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## Contemplating the WTO From the Margins

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# Contemplating the WTO from the Margins

Ruth Gordon<sup>\*</sup>

The World Trade Organization (WTO) is an increasingly powerful and sophisticated organization that is at the center of both the world trade system and what is often posited as the inexorable tide of globalization. Its membership is nearly universal,<sup>1</sup> and unlike international financial institutions such as the World Bank, it has a more democratic governing structure where each nation has a vote and decisions are made by consensus. The vast majority of its Members are the poor and unindustrialized nations of the Third World. Development is always at the center of Southern tier goals, and trade has now been explicitly linked to development. Indeed, there are provisions in WTO Agreements regarding special and differential treatment, and economic development. Moreover, WTO agreements now contain special provisions for least developed countries, many of which are found on the African continent. Notwithstanding these dispensations, the nations of Africa and other small, poor, unindustrialized nations that are on the periphery of the international trade system remain in rather wretched economic circumstances, and they appear set to remain there indefinitely. This essay speaks to the location of these nations within this paradigm and to their prospects for achieving their goals within the contemporary system.

It begins with a brief and very general outline of how the trade regime has responded to the needs of Southern tier countries, and then explores how the WTO as an institution bears upon these nations, including an appraisal of how they have fared within an organization that professes to be more democratic. It then turns to development, which is the perpetual benchmark for impoverished nations in the international system and the reason they have endeavored to become part of the international trade regime. This essay then considers the intersection of the neo-liberal development paradigm and a WTO ideology that claims it can raise all boats, including the vessel that will finally realize development. The premises underlying both of these theories will be explored, as well as whether these undertakings may ultimately prove impossible to attain. Even if there is commitment and enthusiasm on all sides, it is likely that any good faith emanating from the industrializing world will fade when their domestic constituencies begin pressing for protection.

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1. The World Trade Organization had 148 members as of Feb. 16, 2005. WTO, Members and Observers, [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm#members](http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm#members) (last visited Sept. 17, 2005).

While my primary objective is to probe and decipher the most recent facet of the modernization narrative, the hope is to avoid replacing it with yet another account, or version that is rooted in a privileged Western perspective. In this spirit, this essay will not conclude with a grand theory or prescription to resolve Africa's dilemmas, however they might be defined. Rather, it will put forth rather modest suggestions as to how communities might begin to gather strength from their existence on the margins. Indeed, it asks whether they might find ways to take advantage of being outside a global system that refuses them admission, except as gatherers of exhaustible natural resources they are not permitted to own, as farmers of products that are not produced in the West, or by remaining repositories of the very cheapest labor.

## I.

### DEVELOPMENT, TRADE AND THE THIRD WORLD

#### *A. GATT and the Dispossessed*

The General Agreement on Tariffs and Trade (GATT), which has been folded into the panoply of WTO Agreements, was long thought of as a 'rich man's club' that operated in the interests of industrialized countries.<sup>2</sup> Indeed, the international trade regime has been, and remains tilted against the so-called developing world. This bias can be found in the basic precepts and conventions that inspire it, as well as the manner in which these principles have been implemented. GATT is intended to liberalize trade by reducing tariffs, and the most favored nation principle requires that these reduced tariffs be extended to all Members of the WTO.<sup>3</sup> Trade liberalization has been enormously successful, with tariffs on manufactured goods currently at their lowest levels in modern history. Yet, when it comes to agricultural products and textiles, goods in which Southern tier nations have a comparative advantage, protectionism has been rampant.<sup>4</sup> GATT outlawed non-tariff barriers to trade that might dilute or lessen tariff concessions, yet quotas, subsidies and other devices that would otherwise be unacceptable if applied to other goods proliferated and thrived with respect to agricultural products and textiles.<sup>5</sup>

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2. Kevin C. Kennedy, *Reforming U.S. Trade Policy to Protect the Global Environment: A Multilateral Approach*, 18 HARV. ENVTL. L. REV. 185, 213 (1994).

3. The General Agreement on Tariffs and Trade, Oct. 30, 1947, T.I.A.S. No. 1700, 55 U.N.T.S. 187 [hereinafter GATT] at art. I. The most favored nation principle mandates that any advantage or favor granted to one nation must be afforded to all WTO members. Thus, tariff concessions granted to one party are generalized, thereby contributing to overall trade liberalization.

4. The ostensible premise underlying international trade rules is the creation of a level playing field where each nation can sell what it produces most efficiently, while trading with other nations to obtain what others make more efficiently. The end goal is a global system where free trade is ubiquitous and efficiency prevails. The economic theory known as comparative advantage asserts that this outcome will result in a world working at maximum efficiency that will make everyone better off, at least collectively. Third World nations tend to specialize in agricultural products and textiles, which require low levels of technology and cheap labor. Since its inception, agricultural products have generally been exempted from the trade liberalization regime and textiles were imported and exported under a complex series of agreements that subjected this trade to quotas.

5. See GATT, *supra* note 4, at Art. III, ¶ 1; GATT art. XI. National treatment mandates that nations refrain from crafting taxes, laws, regulations or engaging in other internal practices in a manner that affords protection to domestic production. GATT's restrictions on quantitative restrictions prohibit

Exports of primary products, such as minerals and agricultural goods, have been subjected to tariff escalation whereby tariffs escalate as processing increases, thereby discouraging processing, and presumably industrialization and job creation in the nation of origin. It might be observed that it is unlikely that these devices were employed with the explicit intent of harming Third World countries. Rather, it is more probable that they were intended to protect specific domestic industries in industrialized nations, industries that are often populated by the lowest paid and most disenfranchised segments of the labor force. Thus, global competition has meant the poor are competing against the poor on an even larger and broader scale.<sup>6</sup>

Moreover, the trade regime has been expanded to include trade in services, the protection of intellectual property rights and trade related investment measures, among other matters.<sup>7</sup> These are areas of interest to industrialized countries and were included at their behest to protect Western multinational corporations.<sup>8</sup> It is very uncertain whether these regimes will benefit developing or least developed countries. This is evidenced by the necessity for a Declaration on the TRIPS Agreement and Public Health, which was adopted in 2001 in response to the outcry over lack of access by poor countries to life-saving drugs to address AIDS and other health problems.<sup>9</sup> Moreover, GATS may portend difficulties in generating internal service industries, while TRIPS seeks to remove traditional tools utilized by Third World governments to regulate the activities of transnational corporations operating within their borders.

Finally, as the reach of the global trade regime intensifies, enforcement mechanisms have grown stronger. The WTO system currently contains a sophisticated and more rule-based dispute settlement system to insure that Members perform their numerous obligations. This system builds on and generally improves upon GATT dispute settlement, where raw power sometimes prevailed.<sup>10</sup> It is being

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restrictions other than duties, taxes or other charges. This would include quotas, import licenses or other measures. My fellow panelist, Professor Carmen Gonzalez is an expert on agricultural issues. See, e.g., Carmen Gonzalez, *Institutionalizing Inequality: The WTO Agreement on Agriculture, Food Security, and Developing Countries*, 27 COL. J. ENVTL. L. 433 (2004). See also Kevin C. Kennedy, *The Incoherence of Agricultural, Trade and Development Policy for Sub-Saharan Africa: Sowing the Seeds of False Hope for Sub-Saharan Africa's Cotton Farmers?* 14 KAN. J. L. & PUB. POL'Y 307 (2005).

6. Professor Thomas has explored the complexities of this particular race to the bottom in some depth. See, e.g., Chantal Thomas, *Poverty Reduction, Trade, and Rights*, 18 AM. U. INT'L L. REV. 1399 (2003).

7. General Agreement on Trade in Services, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1B, 33 I.L.M. 1125 [hereinafter GATS]; Agreement on Trade-Related Investment Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 33 I.L.M. 1125 [hereinafter TRIMS Agreement].

8. See, e.g., Peter K. Yu, *Trips and Its Discontents*, 10 MARQ. INTELL. PROP. L. REV. 369, 374 (2005).

9. WTO, Declaration on the TRIPS Agreement and Public Health, [http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_trips\\_e.pdf](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.pdf) (last visited Sept. 22, 2005). Frederick M. Abbott, *The WTO Medicines Decision: World Pharmaceutical Trade and the Protection of Public Health*, 99 AM. J. OF INT'L L. 317 (2005).

10. THE WORLD TRADING SYSTEM, LAW AND POLICY OF INTERNATIONAL ECONOMIC RELATIONS (JOHN H. JACKSON, 2<sup>ND</sup> EDITION 1999) at 107-138. The GATT system evolved over GATT's fifty-year history and often worked quite well. Nonetheless, some nations such as the U.S. had a tendency to undertake unilateral measures to vindicate its rights and panel reports were not always complied with. Id. at 112-120. Douglas Ierley, *Defining the Factors that Influence Developing Country Compliance with and Participation in the WTO Dispute Settlement System: Another Look at the Dispute Over Bananas*, 35 LAW & POL'Y INT'L BUS. 615 (2002) (discussing perceptions of fairness).

used more extensively, and at least some Third World countries have been more willing to bring claims. African countries, however, have not been active participants for a number of reasons that include lack of resources, limited access to expertise and fear of retaliation within or without the WTO.<sup>11</sup> More alarmingly, several disputes brought by their Third World brethren have had the potential to have an adverse impact on their interests.

It must be acknowledged that despite GATT's general failings with respect to the Third World, it did eventually include the Generalized System of Preferences (GSP), which permitted non-reciprocal preferences by industrialized countries in favor of countries they designate as developing, and this system is still in place.<sup>12</sup> Moreover, WTO agreements are sprinkled with additional preferences for developing countries, including permitting preferences under such agreements as the Cotonou Agreement and the African Growth and Opportunity Act (AGOA).<sup>13</sup> All of these preferences are 'soft law', however, meaning they are discretionary on the part of industrialized countries and unenforceable by poor countries.<sup>14</sup> Hence, there can

11. As of September 2005, 332 disputes had been brought before the WTO. See, <http://www.WTO.org>. As of 30 September 2004, 92 Members had participated in WTO dispute settlement proceedings either as primary or third parties. The big repeat players are the U.S., E.C., and secondarily Canada, Brazil and India. See Calvin Manduna, *Daring to Dispute: Are There Shifting Trends In African Participation In WTO Dispute Settlement?*, Tralec Trade Brief No. 3 (June 2005), <http://www.tralac.org/scripts/content.php?id=3717>. Mr. Manduna notes that among African nations, only South Africa and Egypt have had consultation requests lodged against them and these have generally regarded dumping. As third parties, African nation have been involved in U.S. –Import Prohibition of Shrimp and Shrimp Products (Nigeria); EC – Regime for the Importation, Sale and Distribution of Bananas (African Caribbean and Pacific); EC – Export Subsidies on Sugar (ACP); and U.S. –Subsidies on Upland Cotton (Benin and Chad).

12. Generalized System of Preferences, June 15, 1971, GATT B.I.S.D. (18th Supp.) at 24-26 (1972). Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, Apr. 15, 1994, 33 I.L.M. 1125. As to the WTO, developing countries and least developed countries are mentioned at various points, including in the preamble. See generally GUIDE TO THE URUGUAY ROUND AGREEMENTS, THE WTO SECRETARIAT (KLUWER LAW INTERNATIONAL 1999) at pp. 223-246.

13. Partnership Agreement Between the Members of the African, Caribbean and Pacific Group of States of the One Part, and the European Community and its Member States, of the Other Part, June 23, 2000, [hereinafter Cotonou Agreement], [http://europa.eu.int/comm/development/body/cotonou/pdf/agr01\\_en.pdf#zoom=100](http://europa.eu.int/comm/development/body/cotonou/pdf/agr01_en.pdf#zoom=100) (last visited Sept. 22, 2005). As Professor Lenaghan noted at this conference, AGOA is a statute that declares what preferences will be granted to African nations. It totally lacks any semblance of the kind of negotiations that one normally thinks of when nations reach agreement. It is the ultimate in soft law, being totally at the whim of the United States and as Professor Lenaghan also pointed out, it is primarily for the purpose of obtaining African oil.

According to the WTO Secretariat, special provisions in favor of developing countries include provisions: —aimed at increasing trade opportunities for developing countries; — which require WTO Members to safeguard the interests of developing country Members when adopting protective trade measures; — allowing flexibility to developing countries in the use of economic and commercial policy instruments; — granting longer transitional periods for the implementation by developing countries of various commitments flowing from these agreements; and — for technical assistance in implementing of their commitments as well as in their efforts to reap full benefits from the results of the Uruguay Round. <http://www.wto.org>.

14. See Gustavo Olivares, *The Case for Giving Effectiveness to GATT/WTO Rules on Developing Countries and LDCs*, 35 J. OF WORLD TRADE 545 (2001); Peter Lichtenbaum, 'Special Treatment' vs. Equal Participation: Striking A Balance in the Doha Negotiations, 17 AM U. INT'L L. REV. 1003 (2002). Professor Frank Garcia makes a powerful and quite brilliant case in support of differential treatment, based on notions of justice, and I have no quarrel with his arguments. See Frank J. Garcia,

be no breach and thus no claim emanating from their intended beneficiaries. Moreover, preferences are being eroded and are becoming less valuable as tariff reductions generalize any benefits that might be gained from preferential access.<sup>15</sup> Special and differential treatment also encompasses more sympathetic consideration towards the least developed countries with respect to dispute settlement, the time-periods for implementing selected WTO obligations, as well as non-reciprocity regarding some concessions, with the last being in the interest of affording some measure of market protection. Generally, such measures as extended timeframes have proven to be unrealistic for many and totally useless to others. Nevertheless, Third World nations are being vigorously pressed to open up their markets if they want industrialized nations to address problems regarding the products they are interested in. Consequently, special and differential treatment is turning out not to be so special or so differential after all.

### *B. Trade and Developing the Least Developed*

If GATT was a rich man's club where Third World interests were secondary at best or simply disregarded at worse, then the rules have been most skewed against the poorest and the smallest nations and economies, nations that are on the outer fringes of the periphery. Most certainly, the nations of sub Saharan Africa make up a disproportionate share of this discontented cluster, accounting for a miniscule fraction of world trade. So one might wonder why these nations have endeavored to become enmeshed in the international trade regime. For them, the answer is the same as it is with all phenomena on the international stage and with whatever international concern. For poor nations, the subject is permanently and continually development, and thus these nations enter the trade construct through their encounters with the development paradigm. These states are Members of the WTO because they have been convinced, or forced to believe, that trade will be the answer to their development woes and that being outside of this regime will be economically fatal. Hence, for the poorest nations, the issue is how trade policy will assist in the modernization quest.<sup>16</sup>

It is not surprising that a correlation between trade and development also happens to be the mantra emanating from the development community, for it is the developers that decide the current development thesis, not the countries that are its objects. With the Washington Consensus, development has now been explicitly and firmly linked to trade, and to becoming part of the global economy. Poor countries are to liberalize their economies by making tariff concessions that open their markets to imported goods, and to undertake measures that will make their economies friendly to international capital. Foreign entities will then be more inclined to invest

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*Building a Just Trade Order for a New Millennium*, 33 GEO. WASH INT'L L. REV 1015 (2001). I have no disagreement with any hypothesis that advocates an alternative vision that favors economic justice or that claims the industrialized world is obligated to grant preferences to small economies. I am just doubtful such equity will be forthcoming from the current powers that be.

15. Lichtenbaum, *supra* note 14 (noting that the Contonou preferences will be phased out as of 2008).

16. See, Ruth E. Gordon & Jon H. Sylvester, *Deconstructing Development*, 22 WIS. INT'L L.J. 1 (2004). All international agreements over the last twenty-five years have made exceptions for the development goals of developing, least developed, Southern tier or as Professor Frank Garcia, so aptly put it for 'small countries'. See Garcia, *supra* note 14.

in their economies and help them build and expand upon their comparative advantage, which is currently agricultural products, exhaustible natural resources and pools of very cheap labor.

The WTO is now an integral part of this project. Indeed, the preamble to the Agreement Establishing the World Trade Organization recognizes the need for "positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth of international trade commensurate with the needs of their economic development." WTO agreements include special provisions for Developing and Least Developed Nations, and the WTO has entered into agreements with the World Bank and the IMF.<sup>17</sup> The WTO and global trade have become integral components of the development paradigm and it is development theory that rules the collective existence of poor Southern tier nations.

International financial institutions not only proclaim the appropriate theories, but also are in a position to rule the poor, small nations that must adhere to their policies and principles. There have been numerous analyses of international financial institutions and their chokehold on poor countries.<sup>18</sup> They often finance healthcare, infrastructure construction and many other projects and services or contribute sufficient funds to direct the size, scope or design of these undertakings. In the meantime, many impoverished nations drown in unsustainable debt to Western banks and governments and thus are forced to maintain strategies and plans that are determined by outside institutions. International financial institutions (IFIs) dictate economic policies and increasingly governance, and under the rubric of good

17. Agreement Between the WTO and the IMF and the World Bank, Nov. 18, 1996, WT/L/194, [http://www.wto.org/english/thewto\\_e/coher\\_e/wtl194.doc](http://www.wto.org/english/thewto_e/coher_e/wtl194.doc) (last visited Oct. 9, 2005); Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, art. III, Apr. 15, 1994, 33 I.L.M. 1125, 1145; Declaration on the Contribution of the World Trade Organization to Achieving Greater Coherence in Global Economic Policy making, [http://www.wto.org/english/docs\\_e/legal\\_e/32-dcohr.doc](http://www.wto.org/english/docs_e/legal_e/32-dcohr.doc) (last visited Oct. 9, 2005); Declaration on the Relationship of the World Trade Organization with the International Monetary Fund, [http://www.wto.org/english/docs\\_e/legal\\_e/34-dimf.doc](http://www.wto.org/english/docs_e/legal_e/34-dimf.doc) (last visited Oct. 9, 2005).

According to the WTO Secretariat:

Globalization has increased the need for closer cooperation between the multilateral institutions with key roles in the formulation and implementation of different elements of the framework for global economic policy, in particular the International Monetary Fund (IMF), the World Bank and the World Trade Organization. Each of these organizations has a mandate for such cooperation in the agreements under which they have been established. They also have signed agreements among themselves, for mutual cooperation and regular consultation, which identify mechanisms designed to foster greater coherence in global economic policy-making.

[http://www.wto.org/english/thewto\\_e/coher\\_e/coher\\_e.htm](http://www.wto.org/english/thewto_e/coher_e/coher_e.htm).

18. International Financial Institutions prescribe how poor nations are to govern themselves and what economic policies are appropriate. They are subjected to projects, more projects, and still more projects; they apply for aid that never quite gets into the country; and they must jump through numerous hoops for the paltriest amounts of money imaginable. The list could go on forever, but I will stop here. One of the best is Antony Anghie, *Time Present and Time Past: Globalization, International Financial Institutions, and the Third World*, 32 N.Y.U. J. INT'L L. & POL. 243 (2000). See James Thuo Gathii, *Retelling Good Governance Narratives About Africa's Economic and Political Predicaments: Continuities and Discontinuities in Legal Outcomes Between Markets and States*, 45 VILL. L. REV. 971 (2000). This is not to assert that poor nations are entirely acquiescent in the face of IFIs, but it is indisputable that these institutions wield an enormous amount of power over relatively weak states. See Gordon & Sylvester, *supra* note 16.

governance, they determine the content and implementation of government policies. Nations are being compelled to conform their laws to international prescriptions as part of the good governance agenda, while they are required to implement numerous WTO mandates that essentially require the adoption of Western laws and policies.

International Financial Institutions are notoriously undemocratic, with the principal monetary contributors possessing the dominant voice over policy and resource allocation. Those who partake of these resources have an almost negligible voice, and this is especially true for the poorest of the poor, and the smallest of the small.<sup>19</sup> Thus, as development becomes part of the agenda of an increasingly powerful WTO, the possibility of finding a more strident voice within an ostensibly more democratic system was eagerly anticipated, but has ultimately proven fruitless. It seems that despite being in the numerical majority, these nations have been unable to exert their collective will.

## II.

### SYSTEMIC OBSTACLES FACING SMALL NATIONS IN THE WTO

Decisions in the WTO are made by consensus, meaning Member States negotiate until no state demurs enough to openly object.<sup>20</sup> One might surmise that a more democratic governing structure would lead to additional democratic input and a stronger voice for poor countries. Employing a consensus-based system, however, should have been a telling indication that such a result was highly unlikely. Whether or not such a result was intended, this system has been an effective means of dealing with the reality that rich nations are in the numerical minority and could have been outvoted by the Southern tier nations that comprise the vast majority of WTO Members.<sup>21</sup> Indeed, consensus has accorded wealthy nations the institutional capacity to exert their power almost at will. Without a doubt, poor nations have a greater voice in the WTO than in international financial institutions, where they have no voice at all. Yet, it seems that their appeals are not quite compelling enough to actually achieve their goals, as power continues to be determinative. Indeed, it is quite apparent that the WTO remains a power-based system where poor countries ultimately have little real influence.

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19. See Anghie, *supra* note 18. In the IMF and World Bank, voting strength is based on the sum of resources contributed to the Organization. See International Bank for Reconstruction and Development (IBRD) art. V, sec. 3, Voting, <http://siteresources.worldbank.org/EXTABOUTUS/Resources/ibrd-articlesofagreement.pdf> (last visited Sept. 25, 2005) ("Each member shall have two hundred fifty votes plus one additional vote for each share of stock held."); Articles of Agreement of the International Monetary Fund, Organization and Management XII, <http://www.imf.org/external/pubs/ft/aa/aa.pdf> (lasts visited Sept. 25, 2005) ("Each member shall have two hundred fifty votes plus one additional vote for each part of its quota equivalent to one hundred thousand special drawing rights" adjusted based on special drawing rights of net sales and net purchases.).

20. In the rare event that a vote must be taken, each nation has one vote and a majority is usually needed for adoption. Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, art. IX, Apr. 15, 1994, 33 I.L.M. 1125, 1148 (decisions are to be made by consensus, unless consensus cannot be reached, in which case they are to be decided by voting with each nation having one vote).

21. BEHIND THE SCENES AT THE WTO THE REAL WORLD OF INTERNATIONAL TRADE NEGOTIATIONS, FATOUMATA JAWARA & AILEEN KWA (2004), hereinafter, BEHIND THE SCENES AT THE WTO.



The institutional reasons for this lack of influence are many and begin with scarce and insufficient resources and inadequate access to expertise. The WTO is an immense entity whose work covers a broad variety of topics and concerns. There are over a thousand meetings a year, with many taking place simultaneously. Many delegations from very poor nations, however, do not have missions in Geneva, making it impossible to be part of the day-to-day decision-making of the Organization.<sup>22</sup> During Trade Rounds and Ministerials, this loss of voice is amplified as WTO Members engage in discussions and negotiations that will have a long-term impact on the future direction of the Organization.<sup>23</sup> There are even more meetings, which are often held concurrently, making it difficult if not impossible for these nations to attend them all. Their delegations simply are not large enough, even when they manage to send additional personnel from home to augment whatever size mission they might have in Geneva.<sup>24</sup> There are also the so-called Green Room meetings that one must be invited to, if one is to participate, and most poor, small countries fail to make the exclusive invite list. Many decisions are being made in these forums, however, and it is almost impossible to have input if one is not present. Moreover, this scenario does not account for the highly disturbing trend of decisions being taken at meetings held by the Quad countries (Canada, the United States, the European Union, and Japan) and then presented to WTO Members as a fait accompli.

Even if a nation has sufficient resources to attend meetings, and one is invited to those held in the back rooms, there is still the matter of not having the technical expertise to participate in a meaningful manner. The work of the WTO is not only voluminous, but is often very technical and complex and is only becoming more so. One need only briefly survey the trade literature to quickly realize the need for considerable and sustained expertise to seriously and continuously participate in a significant and sophisticated manner. Lacking internal think tanks, adequate numbers of trade specialists and the resources to sustain such activities on an ongoing basis, there is evidence that these nations are often not as successful as they would like to be.<sup>25</sup> However, NGOs do sometimes fill some of the gaps, and

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22. BEHIND SCENES AT THE WTO, *supra* note 21. Unless otherwise noted, the following descriptions of WTO negotiations are from this source. Member nations govern the WTO through the General Council, which all Members are members of.

23. WTO Ministerial Conferences must be held at least every two years and are attended by trade ministers from Member countries. These Conferences set the overall work agenda and direction of the Organization. Trade Rounds have taken place since GATT's inception and are where major tariff reductions are negotiated and major policy issues are addressed. As of this writing, the WTO is in the midst of the Doha Development Round launched in Doha, Qatar in 2001. Thus far the WTO has held six ministerial conferences: Singapore (1996), Geneva (1998); Doha (2001), Cancun (2003), Hong Kong (2005) and the infamous Seattle debacle in 1999.

24. This recalls my experiences while working for the Ambassador to the United Nations for the island nation of Vanuatu. Our delegation was simply too small to cover the many meetings that take place at the United Nations and we had to carefully pick and choose which to attend; some were inevitably missed.

25. Surely, it is not for lack of talent, both on the African continent and throughout the Diaspora. The often-brilliant scholarship emanating from such movements as Third World Approaches to International Law and from African and other scholars in residence at excellent institutions the world over, surely attest to this fact. *See, e.g., THE THIRD WORLD AND INTERNATIONAL ORDER LAW, POLITICS AND GLOBALIZATION* (ANTONY ANGHIE, BHUPINDER CHIMNI, KARIN MICKELSON & OBIORA OKAFOR, EDS.). Nevertheless, this literature, however inspired and exceptional, simply does not compare with the organized and voluminous effort that routinely takes place in industrialized countries, where resources

international institutions such as the UN Conference on Trade and Development (UNCTAD) and the WTO Secretariat do provide technical assistance.<sup>26</sup> These are external entities, however, that come with their own beliefs, ideologies and agendas.<sup>27</sup> There is little doubt that they can and have been helpful and supportive, and usually have the best of intentions; and surely, some assistance is usually better than none. Yet, it is doubtful whether this assistance adequately substitutes for the internal dialogue and vetting that takes place in affluent countries. These states can set their own priorities and agendas and then act in what they determine to be their national interests, even if multinational corporations and other special interests often drive their national agendas. For example, ponder what would transpire if a Southern tier country decided not to abide by the current neo liberal “trade liberalization leads to development” ideology, or if it decided to pursue a different approach than that advocated by development professionals? My guess is it would be vilified and left to its own devices. It could be argued that all countries are now restricted by the numerous rules emanating from the WTO, especially with the strengthened dispute settlement system that enforces these rules. On some level, this is true. The biggest difference is the Quad countries have largely written the rules and consequently they tend to reflect Western interests and mimic Western law and values.

There may be *some* strength in numbers, however. Third World nations prevented the launch of a new trade round in Seattle and were largely responsible for the premature termination of the 2003 Cancun Ministerial Conference, thereby putting the Doha Round on hold.<sup>28</sup> Moreover, African nations have attempted to use the system to their advantage as best they could and, along with other Third World countries, have managed a few successes such as the Declaration on TRIPS and Public health.<sup>29</sup> They managed to remain unified during the first WTO trade round,

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abound. Not only are there a large number of universities, colleges, foundations and think tanks, but numerous government departments and interest groups employ experts whose livelihood is to work on these issues.

26. Non Governmental Organizations have pressed the concerns of poor countries. See, e.g., Oxfam, <http://www.oxfam.org/eng/> (last visited Sept. 25, 2005); CARE, <http://www.careusa.org/> (last visited Oct. 16, 2005); Save the Children Fund, <http://www.savethechildren.org/> (last visited Oct. 16, 2005); and Doctors Without Borders, <http://www.doctorswithoutborders.org/> (last visited Oct. 16, 2005). The WTO has established an Advisory Centre on WTO Law to provide legal advice and support on WTO concerns and to train governmental officials on WTO law. Advisory Center on WTO Law, [http://www.acwl.ch/e/index\\_e.aspx](http://www.acwl.ch/e/index_e.aspx) (last visited Oct. 16, 2005); Peter K. Yu, *Trips and Its Discontents*, 10 MARQ. INTELL. PROP. L. REV. 369, 397 (2005). Another example is the UN Conference on Trade and Development (UNCTAD) handbook on TRIPS. See UNCTAD, <http://www.unctad.org/Templates/StartPage.asp?intItemID=2068> (last visited Oct. 16, 2005); [http://www.wto.org/english/thewto\\_e/secre\\_e/intro\\_e.htm](http://www.wto.org/english/thewto_e/secre_e/intro_e.htm) (last visited Oct. 16, 2005);

27. BEHIND SCENES AT THE WTO, *supra* note 21 (on the obvious bias by the Secretary General during negotiations).

28. Elizabeth Becker, *Poorer Countries Pull Out of Talks Over World Trade*, NY TIMES, Sept. 15, 2003, at A1.

29. For a fascinating account of the negotiations leading to the adoption of the Declaration on the TRIPS Agreement and Public Health, adopted on November 12, 2001, see, Frederick M. Abbott, *The WTO Medicines Decision: World Pharmaceutical Trade and the Protection of Public Health*, 99 AM. J. INT'L L. 317 (2005). Other scholars maintain that all Third World countries really obtained in this Declaration was confirmation of their interpretation of TRIPS, making this apparent success less remarkable than it is often made out to be. The Declaration certainly was used as a negotiating chip to wrestle all manner of concessions from poor nations. Moreover, perhaps it is continually cited as a success because it is such a rare victory for the South and it makes multinational pharmaceutical

which has been dubbed the Doha Development Round, and they vigorously pressed their interests in arenas that they believed were most important to their citizens. For example, West African nations have fervently pursued an initiative on cotton subsidies to address the massive subsidies paid to U.S. cotton farmers that are also making African farmers uncompetitive.<sup>30</sup> Although this initiative was ardently pressed, it was ultimately unsuccessful when the United States rejected their demands. African nations also sought to retain traditional preferences with the European Union and they achieved this goal, but at a cost.<sup>31</sup> Once they were granted this concession they were no longer available, so to speak, on other matters of interest to Third World nations. Their nominal share of world trade makes it easier to buy them off with concessions that are negligible to industrialized nations, but pivotal to the small economies seeking them. Moreover, even if they are successful within the WTO, they may still ultimately lose. If industrialized nations are unable to achieve their goals in the WTO, they are increasingly turning to bilateral arrangements where Southern tier countries are at even more of a disadvantage.

It may also become more challenging to build winning coalitions as the so-called developing world splinters in ways that may progressively become more problematic for very poor countries whose interests are diverging from the interests of other Third World nations.<sup>32</sup> Large industrializing countries such as Brazil, China and India and even smaller economies, such as Thailand, Sri Lanka or Bangladesh, may have very different concerns than Angola, Benin or similarly situated nations. Indeed, they may compete with the Angolas and Benins of the world, as preferences for the least developed become detrimental to those that are at the stage of merely "developing." Perhaps a few examples will demonstrate this dilemma.

After a ten-year phase in period, on January 1, 2005, quotas and other restrictions were lifted on textiles. Almost immediately, textile manufacturers in industrialized nations such as the U.S., EU and Canada were pleading for relief. Moreover, countries such as Bangladesh and Sri Lanka that had hoped the expiration of quotas would give them greater access to industrial nation markets suddenly found

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companies appear to be more sympathetic than they actually are. This is reminiscent of the development discourse where any perceived victory is trumpeted, because successes are so very rare and thus so very extraordinary.

30. WTO, Sectoral Initiative in Favour of Cotton, <http://docsonline.wto.org/DDFDocuments/t/tn/ag/GEN4.doc> (last visited Sept. 22, 2005). West African farmers are actually more efficient than American farmers, producing better quality and less expensive cotton on numerous small farms. Cotton subsidies, however, allow U.S. farmers to sell at a lower price thereby undercutting cotton prices and African farmers. The cotton initiative sought an end to these subsidies, as well as compensation from the United States. For a comprehensive discussion of the Cotton Initiative, see Kennedy, *supra* note 5.

31. Partnership Agreement Between the Members of the African, Caribbean and Pacific Group of States of the One Part, and the European Community and its Member States, of the Other Part, June 23, 2000, [hereinafter Cotonou Agreement], [http://europa.eu.int/comm/development/body/cotonou/pdf/agr01\\_en.pdf#zoom=100](http://europa.eu.int/comm/development/body/cotonou/pdf/agr01_en.pdf#zoom=100) (last visited Sept. 22, 2005). This Agreement continues many aspects of the traditional relationship between European countries and their former colonies in Africa, the Caribbean and the Pacific. Its purpose for the European Union is to grant special and preferential treatment to products originating in ACP nations. It has become much more dictatorial towards the Third World nations that are meant to be its beneficiaries, however. For a comprehensive discussion of the Cotonou Trade Agreement see Nsongurua J. Udombana, *Back to Basics: The ACP-EU Cotonou Trade Agreement and Challenges for the African Union*, 40 TEXAS INT'L L. J. 59 (2004).

32. Ruth Gordon, *Sub-Saharan Africa and the Brave New World of the WTO Multinational Trade Regime*, 8 BERKELEY J. AFR.-AM. L. & POL'Y 79 (2006).

they were in no position to compete with China, which seemingly can manufacture almost everything more efficiently than almost any other nation.<sup>33</sup> One might ponder what happens when one or two nations, because of their large educated populations, a mature infrastructure, huge markets or other factors have a comparative advantage in manufacturing more or less everything. This may soon be the case with China and India, and indeed this is where international capital appears to be accumulating. Even more alarming is what happens to nations, such as those in sub-Saharan Africa, who have yet to enter these markets at all?

The demise of European Union sugar subsidies is another example of this predicament, this time from the vantage point of the dispute settlement system. A recent case by Australia, Thailand and Brazil challenged EU export subsidies on sugar and these subsidies were ultimately found to violate EU obligations under WTO Agreements.<sup>34</sup> The fear, however, is that small and marginalized economies may eventually lose preferential access to European markets.<sup>35</sup> Thus, it is no longer only large industrialized nations such as the United States bringing claims that might harm the interests of poor Third World producers.<sup>36</sup> Such cases are now being brought by nations at all levels of the economic spectrum, as they endeavor to enforce their rights under WTO Agreements. The interests of so-called developing

33. See, e.g., Aravind Adiga, *Hanging by a Thread: Textile factories throughout Asia face extinction as a long-standing global trade pact is set to expire*, TIME, Nov. 1, 2004, at 36; Yonhap, *South Korea's Textile Exports Down After Global Restrictions Lifted*, ASIA PULSE, Apr. 27, 2005 (stating that South Korea's textiles and finished clothing exports were down 6.1% in the quarter following the lift of the worldwide textile quota). For a more comprehensive discussion of textile and farm production in sub-Saharan Africa see, Kennedy, *supra* note 5.

34. Australia, Brazil and Thailand invoked WTO dispute settlement measures to determine whether EU sugar production and export subsidies were legal under existing trade treaties. The chief negotiator for Australia, David Spencer, stated that the case against the EU was based on an apparent anomaly in world sugar trade. He cited a report that stated: "the cost of production of a ton of sugar in the EU is 660 dollars, while it is 280 dollars in Brazil, Colombia, Guatemala and other countries. Yet, the EU produces 40 percent of the world production share in sugar. The Complainants maintained that this distortion is due to the European internal support program for sugar. The EU subsidizes large farm operations whose high production costs put them at a disadvantage on the world market and the bloc supports companies that refine imported raw sugar that often come from former European colonies. On August 29, 2003, a Panel was established and on October 15, 2004, the Panel found that the EC had acted inconsistently with its obligations by providing export subsidies in excess of the quantity commitment level and the budgetary outlay commitment level. The EC appealed, and on April 28, 2005, the Appellate Body agreed that the EC provided export subsidies in excess of its commitment levels. Panel Report, *European Communities – Export Subsidies on Sugar*, WT/DS265/AB/R, WT/DS266/AB/R, WT/DS283/AB/R (April 28, 2005); Appellate Body Report, *European Communities – Export Subsidies on Sugar*, WT/DS265/AB/R, WT/DS266/AB/R, WT/DS283/AB/R (April 28, 2005).

35. A group of 15 sugar-producing nations in the developing South could be adversely affected. "The complaint lodged by Australia, Brazil and Thailand is "quite disappointing," commented Jaynarain Meetoo, ambassador of Mauritius, speaking on behalf of his and the other 14 countries potentially affected by a WTO decision against the EU. This group is comprised of Barbados, Belize, Cote D'Ivoire, Democratic Republic of the Congo, Fiji, Guyana, Jamaica, Kenya, Mauritius, Madagascar, Malawi, St. Kitts and Nevis, Swaziland, Zambia and Zimbabwe. All are members of the Africa, Caribbean and Pacific (ACP) bloc of former European colonies that enjoy the benefit of special access to EU markets. Australia and Brazil repeatedly assured them that despite their dispute with the EU, they would not take steps that could harm the interests of the ACP countries that supply sugar to the European markets.

36. The most notorious example is the American dispute against the EU over bananas from ACP countries. See Ibrahim J. Gassama, *Confronting Globalization: Lessons from the Banana Wars and the Seattle Protests*, 81 OR. L. REV. 707 (2002). Of course, disputes by large countries such as the U.S. might be viewed as more objectionable given their ability to better absorb the loss of discrete sectors. Unfortunately, it is often the most vulnerable members of society that are employed in these sectors.

countries appear to be diverging, as the heady days of Third World unity crumbles in the face of global capitalism.<sup>37</sup> If this trend continues, it is likely to be to the detriment of the smallest and most marginal Third World countries, which includes most of the nations of sub-Saharan Africa.

To summarize, we might conclude that impoverished nations and the ideology of development are a much larger part of the WTO construct than was the case with GATT. Poor nations of all sizes are participating more actively in the system, are in the numerical majority and are, at least theoretically, in a position to achieve their aims. In reality, however, small, impoverished nations do not have the influence or power to achieve their objectives in a system that is conceived and constructed in the interests of the rich and powerful, and whose rules are fashioned to advance the needs and interests of the latter. It seems the desires and well being of small, impoverished Southern tier nations are likely to always be on the periphery, and their ambitions will only reach fruition if they assist, or at least do not harm, the interests of industrialized nations and businesses. Accordingly, as long as western farmers can successfully lobby their governments for subsidies, there will be subsidies. Similarly, if textile producers need to be protected from inexpensive imports, there will be safeguard actions unless producers decide to relocate to nations with low-cost labor, in which case there is a system in place to facilitate their repositioning to less expensive labor markets. If open markets are better for wealthy nations, they will do all they can to pry markets open. On the other hand, if the West determines there is an injustice, such as lack of access to life-saving drugs, perhaps there will be concessions although even this depends on how unified or fractured the North might be on the issue. The same can be said of bilateral agreements where poor nations are even less able to bargain for favorable terms.

One might surmise, however, that it is hardly surprising that the relatively powerless would have difficulties achieving their goals within a power-based system. Surely, to the extent their interests conflict with the powerful, which they do when it comes to certain sectors, they would be unable to realize their objectives. If raw power means the strongest nations will almost always prevail and poor nations will be defeated unless their interests coincide with those of the powerful, then why do small nations bother to participate? Is their struggle worth the goal?

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37. Some might recall the heady days of the New International Economic Order and the Charter of Economic Rights and Duties of States, when a strident and seemingly ascendant Third World demanded economic justice. Declaration on the Establishment of a New International Economic Order, G.A. Res. A/RES/3202 (May 2, 1974), available at <http://daccessdds.un.org/doc/UNDOC/GEN/NR0751/89/IMG/NR075189.pdf?OpenElement> (last visited Oct. 8, 2005); Charter of Economic Rights and Duties of States, G.A. Res. A/RES/39/163 (Dec. 17, 1984), available at <http://www.un.org/documents/ga/res/39/a39r163.htm> (last visited Oct. 8, 2005).

### III. DEVELOPMENT REDUX

#### *A. Considering Development*

As previously noted, African nations have become part of the international trade regime because they believe, or have been forced to believe, that it will assist in achieving their perpetual objective of development. The more explicit aspiration is the eradication of poverty, certainly, a worthy goal that is now to be achieved by becoming part of the global economy and being fully engaged in the international trade regime that the WTO personifies. Thus far, this essay has principally questioned the structure supporting the international trade edifice as it relates to small, impoverished nations. This part turns to questioning their objectives within this system, first by a brief critique of development and trade and then by querying the feasibility of the trade and development paradigm on its own terms.

We rarely question development, but perhaps we should. I have more fully appraised development elsewhere, and so only a few thoughts are offered here.<sup>38</sup> By definition, development supposes some deficiency that must be corrected, and presumes inferiority and being substandard to the other that is developed. It also assumes that a particular kind of modernization is the inevitable course that all nations and peoples must pursue, for there is no question that it is preferable, superior and indeed the only path; no other way of life or being is even worthy of discussion. All those who cannot reach this promised land, must somehow be inept, undeveloped, inadequate, and in need of betterment by the West, now termed the international community which comes in the guise of international financial institutions such as the World Bank, the International Monetary Fund and now the WTO. Although development is posited as universal and almost natural and intrinsic, it is very much a part of western ideology and can thus be contested and critically appraised. Indeed, there has been resistance to development, although it is sometimes characterized as incompetence and an inability to comprehend.

The most impoverished, or those who are now termed the 'least developed,' are the ultimate 'other' that is almost always colored, powerless and whose prospects are unmistakably bleak. Depending upon one's perspective, these communities are regarded almost as if they were errant children that one should pity, rescue, ignore or at the other end of the political spectrum, perhaps just turn out of the house and leave to their own sorry devices. To eradicate their desperate poverty, it seems that there is no burden that can be imposed (upon them, of course) that is too great. Poverty reduction provides a rationale for the kind of imposition, the kind of thought processes we would find reprehensible, perhaps unbearable if they were applied to the rich and prosperous West, indeed even to the impoverished colored West.<sup>39</sup> The

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38. See Gordon & Sylvester, *supra* note 16. Except where otherwise indicated, the following thoughts on development are taken from this article.

39. This was graphically displayed during the recent catastrophe of August 2005 that ensued in the wake of hurricane Katrina in New Orleans, Louisiana. The devastating scenes witnessed by the entire world were described as being like those from the undeveloped Third World and comparisons were made to the poor, pitiful peoples of Africa. The term refugee, which is intimately connected with the Third World was condemned as a pejorative term that should not be applied to American citizens.

presumption is the West knows what is best for all peoples. Indeed, there is a presumptive privilege, in fact an obligation, to order and change lives at will and to prescribe how societies and indeed life itself should be ordered. Often, this is done with the best of intentions, but that does not necessarily make it permissible.

### *B. Can Trade Bring Development?*

The triumph of Western capitalism over Soviet (and Chinese) Communism has meant that the United States controls development ideology and theory in an unprecedented manner. Of course, the United States has always dominated development ideology, but with no ideological counterweight, this slant has become all encompassing. Thus, we find the World Bank persistently advocating a neo-liberal agenda that decrees markets as the answer, indeed as the only solution, to the development woes of poor countries. These nations have been forced to liberalize their economies in the hope that it will lead to development, meaning they must make their nations more open to international capital.

Indeed, the fundamental objective of the neo-liberal paradigm is to make poor nations more attractive to global capital so that these forces can exploit the labor of those who are at the bottom, or outside, of the current labor market.<sup>40</sup> The poor are to be put to work, and thus the oft heard refrain that a job, any job, is better than no job at all, although those who contest global poverty attempt to improve horrendous working conditions and often fight for better wages. Having briefly witnessed some of these conditions, surely it is a fight worth waging. Yet it presupposes that one must be located somewhere in the global economy or risk being completely irrelevant and doomed to a pre-modern, and by definition a rather bleak, condition. However, is this scenario in the interest of those who sell their labor, or does it only inhere to the benefit of international capital? Can we challenge the notion that it is better to be employed, even at the very bottom rungs of the global economy, than it might be to be engaged in more satisfying, even if less efficient, work? I do not presume to know the reply. Yet, it is almost heresy to even pose the question because it bucks the ideology of globalization and that ideology is overwhelmingly dominant.

Of course, it can be maintained that industrialization demanded the same kinds of sacrifices as the West industrialized, and poor working conditions are part of the price one must pay as modernization proceeds. To replicate these experiences is to be expected and besides, as demonstrated by the current position of industrialized countries, it is temporary. Indeed, the Western path is historical fact, and while its implications and complexities can be debated, its essentials cannot be contested. The problem comes in positing it as the future of all other communities.

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Regardless of whether the refugee status of the residents of New Orleans was contestable, one implication is that Americans cannot be refugees and are not of the undeveloped, clearly inferior Third World. In discussing observations of the aftermath of hurricane Katrina, a panelist at this Conference observed that those in the South believed that America's obvious incompetence indicated that perhaps the United States is not so invincible and all-knowing as they previously thought, and perhaps they were not as incompetent and ignorant as they often view themselves. This comment spoke volumes about the dominance of western perceptions of the non-West, whose inadequacy and inferiority is almost incontestable.

40. See, Paul Cammack, *Neoliberalism, the World Bank and the New Politics of Development*, in *DEVELOPMENT THEORY AND PRACTICE CRITICAL PERSPECTIVES* at 157 (UMA KOTHARI & MARTIN MINOGUE, eds. 2002).

In essence, the West is regarded as the past, present and future of the South and it blazes the path for everyone else. The underdeveloped 'other' can see its future if it observes and emulates the West, just as the West sees its past when it regards the Third World. We are quite certain what the path of the underdeveloped should and must be, because we have already successfully blazed it.<sup>41</sup>

Surely, there have been countless theories, studies and plans on how to develop and realize the aspiration of modernization. Globalization and international trade are only the latest manifestation of a wide-ranging sequence of modernization theories, and like those before it, it is inspired by the prevailing dogma of the West, which is currently dominated by the ideology of free markets and diminished government. Given the manifest and consistent failure of these theories, however, as demonstrated by persistent and widening global inequality, should we not at least question whether the promises of the international trade system are viable? Although development agencies would no doubt lay development's failures at the feet of recipient nations, no initiative to date has met the expectations of developers or those they profess to develop. Consequently, one must speculate as to why it is believed that somehow this particular theory will yield different results, especially in such an obviously lopsided and biased system. Surely, the prescriptions small poor nations are being advised to undertake were not utilized by Northern nations as they industrialized. Indeed, most rich nations matured either behind exceedingly high trade barriers that protected their infant industries. Others relied on the surplus labor and markets of their colonies and other overseas possessions. Moreover, these nations developed indigenous policies to achieve their national goals and aspirations, rather than relying on outside advice and prescriptions. In addition, even if one accepts the theory of comparative advantage, industrialized nations did not face intense competition in a technologically sophisticated and connected world that includes enormous nations with a comparative advantage in practically everything.

Yet, according to the 'liberal consensus,' if poor nations adhere to the neo-liberal paradigm development will ensue. If they managed to somehow achieve all of their objectives within the WTO, however, this outcome would still be uncertain. Even if one accepts the rules, one must wonder how very poor nations with small markets, sagging or non-existent infrastructures, comparatively undereducated and unskilled populations, as well as other competitive disadvantages can successfully compete in the contemporary global economy. If external capital is the answer, it would seem there are easier and more profitable places to invest. African nations account for a miniscule portion of international trade, and when you subtract South Africa and the oil exports of five oil-exporting nations, it may be less than

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41. Ziauddin Sardar, *Development and the Location of Eurocentrism*, in *CRITICAL DEVELOPMENT THEORY* at 53 (on the West as the past, present and future of the non-West). The idea that the West sets the agenda for all others is such an integral part of Western discourse and thought that it is rarely explicitly vocalized, although it is pervasive. For example, the current debate about outsourcing has led to discussions of the next frontier for Americans, as others undertake work we will no longer engage in. Accordingly, as nations in the Third World enter the information age, the United States enters the 'conceptual age'. See DANIEL H. PINK, *A WHOLE NEW MIND: MOVING FROM THE INFORMATION AGE TO THE CONCEPTUAL AGE* (2005). The underlying assumption is the West always leads the non-West and the United States leads the West. Ultimately, this arrogance may be dethroned, if writers such as Thomas Friedman are correct. See THOMAS L. FRIEDMAN, *THE WORLD IS FLAT: A BRIEF HISTORY OF THE TWENTY-FIRST CENTURY*. Certainly, the rise of China and India speak to this possibility and I envisage a highly racialized and negative response to their newfound prominence and prosperity within the coming years.



miniscule.<sup>42</sup> Their comparative advantage, which is rooted in exploitative colonial relationships, is in non-food and food agricultural products, minerals and metals and goods made by unskilled labor, such as textiles. Global markets for these products are notoriously volatile, and agricultural goods are among the most protected products in the global economy. These products are heavily subsidized by industrialized nations, and often the subject of all varieties of non tariff barriers, such as quotas.<sup>43</sup>

The poorest nations do not possess a comparative advantage or an advantage of any type in the types of exports that generate skills, education, jobs or any of the other elements the modernization critique demands. Moreover, there are few resources to create and build other centers of comparative advantage, especially in the face of multiplying sources of competition. Oil, agricultural and mining products are all that the West, or anyone else it seems, appears to covet from these nations, and even a cursory examination of bilateral agreements and how they are implemented makes this painfully obvious.<sup>44</sup> As for other so-called 'take-off industries' such as textiles, that boat has apparently sailed. This rung on the development ladder is currently occupied by many nations, including emerging economic giants with a seemingly unlimited quantity of laborers who presumably will need work for quite some time.

Underlying the promise of globalization is an unquestioned belief in unlimited growth, meaning the other can become richer while those who are wealthy can remain at the same level (or perhaps become richer still). This is often expressed by the assertion that globalization will raise all boats. On some level, it is surely correct that the poor could be somewhat better off without a corresponding decrease in Western standards of living. Nonetheless, the outer contours of growth must be critically examined, as well as the juxtaposition of poverty to wealth. It is entirely possible that Western affluence is built upon, and based on, the poverty and destitution that is so evident in the international community. Even those who press for change do not intend to relinquish prosperous lives, although Western peoples appropriate and squander a disproportionate share of the earth's bounty and rely upon the world's poor to make the many consumer goods that make these societies consumer cultures. Those with a progressive conscience do attempt to determine how to make 'the other' wealthier, or at least better off. Nonetheless, we seldom question the right to have more, be it based on race, ethnicity, being an American, Western or whatever rationale accompanies this sense of entitlement.

Nearly all of us, including this writer, accept the part of the globalization and development mantra that posits unlimited growth. That is, all societies can be very prosperous or at least the other can be made wealthy enough so we do not feel quite as disturbed about having an exceedingly large share of that wealth.<sup>45</sup> Some

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42. John S. Saul & Colin Leys, *Sub-Saharan Africa in Global Capitalism*, 51 MONTHLY REVIEW 3, 1999.

43. Carmen Gonzalez, *Deconstructing the Mythology of Free Trade: Critical Reflections on Comparative Advantage*, 17 BERKELEY LA RAZA L.J. 65 (2006).

44. Patricia Michelle Lenaghan, *Trade Negotiations or Trade Capitulations – An African Experience*, 17 BERKELEY LA RAZA L.J. 117 (2006) (noting that AGOA is a statute rather than a negotiated treaty between sovereign nations.) The chief impact has been on oil exports and locating textile industries in Africa to avoid now defunct quotas.

45. This is a quite typical view and was well expressed by a visiting colleague. I was expressing these thoughts and he replied that perhaps they couldn't be as rich as we are, but we can at

advocate that we can make the poor less impoverished by giving some back through development assistance, and certainly there is some justice in this line of thought.<sup>46</sup> While I would not dispute this view, I would posit that it is highly unlikely that there will ever be a sufficient transfer of wealth to make a significant difference. If the lives of the impoverished will only improve because of Western beneficence, then their lives are unlikely to improve. Nonetheless, however one believes global disparities should be addressed, this essay contends that the discourse of development, including in its current trade and development configuration, must be constantly challenged. If development as ideology can be confronted in a fundamental manner it becomes possible to explore genuine alternatives to addressing inequality, rather than rehashing variations on the same theme.

### *C. The Potential Posed by New Global Actors*

There are new global actors on the international stage and it might be asked if these new participants may possibly make a discernable difference in the fortunes of poor nations. It has already been suggested that global capitalism may eventually drive a wedge between Third World nations. Yet, is it possible a different scenario might emerge that would yield outcomes that are more constructive for the most impoverished? Two rationales for this shift might be considered. The emerging international players are people of color, raising the specter of some semblance of racial identity and solidarity. The other possibility is presented by cultural difference as these new forces are emerging from the Third World and have experienced colonialism and political and economic dominance in the not too distant past.

Race is one of the central constructs defining social and political relationships in the United States, and Americans are accustomed to thinking about most problems and issues in terms of race, color and/or ethnicity. Indeed, as a middle-aged American colored woman, the impulse to raise the specter of race is almost irresistible. Given the centrality of race in American domestic discourse, in either a primary or tangential role, it is indeed tempting to wonder if it will make a difference that the emerging world economic leaders are people of color. Might it portend a different response or attitude towards the poor and largely colored people of the least developed world or will the face of poverty be confined to the hundreds of millions of impoverished citizens who will continue to toil within their borders for at least the immediate future? I suspect we will soon find out if race has anything to do with it. As contracts are written to gain access to African resources, and especially African oil, my guess is race will be irrelevant.<sup>47</sup> In the face of global competition, the racial makeup of those who supply crucial natural resources is likely

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least make sure that everyone reaches some minimum standard. That would be enough for him. It was also what made taking money from poor countries in the aftermath of the government debacle following hurricane Katrina, almost offensive.

46. JEFFREY D. SACHS, *THE END OF POVERTY: ECONOMIC POSSIBILITIES FOR OUR TIME* (2005).

47. See *A New Scramble; China's Business Links with Africa*, THE ECONOMIST, Nov. 27, 2004 (identifying Chinese interest in Africa as including oil, copper, tobacco, telecommunication deals and construction); *China a Player in African Politics; Seeks Access to Country's Raw Materials*, THE WASHINGTON TIMES, Feb. 16, 2004 (indicating that economic interests largely outweigh political considerations); *Chinese Investment in Africa Exceeded \$1.0 Bln*, CHINESE NEWS DIGEST, Sept. 15, 2005; Forget Mao, *Let's Do Business*, THE ECONOMIST, Feb. 7, 2005.

to count for very little, or at the most will play out in a very different way than the racial encounter in the West and most especially in America. Indeed, given its peculiarity, the position of race in America is particularly useless in trying to discern the meaning of racial difference in the international context. Still, given America's historical and contemporary racial discourse, both domestically and internationally, it is highly doubtful that matters can be much worse, even if it cannot be said whether it will be better.

Yet, even if race is not pivotal, is it possible that culture will make a difference, if culture can survive the onslaught of globalization. Culture is an amazingly powerful force, managing to endure even as it grows, changes and integrates other forces, such as technology and contact with other cultures. One can only speculate as to whether it will make a difference when Asian nations are strong forces within the WTO, or hold the keys to such institutions as the World Bank and the IMF, or have more power in other international institutions or are bilateral partners or donors.<sup>48</sup> One can wonder if the emphasis will be on capital, wealth, resources and modernization, while such quaint notions as Third World solidarity, Northern and Southern tier, and 'the West' are discarded and forgotten. Perhaps a shared colonial history or memories of Western domination will portend a different attitude and role, as will less arrogance and no history of subjugating the peoples one has come to develop. The answers are unknown, but may be critical to poor nations, both within the confines of the WTO and as these nations increasingly enter into bilateral agreements. What contracts, treaties and other parts with large emerging economies will look like is anybody's guess, but it will undoubtedly be important, as will alliances and the refining of interests within the WTO. All said, it is impossible to know, but again, it is difficult to discern how matters could be made worse.

#### IV.

#### A MOST MODEST PROPOSAL FOR CHANGE

So, what are the economically marginal and peripheral nations of sub-Saharan Africa, or wherever they might be located, to do? As I prepared for this Conference, I tried to mollify myself with thoughts of not being an economist and perhaps being wrong about the economics and much too pessimistic about international institutions and international law. Yet, my fellow panelists who are economists assured me that I had it about right, although Professor Ramirez surmised that we could not simply give up on the system. Frankly, I am not at all optimistic about poor nations competing in the global economy and believe the international community will be declaring 'development decades' for the remainder of my lifetime and beyond. Nonetheless, one simply cannot publish essays without some modest proposal to address the issues one depicts – it seems this is almost an imperative. Thus, with this mandate in mind, let us consider the following.

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48. It is possible that there will be fewer conditions and restrictions and a less intrusive style will emerge. This may be more because of different political and cultural attitudes towards western intrusions into what are viewed as internal matters. Those who are advocates on behalf of international human rights and/or believe in the need for an intrusive international role to insure that these countries prosper or to protect populations from their governments will undoubtedly find this problematic. This is all speculation, of course, and is based on how China's contracts with African states and companies have been structured.

One might begin with the proposition that Africa actually is as close to the very edges of the international system as numerous articles, analyses and reports surmise. If that is the case, it might make sense to begin exploring whether something different might occur on the periphery. That is, can it be explored whether the marginal can take advantage of and build upon their marginality? The alternative appears to be continuing to beg for scraps that will in all probability never be forthcoming on remotely acceptable terms.<sup>49</sup> The system simply is not constructed to accord voice to the powerless, and even if one accepts the system on its own terms, it may prove impossible to compete with the already established players. This is especially so as those clusters multiply and seem to have comparatively infinite resources, be it people, technology, education, skills, infrastructure or any of the other factors that have been decreed essential to compete in the global economy. Thus, the notion of competing globally seems a bit implausible to this writer. That is, unless competition really means insuring that peripheral nations can continue to trade the same products they have been exporting in the same volatile markets. Presumably, they would also continue to solicit and plead for aid and assistance from international institutions that determine how economies and governments should be structured and operate. Specifically, global competition would mean they are mired in a comparative advantage that signifies being hewers of raw materials and tropical farm products and suppliers of very cheap labor. This particular scenario appears rather plausible and ought to be demoralizing and quite unacceptable.

Instead, one might query whether an alternative vision is at least imaginable. Is it possible or feasible to contemplate that Africans return to feeding themselves – something they did at one time—instead of exporting agricultural products? The peoples who populated the African continent did manage to eat before they became colonial subjects and the “white man’s burden,” and subsequently became incapable and undeveloped. Could they return to clothing themselves, even if they are not the most cost-effective producers? Might they trade with each other, even if their products are not the most efficient in the international market and are not the most technologically advanced?<sup>50</sup> Could they somehow build their own roads, formulate their own choices, and find their own way? In a world where global competition is the unalterable imperative and where one is at the very

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49. Our entreaties have become ever more sophisticated and quite brilliant. Chantal Thomas, Frank Garcia, Elizabeth Iglesias, Antony Anghie, James Gatthi, Makua Mutua, Maxwell Chibundu, Isabel Gunning, Obiora Okafor Henry Richardson and many, many others could be cited. This is not to say we should cease constructing arguments to convince the powerful to concede some of their resources and power to assist the small and relatively powerless. Indeed, such powerful critiques bear critical witness to conditions within the periphery and the indefensible inequality that characterizes the contemporary international system. This author, however, is quite cynical about the response to these entreaties, no matter how potent or inspired these critiques may be. The dominant discourse paints globalization as a wondrous *fait accompli*, whatever effect it may have on communities or those it has the potential to destroy. Powerful critiques, demonstrations, and other forms of protest have been unable to rupture this discourse, most probably because of the powerful forces behind it.

50. At this point, it is impossible to build internal capacity because of cheap imports. For example, if one travels in sub-Saharan Africa, one is struck by the familiarity of the clothing worn by huge numbers of people. Much of this clothing consists of American discards that are sold in bulk to sub-Saharan countries. See James Brooke, *International Report: Used US Clothes a Best Seller in Africa*, N.Y. TIMES, Feb. 16, 1987; Carter Dougherty, *Trade Theory vs. Used Clothes in Africa*, N.Y. TIMES, June 3, 2004

bottom of the hierarchy, could it make more sense to compete and sell to those one can compete with? If globalization is the accepted paradigm, this is a somewhat unconventional way to build capacity, for it is a matter of thinking and acting between the global and the local – that is, regionally. But the WTO agreements create a space for regional arrangements and this might be the loophole through which this alternative imaginary might be pursued.

To assert that peoples think locally and distance themselves from the global project, seems sheer heresy to many. It leads to multiple charges, such as the impracticability of challenging the globalization critique in a fundamental manner. Or one is accused of romanticizing poverty or glorifying a mythical tradition where local communities were strong and able to feed, house, clothe and fend for themselves. Whether the past was glorious or ignominious, it is over and done with in most respects and this is not an attempt to revive it. Rather, this modest proposal is more about ending the romance and belief in development, because it is inherent that those who would come to develop really do not know how to achieve their objectives. It is to acknowledge capabilities and capacity in those deemed incapable and incompetent. Moreover, in a very practical sense, even if one accepts the desirability of the modernization project and the trade regime as a means to carry it out, achieving these objectives within the contemporary global economy may mean being permanently consigned to doing the dirty work, if one gets any work at all. I believe we should challenge this outcome in whatever manner we can and this is an effort to do so.

Some caveats to this alternative vision are in order, however. It does not mean that people who care about the impoverished peoples of sub-Saharan Africa and elsewhere no longer have work to do. Advocates for global justice can and should continue strategizing and challenging a global economy that is only increasing global inequity. As previously noted, many of these critiques are brilliant and stand as powerful testimony to a system we are all attempting to challenge in some manner. We can continue to look for gaps in the legal and political structure that might assist poor nations. For example, one project might be the one just mentioned - exploring how the WTO deals with regional organizations and whether WTO agreements can be used to encourage regional integration. Surely there are other legal avenues to explore, given the voluminous number of provisions found in WTO Agreements. Moreover, we can never cease doing everything possible to wipe out African debt. It is reprehensible that a major portion of the foreign exchange earnings of African nations is actually sent back to Western banks and governments or the World Bank.<sup>51</sup> Moreover, neither this essay nor this perspective speaks to the horrific wars or genocides currently taking place in some locations on the African continent, although it should be noted that many African nations are poor, but most are at peace.<sup>52</sup> Furthermore, it is readily apparent that the World Bank and IMF are not going to disappear at any time in the near future, as they now team up with the

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51. The HIPC Initiative, *Progress and Prospects*, World Bank Operations Evaluation Department, Number 230 Winter 2003, [http://www.worldbank.org/hipc/hipc-review/Fact\\_Sheet](http://www.worldbank.org/hipc/hipc-review/Fact_Sheet)

52. For a brilliant critique of humanitarian intervention, see, ANNE ORFORD, *READING HUMANITARIAN INTERVENTION HUMAN RIGHTS AND THE USE OF FORCE IN INTERNATIONAL* (Cambridge University Press 2003). Of course, however we read the international response to humanitarian crises, there may be a role for the international community in halting some types of atrocities, or at least making sure, we are not contributing to what is taking place.

even more powerful WTO. Consequently, it may be up to Western progressives to help keep them at bay. This is just a sampling of how we might direct our efforts and there is much work for those who are concerned about these issues and determined to assist. This is not about totally abstaining, being disengaged or abandoning compassion. It is not a call for lack of interest or concern by any means.

Rather, it is about critically engaging the globalization critique and the location of small, poor nations within that paradigm. This proposal is modest because at its heart is the notion that the 'international community' as it is now termed should no longer be in the business of instructing people on what they ought and ought not be doing with their lives, nor how they should run their countries or organize their communities. That perhaps it is not fate to engage in a certain kind of trade, or be destined be part of the global economy, especially on its lowest levels. It is to challenge us to at least think about whether we, meaning the West, really know what people want, or do not want, much less whether we should be advising them on how to get there.

The objective is to examine whether assumptions are grounded in an imagined community that has been taken to a global level. It is open to question whether everyone wants Coca Cola, Hollywood movies or other relics of Americana.<sup>53</sup> Or, perhaps they do because the global can and is creating and dictating the needs and desires of the local. On the other hand, local communities can be found resisting development and battling global corporations such as Gulf Oil in Nigeria. In any case, just because it is considered desirable within our cultural mesh, does not necessarily mean that rampant consumerism is a universal norm. Nor is it a given that there can only be one culture that occupies all spaces at the expense of all other cultures.<sup>54</sup>

In any case, I am certain that we can, and should, at least think about it.

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53. I always wonder about blue jeans and rock music, which along with McDonalds are always trotted out as evidence of how everyone embraces Western culture. It is not clear that everyone in America loves rock music anymore, but rap, which has gone global, is rarely cited.

54. In the United States, the assumption invariably is that it will be American and because of the popularity of U.S. films and African American music, such as rap and hip hop, it appears that this will indeed be the case. But culture may go deeper than rap and blue jeans and it is at least open to question whether there is resistance to what is often termed cultural imperialism. At least some of the rampant anti-Americanism currently prevailing across the globe must be resistance to the perceived decimation of other cultures and ways of being, at the expense of American hegemony.

