESCR does not prescribe particular actions, so States may choose the means by which they achieve the obliged result.⁷⁸ The ICESCR does not actually require the elimination of hunger, but simply recognises the fundamental right to be free from hunger and without prescribing the means, directs States to address certain economic matters in achievement of this right.⁷⁹ The ICESCR

⁷¹ ICESCR above paras 8 and 12.

⁷² ICESCR above para 13.

⁷³ A Eide "The Right to an Adequate Standard of Living Including the Right to Food" in A Eide, C Krause and A Rosas (eds) *Economic, Social and Cultural Rights* (Martinus Nijhoff Publishers, Dordrecht, 1995) 90.

⁷⁴ Donald Buckingham "A Recipe for Change: Towards an Integrated Approach to Food under International Law" (1994) 6 *Pace Int'l L. Rev.* 285, 293 referring to Rene Guldenmund, "SIM Right too [sic] Food Conference: A Synthesis of the Discussion" in Philip Alston and Katarina Tomasevski (eds) *The Right to Food* (Martinus Nijhoff Publishers, Boston, 1984) 215, 218.

⁷⁵ ICESCR above para 8.

⁷⁶ Buckingham above 293 referring to Guldenmund in Alston and Tomasevski 218.

⁷⁷ ICESCR art 11.1: "...States... will take appropriate steps to ensure the realization of [the right to an adequate standard of living, including adequate food], recognizing to this effect the essential importance of international cooperation based on free consent."

⁷⁸ Bard-Anders Andreassen, Alan Smith and Hugo Stokke "Compliance with Economic and Social Rights: Realistic Evaluations and Monitoring in the Light of Immediate Obligations" in Asbjorn Eide and Bernt Hagtvet (eds) *Human Rights in Perspective: A Global Assessment* (Basil Blackwell Ltd, Oxford, 1992) 252, 256.

⁷⁹ ICESCR art 11.2: "States... recognizing the fundamental right to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programmes, which are needed:

interprets this widely - that at the national level and in conjunction with other States, States must institute measures to mitigate or alleviate hunger.⁸⁰ Buckingham argues that the majority of commentators support the notion that the *right to be free from hunger*, the core of the right to food as embodied in article 25(1) of the UDHR, is now a norm of customary international law.⁸¹ If this is the case, all States, not just States Parties to the ICESCR, are bound to provide for the right.

The right to adequate food under the ICESCR is prima facie breached according to the CESCR where a State fails to satisfy "at the very least, the minimum essential level required to be free from hunger."⁸² A State may argue it does not have enough available resources, but according to the CESCR that State must show "that every effort has been made to use all the resources at its disposal in an effort to satisfy, as a matter of priority", the minimum obligation to provide access to food to those without.⁸³ It is the State's responsibility to seek international assistance, manage its debts and other spending and pass laws increasing the taxes of those whose income more than supports the right to food, to get the revenue to take steps to alleviate hunger.

According to the CESCR, the State has three levels of obligation: to respect, protect and fulfil the right to food - with 'fulfil' divided into facilitation and provision.⁸⁴ Obligations to *respect* and not prevent existing access to adequate food and *protect* access to food from removal by enterprises or other individuals, apply in situations where individuals or groups *already* have access to adequate food, and are unqualified. They are supported by

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilisation of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need."

⁸⁰ CESCR "The Right to Adequate Food" *CESCR General Comment 12* 12/5/99 E/C.12/1999/5.

⁸¹ Donald Buckingham "A Recipe for Change: Towards an Integrated Approach to Food under International Law" (1994) 6 *Pace Int'l L. Rev.* 285, 290. The UDHR right is "to a standard of living adequate for the health and wellbeing of himself and of his family, including food..." The Declaration is not a treaty, it is a statement by the United Nations General Assembly. However Buckingham 293, argues that it gives content to the notion of 'human rights' in a treaty, the Charter of the United Nations. He argues that it is indicative of state practice, and recurring references by States to the Declaration as if it was legally binding upon them, indicates the *opinio juris* necessary to turn consistent state practice into a norm of customary international law.

⁸² CESCR above para 17 (emphasis added).

⁸³ CESCR above para 17.

⁸⁴ CESCR above para 15.

the ICESCR article 1.2 direction that a people may in no case be deprived of its means of subsistence.

Oshaug et al say that the protection of the right against "other more assertive or aggressive subjects... is probably the most important aspect of the right to food and other survival rights: the state not as provider, but as protector."⁸⁵ Given the weak position of those who need to be provided with basic rights, protection from deprivation by others is a crucial part of the State's undertaking to guarantee such rights.⁸⁶ As mentioned, the UN General Assembly in article 1 of the UDEHM describes the right to be free from hunger and malnutrition as 'inalienable'. Further, the CESCR asserts that states are liable for the acts of entities insufficiently regulated to prevent them violating the right to food.⁸⁷ Thus as part of its duty of protection, the State should ensure that the economic system does not force people into such desperate straits that they have no choice but to sell off or abandon their only source of food.

The State has an unqualified obligation to pro-actively *facilitate* access to food and utilisation of food resources where access is inadequate.⁸⁸ Where access to adequate food is unavailable and cannot be facilitated, the State is obliged to *provide* food. In all political systems people are forbidden to simply take what they need to survive, and may not be able "within existing economic institutions and policies to provide for their own survival".⁸⁹ Shue includes the right to "provision of subsistence at least to those who cannot provide for themselves."⁹⁰ These people include those disadvantaged by "recession... disasters, and... structural transformations in the economy and production."⁹¹

⁸⁵ Arne Oshaug, Wenche Berth Eide and Asbjorn Eide "Human Rights: A Normative Basis for Food and Nutrition-relevant Policies" (1994) 19(6) Food Policy 491, 494.

⁸⁶ Henry Shue *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy* (Princeton University Press, New Jersey, 1980) 30.

⁸⁷ CESCR above para 19.

⁸⁸ Food security must also be pro-actively facilitated: CESCR above para 15.

⁸⁹ Shue above 24.

⁹⁰ Shue above 24.

⁹¹ Arne Oshaug, Wenche Berth Eide and Asbjorn Eide "Human Rights: A Normative Basis for Food and Nutrition-relevant Policies" (1994) 19(6) Food Policy 491, 494.

3 *Individual Responsibility*

In addition to their rights, individuals have a responsibility to strive for the promotion of the rights in the ICESCR according to its preamble. The CESCR's view is that States are only obliged to *provide* food where "an individual or group is unable, *for reasons beyond their control*, to enjoy the right to adequate food by the means at their disposal".⁹² Individuals must 'take control' to provide their own food needs if they can. However given that a hungry person's main survival instinct is to obtain food, it is difficult to see how governments could argue that hungry people are not doing enough to realise their own food needs. If the means itself is inadequate, then the State has an unqualified duty to facilitate greater access to food.

In addition, if the right to be free from hunger and malnutrition is treated as inalienable, the proviso that lack of access to adequate food must be outside the control of the individual, is arguably limited in law to the third tier of the right to food - cultural acceptability. This inalienability means that if a person gives away their access to food, the State is still obliged to provide for their right to be free from hunger *and malnutrition*.⁹³ Moreover, States cannot discriminate between people on the basis of property,⁹⁴ implying that everyone, with or without wealth or resources, is equally entitled to adequate food and freedom from hunger.

4 *The Unlimited Right to Freedom from Hunger*

States can place domestic limits on their ICESCR obligations. Article 4 of the Covenant requires that ICESCR rights limitations are determined by law and "compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society".⁹⁵ Andreassen et al point out that the obligation to meet minimum subsistence rights under the Limburg Principles is ostensibly subject to the limitations

⁹² CESCR "The Right to Adequate Food" *CESCR General Comment 12* 12/5/99 E/C.12/1999/5 para 15 (emphasis added).

⁹³ The proposition that in some circumstances, people can be said to have 'alienated' their right to be provided with food poses serious dangers in equity. This could be dangerously relied upon to deny the right to food to, for example, people who leave their land in search of more fertile land, but fail to access any, where they are fatigued and malnourished from inadequate food intake.

⁹⁴ ICESCR art 2.

⁹⁵ ICESCR art 4.

clause in article 4, but states that "rights related to subsistence, survival and the integrity of the person were meant to be exempted from ...[the ICESCR's limitations] clauses".⁹⁶ This is undoubtedly because any such limitations would be inconsistent with the whole thrust of the ICESCR. Türk, Special Rapporteur on the Realization of Economic, Social and Cultural Rights, has recently affirmed this saying that States Parties are "obliged, regardless of the level of economic development, to ensure respect for minimum subsistence rights for all."⁹⁷

Using the framework of tiers of rights within the right to food, there could be no limitations consistent with socio-economic rights and the general welfare, on the absolute, inalienable right to be free from hunger. Without the right to be free from hunger, the right to life is denied. If states were to limit this right, they would in effect be saying that death is an appropriate consequence of socio-economic policy. States must cooperate to ensure that the right to be free from hunger is met.

The second tier of the right, to food of an adequate quantity and quality to satisfy nutritional and energy requirements, could be argued to be subject to some limitations in the interests of the general welfare. Such limitations could only relate to the state's duty to *provide*, or in some cases respect access to, adequate food. This might happen if there was simply an inadequate quantity or quality of food to go around. There is no justification consistent with the general welfare and justice, to deny people access to food or the means to attain food, or to fail to protect existing access to adequate food from removal by others. It would also be very difficult to argue that it would be consistent with the general welfare to fail to facilitate access to adequate food, or to the resources needed to produce adequate food. Although a state must protect existing access to culturally acceptable food, the third tier of the right, there may be occasions when consistent with the general welfare, they are not obliged to *provide* culturally acceptable food.

⁹⁶ Bard-Anders Andreassen, Alan Smith and Hugo Stokke "Compliance with Economic and Social Rights: Realistic Evaluations and Monitoring in the Light of Immediate Obligations" in Asbjorn Eide and Bernt Hagtvet (eds) *Human Rights in Perspective: A Global Assessment* (Basil Blackwell Ltd, Oxford, 1992) 252, 257.

⁹⁷ Danilo Türk *The Realization of Economic, Social and Cultural Rights* Second Progress Report to the Commission on Human Rights UN Doc. E/CN.4/Sub.2/1991/17 18 cited in Robert Robertson "Nutrition, Human Rights and Resources" (1996) 21(1) *Food Policy* 57, 62.

III GLOBALISATION LED BY NON-STATE ACTORS

The ICESCR from which these obligations are drawn was opened for ratification in 1966. Since then domestic economies of Third World nations have globalised. Globalisation “signifies the deepening enmeshment of societies in a web of world-wide flows” of people, money, ideas, technology and goods.⁹⁸ Globalisation is not a new process, but has been institutionalised in different ways over time.⁹⁹ The colonial subjugation of Third World peoples by other States as cheap source of land, raw materials, food and labour for the capitalist system could be called the ‘first wave’ of globalisation.

The twentieth century opening up of national economies to transnational trading and the push for ‘free trade’ has been promoted as method of development for poor nations and more broadly as a means of increasing the overall standard of living of all worldwide. First World economists, the IMF and World Bank believe that the globalisation of production and capital flow will diffuse prosperity and democracy throughout the world.¹⁰⁰ The World Bank says that “[g]lobalization... opens the way for effective, disciplined states to foster development and economic well-being...”¹⁰¹ Globalisation is therefore seen by many as a way of advancing socio-economic rights.

But this assertion is questioned. In 2000, the Secretary-General released a preliminary report entitled “Globalization and its impact on the full enjoyment of all human rights”, which concludes that the benefits of globalisation are unevenly enjoyed.¹⁰² The report states that “economic growth does not automatically lead to greater promotion and protection of human rights.”¹⁰³ It cites a UNGA resolution which sums up the debate:¹⁰⁴

⁹⁸ Anthony McGrew “Sustainable Globalization: The Global Politics of Development and Exclusion in the New World Order” in Tim Allen and Alan Thomas (eds) *Poverty and Development into the 21st Century* (Oxford University Press, New York, 2000) 346, 347.

⁹⁹ McGrew above 347.

¹⁰⁰ McGrew above 348-349.

¹⁰¹ The International Bank for Reconstruction and Development *The State in a Changing World* (Oxford University Press, New York, 1997) 11 [World Bank].

¹⁰² United Nations Secretary-General Preliminary Report “Globalization and its impact on the full enjoyment of all human rights” 31 August 2000 A/55/342 9 [Secretary-General Report].

¹⁰³ Secretary-General Report above 3.

¹⁰⁴ Secretary-General Report above 2 citing UNGA, twenty-fourth special session “World Summit for Social Development and beyond: achieving social development for all in a globalizing world” A/S-24/8/Rev.1, ch III, para 4.

Globalization and continuing rapid technological advances offer unprecedented opportunities for social and economic development. At the same time they continue to present serious challenges, including widespread financial crises, insecurity, poverty, exclusion and inequality within and among societies.

This part aims to set the scene for an analysis of the contemporary socio-economic rights implications which flow from the decline of the Third World state and the rise of corporate power through globalisation. It will briefly trace the 'second wave' of globalisation, the opening up of Third World states in the later half of the twentieth century, focusing on the development agenda of the International Monetary Fund (IMF), the World Bank and the First World. The negative implications for socio-economic and civil and political rights in the Third World, amounting to a transnationalisation of rights violations by First World states and non-state actors is discussed.

The focus then shifts to the rise of the power and reach of transnational corporations, in the context of these development reforms and the push for greater 'free trade', a 'third wave' of globalisation. The influence corporate interests directly and indirectly wield over the social and economic policy of states and the internal distribution of goods, is examined. It is argued that Third World states have lost their economic sovereignty to global financial and corporate interests. Power is being transferred away from the state to market forces, and it is advanced that this may further imperil the realisation of human rights.

A Third World States Retract from Social and Economic Arenas

1 Development and Structural Adjustment Programmes

Institutions set up after World War II such as the UN, IMF and World Bank and trade agreements such as the General Agreement on Tariffs and Trade (GATT) have had a huge impact on the international political, social and economic order. The UN was primarily set up to provide international political and military stability, the IMF as a source of short-term finance for deficits, the World Bank for long-term finance to developing countries and the GATT (which has become the World Trade Organisation

(WTO)) to regulate trade in accordance with conservative United States (US) and British foreign policy.¹⁰⁵

In the 1960s and 1970s the World Bank pushed open economy growth models onto Third World countries under the guise of national development. The World Bank and IMF insisted that Third World governments employ a 'development for export' strategy.¹⁰⁶ The 'development' was funded by loans, the conditions of which included undertaking structural adjustment programmes (SAPs).¹⁰⁷ These programmes included privatisation of parts of the economy and the encouragement of foreign investment by dismantling regulatory barriers to large profit generation. In time, banks holding debts, were able to pressure governments for more control over national resources and monetary policy. Under deals for debt collection and renewal, countries were required to privatise *remaining* state assets, accelerate deregulation and divert large amounts of tax income from social spending to interest repayment.

The ideology behind the reforms was to trim down the role of the State¹⁰⁸ and increase the productive capacity of the Third World whilst ensuring markets for its products. The goal was to increase export production and profits by minimising labour costs and pushing for currency devaluations to make products more attractive to international buyers. This was to provide jobs and foreign capital, which would fund the increased purchase of imports and facilitate a higher standard of living.

¹⁰⁵ Tom Hewitt "Half a Century of Development" in Tim Allen and Alan Thomas (eds) *Poverty and Development into the 21st Century* (Oxford University Press, New York, 2000) 291-292. The US for example, ensured that agricultural and service exports, the major US exports, were omitted from the GATT, whilst manufactured goods were subject to tariff reduction: Herman Schwartz *States Versus Markets: History, Geography, and the Development of the International Political Economy* ((St. Martin's Press, New York, 1994) 283.

¹⁰⁶ S Mvududu "Revisiting Traditional Management of Indigenous Woodlands" in R Radford Reuther (ed) *Women Healing Earth - Third World Women on Ecology, Feminism and Religion* (Orbis Books, New York, 1996).

¹⁰⁷ Mira Shiva "Environmental Degradation and the Subversion of Health" in Vandana Shiva (ed) *Close to Home - Women Reconnect Ecology, Health and Development Worldwide* (New Society Publishers, Philadelphia, 1994).

¹⁰⁸ The International Bank for Reconstruction and Development *The State in a Changing World* (Oxford University Press, New York, 1997) 158.

2 *Effects on Living Standards*

Development models benefited Western money lenders and transnationals, not Third World states.¹⁰⁹ For many decades, capital has flowed from poor to rich nations, as outgoing debt servicing has easily surpassed incoming investments, loans and aid.¹¹⁰ The production for export strategy worsened income inequalities¹¹¹ and increased poverty in many countries. Haragopal and Balagopal state that the development strategy instituted in India in the 1960s led to widening disparities and deepening poverty and contributed to an economic crisis.¹¹² Donnelly points out that the free market push in South America, "produced a rapid decline in living standards"¹¹³. In 1975, Pinochet cut government spending in Chile by more than a quarter and sliced public investment in half.¹¹⁴ In 1976, real wages in Chile were one-third lower than in 1970 and infant mortality had increased dramatically. After this initial shock, there was limited economic recovery, and though the elite benefited the most, employment and wages increased and inflation declined.¹¹⁵

3 *Misjudgment or Calculation?*

The World Bank admits that it oversimplified the task of development and that world disparities may have widened. The Bank recently stated¹¹⁶

¹⁰⁹ S Lee-Park "The Forbidden Tree and the Year of the Lord" in R Radford Reuther (ed) 1996 *Women Healing Earth - Third World Women on Ecology, Feminism and Religion* (Orbis Books, New York, 1996).

¹¹⁰ Susan George "The Structure of Dominance in the International Geo-economic System and the Prospects for Human Rights Realization" in Asbjorn Eide and Bernt Hagtvet (eds) *Human Rights in Perspective: A Global Assessment* (Basil Blackwell Ltd, Oxford, 1992) 268, 276. See also Titus Alexander *Unravelling Global Apartheid, An Overview of World Politics* (Polity Press, Cambridge UK, 1996) 114. For example between 1982 and 1990, outgoing debt servicing (\$1,345 billion) was 30% more than incoming aid, investment, loans and credits at \$418 billion, or about \$4 billion a month: Alexander 114.

¹¹¹ G Sen and C Grown *Development, Crises and Alternative Visions: Third World Women's Perspectives* (Monthly Review Press, New York, 1987).

¹¹² G Haragopal and K Balagopal "Civil Liberties Movement and the State in India" in Manoranjan Mohanty and Partha Nath Mukherji (eds) *People's Rights: Social Movements and the State in the Third World* (Sage Publications, New Delhi, 1998) 353, 360.

¹¹³ Jack Donnelly *International Human Rights* (2 ed, Westview Press, Colorado, 1998) 42.

¹¹⁴ Donnelly above 42.

¹¹⁵ Donnelly above 42.

¹¹⁶ The International Bank for Reconstruction and Development *The State in a Changing World* (Oxford University Press, New York, 1997) 29 [World Bank].

[f]ifty years ago... [t]he difficulties of economic development were not yet haunting us. Improving people's lives looked so achievable, a simple matter of applying the right ideas, technical expertise, and resources. And so it proved—in some cases. But in others progress was meagre. Despite five decades of effort, enormous disparities remain in the quality of life of people around the world. Indeed, by some measure the gap between rich and poor has widened.

Yet the Bank still believes that that “[t]he cost of not opening up [to the global economy] will be a widening gap in living standards between those countries that have integrated and those that remain outside,” but fall back on the notion that ‘integration’ cannot supplant sound domestic policies and state capability.¹¹⁷

A counter suggestion is that the resulting inequalities were calculated - that the West essentially imposed an economic formula on the Third World in “a new expression of Western imperialism”.¹¹⁸ The IMF and World Bank are seen as Washington-based regulators who “operate within the capitalist system and respond to dominant financial players”.¹¹⁹ It is alleged that traditional systems of organisation and production, maintained during colonisation to ensure order,¹²⁰ were replaced by the World Bank notion of ‘development’ as a way of reconciling ‘progress’ with the need to manage the potential social disorder arising out of inequality, poverty and unemployment.¹²¹ George describes the SAPs as analogous to warfare.¹²² The IMF’s macroeconomic policies were largely influenced by the US, who ensured that deficit states would bear the cost of deflating their currency.¹²³

¹¹⁷ World Bank above 12.

¹¹⁸ Anthony McGrew “Sustainable Globalization: The Global Politics of Development and Exclusion in the New World Order” in Tim Allen and Alan Thomas (eds) “Poverty and Development into the 21st Century” (Oxford University Press, New York, 2000) 346.

¹¹⁹ Michel Chossudovsky *The Globalisation of Poverty* (Zed Books/Third World Network, Penang, 1997) 16.

¹²⁰ Henry Bernstein “Colonialism, Capitalism and Development” in Tim Allen and Alan Thomas (eds) “Poverty and Development into the 21st Century” (Oxford University Press, New York, 2000) 266, 267 citing M. P. Cowen and R. W. Shenton “The Origin and Course of Fabian Colonialism in Africa” *Journal of Historical Sociology* (1991) 4(2).

¹²¹ Bernstein above in Allen and Thomas 266 citing M. P. Cowen and R. W. Shenton *Doctrines of Development* (Routledge, London, 1996).

¹²² Susan George “The Structure of Dominance in the International Geo-economic System and the Prospects for Human Rights Realization” in Asbjorn Eide and Bernt Hagtvet (eds) *Human Rights in Perspective: A Global Assessment* (Basil Blackwell Ltd, Oxford, 1992) 268, 276.

¹²³ Herman Schwartz *States Versus Markets: History, Geography, and the Development of the International Political Economy* (St. Martin's Press, New York, 1994) 216.

B Implications of Third World 'Development' for Rights

1 Implications for Basic Socio-economic Rights

Development was seen solely as increased economic production devoid of a sense of social purpose, and failed to address the human rights "questions of subsistence, dignity and justice for individuals and nations".¹²⁴ SAPs were designed to ensure debt repayment, not the promotion and protection of human rights.¹²⁵ Donnelly asserts that SAPs "almost always have immediate and detrimental short-term effects on the enjoyment of economic rights by large segments of the population."¹²⁶ The poor are made even more vulnerable through reductions in social spending and real wages, and by the privatisation of land.¹²⁷ Health and education budgets are cut and basic needs sidelined to help pay debts.¹²⁸ Olukoshi states that the Nigerian economic crisis of the early 1980s and the 1986 IMF-World Bank SAP, "severely undermined the living standards and working environment of most Nigerians."¹²⁹ Only recently have states have agreed to integrate social development into economic development models.¹³⁰

2 The Internationalisation of Rights Violations

The internationalisation of human rights in the mid to late twentieth century, has been paralleled by an intensification of international, across-border socio-economic rights *violations* by states and other powerful international actors. Globalised capitalism has

¹²⁴ Jose Zalaquette "The Relationship between Development and Human Rights" in Asbjorn Eide et al (eds) *Food As a Human Right* (United Nations University, Tokyo, 1984) 141, 146. Allen and Thomas point out that it is not the goal of national development itself that leads to poverty, but rather international 'development' by corporates and rich states at the expense of poorer nations: in Bernstein above 269.

¹²⁵ Special Rapporteur of the Economic and Social Council Working Group on SAPs E/CN.4/1999/47 referred to in Secretary-General Report "Globalization and its impact on the full enjoyment of all human rights" 31 August 2000 A/55/342 5.

¹²⁶ Jack Donnelly *International Human Rights* (2 ed, Westview Press, Colorado, 1998) 160.

¹²⁷ Donnelly above 160-161.

¹²⁸ G Sen and C Grown *Development, Crises and Alternative Visions: Third World Women's Perspectives* (Monthly Review Press, New York, 1987).

¹²⁹ Adebayo Olukoshi "The State and the Civil Liberties Movement in Nigeria" in Manoranjan Mohanty and Partha Nath Mukherji (eds) *People's Rights: Social Movements and the State in the Third World* (Sage Publications, New Delhi, 1998) 373, 374.

¹³⁰ Secretary-General Report "Globalization and its impact on the full enjoyment of all human rights" 31 August 2000 A/55/342 10 citing A/S-24/2/Add.2.

further widened the gap between rich and poor and increased national fragmentation.¹³¹ First World states have been instrumental in promoting an international capitalist economic order in which they and international corporations and banks based in First World nations, have entrenched and taken advantage of sub-standard socio-economic conditions, and at worst poverty and death, in poor nations. George argues that the rich nations play with the poorer, aiming to control their economies in a silent financial war.¹³² This war goes unbroadcast and is unseen by the inhabitants of the richer nations.¹³³ She says that the debt situation has a great deal to do with the First World's confidence that the Third World posed no real threat to the capitalist global order.¹³⁴

George said in the late 1980s that violations of economic and social rights had by then been *institutionalised* by the First World, who had dropped the veil of pretence that they had ever intended to facilitate the realisation of such rights.¹³⁵ In the following statement, George illustrates a causative link between globalised capitalism, the violation of socio-economic rights and the inability of peoples to meet their basic needs, and illuminates the present day role of most aid:¹³⁶

'Open economy' countries will, in order to remain competitive on international markets, reduce the cost of labour, which is the only factor in production costs over which they have real control. They will thus tend to suppress the rights of workers and to keep wages below those necessary to attain the standard of living set forth in article 25. In exchange for keeping their economies 'open' (to transnational corporations, to exploitation of human and material resources, to expansion of export markets *inter alia*), their elites will receive financial aid which rarely 'trickles down' to less fortunate members of society. Military aid, in the form of Northern-trained security forces and imported repression technology, will take care of the said less fortunate should they try to change their situation. Anyone who does try is called a communist.

¹³¹ Anthony McGrew "Sustainable Globalization: The Global Politics of Development and Exclusion in the New World Order" in Tim Allen and Alan Thomas (eds) "Poverty and Development into the 21st Century" (Oxford University Press, New York, 2000) 346, 349.

¹³² Susan George "The Structure of Dominance in the International Geo-economic System and the Prospects for Human Rights Realization" in Asbjorn Eide and Bernt Hagtvet (eds) *Human Rights in Perspective: A Global Assessment* (Basil Blackwell Ltd, Oxford, 1992) 268, 277.

¹³³ George above 277.

¹³⁴ George above 269.

¹³⁵ George above 269.

¹³⁶ George above 271-272 (emphasis added lines 3-4).

Groups who revolt against the Third World government and governing elites, protesting against capitalism's threat to their ongoing physical survival, are met with violence sanctioned by the West.¹³⁷ In reality no 'captured' Third World government can deliver an alternative to liberal economic management. If they attempt to, major creditor states will block public and private sources of further credit, as the US did to Costa Rica.¹³⁸ Only radical international "financial disarmament" and cancellation of debts could alter this position.¹³⁹

3 *US Opposition to Social and Economic Rights and Funding of Capitalism*

Historically, the US has rallied against Third World states with strong socialist regimes, causing and accepting massive human rights violations, in the name of eliminating communism globally. The US supported guerilla movements in destroying social structures in many strategic nations, especially Central American countries, throughout the Cold War era.¹⁴⁰ George points out that¹⁴¹

several dozen third world countries have attempted to break free from the dominant global system... The West never fails to make use of human rights arguments when attempting to isolate and discredit such breakaway countries. The same West has, however, easily accommodated third world regimes with appalling human rights records, so long as these governments continue to play by the rules of the world economic system with no questions asked... Indeed a successful struggle to rid one's country of the worst abusers of human rights and to achieve self-reliance and a better life for one's people, far from eliciting cooperation and praise, instead triggers instant retaliation, particularly from the United States.

The US also used the tool of development finance to ensure that strategic Central and South American countries were captured by capitalism, not communism. During the 1976-1981 Carter presidency alone, at least twenty-three international development bank

¹³⁷ George above 276.

¹³⁸ George above 276.

¹³⁹ Michel Chossudovsky *The Globalisation of Poverty* (Zed Books/Third World Network, Penang, 1997) 26.

¹⁴⁰ Jack Donnelly *International Human Rights* (2 ed, Westview Press, Colorado, 1998) 94.

¹⁴¹ George above 271.

loans were approved to Argentina, eleven to Uruguay, and five to Chile.¹⁴² This suggests that global human rights realisation is light years away from a US objective.

Indeed the US opposes socio-economic rights, and has not ratified the ICESCR. Opponents of socio-economic *rights*, including the US, assert that States are not legally obliged to pursue any particular policy or goal, including the fulfilment of the basic needs of citizens, let alone the provision of all social, cultural and economic rights. Kennan believes that rather than guided by moral aims such as human rights, governance should be driven by the objective of the retention or augmentation of power 'in the national interest', and only in this more limited sense is the people's wellbeing one of Government's primary obligations.¹⁴³ Consistent with this, American foreign policy is directed towards the precedence of capitalism, the maintenance of world reliance on the US economy and the primacy of the influence of American corporate interests over massive sectors of the globe.

There are further undercurrents to opposition to social and economic rights. It is argued by Donnelly that the American anti-communist tradition is a core part of the US' continuing resistance to acknowledging social and economic rights as *rights*. States who place socio-economic rights on an equal or higher footing as civil and political rights are regarded as 'anti-democratic' because they have not embraced *full-blooded* free market capitalism. The US supported right-wing politicians and military rulers in Chile, Argentina, and Uruguay on the grounds that 'democracy' (actually elite wealth and capitalism) must be protected from proponents of economic and social reforms that redistribute wealth more evenly.¹⁴⁴ The local, national and international theme is repeated: the wealthy protecting their wealth and denying others the guarantee of a livelihood and basic living and working conditions.

4 *Implications for Civil and Political Rights*

Many Third World states repressed communities to anticipate and respond to resistance to the declining living standards that economic reforms caused for many communities,

¹⁴² Donnelly above 102.

¹⁴³ George Kennan "Morality and Foreign Policy" 64 *Foreign Affairs* 206 cited in Donnelly above 30.

¹⁴⁴ Donnelly above 88, 101.

with negative implications for civil and political rights. Alexander contends that “[w]estern affluence, welfare states and military spending are paid for through the division of labour of global apartheid that encourages repression rather than democracy in the Majority World.”¹⁴⁵ In India there has been a “significant connection between the retreat of the state from the welfare and development domains and the increasing trend of state repression”.¹⁴⁶ Olukoshi states that Nigeria’s “deep-seated fiscal crisis and donor conditionality push[ed] it towards authoritarianism”.¹⁴⁷ The military government’s violations of civil and political rights in *implementation* of the market reforms, and the severe cut in living and working standards which followed, led to the growth of Nigeria’s rights movements.¹⁴⁸ In the 1970s, the Chilean military government privatised the economy to weaken organised labour, which was seen as a subversive communistic force.¹⁴⁹ In El Salvador, faced with the majority’s extreme poverty, the rulers, with tacit US support, blatantly disregarded civil and political rights in the 1970s.¹⁵⁰ The corrupt rulers of Nicaragua, violated all manner of human rights, until overthrown in 1979.¹⁵¹

5 *Rights Violations Increasingly Caused by Non-state Actors*

A key difference between the world today and the world in the mid-twentieth century when the rights instruments were being debated and drawn up is that individual lives and human needs are increasingly subjugated to the agendas of *non-state* actors. At the Vienna counter-session the spokesperson of the Afro-Asian People’s Solidarity Organization stated “the policies of the international institutions are contributing to the impoverishment of the world’s people, the degradation of the global environment, and the violation of the most fundamental human rights”.¹⁵² Chomsky quotes Alston, the chairperson of the CESCR, who in the same session stated that the World Bank and the

¹⁴⁵ Titus Alexander *Unravelling Global Apartheid, An Overview of World Politics* (Polity Press, Cambridge UK, 1996) 246.

¹⁴⁶ G Haragopal and K Balagopal “Civil Liberties Movement and the State in India” in Manoranjan Mohanty and Partha Nath Mukherji (eds) *People’s Rights: Social Movements and the State in the Third World* (Sage Publications, New Delhi, 1998) 353, 365.

¹⁴⁷ Adebayo Olukoshi “The State and the Civil Liberties Movement in Nigeria” in Manoranjan Mohanty and Partha Nath Mukherji (eds) *People’s Rights: Social Movements and the State in the Third World* (Sage Publications, New Delhi, 1998) 373, 375.

¹⁴⁸ Olukoshi above 374.

¹⁴⁹ Jack Donnelly *International Human Rights* (2 ed, Westview Press, Colorado, 1998) 42.

¹⁵⁰ Donnelly above 91-93.

¹⁵¹ Donnelly above 93-94.

¹⁵² Noam Chomsky “The United States and the “Challenge of Relativity” quoting Nouri Abdul Razzak <<http://www.lol.shareworld.com/ZMag/articles/chomud.htm>> (last accessed 8 May 2001).

IMF "have been extraordinarily human rights adverse".¹⁵³ Haragopal and Balagopal go further and argue that though they use "the rhetoric of human rights", the World Bank and IMF are "organisations of world economy whose character and work, in essence, constitute the violations of rights and freedoms of the people, particularly of the third world."¹⁵⁴ The globalisation of capital and labour has had a huge impact on the world order, allowing corporations and banks to take hold of the reins, with serious implications for human rights.¹⁵⁵

C Transnational Corporations

The Western-controlled World Bank, IMF and GATT have greatly accelerated the international exploitation of Third World countries by private corporations. Transnational corporations who had found that national regulatory frameworks barred the development of a global private food trade were liberated by the privatisation and 'development for export' agenda of the 1960s and 1970s.¹⁵⁶ They increased their investment in the Third World as a result of the cheap labour and lax regulation. Through the 1960s, 70% of capital flow into developing countries was from transnational corporations.¹⁵⁷ "The differentiation of the Third World into oil exporters, successful exporters of manufactured products and those left behind in poverty... began in the early 1970s."¹⁵⁸ There was a overall shift from agricultural exports towards the export of manufactured goods, but by the end of the 1980s, half of all manufactured goods originated from Taiwan, South Korea, Hong Kong and Singapore, and another quarter from Brazil, Mexico, Argentina and Columbia.¹⁵⁹ During the 1980s, Third World states became "less suspicious" of transnational corporations, seeing them as an

¹⁵³ Chomsky above quoting Philip Alston.

¹⁵⁴ G Haragopal and K Balagopal "Civil Liberties Movement and the State in India" in Manoranjan Mohanty and Partha Nath Mukherji (eds) *People's Rights: Social Movements and the State in the Third World* (Sage Publications, New Delhi, 1998) 353, 370.

¹⁵⁵ William Meyer *Human Rights and International Political Economy in Third World Nations* (Praeger Publishers, Connecticut, 1998) 175.

¹⁵⁶ Harriet Friedmann "The International Relations of Food" in Barbara Harriss-White and Sir Raymond Hoffenberg (eds) *Food: Multidisciplinary Perspectives* (Blackwell Publishers, Oxford, 1994) 174, 183.

¹⁵⁷ Tom Hewitt "Half a Century of Development" in Tim Allen and Alan Thomas (eds) *Poverty and Development into the 21st Century* (Oxford University Press, New York, 2000) 291, 294.

¹⁵⁸ Friedmann above 189.

¹⁵⁹ Herman Schwartz *States Versus Markets: History, Geography, and the Development of the International Political Economy* ((St. Martin's Press, New York, 1994) 260.

important source of currency and technology, and an investment that pays taxes and does not require interest repayments.¹⁶⁰

1 Free Trade and Poverty

The profits to be made can only increase for all transnational corporations with the growing push for global 'free trade', a third wave of globalisation. Free trade frees up and increases the goods, services and investment flows across borders, by reducing or eliminating tariffs and trade and investment barriers.¹⁶¹ For example, direct US investment in Mexico had doubled from US\$2 billion in 1993 before the North American Free Trade Agreement first took effect, to US\$4 billion a year later.¹⁶² World exports of goods and services have increased from \$US4.7 trillion in 1990 to \$US7.5 trillion in 1998.¹⁶³ This push has been led by private enterprise and the WTO, which has authority over states members in the trade realm,¹⁶⁴ and is supported by the World Bank and IMF.¹⁶⁵ The WTO contends that trade contributes to economic growth and may alleviate poverty.¹⁶⁶ The World Bank states that trade and investment liberalisation has increased the welfare of 'participants' and that a global consensus of its benefits is reflected in the rise of the WTO.¹⁶⁷ World Bank figures show that the *percentage* of the world living in extreme poverty declined from 29% to 24% between 1990 to 1998.¹⁶⁸

¹⁶⁰ Titus Alexander *Unravelling Global Apartheid, An Overview of World Politics* (Polity Press, Cambridge UK, 1996) 94.

¹⁶¹ William Meyer *Human Rights and International Political Economy in Third World Nations* (Praeger Publishers, Connecticut, 1998) 168.

¹⁶² Meyer above 169 citing Koechlin 1995, 26.

¹⁶³ Secretary-General Report "Globalization and its impact on the full enjoyment of all human rights" 31 August 2000 A/55/342 6 citing UNDP *Human Development Report 2000* (Oxford University Press, New York, 1999) 82.

¹⁶⁴ Secretary-General Report "Globalization and its impact on the full enjoyment of all human rights" 31 August 2000 A/55/342 2 referring in footnote 1 to United Nations Development Programme (UNDP) *Human Development Report 1999* (Oxford University Press, New York, 1999) 1. The WTO was established in 1995.

¹⁶⁵ Michel Chossudovsky *The Globalisation of Poverty* (Zed Books/Third World Network, Penang, 1997) 16.

¹⁶⁶ D Ben-David and Alan Winters "Trade, Income Disparity and Poverty" *Special Studies No. 5* (WTO Publications, Geneva, 1999) referred to in Secretary-General Report above 7.

¹⁶⁷ The International Bank for Reconstruction and Development *The State in a Changing World* (Oxford University Press, New York, 1997) 133-134.

¹⁶⁸ Secretary-General Report "Globalization and its impact on the full enjoyment of all human rights" 31 August 2000 A/55/342 9 citing World Bank *World Development Indicators 2000* (World Bank, Washington D.C. 2000) 4. Note that the world's population has increased.

But even ardent globalists acknowledge that free trade and economic activity can only increase the *average* standard of living¹⁶⁹, and it is inevitable that there must be winners and losers. A study of nine countries noted that trade liberalisation correlated with reduced wages and underemployment.¹⁷⁰ While the percentage of the world living in poverty declined between 1990 and 1998 in East Asia, the Pacific, the Middle East and North Africa, poverty rates in the Third World including South Asia, Latin America, the Carribean and sub-Saharan Africa are largely unchanged, and poverty in central Asia and Europe has increased.¹⁷¹

2 *Transnational Power and Market Control*

In theory the removal of subsidies and tariffs in First World nations should vastly increase demand for cheaper Third World products. This should increase the influx of foreign capital into Third World nations allowing them to pay debt more easily and advance living standards.¹⁷² But because transnational corporations control production, increased profits find their way into bank accounts held and largely invested in First World nations.

Transnational corporations and banks generally have their head offices in Western countries and produce and invest for Western consumers. Alexander describes transnational corporations as the “modern equivalent of the Vikings and feudal barons combined, but bigger, wealthier and more powerful than most modern states.”¹⁷³ The Secretary-General’s report cites a United Nations Development Programme report that agrees that globalisation has given “multinational corporations... more economic power than many states”.¹⁷⁴ The top *five* corporations have a corporate sales of \$US871 billion in 1994, as compared to the \$US76 billion combined GDP of least developed countries

¹⁶⁹ Kenichi Ohmae *The End of the Nation State* (HarperCollins, London, 1995) 57.

¹⁷⁰ Janine Berg and Lance Taylor “External liberalization, economic performance and social policy” New School for Social Research, Working Paper Series: Globalization, Labour Markets and Social Policy, February 2000 cited in Department of Economic and Social Affairs Report A/AC.253/25 para 9 referred to in Secretary-General Report above 8.

¹⁷¹ Secretary-General Report above 9 citing World Bank *World Development Indicators 2000* (World Bank, Washington D.C. 2000) 4.

¹⁷² Herman Schwartz *States Versus Markets: History, Geography, and the Development of the International Political Economy* ((St. Martin’s Press, New York, 1994) 287.

¹⁷³ Titus Alexander *Unravelling Global Apartheid, An Overview of World Politics* (Polity Press, Cambridge UK, 1996) 86.

¹⁷⁴ Secretary-General Report above 1.

and the \$US451 billion GDP of South Asia.¹⁷⁵ Ongoing mergers mean transnational corporations continue to grow in size and influence.¹⁷⁶

They have a very clear goal, to maximise profits and market control.¹⁷⁷ To achieve market dominance, corporate interests inevitably "subordinate national interests to their own global profit and growth strategies".¹⁷⁸ As they become wealthier, they bring huge weight to bear on governments to develop laws and policies, or institute programs of deregulation, that entrench poverty and inequality.¹⁷⁹ Alexander estimates that transnational corporations now provide about 20% of Third World government income.¹⁸⁰ It has been argued that "[m]ultinational capital has... [replaced] military power as the primary instrument of domination".¹⁸¹ It is First World consumers and corporations that benefit from increasingly lower prices for goods produced in the Third World in an increasingly free global trade environment.¹⁸² Third World peoples live in greater poverty, not because of a resource scarcity, but on an oversupply to rich nations.¹⁸³

D The Shift in Economic Control from States to Private Market Forces

Globalisation has re-configured power relations *worldwide*. As Eide and Rosas suggest "the role of the modern nation-state seems to be on the decline, with an increased role for... international financial and developmental institutions, the private sector and

¹⁷⁵ UNDP *Human Development Report 1997* (Oxford University Press, Oxford, 1997) 92 cited in Anthony McGrew "Sustainable Globalization: The Global Politics of Development and Exclusion in the New World Order" in Tim Allen and Alan Thomas (eds) "Poverty and Development into the 21st Century" (Oxford University Press, New York, 2000) 346, 350.

¹⁷⁶ Cross-border mergers and acquisitions exceeded \$US1,100 billion in 1999: Secretary-General Report above 8.

¹⁷⁷ Titus Alexander *Unravelling Global Apartheid, An Overview of World Politics* (Polity Press, Cambridge UK, 1996) 86.

¹⁷⁸ G Sen and C Grown *Development, Crises and Alternative Visions: Third World Women's Perspectives* (Monthly Review Press, New York, 1987) 32.

¹⁷⁹ Anthony Kearns "The Right to Food Exists Via Customary International Law" (1998) 22 *Suffolk Transnat'l L. Rev.* 223, 243.

¹⁸⁰ Alexander above 94.

¹⁸¹ Anthony McGrew "Sustainable Globalization: The Global Politics of Development and Exclusion in the New World Order" in Tim Allen and Alan Thomas (eds) "Poverty and Development into the 21st Century" (Oxford University Press, New York, 2000) 346, 350.

¹⁸² L Jaising & C Sathyamala "Legal Rights and Wrongs: Internationalising Bhopal" in Vandana Shiva (ed) *Close to Home - Women Reconnect Ecology, Health and Development Worldwide* (New Society Publishers, Philadelphia, 1994).

¹⁸³ Michel Chossudovsky *The Globalisation of Poverty* (Zed Books/Third World Network, Penang, 1997) 26.

regional and local governments and interests.”¹⁸⁴ Ohmae suggests that states “have been a transitional form of organization for managing financial affairs” which grew out of their control of resources and land, and their political independence, enforced by military power.¹⁸⁵ It is argued by neoliberals that with an open economy and free trade, states will become simple “transmission belts for global capitalism”.¹⁸⁶

The power ‘division’ is no longer between North and South states, but between elite individuals and corporations, the middle class and the marginalised and dispossessed persons in all regions of the world.¹⁸⁷ Power is passing from states to individuals and groups of individuals. Market forces, collections of individuals united in their quest for power and wealth through commerce, dominate whole spheres of human society and control access to many goods. Access to those spheres and goods is via the medium of money, not nationality.

This transfer of power is occurring within every nation, but the shift is most profound in the poorest. As Donnelly suggests, beginning with the development programs, developing states have lost “economic sovereignty”.¹⁸⁸ Third World state control over economic activity has been systematically removed.¹⁸⁹ They have lost control of their central banks and monetary policy and so cannot adjust the money supply in the interests of their societies.¹⁹⁰ This is widespread - half the world’s population and two thirds of its governments, mainly Third World and former communist nations, are subject to IMF programmes or World Bank lending.¹⁹¹ The developing world’s external debt is over 2

¹⁸⁴ A Eide and A Rosas “Economic, Social and Cultural Rights: A Universal Challenge” in A Eide, C Krause and A Rosas (eds) *Economic, Social and Cultural Rights* (Martinus Nijhoff Publishers, Dordrecht, 1995) 18.

¹⁸⁵ Kenichi Ohmae *The End of the Nation State* (HarperCollins, London, 1995) 141.

¹⁸⁶ Anthony McGrew “Sustainable Globalization: The Global Politics of Development and Exclusion in the New World Order” in Tim Allen and Alan Thomas (eds) “Poverty and Development into the 21st Century” (Oxford University Press, New York, 2000) 346, 349.

¹⁸⁷ McGrew above 351 citing A Hoogvelt *Globalization and the Postcolonial World: the new political economy of development* (Macmillian, London, 1997).

¹⁸⁸ Jack Donnelly *International Human Rights* (2 ed, Westview Press, Colorado, 1998) 152.

¹⁸⁹ L Jaising & C Sathyamala “Legal Rights and Wrongs: Internationalising Bhopal” in Vandana Shiva (ed) *Close to Home - Women Reconnect Ecology, Health and Development Worldwide* (New Society Publishers, Philadelphia, 1994) 98.

¹⁹⁰ Michel Chossudovsky *The Globalisation of Poverty* (Zed Books/Third World Network, Penang, 1997) 24.

¹⁹¹ Anthony McGrew “Sustainable Globalization: The Global Politics of Development and Exclusion in the New World Order” in Tim Allen and Alan Thomas (eds) “Poverty and Development into the 21st Century” (Oxford University Press, New York, 2000) 346, 350.

trillion dollars.¹⁹² This accumulation of debt gives international banks huge leverage over the economic and social policy of developing nations.¹⁹³ Third World states have effectively signed away their ability to make effective social and economic policy. Further, as time passes financial and corporate interests are "less and less amenable to state control".¹⁹⁴ Transnational corporations have taken over much economic activity. Decisions that can have profound and often disempowering effects on people and communities are made far removed from the realities of their lives, often in First World boardrooms.¹⁹⁵

Through market distribution alone, access to essential goods and services is being denied to thousands of millions of people. As the World Bank says, "development without an effective state is impossible... it retains a distinctive role in providing the public goods that promote social and economic development" and correcting market failures.¹⁹⁶ Yet the Bank argues that all states should "build on the relative strengths of private markets and the voluntary sector"¹⁹⁷ as facilitator and regulator, not sole provider of goods, services and welfare.¹⁹⁸ But Third World states cannot unilaterally redirect investment policy and minimal regulation is a condition of loans.¹⁹⁹ They are in the grips of the international financial institutions and banks who work in conjunction with corporate interests to maximise wealth in the hands of corporate shareholders and investors. Even if it *could* make such changes, because the Third World state relies on international investment for its economic survival, tighter investment restrictions and more extensive regulation would spell economic disaster for the State, spurring investors to relocate elsewhere. If corporations are contributing to poverty and rights violations, states are largely powerless to impose restrictions on corporate activity.

¹⁹² Chossudovsky above 15.

¹⁹³ Chossudovsky above 18.

¹⁹⁴ Philip Cerny "The Political Economy of International Finance" in Philip Cerny (ed) *Finance and World Politics: Markets, Regimes and States in the Post-hegemonic Era* (Edward Elgar, Cambridge, 1993) 4.

¹⁹⁵ Anthony McGrew "Sustainable Globalization: The Global Politics of Development and Exclusion in the New World Order" in Tim Allen and Alan Thomas (eds) "Poverty and Development into the 21st Century" (Oxford University Press, New York, 2000) 346, 348.

¹⁹⁶ The International Bank for Reconstruction and Development *The State in a Changing World* (Oxford University Press, New York, 1997) 25 [World Bank].

¹⁹⁷ World Bank above 25.

¹⁹⁸ World Bank above 2.

¹⁹⁹ S Lee-Park "The Forbidden Tree and the Year of the Lord" in R Radford Reuther (ed) 1996 *Women Healing Earth - Third World Women on Ecology, Feminism and Religion* (Orbis Books, New York, 1996).

Some First World nations such as the US push for the "globalisation of the economy but not of human rights."²⁰⁰ States perceive that global application of human rights will erode their governance stronghold. This is why they are so reluctant to place strong duties upon themselves, especially duties backed up by international enforcement and in the area of social, economic and cultural rights. Yet massive foreign investment and economic sectoral control by financial forces, diminishes the state and its sovereign reach more subtly. This is especially so when the state has relinquished regulatory power over financial and corporate activities. This seems to explain why countries such as the US, who have strong regulatory structures exercising much greater control over corporate activities than Third World nations, can afford to push for a global economy. Their socio-economic 'sovereignty' is not so threatened.

IV CORPORATE DOMINANCE - IMPLICATIONS FOR RIGHTS

This part examines the impact of the rise of the transnational corporation on socio-economic rights. The effects of the corporatisation of agriculture on the lives of Third World peoples and the decline in the domestic availability of food is examined. Access to food is increasingly unreachable for many, denying them the right to food and indicating that basic rights are increasingly unrealisable in the Third World.

The responsibility of the Third World state for advancing the protection and fulfilment of socio-economic rights under international law is restated. Private transnational interests are not accountable in international law, and it is argued that because of lax regulations and laws, cannot be sued and reined in domestically. It is asserted that because of its indebtedness, the Third World state is unable to alter domestic laws and policies to protect its citizens from rights violations caused by transnational corporate activity, and does not have the means of production or distribution at its hands to directly provide for the fulfilment of basic needs. The CESCR's suggestion that private corporations should voluntarily take on responsibilities to respect rights is step in the right direction, but is a flimsy, unmonitorable and unenforceable safeguard. It is concluded that socio-economic

²⁰⁰ G Haragopal and K Balagopal "Civil Liberties Movement and the State in India" in Manoranjan Mohanty and Partha Nath Mukherji (eds) *People's Rights: Social Movements and the State in the Third World* (Sage Publications, New Delhi, 1998) 353, 369.

rights in the ICESCR are more unrealisable in this globalised era than they were when the Covenant was conceived.

A *The Question of Transnational Corporations as Rights Violators*

Money is "a powerful social and economic tool"²⁰¹ and its investment in the Third World by transnational corporations has to have an impact, positive or negative, for the realisation of socio-economic rights. One school of thought argues that transnationals promote socio-economic rights through promoting 'development', providing jobs, employment benefits, new technology and capital. Others such as Hymer argue that transnationals absorb local firms and take jobs, and bring technology inappropriate to local needs leaving the majority of the population worse off.²⁰² With the investment goal of cutting costs and maximising profits, the argument is essentially that transnationals cannot afford for their activities to *not* negatively impact on rights. Hymer's view is that transnationals can safely do this because of the organisational divide between the directors of the companies based in First World nations, who control the direction and investment decisions of the company, and the personnel on the ground in Third World countries who carry the responsibility for the implementation of these decisions.²⁰³

Meyer's 1998 study sought to assess whether increased transnational corporate investment in Third World nations in the 1980s, promoted or detracted from socio-economic conditions in those countries between the years of 1985 and 1990.²⁰⁴ The overall results suggest (statistically significantly), that increased foreign investment correlates with increases in life expectancy, and reductions in infant mortality and illiteracy, all considered measures of social and economic rights.²⁰⁵ This indicates that increased foreign investment is associated with *improved* social and economic rights. But Meyer did three case studies of what he calls the 'newly industrialised countries' of India, Mexico and Chile, to see if his results were borne out in singular cases - they were

²⁰¹ Titus Alexander *Unravelling Global Apartheid, An Overview of World Politics* (Polity Press, Cambridge UK, 1996) 122.

²⁰² Hymer 1976 in William Meyer *Human Rights and International Political Economy in Third World Nations* (Praeger Publishers, Connecticut, 1998) 92-93.

²⁰³ Hymer in Meyer above 92.

²⁰⁴ Data from 52 nations in 1985 and 39 nations in 1990 was assessed.

²⁰⁵ Meyer above 105-107.

not. At the national level increased transnational corporate activities were found to negatively correlate with the same measures of socio-economic rights.²⁰⁶

These results must be treated with caution. Meyer recognises Winston's critique that such results only show a correlation, not a *causation*, between transnational corporate investment and human rights.²⁰⁷ There may be other causative factors in the social, cultural, political, legal and economic environment that contribute to increased literacy, lower mortality and increased life expectancy for Third World nations overall, and the opposite at the national level. For example, the analysis does not distinguish between countries whose laws and policies mitigate or exacerbate the impacts of transnational corporate activities on human rights. Nor do the results distinguish between different types of corporations, some of which may have a positive and some a negative impact on socio-economic rights.

B The Consequences of the Corporatisation of Third World Agriculture

I The Corporatisation of Agriculture

Third World countries were largely self-sufficient in food, until the 1950s when the US began dumping its wheat surpluses into Third World markets.²⁰⁸ Within 20 years, Third World countries were dependent on food imports, and the West had largely replaced sugar and oil imports from the Third World with domestically produced substitutes.²⁰⁹ The food crisis in 1973-74, meant import prices skyrocketed and a solution was gleaned from transnational bank loans.²¹⁰

With the SAPs, the 'business' of crops and animals was taken over, directly or indirectly,²¹¹ by national and international corporations.²¹² Currency devaluations

²⁰⁶ Meyer above 198.

²⁰⁷ Winston cited in Meyer above 141-142.

²⁰⁸ Harriet Friedmann "The International Relations of Food" in Barbara Harriss-White and Sir Raymond Hoffenberg (eds) *Food: Multidisciplinary Perspectives* (Blackwell Publishers, Oxford, 1994) 174, 182.

²⁰⁹ Friedmann above 182.

²¹⁰ Friedmann above 183.

²¹¹ For many corporates it is more profitable to contract with landowners to provide food for export, using seeds and inputs supplied to them at a cost, rather than purchase the land outright: Erich Jacoby "Transnational Corporations and Third World Agriculture" 6(2) *Development and Change* 90, 92-93.

²¹² Friedmann above 189.

undertaken in implementation of the SAPs led to increased internal prices²¹³ and in some countries a currency collapse, which fuelled internal conflicts over resources, including access to food.²¹⁴ Domestic food producers went bankrupt or had to start producing exports for a global distributor to survive and meet increasing costs.²¹⁵ Oshaug et al state that “[w]ith political, economic and ecological change, *new* groups of people that previously had enough to eat are suddenly faced with declining food availability, increasing prices and decreasing wages”.²¹⁶ Yet devaluations made production even cheaper for corporations.²¹⁷ Powerful groups and corporations took control of vast areas of land in much of Africa, and some of Asia, to take advantage of economies of scale.²¹⁸ This removed poor countries’ self-sufficiency and created dependence.²¹⁹

Transnational companies now have effective control over the agricultural and industrial sectors of the Third World, with almost unconditioned access to its land, people and harvestable resources. About 75% of all people cultivate land for a living, but in the Third World only a small group of corporations and wealthy individuals own the extensive farmlands.²²⁰ By locating in the Third World, corporations are able to export food products to First World nations at a lower cost, enhancing their competitiveness and increasing their market share and hence their profits. Although at 1990, agricultural trade had diminished to only 10% of world trade, it constitutes a major proportion of exports coming out of Third World countries.²²¹ Transnationals grow Western fruits, vegetables, grains and flowers to enable a year-round supply for First World consumers.²²² Third World countries make up 75% of the world’s population, they

²¹³ Michel Chossudovsky *The Globalisation of Poverty* (Zed Books/Third World Network, Penang, 1997) 16.

²¹⁴ Chossudovsky above 15.

²¹⁵ Chossudovsky above 17.

²¹⁶ Arne Oshaug, Wenche Berth Eide and Asbjorn Eide “Human Rights: A Normative Basis for Food and Nutrition-relevant Policies” (1994) 19(6) *Food Policy* 491, 492 (emphasis added) referring to FAO/WHO 1992 *Nutrition and Development - A Global Assessment* ICN/92/INF/5, International Conference on Nutrition, Rome, Italy.

²¹⁷ Erich Jacoby “Transnational Corporations and Third World Agriculture” 6(2) *Development and Change* 90, 93.

²¹⁸ Michael Lipton “Food Production and Poverty” in Barbara Harriss-White and Sir Raymond Hoffenberg (eds) *Food: Multidisciplinary Perspectives* (Blackwell Publishers, Oxford, 1994) 130, 144.

²¹⁹ Jose Zalaquette “The Relationship between Development and Human Rights” in Asbjorn Eide et al (eds) *Food As a Human Right* (United Nations University, Tokyo, 1984) 141, 145.

²²⁰ Anthony Kearns “The Right to Food Exists Via Customary International Law” (1998) 22 *Suffolk Transnat’l L. Rev.* 223, 243.

²²¹ Herman Schwartz *States Versus Markets: History, Geography, and the Development of the International Political Economy* (St. Martin’s Press, New York, 1994) 283.

²²² Schwartz above 284.

produce over 50% of the world's food, but consume only 40%.²²³ The "poor who are feeding the rich, as they have always done".²²⁴

2 *Displacement and Unsustainability*

The effects of the corporatisation of agriculture illustrate that capitalistic goals of capital accumulation and profit maximisation rely on and create inequalities among and between peoples and destroy their resource base. The demand for labour decreased markedly²²⁵ and those growing produce on contract to corporations or as labourers are paid little. As Alexander says "[f]ree trade and consumer choice for a few means low incomes, long hours and a struggle for subsistence among the many."²²⁶ Millions whose families have worked the land for hundreds of years on a subsistence basis or for local production are displaced to cities,²²⁷ where they scrape by in poverty in enormous slums.²²⁸ Other displaced peoples move to marginal land and are forced through poverty to use its few resources unsustainably.²²⁹ In time, in the vicious circle of poverty, the area will be stripped bare, and people forced to move on or starve. Lipton says²³⁰

There are therefore areas such as the western desert of Rajasthan in India, and many areas in East Africa, where there is substantial net growth of population in spite of a very fragile and inadequate land and resource base... These environmentally fragile and semi-arid areas of the developing world - not only in sub-Saharan Africa, but also in South Asia, China and to some extent Latin America - are now the heartlands of world poverty.

²²³ Kearns above 242.

²²⁴ Jacobo Schatan and Joan Gussow "Cultural and Ecological Considerations in the Right to Food" in Asbjorn Eide et al (eds) *Food As a Human Right* (United Nations University, Tokyo, 1984) 110, 114.

²²⁵ Michael Lipton "Food Production and Poverty" in Barbara Harriss-White and Sir Raymond Hoffenberg (eds) *Food: Multidisciplinary Perspectives* (Blackwell Publishers, Oxford, 1994) 130, 144.

²²⁶ Titus Alexander *Unravelling Global Apartheid, An Overview of World Politics* (Polity Press, Cambridge UK, 1996) 246.

²²⁷ Schatan and Gussow above 111.

²²⁸ Erich Jacoby "Transnational Corporations and Third World Agriculture" 6(2) *Development and Change* 90, 91.

²²⁹ Schatan and Gussow above 114.

²³⁰ Michael Lipton "Food Production and Poverty" in Barbara Harriss-White and Sir Raymond Hoffenberg (eds) *Food: Multidisciplinary Perspectives* (Blackwell Publishers, Oxford, 1994) 130, 144-145.

Not only are people displaced and impoverished, but their homelands are being stripped of nutrients and moisture by the over-intensive production of foreign crops. These require large amounts of imported inputs such as pesticides, fertilisers and tractors that are too costly for individual farmers. Even more crucially, unlike traditional crops "well adapted to rainfall pattern, soil structure and chemistry, pest population and terrain"²³¹ exotic 'high-yield' crops are inappropriate for local conditions.²³² As a result the arable lands are desertifying and soils are being lost. Everybody's wellbeing and ongoing access to food is threatened by this.²³³

Schatan and Gussow contend that "the globalization of the food supply - the supermarket world - has so completely separated consumers from the sources of their food that they can no longer even imagine what is required to support its production."²³⁴ Schatan and Gussow suggest that the only way people can understand the necessity of sustaining the topsoil, water, farming techniques and food varieties is to bring agriculture "close to home" - for all countries to attain a degree of agricultural self-reliance.²³⁵ The term 'self-reliance' is used in this context to mean sustainable development, rather than 'isolationism'.²³⁶ But this ignores the fact that it is not everyday people who have *control* over food production, rather it is large corporations, who have no incentive to sustain the soil. Once all nutrition is lost, they will simply relocate, leaving the soil dead and the labourers and contract farmers who had avoided displacement, without income or the means to produce food for themselves.

C Implications for the Right to be Free from Hunger

I Less Food for Domestic Consumption

More food is being produced in Third World nations than ever before, but by transnationals for export. There is less food for domestic consumption.²³⁷ Lipton argues

²³¹ Lipton above 143.

²³² Schatan and Gussow above 116.

²³³ Schatan and Gussow above 115.

²³⁴ Schatan and Gussow above 115.

²³⁵ Schatan and Gussow above 115.

²³⁶ Jose Zalaquette "The Relationship between Development and Human Rights" in Asbjorn Eide et al (eds) *Food As a Human Right* (United Nations University, Tokyo, 1984) 141, 145.

²³⁷ Erich Jacoby "Transnational Corporations and Third World Agriculture" 6(2) *Development and Change* 90, 93.

that growth in the production of *staple* food is very strongly directly related to poverty alleviation at all levels: household, local or national.²³⁸ Lipton says "it is indisputable that food staples production per person in most of Africa has fallen sharply since 1960. Imports have risen at faster rates than population growth, yet the incidence of undernutrition has not declined."²³⁹ There is greater poverty and more people than ever are displaced from their lands, unable to provide for their own basic food needs.

As Kearns states "[h]unger exists today not because the earth lacks sufficient food... but because economic, political, and sociocultural policies promote poverty and encourage hunger."²⁴⁰ Hunger is fostered by the global economic system of food production, distribution and ownership and vast debts. Enormous numbers of people are hungry because the distribution of wealth and resources between and within countries is so unequal.²⁴¹ It is unequal because of greed and the pursuit of power, profit and pleasure.²⁴² "Some peoples right to have the food they need is being interfered with by the presumed right of others to have whatever food [or other goods] that they want."²⁴³

2 *Access to Food*

"In a market economy access to food... is determined almost exclusively by the purchasing power of each family or individual, or in the case of agriculturalists by their control of productive resources."²⁴⁴ People are earning less, if at all, but are required to pay higher prices for imported food and medicines, which many cannot afford. Many are hence denied access to otherwise available food. The CESCR states in 1999, that a "lack of access to *available* food, inter alia because of poverty" is a fundamental cause of hunger and malnutrition.²⁴⁵ The distribution of food via the market based on ability to pay is seen to "doom hundreds of thousands of present and future inhabitants of this

²³⁸ Michael Lipton "Food Production and Poverty" in Barbara Harriss-White and Sir Raymond Hoffenberg (eds) *Food: Multidisciplinary Perspectives* (Blackwell Publishers, Oxford, 1994) 130, 130-131.

²³⁹ Lipton above 143.

²⁴⁰ Anthony Kearns "The Right to Food Exists Via Customary International Law" (1998) 22 *Suffolk Transnat'l L. Rev.* 223, 241.

²⁴¹ Jacobo Schatan and Joan Gussow "Cultural and Ecological Considerations in the Right to Food" in Asbjorn Eide et al (eds) *Food As a Human Right* (United Nations University, Tokyo, 1984) 110, 111.

²⁴² Schatan and Gussow above 112.

²⁴³ Schatan and Gussow above 112.

²⁴⁴ Schatan and Gussow above 111.

²⁴⁵ CESCR "The Right to Adequate Food" *CESCR General Comment 12* 12/5/99 E/C.12/1999/5 para 5 (emphasis in original).

planet to hunger and malnutrition²⁴⁶, depriving them of their most basic rights. Access to food on this basis is labelled inequitable, irrational, wasteful and exploitative.²⁴⁷ Applying Andreassen et al's thesis that access to food is the best indicator of a group's capacity to subsist, if access to food has decreased, basic needs are not being met and people are being deprived of all of their basic rights.

Access to food is ultimately determined by potential resources, the economic, political and ideological structure through which they are channelled and the control and management of resources.²⁴⁸ But many states no longer control or regulate resource use, and are unable to resist the capitalist economic and ideological structure, so are unable to improve access to food. As Robertson says "the globalization of the world economy and the influence of international financial institutions have weakened the national policy levers needed to implement economic, social and cultural rights."²⁴⁹

D Private Organisations Not Responsible For Rights Violations

1 Transnationals Not Responsible under International Law

State power has been whittled down and replaced by the power of financial institutions and corporations. "This vast concentration of corporate power was a direct result of privileges granted by Western states, including... free trade zones, ...subsidies and support... Above all governments have provided a framework of regulation and law which protects companies as almost autonomous economic agents."²⁵⁰ Corporations are not directly accountable to society.

Yet now the internationalisation of socio-economic rights violations, is no longer exacted first and foremost by states. The activities of financial and corporate international actors, are now producing rights violations across borders freely crossed by goods,

²⁴⁶ Schatan and Gussow above 113.

²⁴⁷ Schatan and Gussow above 113.

²⁴⁸ Arne Oshaug, Wenche Berth Eide and Asbjorn Eide "Human Rights: A Normative Basis for Food and Nutrition-relevant Policies" (1994) 19(6) Food Policy 491, 497 figure 1, adapted from U Jonsson *Nutrition and the United Nations Convention on the Rights of the Child* Innocenti occasional papers, child rights series, no 5, (UNICEF International Child Development Centre, Florence, 1993).

²⁴⁹ Robert Robertson "Nutrition, Human Rights and Resources" (1996) 21(1) Food Policy 57, 58.

²⁵⁰ Titus Alexander *Unravelling Global Apartheid, An Overview of World Politics* (Polity Press, Cambridge UK, 1996) 86.

money and agendas. But corporations are not subjects of international legal obligations to safeguard the basic human rights of those whom their activities impact on, and thus cannot be held to have breached international human rights.

International law is built around States. Its branch of international human rights law concerns itself with the relationship between individuals and states. Traditionally, rights have been asserted against the intrusive and potentially dictatorial nature of state power²⁵¹ and should limit the policies and actions that a government can action.²⁵² Human rights are legally meaningless between individuals and private corporations, so corporations do not need to safeguard the human rights of individuals they come into contact with, except where human rights limits are imposed on their activities by state regulation. As part of their duty to ensure that rights are advanced, states should however provide mechanisms by which citizens can be protected from exploitation by other powerful individuals and groups.

2 Domestic Accountability

Domestically, there is also unlikely to be tortious redress against breaches of rights by transnational corporations. Transnationals locate in poor countries precisely because regulations are weak. The laws of the parent company's (generally First World) nation cannot be invoked because under the rule of state territorial sovereignty in international law, subsidiary companies located in Third World countries fall under the jurisdiction of the laws of the nation they operate in, not the country where the profits go. Only the Third World state could be held liable for failing to sufficiently regulate corporations.

E The Inadequacy of State Responsibility for Socio-economic rights

As legal systems based around state-state and state-individual relations, international law and the branch of international human rights are utterly ill-equipped to deal with the phenomenon of rights violations by private transnational forces and the provision of remedies for victims. The state has a duty to respect, protect, facilitate and provide

²⁵¹ Upendra Baxi "The State and Human Rights Movements in India" in Manoranjan Mohanty and Partha Nath Mukherji (eds) *People's Rights: Social Movements and the State in the Third World* (Sage Publications, New Delhi, 1998) 335, 339.

²⁵² Jack Donnelly *International Human Rights* (2 ed, Westview Press, Colorado, 1998) 155.

socio-economic goods under the ICESCR. But crucially, the Third World State is unable to fulfil its fundamental role of *protecting* individuals through domestic law and regulation from breaches of their rights by corporations. The state is theoretically ultimately responsible for rights violations by others who are insufficiently regulated, but is unable to provide a remedy. The shrunken state does not have the resources and no longer has the 'jurisdiction' to *facilitate* access to the means to meet life-sustaining economic needs. It does not control the means of production or social and economic policy so is unable to *provide* individuals with food or work.

The state has not even *respected* communities whose socio-economic needs were being met and whose socio-economic rights were fulfilled. It has done the opposite by agreeing to open up its economies and exposing its people to the profit-driven exploitation of global financial and corporate interests. By protecting and supporting these companies through lax policy and legislation,²⁵³ Third World governments are themselves indirectly exacerbating poverty and inequalities²⁵⁴ and perpetuating deepening human rights abuses. At the same time they are facilitating the predominance of transnationals in a world order where in practice, the call for the widespread provision of basic needs arguably cannot be backed up and enforced by rights. Even if the protection of rights was theoretically possible, the Third World state has been whittled down so that it no longer has the means and the personnel to re-empower its people. In many countries it is hard to give meaning to socio-economic rights in the growing spheres where private interests rule.

F Private Responsibilities For the Right to Food?

The CESCR goes some way to addressing this issue in their General Comment on the right to food, by stating that although only State Parties are accountable, all members of society including private business, have 'responsibilities' for the realisation of the right.²⁵⁵ The CESCR recommends that national and transnational private businesses should

²⁵³ Anthony Kearns "The Right to Food Exists Via Customary International Law" (1998) 22 *Suffolk Transnat'l L. Rev.* 223, 243 citing Clarence Dias "The Legal Resources Approach" in Asbjorn Eide et al (eds) *Food As a Human Right* (United Nations University, Tokyo, 1984) 179.

²⁵⁴ Kearns above 243 citing Dias above 179.

²⁵⁵ CESCR "The Right to Adequate Food" *CESCR General Comment 12* 12/5/99 E/C.12/1999/5 para 19.

operate within a "code of conduct conducive to respect of the right to adequate food, agreed upon jointly with the Government and civil society."²⁵⁶

All this proposal requires is that businesses operate in a way that *respects* the right to food. Even assuming they chose to commit to such a code, they could argue that it simply requires them not to prevent existing access to food, just like the first limb of a state's obligation. The recommendation does not seem to include the protection or fulfilment of the right. It is therefore a very thin safeguard indeed, and it does nothing to alleviate existing rights breaches.

To back up private obligations, the CESCR requests that States "provide an environment that facilitates implementation of these 'responsibilities'."²⁵⁷ It is highly unlikely that Third World states, who have little control over the actions of transnationals operating within their borders, and little hope of monitoring private actions, have the capacity to do this.

G *An Economic System That Renders Socio-economic Rights Unachievable*

Global free market capitalism is fundamentally inconsistent with the realisation of socio-economic rights for large sections of the world's people. George has said²⁵⁸

"[b]y now it should be obvious that a world system based on the free market and the laws of capital is chronically incapable of providing everyone with 'the right to a standard of living adequate for the health and wellbeing of himself and his family, including food...' [in article 25 of the UDHR].

The realisation of economic and social rights depends on a system of redistribution. Donnelly states²⁵⁹

²⁵⁶ CESCR above para 20.

²⁵⁷ CESCR above para 20.

²⁵⁸ Susan George "The Structure of Dominance in the International Geo-economic System and the Prospects for Human Rights Realization" in Asbjorn Eide and Bernt Hagtvet (eds) *Human Rights in Perspective: A Global Assessment* (Basil Blackwell Ltd, Oxford, 1992) 268, 268-269.

²⁵⁹ Jack Donnelly *International Human Rights* (2 ed, Westview Press, Colorado, 1998) 159.

[f]ree markets... necessarily produce gross economic inequalities. This is well known and is the basis of the welfare states that almost all Westerners now take for granted. The collectivity that benefits, has an obligation to look after individual members who are disadvantaged in or harmed by markets.

There was no 'welfare' system at an international level, except the informal, politically-driven and hence unreliable and biased system of aid. The ICESCR was drafted to provide the roots for a system of welfare. But this attempt has been submerged by the rise of unfettered capitalism, coinciding with the decreased focus on the social collective, nationally and internationally.²⁶⁰ Non-state actors direct international trade and investment, and use the people, land and resources of Third World nations as inputs for profit-making, with no strong state conditions placed upon their activities. Global capitalist forces have enormous negative impacts on the ability of millions to meet their most basic needs, and correspondingly violate the rights of these millions. But "the financial community exerts more power over domestic economic decision-making than do elected governments."²⁶¹ The stronger its foothold becomes, the more ineffectual the state is as a shield against the violation of rights.

It is clear that there is a fundamental structural clash between this trend and the goal of realising socio-economic rights in poor nations and communities. The capitalist world forces rely on socio-economic rights in Third World nations having no real content, just as they rely on having a consumer and investor base in rich nations whose socio-economic rights are met.

V RIGHTS, RESPONSIBILITIES AND VIOLATIONS

During the last 50 years, *international* socio-economic human rights standards have been enunciated, supported and given some content by international bodies set up by states.

²⁶⁰ The primacy placed by First World states on the civil and political rights in the ICCPR vis a vis socio-economic rights in the ICESCR, both at international and domestic levels, is arguably consistent with the rise of global private capitalist power. The stability of countries and transnational investments is promoted if states are required to operate fairly and 'democratically', whereas the retreat of the state from social and economic fields is a pre-condition of transnational control and profit-generation.

²⁶¹ Titus Alexander *Unravelling Global Apartheid, An Overview of World Politics* (Polity Press, Cambridge UK, 1996) 121.

But international organisations have also encouraged the opening up of nation states and peoples to global capitalist forces, from which a new wave of private *transnational* human rights *violations* been born. States are in breach of their Covenant obligations through their failure to protect their peoples against violations by these market forces, but are unable to remedy this. In turn, transnational corporations are not directly accountable for these rights violations, either to the state, to international organisations or the people whose lives they impact upon. Half a century after the ICESCR was conceived, the market system rules in the international world order and the social and economic rights set forth in the Covenant are even more unachievable than before.

This clash between the communal good and individual advancement, State and corporate power, socio-economic rights and non-regulation of corporate activity is here to stay. There are however several ways states and other international actors might try to change the 'rights and responsibilities' balance, to alleviate some of the inequalities produced by the present international economic environment. This final part canvasses the options for expanding the pool of duty-holders in international law and mitigating the impact of rights violations, but concludes that they are either unrealistic or would be ineffective to achieve the goal of advancing socio-economic conditions in Third World nations.

A *Altering Rights' Responsibility in International Law*

1 *States as Duty-holders - Socio-economic Rights Not Universally Realisable*

If socio-economic rights are ultimately the responsibilities of states, we must conclude that it is a fallacy to treat them as universally achievable rights in the present global economic order. Third World states are unable to advance socio-economic conditions or redress rights violations. Limiting the breadth of each right to its core precept will not assist, because it has been shown that given the economic environment prevalent in Third World nations, the most basic form of the basic right to food, freedom from hunger, is not being advanced. First World states should cooperate with struggling states to advance rights, but to do so in a meaningful way would threaten their nations' high standards of living.

2 *Corporations as Duty-holders in International Law*

To reflect the realities of the shift in power, beginning with UN General Assembly resolutions and eventually through the development of treaties, States could push for corporations to be held *responsible* as international rights actors. This would massively increase the reach of international human rights. Corporations would strongly resist this and states are unlikely to make this happen. Further, even assuming states could agree to do it, at present there is no way that such a scheme could be enforced, as there is no international body capable of reining in international financial and corporate interests.

B *Mitigating Rights Violations*

If the right is a legitimate social and moral goal, and this goal cannot be pursued within the international system, this implicates the system itself. It delegitimises any further attempts to remove common welfare limits on economic actors operating within the system and it suggests that the economic environment's negative impacts on rights should be mitigated.

1 *State Limits on Corporate Activity*

States could agree to place conditions on the activities of corporations operating within their territory, building on the CESCR notion that corporations have rights responsibilities. This might include conditions that improve access to social and economic goods. Changes could only be effective if all poor countries acted together, otherwise corporations will simply shift their activities elsewhere. For obvious reasons, First World nations are unlikely to support this, but if Third World nations were to act together, through regional initiatives or within the United Nations, some controls may be achieved. However as always, there is the risk that they remain unenforced for political reasons or because of a lack of resources.

2 *Voluntary Corporate Limits*

Corporations could be encouraged to voluntarily change their practices to mitigate rights impacts. The UN has initiated the Secretary-General's Global Compact in a bid to

encourage “voluntary cooperation between the United Nations and the private sector in order to ensure that corporations have a positive impact on the enjoyment of human rights.”²⁶² It calls for business leaders to promote and apply nine principles, derived from human rights instruments, embodying human rights, labour and environmental standards.²⁶³ This initiative and the CESCR’s suggestion that private corporations agree on a human rights code with governments and society, acknowledge the reality that corporations have enormous power and influence and without their assistance human rights standards will not be achieved world wide. The key question is how such a system could realistically be monitored, and why corporations would choose to place limits on themselves! They would do so only if it gave them a competitive advantage. This would have to come from their consumers and clients.

As Haragopal and Balagopal say, “movements against... [capitalist] economic development are exposing its anti-people character”.²⁶⁴ Recent protests by First World individuals and groups at the 1999 World Trade Summit and 2001 Genoa G8 Summit, highlight the increasing numbers of people who are bringing attention to the social inequity and environmental harm caused by globalisation and transnational corporate power and profit-seeking. Information about the damaging consequences of corporate activity in Third World nations, and by implication the damaging force of their own lifestyles, is reaching more and more ears. But even assuming awareness continues to grow, this approach can have only limited impact. Only the richer consumers of the world can afford to buy ‘rights-friendly’ products, and there is great inertia to ‘self-imposed’ reductions in consumer choice, let alone fundamentally altering our privileged lifestyles.

²⁶² Secretary-General Report “Globalization and its impact on the full enjoyment of all human rights” 31 August 2000 A/55/342 9.

²⁶³ Secretary-General Report above 9 referring to Mary Robinson United Nations High Commissioner for Human Rights *Putting principles into practice: creating a Global Compact with the business sector 2000*.

²⁶⁴ G Haragopal and K Balagopal “Civil Liberties Movement and the State in India” in Manoranjan Mohanty and Partha Nath Mukherji (eds) *People’s Rights: Social Movements and the State in the Third World* (Sage Publications, New Delhi, 1998) 353, 368.

3 *Greater Commitment to Economic Assistance*

Another possible approach involves undertaking market intervention through aid programmes. This 'ambulance at the bottom of the cliff' strategy is taken by states and non-government organisations today. Andreassen et al argue that market intervention through international aid is needed in both urban and rural areas to advance the achievement of basic rights.²⁶⁵ Türk, the Special Rapporteur on the Realization of Economic, Social and Cultural Rights argues that states need to recognise their own inadequacies and encourage the use of private resources, such as organised people's movements, to meet citizen's needs.²⁶⁶

Aid measures are proposed as affordable ways of advancing social and economic rights, but all they do is preserve the status quo. Key problems with aid include its informality as a system, and its politically-driven availability and distribution. Because of this bias and unreliability it is inappropriate in principle to rely on aid to advance socio-economic conditions and remedy violations, but it may be the only real option. However the amount of aid presently available to Third World countries to meet basic human needs is very small - just over 8% of official development assistance, which only amounts to 0.3% of donor nations' GNP.²⁶⁷ Extra assistance could come from private finance, however the danger is that if corporations were to 'sponsor' aid programmes in certain nations, they would require further concessions from regional and central governments as a return on their 'investment' and the state would risk whole regions becoming captured by that corporation's agenda.

C *First World-led Overturning of the Economic Paradigm*

Given that at the core of this phenomenon is the capitalist system and its most powerful actors, rejecting the *system* may be the only long term solution to the socio-economic

²⁶⁵ Bard-Anders Andreassen, Alan Smith and Hugo Stokke "Compliance with Economic and Social Rights: Realistic Evaluations and Monitoring in the Light of Immediate Obligations" in Asbjorn Eide and Bernt Hagtvet (eds) *Human Rights in Perspective: A Global Assessment* (Basil Blackwell Ltd, Oxford, 1992) 252, 266.

²⁶⁶ Danilo Türk *The Realization of Economic, Social and Cultural Rights* Final Report to the Commission on Human Rights UN Doc. E/CN.4/Sub.2/1992/16 50 cited in Robert Robertson "Nutrition, Human Rights and Resources" (1996) 21(1) *Food Policy* 57, 60.

²⁶⁷ Robert Robertson "Nutrition, Human Rights and Resources" (1996) 21(1) *Food Policy* 57, 68 citing UNDP *Human Development Report 1991* (Oxford University Press, Oxford, 1991) 8.

rights dilemma. It is however highly unlikely that the global capitalist system will be overturned by the First World. First World states and citizens have some influence over large corporations, but little control. Most importantly, they have no incentive to change the system. First World states benefit from the system through cheap imports and high investment returns, and to change the system would lower their national standard of living and cut the profits of their corporations. First World individuals are removed from social suffering, or do not want to jeopardise their privileged lifestyle, or simply feel that the problem is too big for the few who care.

D An Unrealisable ICESCR

Short of overturning the world economic order, beginning with the cancellation of transnational debts and returning economic sovereignty to Third World states, or overhauling the basis for rights' obligations in international human rights law, we are reliant on corporations to voluntarily place limits on their rights-violating activities in Third World countries. Given the unlikelihood of corporations doing so, the minor extent to which they would place limits on their activities if they were willing, and what they might require in return, a pessimistic conclusion is inescapable. The ICESCR seems nothing more than a token document for many peoples of the world, an unreachable wish list in a world order where even freedom from hunger, the core of the most basic socio-economic right, is more and more unrealisable.

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