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Globalization and Human Rights*

*Robert McCorquodale** with Richard Fairbrother****

I. INTRODUCTION

An advertising campaign by the McDonald's food corporation in the late 1990s showed images of Russian soldiers and American grandfathers, young Mexican women and Australian Aboriginal children, all celebrating the thing they share in common: a love of McDonald's food. According to the advertisement: "everyone around the world is saying 'It's Mac time now.'"

These advertising images are simultaneously symptomatic and symbolic of globalization. The apparent universal market and demand for a product, which is created and presented by the use of new communication technologies and produced by a transnational corporation, could be seen as a manifestation of new opportunities provided by globalization for all people after the end of the Cold War. At the same time, the impacts of the universal market on diverse cultures and on state sovereignty, as well as the pervasiveness of development measured in market terms, could indicate the dangers in this process of globalization. These opportunities and dangers arise because globalization is "an economic, political, social, and ideological phenomenon which carries with it unanticipated, often contradictory, and polarizing consequences."¹ This process of globalization is part of an "ever more interdependent world,"² where political, economic, social, and

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** *Robert McCorquodale* is Associate Professor in International and Public Law in the Faculty of Law, The Australian National University.

*** *Richard Fairbrother* was a research assistant to Robert McCorquodale and now works for the Australian Department of the Prime Minister and Cabinet.

1. Claire Turenne Sjolander, *The Rhetoric of Globalization: What's in a Wor(l)d?*, 51 INT'L J. 603, 604 (1996).
2. *Report of the Secretary-General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council on 31 January 1992: An Agenda For Peace: Preventative Diplomacy, Peacemaking, and Peace-Keeping*, U.N. GAOR, 47th Sess., ¶ 17, U.N. Doc. A/47/277-S/24111 (1992) [hereinafter *Agenda for Peace*].

cultural relationships are not restricted to territorial boundaries or to state actors and no state or entity is unaffected by activities outside its direct control. Developments in technology and communications, the creation of intricate international economic and trade arrangements, increasing activity by international organizations and transnational corporations (such as McDonald's), and the changes to international relations and international law since the end of the Cold War have profoundly affected the context within which each person and community lives as well as the role of the state.

The focus of this article is the effect of globalization on the protection of human rights, particularly the protection of human rights through international human rights law. This effect of globalization must be considered because, as the former Secretary-General of the United Nations noted:

[t]echnological advances are altering the nature and the expectation of life all over the globe. The revolution in communications has united the world in awareness, in aspiration and in greater solidarity against injustice. But progress also brings new risks for stability: ecological damage, disruption of family and community life, greater intrusion into the lives and rights of individuals.³

This article examines the processes of globalization and of international human rights law, as well as the impact of the economic processes of globalization on the protection of some human rights. Examples from Africa are primarily used here because the impact can be seen most clearly there. In this analysis, the consequences of globalization, including both the opportunities and dangers that it creates, are considered not only with regard to the protection of human rights, but also in terms of globalization's effect on the international legal order, of which international human rights law forms a part.

II. GLOBALIZATION

Globalization is a contested term and there is no one accepted definition of it.⁴ Robertson provides a definition which captures the contradictory elements of globalization: "we may best consider contemporary globalization in its most general sense as a form of institutionalization of the two-fold process involving the universalization of particularism and the particularization of universalism."⁵ This twofold process has many aspects. Clearly, it is

3. *Id.* ¶ 12.

4. "Globalization" could mean whatever the user wants it to mean. See Sjolander, *supra* note 1, at 603.

5. ROLAND ROBERTSON, *GLOBALIZATION: SOCIAL THEORY AND GLOBAL CULTURE* 102 (1992).

a political, social, and cultural process, but "[i]t is foremost an economic process."⁶ Cerny defines the economic process of globalization in the following way:

it . . . create[s] permissive conditions for a range of distinct but intertwined structural trends—that is, it expands the playing field within which different market actors and firms interact. It transforms the international economy from one made up of holistic national economies interacting on the basis of *national* 'comparative advantage' into one in which a variety of 'competitive advantages' are created in ways which are not dependent on the nation-state as social, economic, and/or political unit.⁷

As Cerny's definition suggests, economic globalization is seen in terms of "markets" where the actors in the market have changed, as have the goods and services on offer.

The establishment of globalized economic institutions has been both a symptom of and a stimulus for globalization. The development of the World Bank, the International Monetary Fund (IMF), regional development banks such as the European Bank for Reconstruction and Development (EBRD), and, more recently,⁸ multilateral trade institutions such as the World Trade Organization (WTO) indicates the trend away from the dominance of the state as the exclusive unit of analysis in international affairs. Acknowledging this trend, the World Bank has stated that:

[t]he state still defines the policies and rules for those within its jurisdiction, but global events and international agreements are increasingly affecting its choices. People are now more mobile, more educated, and better informed about conditions elsewhere. And involvement in the global economy tightens constraints on arbitrary state action, reduces the state's ability to tax capital, and brings much closer financial market scrutiny of monetary and fiscal policies.⁸

Globalization has thus been transformative in terms of a reconceptualizing of state sovereignty within both international relations and international law.⁹

Of course, states have never had exclusive control over their economic,

6. Alex Y. Seita, *Globalization and the Convergence of Values*, 30 CORNELL INT'L L.J. 429 (1997).

7. Phillip G. Cerny, *Globalization and Other Stories: The Search for a New Paradigm for International Relations*, 51 INT'L J. 617, 626 (1996) (footnote omitted). See also Hyug Baeg Im, *Globalisation and Democratisation: Boon Companions or Strange Bedfellows?*, 50 AUSTL. J. INT'L AFF. 279 (1996).

8. THE WORLD BANK, WORLD DEVELOPMENT REPORT 1997, at 12 (1997).

9. See Cerny, *supra* note 7, at 624; John Stremlau, *Antidote to Anarchy*, 18 WASH. Q. 29, 42 (1995); W. Michael Reisman, *Sovereignty and Human Rights in Contemporary International Law*, 84 AM. J. INT'L L. 866, 869 (1990); Louis Henkin, *Human Rights and State "Sovereignty"*, 25 GA. J. INT'L & COMP. L. 31 (1996).

legal, political, and security affairs. However, the current trend of globalization differs from past transnational influences on state sovereignty in the scale and speed of its operation. For example, foreign exchange trading volumes had, even by the late 1980s, reached \$US 1.2 trillion per day, which is nearly forty times the volume of physical international trade¹⁰ and more than the combined foreign currency reserves of all the states in the world.¹¹ The speed of these huge transactions is crucial, as Luke notes:

a 'transnational' flow of goods, capital, people and ideas has existed for centuries; it antedates even the rise of modern nation-states. However, this historical flow . . . tended to move more slowly, move less and more narrowly than the rush of products, ideas, persons and money that develops with jet transportation, electronic telecommunication, massive decolonization and extensive computerization. . . .¹²

While the current globalization is different, it is not analytically detached from its historical origins. Despite some claims to the contrary,¹³ the philosophical oppositions which characterized the Cold War remain integral to many of the debates concerning globalization today. For example, there are oppositional constructs between political rights and economic development, and, in international legal theory and practice, between accepting a state-based international legal system or pushing for a change to the international system.¹⁴

Nonetheless, the end of the Cold War represents a new analytical phase in world history. In today's globalization, the actors involved are not only states but also transnational corporations and inter-governmental institutions. Indeed, of the world's 100 biggest economies, only 49 are states, while the remaining 51 economies are corporations.¹⁵ Thus the heads of states may have much less impact on both individuals and on world events than those in charge of transnational corporations. As Luke explains:

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10. See Sjolander, *supra* note 1, at 608 (citing figures produced by the United Nations Conference on Trade and Development (UNCTAD)).
 11. See Peter Evans, *The Eclipse of the State?: Reflections on Stateness in an Era of Globalization*, 50 *WORLD POL.* 62, 67 (1997).
 12. Timothy W. Luke, *New World Order or Neo-world Orders: Power, Politics and Ideology in Informationalizing Glocalities*, in *GLOBAL MODERNITIES* 91, 99–100 (Mike Featherstone et al. eds., 1995). The importance of speed in today's globalization is supported by RICHARD O'BRIEN, *GLOBAL FINANCIAL INTEGRATION: THE END OF GEOGRAPHY* 8 (1992); JAMES DER DERIAN, *ANTIDIPLMACY: SPIES, TERROR, SPEED, AND WAR* 133 (1992).
 13. See Walter Russell Mead, *Trains, Planes, and Automobiles: The End of the Postmodern Moment*, 12 *WORLD POL'Y J.* 13, 15 (1996) (referring to the various claims about the "end of history," etc, whereby it was considered that a "contemporary society has overcome the fundamental contradictions whose opposition was the motor of Hegelian history.").
 14. See generally MARTTI KOSKENNIEMI, *FROM APOLOGY TO UTOPIA: THE STRUCTURE OF INTERNATIONAL LEGAL ARGUMENT* (1989).
 15. R.C. Longworth, *Large Companies Now Economically Bigger Than Some Countries*, *CHICAGO TRIBUNE*, 15 Oct. 1996.

who sets the pace in automobile output, who controls the Earth's computer software production, . . . who leads international money markets or who directs world telecommunication systems is materially far more important to most individuals, households and firms than who holds the state leadership in Guatemala, Germany, Ghana or Greece.¹⁶

Current globalization operates in diverse ways. Falk offers a bifurcated view of globalization. "[G]lobalization-from-above reflect[s] the collaboration between leading states and the main agents of capital formation . . . [of] the New World Order"¹⁷ and concerns the activities of transnational corporations, international economic organizations, and other similar developments. In contrast, "globalization-from-below," includes popular participation at local levels, the building of civil societies, and the enhancement of non-governmental organizations as part of "the strengthening over time of the institutional forms and activities associated with global civil society."¹⁸ Falk appropriately locates human rights in this latter branch.

III. INTERNATIONAL HUMAN RIGHTS LAW

At one time, governments dealt with those within their jurisdiction as they wished and resisted all criticisms of their actions by claiming that human rights were matters of "domestic jurisdiction" and the responsibility of each state alone.¹⁹ Now human rights are an established part of international law with an institutional structure—including substantive definitions of human rights and mechanisms to enforce these rights—and with universal application.²⁰

16. Luke, *supra* note 12, at 103. Also, "the secretary general of Amnesty International and the chief executive officer of Royal Dutch Shell cast far longer shadows on the international stage than do the leaders of Moldova, Namibia, or Nauru. The state may not be quite ready to wither away, but it's not what it used to be." Peter J. Spiro, *New Global Communities: Nongovernmental Organizations in International Decision-Making Institutions*, 18 WASH. Q. 45, 46 (1995) (endnote omitted). Nowhere has this been more obviously the case than in Asia, where the continuation of the currency crisis has, at least in part, been a result of international financial markets "punishing" states for poor economic management, crony capitalism, and poorly performing banking sectors. It is the IMF, rather than individual Western states, that receives the most publicity for its rescue attempts. See generally Martin Feldstein, *Refocusing the IMF*, 77 FOREIGN AFF., March/April 1998, at 20; Donald K. Emmerson, *Americanising Asia?*, 77 FOREIGN AFF., May/June 1998, at 46.
17. Richard Falk, *The Making of Global Citizenship*, in GLOBAL VISIONS: BEYOND THE NEW WORLD ORDER 39 (Jeremy Brecher et al. eds., 1993).
18. *Id.*
19. U.N. CHARTER art. 2, para. 7, signed 26 June 1945, 59 Stat. 1031, T.S. No. 933, 3 Bevans 1153 (entered into force 24 Oct. 1945). See also Leo Gross, *The Peace of Westphalia 1648-1948*, 42 AM. J. INT'L L. 20 (1948); Reisman, *supra* note 9, at 866.
20. See, e.g., A.H. ROBERTSON & J.G. MERRILLS, *HUMAN RIGHTS IN THE WORLD: AN INTRODUCTION TO THE STUDY OF THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS* 286-303 (3d ed. 1989); MARTIN DIXON & ROBERT MCCORQUODALE, *CASES AND MATERIALS ON INTERNATIONAL LAW* 191-278 (2d ed. 1995); HENRY STEINER & PHILIP ALSTON, *INTERNATIONAL HUMAN RIGHTS IN CONTEXT* 118-65 (1996).

Every single state has ratified at least one treaty containing legal obligations to protect human rights. Human rights, as law, are now within the discourse of the international community. Human rights issues are raised in political, economic, social, and cultural interactions across the world. States have acknowledged, in principle at least, that "the promotion and protection of all human rights is a legitimate concern of the international community."²¹ While only states are legally obliged to protect human rights, international institutions, especially as they are largely comprised of states, arguably also have obligations to protect human rights.²²

International human rights are globalized. They operate beyond all borders and all state mechanisms. They have become part of the discourse in almost all societies, speaking to both the elites and the oppressed, to institutions and to communities. Human rights are both a part of globalization and separate from globalization.²³

However, this globalized characterization of human rights is subject to criticism by those who argue that international human rights law does not reflect universal values, but rather Western, European ones. While a critique of human rights as globalized or universal goes beyond the scope of this article, it is important to realize the context within which human rights have developed and are developing. Human rights (though that term was not originally used) developed in the context of certain historical, social, political, and philosophical situations in Europe. They "are one of the monumental legacies left by the Enlightenment. They are one of those grand narratives . . . that spoke the Truth about the world in order to change it, and that promised a final reconciliation at the end of modernity."²⁴ Theorists from many perspectives²⁵ have shown the problems with this assumption of

21. Vienna Declaration and Programme of Action, U.N. GAOR, World Conf. on Hum. Rts., 48th Sess., 22d plen. mtg., part I, ¶ 4, U.N. Doc. A/CONF.157/23 (1993), *reprinted in* 32 I.L.M. 1661 (1993) [hereinafter Vienna Declaration]. Similar statements are found in the Concluding Document from the Moscow Conference on Security and Co-Operation in Europe (CSCE) (now OSCE), where states involved "categorically and irrevocably [declared] that the commitments undertaken in the field of the human dimension of the CSCE are matters of direct and legitimate concern of all participating States and do not belong exclusively to the internal affairs of the State concerned." Conference on Security and Co-Operation in Europe: Document of the Moscow Meeting on the Human Dimension, *adopted* 3 Oct. 1991, *reprinted in* 30 I.L.M. 1670, 1672 (1991).
22. See Vienna Declaration, *supra* note 21. There was a recommendation "that high-level officials of relevant United Nations bodies and specialized agencies at their annual meeting, besides coordinating their activities, also assess the impact of their strategies and policies on the enjoyment of human rights." *Id.* Part II, ¶ 1.
23. See Falk, *supra* note 17, at 39 (stating that globalization-from-below is "both reactive to [globalization] developments and responsive to different impulses and influences.").
24. Rolando Gaete, *Postmodernism and Human Rights: Some Insidious Questions*, 2 LAW & CRITIQUE 149 (1991). See also JOHN RALSTON SAUL, *VOLTAIRE'S BASTARDS: THE DICTATORSHIP OF REASON IN THE WEST* (1992).
25. See, e.g., Peter Gabel & Duncan Kennedy, *Roll Over Beethoven*, 36 STAN. L. REV. 1, 26 (1984); Hilary Charlesworth, *What are 'Women's International Human Rights'?*, in

what is "the Truth" in human rights, because "in its current form, human rights law naturalises and legitimises the subjugating and disciplinary effects of European, masculinist, heterosexual and capitalist regimes of power."²⁶ Thus, besides the general problem of the lack of enforcement of international human rights law, there is also a debate about whether an international system for protecting human rights is inappropriate and invasive if human rights are dependent on their cultural context.²⁷ In addition, international human rights law, despite its concern with the protection of the rights of humans, remains largely contained within a state-based framework where the responsibility for violations of human rights is by states alone and the sovereign powers of states are affirmed.²⁸

These criticisms have made some impact on the understanding of human rights. For example, it has been recognized that human rights extend beyond civil and political rights to economic, social, cultural, and group rights.²⁹ In addition, there has been increasing involvement of non-European based systems in the development of human rights.³⁰ Thus, while the international legal framework for the protection of human rights is based on a universal approach, some account is now taken of the diversity of

HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES 58 (Rebecca Cook ed., 1994); Jane Flax, *The End of Innocence*, in *FEMINISTS THEORIZE THE POLITICAL* 445 (Judith Butler & Joan W. Scott eds., 1992); R. Pannikar, *Is the Notion of Human Rights a Western Concept?*, 120 *DIAGENES* 76 (1982); Jim George, *Understanding International Relations after the Cold War: Probing Beyond the Realist Legacy*, in *CHALLENGING BOUNDARIES: GLOBAL FLOWS, TERRITORIAL IDENTITIES* 33 (Michael Shapiro & Hayward R. Alker eds., 1996); Joseph Slaughter, *The Question of Narration: A Voice in International Human Rights Law*, 19 *HUM. RTS. Q.* 406 (1997).

26. Diane Otto, *Rethinking Universals: Opening Transformative Possibilities in International Human Rights Law*, 18 *AUSTL. Y.B. INT'L L.* 1, 35 (1997). Similar arguments can be made with respect to neo-classical economics generally because it emerged from the same philosophical foundations as human rights. See STEPHEN TOULMIN, *COSMOPOLIS: THE HIDDEN AGENDA OF MODERNITY* (1990).
27. For the view that human rights are culturally dependent, see, for example, Pannikar, *supra* note 25; Bilahari Kausikan, *Asia's Different Standard*, 92 *FOREIGN POL'Y* 24 (1993). Those who argue against this view include Fernando R. Tesón, *International Human Rights and Cultural Relativism*, 25 *VA. J. INT'L L.* 869, 895 (1985); Abdullahi An-Na'im, *Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives*, 3 *HARV. HUM. RTS. J.* 13 (1990); Ann F. Bayefsky, *Cultural Sovereignty, Relativism, and International Human Rights: New Excuses for Old Strategies*, 9 *RATIO JURIS* 42 (1996). See also Michael C. Davis, *Constitutionalism and Political Culture: The Debate over Human Rights and 'Asian Values'*, 11 *HARV. HUM. RTS. J.* 109 (1998).
28. See Martti Koskeniemi, *The Future of Statehood*, 32 *HARV. J. INT'L L.*, Spring 1991, at 397; Robert McCorquodale, *Self-Determination: A Human Rights Approach*, 43 *INT'L & COMP. L.Q.* 857 (1994).
29. See Charles Taylor, *Human Rights: The Legal Culture*, in *PHILOSOPHICAL FOUNDATIONS OF HUMAN RIGHTS* 49 (UNESCO ed., 1986).
30. The role of non-European-based systems in the acceptance of the right to development is one example. See Russel Barsh, *The Right to Development as a Human Right: Results of the Global Consultation*, 13 *HUM. RTS. Q.* 322 (1991).

cultures; both the international instruments³¹ and the international human rights tribunals make allowance for each state's "margin of appreciation."³² Nevertheless, the globalized aspect of human rights can be seen most clearly in the universal power (albeit one which may put the speaker at risk) of the rhetoric of "human rights." According to Williams:

[f]or the historically disempowered, the conferring of rights is symbolic of all the denied aspects of their humanity: rights imply a respect that places one in referential range of self and others, that elevates one's status from human body to social being. . . .³³ 'Rights' feels new in the mouths of most black [and other oppressed] people. It is still deliciously empowering to say. It is the magic wand of . . . inclusion and exclusion, of power and no power. The concept of rights, both positive and negative, is the marker of citizenship, our relation to others.³⁴

Because this rhetoric is heard worldwide, it is necessary to understand it in terms of the types of rights affected by economic globalization.

IV. ECONOMIC RIGHTS AND ECONOMIC GROWTH

Economic rights include the individual right to an adequate standard of living and the individual and group right to development.³⁵ The right to an adequate standard of living concerns access to the basic essentials for sustaining life, including food, shelter, clothing, and health care.³⁶ The right

31. See the Vienna Declaration, *supra* note 22, Part I, ¶ 5 which provides:

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

Id.

32. This phrase has been used by, for example, the European Court of Human Rights in the *Handyside Case*, 24 Eur. Ct. H.R. (ser. A) at 22 (1976).

33. PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS*, 153 (1991).

34. *Id.* at 164. Williams is, though, generally wary of the globalization of a human rights discourse. However, Rorty asserts that the human rights phenomenon is a "fact of the world," so that the issue of whether humans really have rights is no longer worth debating. Richard Rorty, *Human Rights, Rationality, and Sentimentality*, in *ON HUMAN RIGHTS: THE OXFORD AMNESTY LECTURES 1993*, at 111, 116, 134 (Stephen Shute & Susan Hurley eds., 1993).

35. See MATTHEW CRAVEN, *THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL, AND CULTURAL RIGHTS: A PERSPECTIVE ON ITS DEVELOPMENT* (1995); *ECONOMIC, SOCIAL AND CULTURAL RIGHTS: A TEXTBOOK* (Asbjørn Eide et al. eds., 1995). See also Jerry Dohnal, *Structural Adjustment Programs: A Violation of Rights*, 1 *AUSTL. J. HUM. RTS.* 57 (1994).

36. See International Covenant on Civil and Political Rights, adopted 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, arts. 11 & 12, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (entered into force 23 Mar. 1976) [hereinafter ICCPR].

to development, while still contentious as a human right, means that "every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."³⁷ Accordingly, it can be argued that economic growth will increase protection of economic rights because economic growth brings increased access to health care, food, and shelter, either directly through employment and increased income or indirectly through the improvement and extension of these facilities to more people. For most developing states, particularly those in Africa, economic growth is often fostered through large-scale external investment. This investment comes from globalized economic institutions, such as inter-governmental institutions, including the World Bank and the IMF, or transnational corporations.³⁸ This argument, therefore, concludes that economic growth through globalization leads to the protection of economic rights such as the right to an adequate standard of living and the right to development.

However, the reality is somewhat different in most instances. There are at least three reasons for this: the type of investment, the basis for investment decisions, and the type of economic growth. First, a great deal of the investment arising from globalized economic sources for the purposes of "development" is allocated only to certain types of projects, such as the building of dams, roads, and runways, and the creation of large-scale commercial farms. There is little or no investment in primary health care, safe drinking water, and basic education. Furthermore, these globalized investment-based projects "create some risks of (legally cognizable) harm to some categories of project-affected people, and some projects generate many risks of very serious harms to many people."³⁹ The World Bank itself has recognized the risks involved. With regard to large-scale irrigation projects, the World Bank has recognized that:

[s]ocial disruption is inevitable in large-scale irrigation projects. . . . Local people often find that they have less access to water, land and vegetation resources as a result of the project. Conflicting demands on water resources and

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37. Declaration on the Right to Development, G.A. Res. 41/128 (Annex), adopted 4 Dec. 1986, U.N. GAOR, 41st Sess., Supp. No. 53, art. 1.1; U.N. Doc. A/41/53 (1987), reprinted in 3 WESTON III.R.2. The right has been subsequently affirmed by the international community. See, e.g., Vienna Declaration, *supra* note 21, Part I, ¶ 10.
 38. See Timothy M. Shaw & Clement E. Adibe, *Africa and Global Issues in the Twenty-First Century*, 51 INT'L J. 1, 12 (1996). They point out that most "African economies must rely on the [World Bank and IMF] for external financing since they cannot obtain capital from the world's financial markets." *Id.* (footnote omitted).
 39. James C.N. Paul, *The Human Right to Development: Its Meaning & Importance*, 25 J. MARSHALL L. REV. 235, 238 (1992).

inequalities in distribution can easily occur both in the project area and downstream . . . altering the distribution of wealth.⁴⁰

An example of this occurred when representatives of the Penan people of Malaysia told then Senator and now US Vice-President Gore: "We are not being killed by weapons, but when our lands are taken, it is the same as killing us."⁴¹ Their statements "exemplif[ied] the grave human rights offenses that sometimes occur in the effort [by governments and transnational corporations] to develop national resources."⁴² Thus, the type of investment generated by globalized economic institutions tends to infringe upon economic rights rather than protect them.

Second, decisions about investment by these globalized organizations are based almost exclusively on financial concerns, including generating profits for banks in the developed states and for other transnational corporations. As such, these concerns are external to the state in which the investment is made, and subsequently fail to focus on social welfare within the state. A classic example of this decision-making process is seen in an infamous internal World Bank memo:

[S]houldn't the World Bank be encouraging more migration of the dirty industries to the [less developed countries]? . . . The measurement of the costs of health impairing pollution depends on the foregone earnings from increased morbidity and mortality. From this point of view, a given amount of health-impairing pollution should be done in the country with the lowest wages. I think the economic logic behind dumping a load of toxic waste in the lowest-wage country is impeccable and we should face up to that. . . . I've always thought that under-populated countries in Africa are vastly under-polluted; their air quality is probably vastly inefficiently [high] compared to Los Angeles or Mexico City.⁴³

This memo, written by then World Bank Chief Economist and now US Deputy Treasury Secretary (and US Treasury Secretary-designate) Lawrence Summers, makes excellent neo-classical economic logic.⁴⁴ But this logic can have disastrous consequences for environmental and human rights protection. For example, research has shown that United States-based

40. THE WORLD BANK, TECHNICAL PAPER NO. 140, 2 ENVIRONMENTAL ASSESSMENT SOURCEBOOK 96 (1991).

41. Brian B.A. McAllister, *The United Nations Conference on Environment and Development: An Opportunity to Forge a New Unity in the Work of the World Bank Among Human Rights, the Environment, and Sustainable Development*, 16 HASTINGS INT'L & COMP. L. REV. 689, 691 (1993).

42. *Id.* at 691.

43. See *Let Them Eat Pollution*, ECONOMIST (London), 8 Feb. 1992, at 66 (quoting a World Bank memo written by Lawrence Summers). See also, *Pollution and the Poor*, ECONOMIST (London), 15 Feb. 1992, at 18.

44. See generally PAUL ORMEROD, *THE DEATH OF ECONOMICS* (1994) (for a critique of contemporary economics).

chemical companies have been exporting pesticides banned in the US to developing states by altering production techniques and changing production sites to avoid strict US labeling laws.⁴⁵ Unlabeled containers of hazardous pesticides then become available for purchase over the counter in, for example, parts of Africa.⁴⁶ Often, due to lack of proper information by consumers, the pesticides are improperly used and the containers are reused to carry drinking water.⁴⁷

In a globalized economy, the patience of investors to obtain returns on their investment is considerably reduced. In Africa, where long-term investment in infrastructure is needed, investors from developed states can be harsh in their economic decisions. For example, a French diplomat apparently said that "[e]conomically speaking, if the entire black Africa, with the exception of South Africa, were to disappear in a flood, the global cataclysm will be approximately nonexistent."⁴⁸ It should also be realized that many of the economic decisions made by the globalized economic institutions are made on the basis of very dubious information and analysis. The quantity and speed of information today does not always improve decision-making.

In broader human rights terms, globalized economic institutions often implement plans that hurt those whose economic rights are most vulnerable. For example, Howard notes that "[i]n Africa today, schools are closing down as governments retrench in the face of structural adjustment programmes imposed by the International Monetary Fund."⁴⁹ Because the government is the largest employer in most African states, "[n]ot only do thousands of people lose their jobs . . . , but often all services are drastically cut, especially those of the already underfunded health sector."⁵⁰ Those who

45. See James H. Colopy, *Poisoning the Developing World: The Exportation of Unregistered and Severely Restricted Pesticides from the United States*, 13 UCLA J. ENVTL. L. & POL'Y 167, 171, 181 (1995).

46. See *id.* at 177. This action occurs despite the existence of "Responsible Care" and the industry's self-espoused ability to ethically regulate itself. See Robert Gottlieb et al., *Greening or Greenwashing?: The Evolution of Industry Decision Making*, in REDUCING TOXICS: A NEW APPROACH TO POLICY AND INDUSTRIAL DECISIONMAKING 170 (Robert Gottlieb ed., 1995); Peter Simmons & Brian Wynne, *Responsible Care: Trust, Credibility, and Environmental Management*, in ENVIRONMENTAL STRATEGIES FOR INDUSTRY: INTERNATIONAL PERSPECTIVES ON RESEARCH NEEDS AND POLICY IMPLICATIONS 201 (Kurt Fischer & Johan Schot eds., 1993).

47. See Colopy, *supra* note 45, at 177. Also, while developing states use only around twenty percent of all pesticides used in the world, over seventy percent of the world's pesticide-related deaths and fifty percent of acute pesticide poisoning occur in developing states.

48. Victor Chesnault, "Que faire de l'Afrique noire?," *Le Monde*, 28 Feb. 1990, at 2, quoted in Michael Chege, *Remembering Africa*, 71 FOREIGN AFF. [America and the World 1991/92], at 148 (1992).

49. Rhoda E. Howard, *Civil Conflict in Sub-Saharan Africa: Internally Generated Causes*, 51 INT'L J. 26, 32 (1996).

50. MAHMOOD MONSHIPOURI, *DEMOCRATIZATION, LIBERALIZATION & HUMAN RIGHTS IN THE THIRD WORLD* 54 (1995) (quoting Fran Hoskin). See also Anne Orford, *Locating the International: Military and Monetary Interventions after the Cold War*, 38 HARV. INT'L L.J. 443, 464-75 (1997).

are the worst affected when governments are forced to change their priorities are usually the poor, women, and agricultural workers. For example, Zimbabwe used to provide free education for all until adherence to an IMF structural adjustment program caused this to end.⁵¹ As a result, many Zimbabwean girls are no longer being educated because parents make gender-based financial choices.⁵² This occurs despite the clear evidence that the education of girls is an investment that "yield[s] the highest rate of return in a developing country."⁵³

Indeed, structural adjustment programs have significant gender impact, and often fail to withstand criticism in the same economic terms that they purport to uphold.⁵⁴ The United Nations Special Rapporteur on the Realization of Economic, Social and Cultural Rights reported that:

[s]tructural adjustment programs continue to have a significant impact upon the overall realization of economic, social and cultural rights, both in terms of the ability of people to exercise them, and of the capability of governments to fulfil and implement them. . . . Human rights concerns continue to be conspicuously underestimated in the adjustment process.⁵⁵

Thus, human rights (in the case of Zimbabwe, the rights to education and freedom from discrimination) are violated as a consequence of the policies of the globalized economic institutions.

Additionally, the fact that the economic decision-making process is being taken away from governments and put in the hands of financial "experts" in globalized economic institutions also means that the people and the governments of developing states are not effectively involved in decisions affecting their lives.⁵⁶ This has an impact on both state sovereignty

51. See Maria Nzomo, *The Political Economy of the African Crisis: Gender Impacts and Responses*, 51 INT'L J. 78 (1996).

52. See Bharati Sadasivam, *The Impact of Structural Adjustment on Women: A Governance and Human Rights Agenda*, 19 HUM. RTS. Q. 630, 641 n.36 (1997).

53. JOSETTE L. MURPHY, GENDER ISSUES IN WORLD BANK LENDING 22 (1995) (footnote omitted).

54. See generally Dohnal, *supra* note 35 (for a cogent summary of structural adjustment programs and their problems).

55. Danilo Türk, *The Realization of Economic, Social and Cultural Rights: Final Report*, U.N. Doc E/CN.4/Sub.2/1992/16 (1992). The World Bank acknowledges this when it states that "[c]omplicating the picture is the fact that some public consumption—teachers' salaries for example, or purchases of medicine—can affect people's lives for the better, and even raise the efficiency of investment. Cutting consumption indiscriminately to boost equally indiscriminate investment is clearly not the answer." THE WORLD BANK, *supra* note 8, at 32. The World Bank promised to provide extra funding to help Indonesian hospitals affected by the financial crisis in Asia in 1997–1998. See *Asian Melt-down Hits Indonesian Hospitals*, GUARDIAN WEEKLY (Manchester), 22 Feb. 1998, at 19.

56. See Lawrence Tshuma, *The Impact of IMF/World Bank Dictated Economic Structural Adjustment Programmes on Human Rights: Erosion of Empowerment Rights*, in THE INSTITUTIONALISATION OF HUMAN RIGHTS IN SOUTHERN AFRICA 219, 229 (Pearson Nherere & Marina d'Engelbronner-Kolff eds., 1993).

and human rights. People are not able to exercise their right to development because they are not afforded the opportunity to participate in decisions concerning their development. In addition, governments, as well as minorities within a state, are marginalized as power is transferred to bureaucrats and special interest groups. This impact is compounded with the increasing privatization of public functions and public goods. As a result, the ability of governments to protect human rights, even if guaranteed by a constitution and enforced by an independent judiciary, becomes more restricted.⁵⁷ Of course, many governments, even when they are in control of economic decision-making, do not take the interests or economic rights of their people into account. However, globalization can restrict the choices open to governments and people, particularly in the human rights area, and thus make it more difficult to attribute responsibility for violations of human rights.

Ironically, it appears that the World Bank has now become concerned about the decreasing role of the state. It now argues that:

[a]n effective state is vital for the provision of goods and services—and the rules and institutions—that allow markets to flourish and people to lead healthier, happier lives. Without it, sustainable development, both economic and social, is impossible. . . . [T]he state is central to economic and social development, not as a direct provider of growth but as a partner, catalyst, and facilitator.⁵⁸

According to the World Bank, “globalization is [only] a threat to weak or capriciously governed states”⁵⁹ which fail to “set the rules that underpin markets and permit them to function.”⁶⁰ However, the World Bank’s support of a role for the state in the decision-making process of economic globalization is problematic because the state’s role is seen purely in terms of allowing markets to “flourish.” The state’s role in allocating resources, dealing with social goods, and protecting human rights are all sublimated to the “market.”⁶¹ Indeed, the World Bank’s concern for the role of the state is

57. See Philip Alston, *The Myopia of Handmaidens: International Lawyers and Globalization*, 8 EUR. J. INT’L L. 435, 443 (1997).

58. THE WORLD BANK, *supra* note 8, at 1.

59. *Id.* at 11.

60. *Id.* at 34. Though the World Bank also considers that “a state that ignores the needs of large sections of the population in setting and implementing policy is not a capable state.” *Id.* at 110.

61. This position could also be seen in the negotiation for a Multilateral Agreement on Investment which would enable transnational corporations to enforce limitations on governments actions, even if these limitations are contrary to the wishes of the people. See David Rowan, *Meet the New World Government*, GUARDIAN WEEKLY (Manchester), 22 Feb. 1998, at 14. However, the International Labour Organization has recently adopted a declaration which states that “all Members . . . have an obligation . . . to respect, to promote and to realize, in good faith . . . the principles concerning the fundamental [labor] rights”: *ILO Declaration on Fundamental Principles and Rights at Work* (June 1998) available on <<http://www.ilo.org>>.

purely self-interested; the World Bank itself has noted that "if the history of development assistance teaches anything . . . it is that external support can achieve little where the domestic will to reform is lacking."⁶² In this context, such reform must be in accord with the World Bank's own economic philosophies, rather than in terms of the social welfare or the protection of human rights of the people in the State.

The third and final reason that globalization does not necessarily promote economic rights is because there are different types of economic growth. The United Nations Human Development Report 1995 dealt with the impact of damaging forms of economic growth.⁶³ It found that damaging economic growth includes:

that which does not translate into jobs, that which is not matched by the spread of democracy, that which snuffs out separate cultural identities, that which despoils the environment, and growth where most of the benefits are seized by the rich.⁶⁴

An example of damaging economic growth, where growth, as it were, is not growth, is where crops are planted for export to gain foreign exchange revenue while the people are deprived of their staple diet. This has happened in both Zimbabwe and Brazil.⁶⁵ This kind of damaging economic growth is contrary to the right of self-determination which provides that "[i]n no case may a people be deprived of its own means of subsistence."⁶⁶

62. THE WORLD BANK, *supra* note 8, at 15.

63. UNITED NATIONS DEVELOPMENT PROGRAMME, HUMAN DEVELOPMENT REPORT 1995 (1995).

64. Larry Elliott, *Bridging the North-South Divide*, GUARDIAN WEEKLY (Manchester), 11 Aug. 1996, at 14 (describing the conclusions of the UNDP Report). One form of damaging growth can be where governments attempt to attract foreign investment by "improving" the physical appearances of cities, such as the extermination of street children in Latin America and the perfunctory cleaning up of slum housing by eviction of low-income tenants in Atlanta prior to the 1996 Summer Olympics. See *id.*

65. See Sadasivam, *supra* note 52, at 641 n.36. Brazil has an estimated 86 million undernourished citizens who could be fed with only a 1.6 percent redistribution of Brazilian food production. See Joseph Collins, *World Hunger: A Scarcity of Food or a Scarcity of Democracy?*, in *WORLD SECURITY: CHALLENGES FOR A NEW CENTURY* 356, 358 (Michelle T. Klare & Daniel C. Thomas eds., 2d ed. 1994). There is also an impact on health. See Jonathan Mann, *Health and Human Rights*, 312 BRITISH MED. J. 924 (1996); Michael Kirby, *Human Rights and the HIV Paradox*, 348 LANCET 1217, 1218 (1996).

66. International Covenant on Economic, Social and Cultural Rights, adopted 16 Dec. 1966, G.A. Res. 2200 (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, art. 1(2), U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (entered into force 3 Jan. 1976) [hereinafter ICESCR]; ICCPR, *supra* note 36, art. 1(2). See also Christine Chinkin & Shelley Wright, *The Hunger Trap: Women, Food and Self-Determination*, 14 MICH J. INT'L L. 262 (1993) (calling for a different definition of "peoples" or "self"). "Food, shelter, clean water, a healthy environment, peace and a stable existence must be the first priorities in how we define or 'determine' the 'self' of both individuals and groups, instead of the present definitions, which are based on masculinist goals of political and economic aggrandizement and aggressive territoriality." *Id.* at 294.

Another kind of damaging economic growth in which the benefits of economic growth are seized by the rich was exemplified in South Africa during the apartheid regime. There, economic growth was for many years achieved through the exploitation of a large unskilled, insecure, dispossessed, and dependent work force consisting of oppressed blacks.⁶⁷ Thus globalization can have the effect of increasing economic inequality when the economic interests which are protected are those of the rich and economically powerful, who are usually the elite urban males.

Economic growth through globalization processes can even encourage human rights abuses beyond state borders by providing economic incentives for trade in goods injurious to humans, such as land mines and military weapons.⁶⁸ For example, in 1997, the South African arms manufacturer, Denel, sought to sell to Syria up to \$640 million worth of updated weaponry for that country's fleet of T72 tanks. The deal eventually collapsed, partly because of strong criticism from the United States.⁶⁹ The South African government responded to the criticism by saying that South Africa was a sovereign state which would not determine its foreign policy with reference to the wishes of other States.⁷⁰ This reaction is ironic considering that the globalization of human rights concerns and the impact of the international legal order was integral to the improvement of human rights and the historic change of government in South Africa.

In sum, economic globalization can lead to improved conditions for those in developing states, but it can also encourage economic exploitation and oppression. Globalization may lead to apparent improvements in economic growth, but at a cost to the economic rights of many within a state. Indeed, "[t]he overwhelming thrust of the evidence would appear to support the claim that World Bank and IMF policies are violating human rights."⁷¹ The influence of the economic philosophies of the globalized economic institutions is such that even the concepts of human rights can be affected. For example, the right to development is now partly defined on the

67. See Heribert Adam, *Cohesion and Coercion*, in *THE ELUSIVE SEARCH FOR PEACE: SOUTH AFRICA, ISRAEL AND NORTHERN IRELAND* 227 (Hermann Giliomee & Jannie Gagiano eds., 1990). "The danger for South Africa lies in the temptation to create the semblance of a formal democracy, with a universal franchise and veto powers for entrenched interests that leave the enormous economic inequality basically intact." *Id.* at 241.

68. It has been shown that, over the long-term, economic activity in the form of arms production does not contribute to overall economic growth. See William Felice, *Militarism and Human Rights*, 74 INT'L AFF. [LONDON] 30 (1998).

69. See Arms Transfer Project of the Stockholm International Peace Research Institute (SIPRI), Frosunda, Sweden, available at <<http://www.sipri.se>> (as verified by the authors' correspondence with Siemon Wezeman of the Arms Transfer Project of SIPRI, Mar. 1999; copy on file with authors).

70. See *id.* See also DEFENSE NEWS Aug. 11-17, 1997, at 21.

71. Dohnal, *supra* note 35, at 82.

notion that "development" means industrialization, westernization, and economic growth.⁷² Only a very few of the globalized economic institutions take human rights issues directly into account in their investment decisions, though this may be changing.⁷³ If human rights issues are not taken into account in these investment decisions, it is likely that human rights will become more endangered as a consequence of those decisions.

V. POLITICAL RIGHTS AND INTERNATIONAL INVESTMENT

There has been debate concerning the relationship between economic globalization and the protection of political rights, the strengthening of civil society and institution building, and the development of democracy. The World Bank has noted that "researchers have yet to reach a consensus on the precise relationship between growth and democracy: about one-fifth of the studies find a positive relationship, one-fifth a negative relationship, and the rest are inconclusive."⁷⁴ The main arguments supporting both a positive and a negative relationship will be canvassed here in turn.

It was argued by a former United Nations Secretary-General that there is a positive relationship between democracy and development:

Democracy and development are linked in fundamental ways. They are linked because democracy provides the only long-term basis for managing competing ethnic, religious, and cultural interests in a way that minimizes the risk of violent internal conflict. They are linked because democracy is inherently attached to the question of governance, which has an impact on all aspects of development efforts. They are linked because democracy is a fundamental human right, the advancement of which is itself an important measure of development. They are linked because people's participation in the decision-making processes which affect their lives is a basic tenet of development.⁷⁵

There is some research to support this argument. For example, Barro studied the economic development of 100 states between 1960 and 1990 and

72. See Hilary Charlesworth, *The Public/Private Distinction and the Right to Development in International Law*, 12 *AUSTL. Y.B. INT'L L.* 190, 196-97 (1992).

73. See David Forsythe, *The United Nations, Human Rights, and Development*, 19 *HUM. RTS. Q.* 334, 342 (1997) (noting that the treaty creating the European Bank for Reconstruction and Development provides that it must advance democratic development).

74. *THE WORLD BANK*, *supra* note 8, at 149. See also Michael Davis, *The Price of Rights: Constitutionalism and East Asian Economic Development*, 20 *HUM. RTS. Q.* 303 (1998).

75. *Report of the Secretary-General: An Agenda for Development—Development and International Economic Cooperation*. U.N. GAOR, 48th Sess., Agenda Item 91, ¶ 120, U.N. Doc. A/48/935 (1994).

compared it with their political development in terms of "more democracy."⁷⁶ His study revealed that

increases in various measures of the standard of living tend to generate a gradual rise in democracy. In contrast, democracies that arise without prior economic development—sometimes because they are imposed by former colonial powers or international organizations—tend not to last. . . .⁷⁷ [I]n the worst dictatorships, an increase in political rights tends to increase growth and investment because the benefit from limitations on governmental power is the key matter. But in places that have already achieved a moderate amount of democracy, a further increase in political rights impairs growth and investment because the dominant effect comes from the intensified concern with income redistribution . . .⁷⁸ [and] countries at low levels of economic development typically do not sustain democracy. . . . Conversely, non-democratic places that experience substantial economic development . . . become more democratic.⁷⁹

These conclusions offer powerful support for the view often espoused by the globalized economic institutions, that the priority of the international community should be to press for economic growth rather than the direct promotion of human rights.⁸⁰ As Barro himself noted: "one way to view the findings is that political freedom emerges as a sort of luxury good . . . [and] if economic freedom were to be established in a poor country, then growth would be encouraged, and the country would tend eventually to become more democratic on its own."⁸¹

One consequence of this view espoused by Barro is that, even if there is initially some inequality in terms of economic power or some initial decrease in human rights, those who gain economic power will (eventually) press for political power. In other words, changes towards political rights will come from those who have economic power rather than from the general population or human rights activists. The creation of more democratic political institutions in East Asia after rapid economic growth under authoritarian rule is used to support this view.⁸² The conclusion drawn is

76. ROBERT J. BARRO, *DETERMINANTS OF ECONOMIC GROWTH: A CROSS-COUNTRY EMPIRICAL STUDY* (1997). Barro sets out in detail his assumptions and measurement standards in his book.

77. *Id.* at 52.

78. *Id.* at 59.

79. *Id.* at 61. Support is also found in the fact that Tanzania, despite democratic elections since 1985, is ranked as the third poorest State in the world. See *Democracy Fails to Boost Tanzania Economy*, *GUARDIAN WEEKLY* (Manchester), 4 Jan. 1998, at 3.

80. This view is often taken as human rights are seen as "political" while economic development is not. See Forsythe, *supra* note 73, at 339–42.

81. Robert Barro, *Democracy: A Recipe for Growth?*, *WALL STREET J.* (Eur. ed.) 9–10 Dec. 1994.

82. See *Democracy on the March Across East Asia*, *GUARDIAN WEEKLY* (Manchester), 11 Jan. 1998, at 15.

that "greater integration into the international community . . . enlarges the role of the private sector, promotes a stable legal environment, and restructures the state's relations with its citizens. International economic participation widens political participation."⁸³

Another argument supporting a positive relationship between economic globalization and democracy suggests that globalized economic institutions, including transnational corporations, tend to demand that certain conditions exist in a state before they are willing to invest and that these conditions lead to the protection of political rights.⁸⁴ These investment conditions, sometimes called "democratic governance" requirements,⁸⁵ can include the acceptance of the rule of law, clear and transparent practices by government and local institutions, and international dispute resolution. Thus, it is argued, these investment conditions ensure that there is a democratic system, including judicial guarantees of human rights and political institutions.⁸⁶ The apparent links between setting these conditions and democracy are found in instruments such as the Charter of Paris, where "democracy has as its foundation respect for the human person and the rule of law."⁸⁷ Similarly, in the opinion of the Inter-American Court of Human Rights, judicial protection and political institutions are essential to the preservation of democracy and the rule of law.⁸⁸ The rule of law is crucial

83. MONSHIPOURI, *supra* note 50, at 57-62. See also G. Sheridan, *Why We Lack the Weight to Heavy Asia*, AUSTRALIAN, 7 Aug. 1996, at 13. "[I]n today's global economy, it is almost inconceivable that you can have sustained economic growth without increasing the civic space people enjoy." *Id.*

84. See Forsythe, *supra* note 73, at 337-39.

85. See *id.* at 334. There is also some debate about whether democracies go to war. See I. Oren & J. Mays, *Democracies May Rarely Fight One Another but Developed Socialist States Rarely Fight At All*, 22 ALTERNATIVES: SOCIAL TRANSFORMATION AND HUMAN GOVERNANCE 493 (1997); K. Smits, *International Identity Construction and the Liberal Peace*, 47 PEACE, SECURITY AND GLOBAL CHANGE 49 (1995). It has also been argued that when a state "reaches a certain level of economic development, when it has a middle class big enough to support a McDonald's, it becomes a McDonald's country. And people in McDonald's countries don't like to fight wars. They like to wait in line for burgers." Quoted in James Langton, *Peace on Earth and Big Macs to All Men*, DAILY TELEGRAPH (London), 21 Dec. 1996. See also Clifford D. Shearing & Phillip C. Stenning, *Say Cheese!: The Disney Order that is not so Mickey Mouse*, PRIVATE POLICING 317 (Clifford D. Shearing & Phillip C. Stenning eds., 1987).

86. See MONSHIPOURI, *supra* note 50, at 57-62. The need for such an institutional system, including legislative, judicial, and administrative processes, in order to have effective remedies when rights are violated is set out in Article 2 of the International Covenant on Civil and Political Rights, *supra* note 36.

87. Charter of Paris for a New Europe, adopted by the Conference on Security and Cooperation in Europe at Paris, 21 Nov. 1991, reprinted in 30 I.L.M. 190, 193-94 (1991).

88. See *Judicial Guarantees in States of Emergency* (Arts. 27(2), 25 and 8 of the American Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987, Inter-Am. Ct. H.R. (Ser. A) No. 9, ¶¶ 37-38 (1987), reprinted in 9 Hum. Rts. L.J. 204, 211 (1988).

because "in a society governed by law, the legal system can be a means for people to protect themselves from bureaucratic abuse, commercial exploitation, and official lawlessness which are generally the lot of the poor and powerless."⁸⁹

The rule of law, at least in terms of the state providing a settled system of rules in order to allow markets to function,⁹⁰ is enhanced, either directly by agreements with globalized economic institutions on investment conditions or indirectly by states changing their systems in order to attract investment by these institutions.⁹¹ With regard to direct changes, most investments by globalized economic institutions are governed by some contractual agreement or treaty. These are usually made subject to international law or international arbitration.⁹² For example, an increasing number of states are parties to the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States⁹³ which restricts the ability of states to change their national laws to the detriment of foreign investors. The controversial Multilateral Agreement on Investment (MAI) is a more recent example of a treaty which, if it becomes part of international law, will have a wide range of impacts on state sovereignty, economic conditions in member states, and possibly also on human rights.⁹⁴ Other

89. Geoffrey Budlender, *Lawyers and Poverty: Beyond Access to Justice*, in SECOND CARNEGIE INQUIRY INTO POVERTY AND DEVELOPMENT IN SOUTHERN AFRICA 7 (Carnegie Conference Paper No. 91, 1984).

90. See THE WORLD BANK, *supra* note 8, at 34.

91. See John Mukum Mbaku & Mwangi S. Kimenyi, *Democratization in Africa: The Continuing Struggle*, 32 COEXISTENCE 119 (1995). Mbaku and Kimenyi comment that:

African countries must find other ways to attract foreign resources for growth and development [other than on the basis of Cold War allegiances]. Until appropriate policy reforms are implemented, foreign entrepreneurs are not likely to consider the continent as an attractive place for investment, especially when one considers emerging investment opportunities in Eastern Europe.

Id. It is also possible that changes to law and institutions can create a general local desire for compliance with laws particularly because such new laws are often drafted by people with some understanding of international human rights law.

92. See generally ALAN REDFERN & MARTIN HUNTER, *LAW AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION* (2d ed. 1987). The World Bank sees these agreements as positive for states because "[c]ountries with weak domestic commitment mechanisms can strengthen their credibility by binding themselves to pay a penalty should they violate the agreement." THE WORLD BANK, *supra* note 8, at 101.

93. See Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, concluded at Washington, 18 Mar. 1965 (entered into force 14 Oct. 1965), 575 U.N.T.S. 159, reprinted in 4 I.L.M. 532 (1965). This treaty sets up procedures for the settlement of investment disputes (and the International Centre for Settlement of Investment Disputes (ICSID)) and there are over 130 State parties to the Convention. See 14 NEWS FROM ICSID (1997).

94. The text of the Multilateral Agreement on Investment (MAI) is available on <<http://www.oecd.org/daf/cm/mai/negtext.htm>> (visited 1 May 1999). A wide range of Organisation for Economic Co-operation and Development (OECD) papers about the MAI are available on the OECD's website <<http://www.oecd.org>>.

examples include the IMF agreements entered into with governments in East Asia as a consequence of the currency crisis in 1997 and 1998. These agreements contain strict requirements for the governments concerned to change their national financial institutions and investment laws and procedures.⁹⁵

With regard to indirect effects, it is clear that decisions made about economic investment by the globalized economic institutions give considerable weight to political stability.⁹⁶ An example of international action linking economic globalization to democracy can be seen in the decision in 1992 by all of the major donor states to stop investment in Malawi until President Banda dealt with the gross breaches of human rights there.⁹⁷ This decision was undoubtedly a catalyst for the move to multi-party elections in Malawi.⁹⁸ Decisions such as these are used to support arguments that economic globalization, manifested in the use of the threat of non-investment or disinvestment, can lead to the creation or improvement of political institutions that are responsive to the demands of the people.

In contrast, there are arguments which find a negative relationship between economic globalization and political rights.⁹⁹ The record to date of the globalized economic institutions in using their investment to foster democracy has been poor.¹⁰⁰ This may be due in part to the pervasive distrust of outsiders by ruling elites,¹⁰¹ as well as relatively weak "civil societies" and the fragility of many developing states.¹⁰² Indeed, globaliza-

95. For Letters of Intent from states receiving IMF support, as well as their Memoranda of Economic and Financial Policies, see *Member Country Publications* (visited 1 May 1999) <<http://www.imf.org/external/np/loi/mempub.htm>>. For further details on the IMF's response to the Asian crisis, see *The IMF's Response to the Asian Crisis*, 17 Jan. 1999 (visited 1 May 1999) <<http://www.imf.org/external/np/exr/facts/asia.htm>>. See also *No Bargains for Korea in This Sale*, *GUARDIAN WEEKLY* (Manchester), 11 Jan. 1998, at 12; Dave McIntyre, *IMF Leader Turns 007 to Save Asia Markets*, *AUSTRALIAN*, 31 Dec. 1997, at 26; Lincoln Wright, *IMF: New Imperialistic Force Threatening to Change the Face of Asia*, *CANBERRA TIMES*, 17 Jan. 1998, at C4.

96. See Chege, *supra* note 48, at 154. See also Michael Steketee, *Disney's Worldly Ambitions*, *AUSTRALIAN*, 14 Aug. 1996, at 15 (quoting Julian Disney that "even in many wealthy countries, government decisions as to whether they will devote resources to particular social welfare programs are often crucially affected by fears that international financiers will disapprove and directly or indirectly reduce the supply of international finance to that country.").

97. See Forsythe, *supra* note 73, at 346.

98. See Kevin Brampton, *Making Constitutions: Raising Public Awareness*, in *HUMAN RIGHTS AND THE MAKING OF CONSTITUTIONS: MALAWI, KENYA, UGANDA* 56, 57-62 (Joanna Lewis et al. eds., 1995).

99. See Shaw & Adibe, *supra* note 38, at 19.

100. See *id.*

101. See Barry Buzan, *People, States and Fear: The National Security Problem in the Third World*, in *NATIONAL SECURITY IN THE THIRD WORLD: THE MANAGEMENT OF INTERNAL AND EXTERNAL THREATS* 14 (Edward E. Azar & Chung-in Moon eds., 1988).

102. See Im, *supra* note 7.

tion, through the creation of international or regional trade and economic institutions, can lead directly to a feeling of loss of political power by groups within states.¹⁰³ Globalization also leads to the fostering of "tribalism and other revived or invented identities and traditions which abound in the wake of the uneven erosion of national identities, national economies, and national state policy capacity."¹⁰⁴ Such developments are consistent with Robertson's idea of globalization, including the process of "universalisation of particularism,"¹⁰⁵ where government is determined according to local narratives.

In addition, many of the funding conditions imposed by the globalized economic institutions, such as economic structural adjustment programs, require strong government action for smooth implementation. Authoritarian and military governments are favored by external investors as the best-suited to implement these policies successfully, thereby putting new democracies at risk.¹⁰⁶ Indeed, the World Bank's 1992 report on *Governance and Development*¹⁰⁷ "stressed management, accountability, rule of law, and information and transparency . . . [but] did not explicitly urge that governments be held accountable to their citizens through [democratic processes]."¹⁰⁸ As such, the World Bank's characterization of a credible legal system is solely market-focused. The legal system must provide legal rules and enforcement mechanisms which "establish and apply the rules of the game, lower transaction costs, increase commercial certainty, create incentives for efficiency, and control crime and corruption so that businesses can focus on productive activities."¹⁰⁹ There is no recognition of other reasons for law, including protection of human rights and maintenance of ordered, settled communities.

Indeed, the investment conditions imposed by the globalized economic institutions can lead to distortion of the energies and resources of governments. Even the instances of apparent links between investment and

103. Examples include the Scottish and the Chiapas. See generally Jorge A. Vargas, *NAFTA, the Chiapas Rebellion and the Emergence of Mexican Ethnic Law*, 25 CAL. W. INT'L L.J. 1 (1994); A. Macartney, *Autonomy in the British Isles*, 54 NORDISK TIDSSKRIFT FOR INT'L RET 10 (1984); Jack Brand, *Scotland and the Politics of Devolution: A Patchy Past, A Hazy Future*, 46 PARLIAMENTARY AFF. 38 (1993).

104. Cerny, *supra* note 7, at 619 (alteration in original).

105. ROBERTSON, *supra* note 5, at 102.

106. See generally JOHN CAVANAGH ET AL., *BEYOND BREITON WOODS: ALTERNATIVES TO THE GLOBAL ECONOMIC ORDER* (1994); *FIFTY YEARS AFTER BREITON WOODS: THE NEW CHALLENGE OF EAST-WEST PARTNERSHIP FOR ECONOMIC PROGRESS* (Miklós Szabó-Pelsöczy ed., 1996); THE IMF, *THE WORLD BANK AND THE AFRICAN DEBT* (Bade Onimode ed., 1989).

107. THE WORLD BANK, *GOVERNANCE AND DEVELOPMENT* (1992).

108. Forsythe, *supra* note 73, at 340.

109. THE WORLD BANK, *WORLD DEVELOPMENT REPORT 1996: FROM PLAN TO MARKET* 86 (1996). See also Ibrahim J. Wani, *The Rule of Law and Economic Development in Africa*, 1 E. AFR. J. PEACE & HUM. RTS. 52 (1993).

democracy, such as in Malawi, have been said to emerge from financial concern over repayment of loans and not from a broader interest in the establishment of democracy.¹¹⁰ Similarly, a case study of the former Yugoslavia traced some of the causes of the conflict there to actions by the globalized economic institutions which stripped that state of many of its functions and led people to seek other sources of community.¹¹¹

Despite these facts, it is still recognized that

[i]n the new global order unleashed by the collapse of communism, Africans [and other developing States] will have little choice but to pull their own weight by meeting the most exacting standards in domestic governance and economic competitiveness.¹¹²

The implications from this quotation, as well as the Yugoslavian case study, are twofold. On the one hand, there is an encouraging move away from the use of developing states as places for political ideological conflict and military bases to an acknowledgment that economic decision-making requires consideration of human rights. On the other hand, the economic philosophies expounded in developed states rarely consider the cultural and social ramifications for developing states. In addition, under the pressure of the globalized economic institutions, governments in developing states often lack any effective sovereign power to make decisions to protect minorities or to preserve important cultural and social elements within communities.

It is only in the last few years that globalized economic institutions have begun to take into account non-economic factors such as human rights, environmental degradation, and cultural fragmentation in their investment decisions.¹¹³ This may be due partly to broader human rights concerns and partly to economic considerations. For example, the World Bank's report on *Sub-Saharan Africa: From Crisis to Sustainable Growth*,¹¹⁴ concluded that "unless these political conditions improved no economic strategy will succeed in reversing economic decline in Africa."¹¹⁵

While transnational corporations can have a powerful influence in reforming political conditions, this is only likely to occur where such reform is in the corporations' own interests. Transnational corporations are primarily subject to control by their major shareholders. Arguably, however, they

110. See Forsythe, *supra* note 73, at 347.

111. See Orford, *supra* note 50, at 457.

112. Chege, *supra* note 48, at 149. See also Bård-Anders Andreassen, *Democratisation and Human Rights Beyond Borders: On the Donor-Recipient Connection*, in *THE INSTITUTIONALISATION OF HUMAN RIGHTS IN SOUTHERN AFRICA* 195 (Pearson Nherere & Marina d'Engelbronner-Kolff eds., 1993).

113. See *supra* note 73 and accompanying text.

114. THE WORLD BANK, *SUB-SAHARAN AFRICA: FROM CRISIS TO SUSTAINABLE GROWTH* (1989).

115. Wani, *supra* note 109, at 52.

are subject to the power of the market in terms of the interests of consumers and can therefore be forced, for example, to consider human rights or environmental issues due to strong consumer boycotts.¹¹⁶ However, this approach is not uniformly applicable; more heed tends to be taken of consumers in the developed states concerning actions in or near developed states close to corporate headquarters. Less attention is paid to consumers in developing states about activities in their distant states.¹¹⁷ Nevertheless, this selective reaction is inconsistent with human rights because human rights are applicable worldwide and are not limited to matters that only affect consumer groups.

Further, transnational corporations can greatly assist the effectiveness of international sanctions, such as those previously in force against South Africa, which can lead to improved protection of human rights.¹¹⁸ However, transnational corporations may also choose to ignore these international actions because they are beyond state control.¹¹⁹ Thus, while opportunities for enhanced human rights protection can emerge from pressure on globalized economic institutions to take more account of human rights issues, so far this pressure (and the resultant impact) has been piecemeal and inconsistent.

Finally, many of the arguments claiming a positive relationship between economic globalization and political rights confuse democracy with human rights. The terms are not synonymous. Although public participation in the public institutions of the states is a right recognized in Article 25 of the International Covenant on Civil and Political Rights,¹²⁰ there is no generally accepted human "right to democracy."¹²¹ Not only is the term "democracy" able to sustain many definitions,¹²² but human rights are much more

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- 116. See Debora L. Spar, *The Spotlight and the Bottom Line: How Multinationals Export Human Rights*, 77 FOREIGN AFF., March/April 1998, at 7. The withdrawals of Texaco, Levi Strauss, *inter alia*, from Burma are examples of this consumer pressure. See *id.* at 10.
 - 117. See J. Shestack, *Sisyphus Endures: The International Human Rights NGO*, 24 N.Y.L. SCH. L. REV. 89 (1978).
 - 118. See COMMONWEALTH COMMITTEE OF FOREIGN MINISTERS ON SOUTHERN AFRICA, SOUTH AFRICA: THE SANCTIONS REPORT (1989).
 - 119. See JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE, PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA, REPORT NO. 67, HUMAN RIGHTS AND PROGRESS TOWARDS DEMOCRACY IN BURMA [MYANMAR] (1995).
 - 120. ICCPR, *supra* note 36, art. 25.
 - 121. Some jurists have sought to discern such a right. See Reginald Ezetah, *The Right to Democracy: A Qualitative Inquiry*, 22 BROOKLYN J. INT'L L. 495 (1997); W. Michael Reisman, *Humanitarian Intervention and Fledgling Democracies*, 18 FORDHAM INT'L L.J. 794 (1995).
 - 122. See generally Christine Sylvester, *The White Paper Trailing*, in DISCOURSES OF DANGER & DREAD FRONTIERS: AUSTRALIAN DEFENCE AND SECURITY THINKING AFTER THE COLD WAR 134, 142 (Graeme Cheeseman & Robert Bruce eds., 1996); Susan Marks, *The European Convention on Human Rights and its Democratic Society*, 66 BRIT. Y.B. INT'L L. 209, 235-37 (1995); Orford, *supra* note 50, at 463; Im, *supra* note 7, at 290. Cf. Seita, *supra* note 6, at 5.

complex and diverse than simply being about democracy or civil and political rights.

Accordingly, it is possible to argue that there is a positive relationship between economic globalization and the protection of political rights. Certainly, the globalized economic institutions have been seeking to make the relationship a positive one by placing democratic governance conditions on investment and by taking some account of non-economic factors in their decision-making. However, the arguments that the relationship is a negative one are also strong. These arguments raise questions about the legitimacy of the democratic governance conditions and the seriousness with which human rights issues, and the nebulous concept of "democracy," are taken into account by both the global economic institutions and transnational corporations. It would appear that instead of creating order, the rule of law, and the protection of human rights, globalization can create conditions for disorder, authoritarian rule, and the disintegration of the state entity with consequent violations of human rights.

VI. CULTURAL RIGHTS AND GLOBAL COMMUNICATIONS

One of the sectors which has been an integral part of economic globalization is the communications industry. Not only has it become a global industry in and of itself, but also it has been a major factor in the globalization of other industries. The worldwide high-speed communications systems developed in recent years have propelled globalization. Information transmitted almost instantly by satellites and computer networks gives economic and political decision makers a worldwide and real-time view. The Internet particularly operates beyond any real state control and easily transcends territorial boundaries.¹²³

As a result, information about human rights abuses is disseminated around the world much more quickly and easily, thereby reducing the effectiveness of state internal security regimes. Indeed, as early as 1976, the European Court of Human Rights recognized that "[f]reedom of expression [is] one of the essential foundations of" a democratic institution,¹²⁴ and that the communications industry, by providing information, is a vital part of the

123. See *Reno v. ACLU*, 117 S. Ct. 2329 (1997), where the US Supreme Court, by a majority of 7 to 2, held that an Act which sought to limit "obscene or indecent" communications over the Internet was unconstitutional as it was in breach of the right to freedom of speech in the United States Constitution. The Court did note the dramatic expansion of the Internet as a new market-place of ideas.

124. *Handyside Case*, *supra* note 32, at 23.

protection of human rights.¹²⁵ This globalized communications system can provide human rights groups with information, assistance, and support in their resistance to oppression. Human rights non-governmental organizations, such as Amnesty International, flourish in an information-rich environment. When people know about human rights and are aware of human rights abuses, they are more likely to seek to protect them. In addition, the globalized communications system reduces the ability of governments to hide their activities, including acts which violate human rights, from public scrutiny. This exposure can lead to changes in policy by the state concerned. In addition, information provided by the globalized communications industry can lead to international pressure on, or even action against, that state by other states.¹²⁶

However, the difficulty that arises with the impact of the globalized communications industry on the protection of human rights is that the information that it provides is full of both noises and silences. The globalized communications industry often compresses complex issues and events into thirty second "sound bites" for the evening news. Most conflicts and human rights abuses are never reported by the globalized communications industry media, and even some that are, such as events in Liberia, Nagorno-Karabakh, Tajikistan, or Bougainville, frequently merit only thirty seconds. For example, through its focus on Somalia in 1993–1994, the globalized communications industry masked other areas in the world facing equally severe hardships caused by famine, violence, or civil war. In fact, former Secretary-General of the United Nations, Boutros Boutros-Ghali, referred to CNN as the sixteenth member of the Security Council.¹²⁷ He lamented that the "Member States never take action on a problem unless the media takes up the case."¹²⁸ Thus, in a globalized world, information and communications technology offer opportunities for better human rights protection. So much information is available so quickly that it is inconceivable that something could happen without someone being aware of it. But there are also dangers. So much information is available so quickly that

125. See *Autronic AG v. Switzerland*, 12 Eur. H.R. Rep. 485 (1990).

126. Examples are the reactions of some governments to the public response to the media coverage of the situation in Somalia and with Kurdish refugees in Northern Iraq after the Gulf War. See David Scheffer, *Use of Force after the Cold War: Panama, Iraq, and the New World Order*, in RIGHT V MIGHT: INTERNATIONAL LAW AND THE USE OF FORCE 146 (Louis Henkin et al. eds., 2d ed. 1991); Matthew Bryden, *Somalia: The Wages of Failure*, 94 CURRENT HIST. 145, 148 (1995); David Rieff, *The Humanitarian Trap*, 12 WORLD POL'Y J. 1, 4 (1996).

127. See Rieff, *supra* note 126, at 7. This remark has also been attributed to the US Secretary of State, and former US Ambassador to the United Nations, Madeleine Albright. See Nancy Gibbs, *Voice of America*, TIME (Australia), 16 Dec. 1996, at 45.

128. KEITH D. SUTER, GLOBAL AGENDA: ECONOMICS, THE ENVIRONMENT AND THE NATION-STATE 62 (1995).

events get lost in what Der Derian calls the "signal/noise ratio: information overload."¹²⁹

An additional concern arises from the consequences of the information provided by the globalized communications industry. This is seen in the "CNN effect," where the globalized communications industry shapes what is seen and, in doing so, shapes the bases for the decision-making.¹³⁰ This has the potential for skewed decision-making because, in contrast to its apparently large influence, CNN is small in size and, therefore, may be unable to cover world events adequately. For example, in 1997, CNN had 23 foreign bureau and 50 overseas journalists.¹³¹ The three traditional wire services each had between four and seven times the number of bureaux and between 10 and 20 times as many overseas journalists.¹³² Decisions based on CNN coverage, as many are, including those made during the Gulf War, may be made on insufficient, or insufficiently objective, information.¹³³ In addition, certain information may be given greater priority than others for the personal business purposes of media owners. This is of increasing concern in an era when control of the globalized communications industry is held by a few groups, who are largely based in the developed States.¹³⁴ As Alleyne has commented:

Because politics is about power, we say that the global flow of news is political: it reflects and determines the international configuration of power. . . . In the case of global news flows, therefore, those with power are those who can determine the very definition of news. Power also rests with those whose voices and perspectives are heard the most.¹³⁵

129. DER DERIAN, *supra* note 12, at 141–69.

130. Bryden, *supra* note 126, at 148. While CNN is the focus here, the reality is that there are other major players in the globalized communications industry. They include the five news agencies: Associated Press (US based), United Press International (US based), Agence France-Presse (French based), Reuters (UK based) and ITAR-TASS (Russian based) as well as the global television networks such as CNN and the BBC. See MARK D. ALLEYNE, *INTERNATIONAL POWER AND INTERNATIONAL COMMUNICATION* (1995). CNN's influence does outrank its size, however. See Claude Moisy, *Myths of the Global Information Village*, 107 FOREIGN POL'Y 78, 80 (1997).

131. See *id.*

132. *Id.* In 1997, CNN had 50 foreign correspondents working in 23 foreign bureaux. Meanwhile, AP had 520 foreign correspondents in 93 bureaux, Reuters had 1040 in 139 bureaux, and AFP had 1040 in 176 bureaux. *Id.*

133. The impacts of globalization can themselves be based on perceptions rather than based on real information. See Paul Kelly, *IMF Tightens the Screws on Suharto*, AUSTRALIAN, 11 Mar. 1998.

134. See generally ALI MOHAMMADI, *INTERNATIONAL COMMUNICATIONS AND GLOBALIZATION: A CRITICAL INTRODUCTION* (1997); HAMID MOWLANA, *GLOBAL COMMUNICATION IN TRANSITION: THE END OF DIVERSITY?* (1996); EDWARD S. HERMAN, *THE GLOBAL MEDIA: THE NEW MISSIONARIES OF CORPORATE CAPITALISM* (1997); CEES J. HAMELINK, *THE POLITICS OF WORLD COMMUNICATION: A HUMAN RIGHTS PERSPECTIVE* (1994).

135. ALLEYNE, *supra* note 130, at 67–69.

Alleyne's comment applies to all those who control communications, both the globalized communications industry and governments. Governments can and do regulate and control communications, as seen during apartheid South Africa:

the South African public [was] presented with a one-sided picture of the international community by politicians and the media and, inevitably, this same perspective [was] presented by teachers in schools and other educational institutions. Public opinion [was] not, therefore, equipped to question government action in the international arena, with the result that it serve[d] as no restraining force on violations of international law.¹³⁶

The extent to which governments can continue to regulate communications, and hence maintain sovereignty, within their states may depend upon who gets access to information technology. The speed of developments in communications technology and the expense involved means that many in developed states and most in developing states stand in very real danger of missing most of the advantages of global communications technology. However, the impact on the human rights of those in developing states by the globalized communications industry controlled from developed states may already have been felt. It has been argued that

[u]nder conditions of very scarce resources [as in many developing States], the emulation of the socio-cultural systems and especially the consumption patterns of [developed States] means first of all that the provision of basic foodstuffs, health services, clothing, housing, drinking water, education, reliable transportation and the like is neglected. It furthermore means that production processes tend to be utilised which actually may increase unemployment and underemployment; and that, in fact, resources are wasted in products subject to planned obsolescence. Moreover, to the extent that the satisfaction of foreign-oriented consumption wants requires inputs from abroad, continuing dependence on [developed] countries and their institutions (especially transnational enterprises) that can provide these inputs remains almost unavoidable.¹³⁷

This view indicates not only the possible consequences on the protection of human rights of a globalized communications industry, but also the way in which industry tends to offer a particular economic and political philosophy, where the primacy of the markets and of certain civil and political rights

136. John Dugard, *The Conflict Between International Law and South African Law: Another Divisive Factor in South African Society*, S. AFR. J. HUM. RTS. 1, 26 (1986). Similarly, the Malawi government under President Banda controlled and restricted radio communication and facsimile machines and did not allow television in Malawi. See AFRICA WATCH, *WHERE SILENCE RULES: THE SUPPRESSION OF DISSENT IN MALAWI* (1990).

137. Karl P. Sauvant, *From Economic to Socio-Cultural Emancipation: The Historical Context of the New International Economic Order and the New International Socio-Cultural Order*, 3 THIRD WORLD Q. 48, 58-59 (1981).

(such as the rights of freedom of speech, fair trial, and political participation) are constantly propounded to the detriment of economic rights.

One particular impact of the globalized communication industry is on the protection of cultural rights, especially of minorities.¹³⁸ Some cultures are brought to life by this industry by being recorded and transmitted on the international communications network, albeit usually from the perspective of the developed state.¹³⁹ A successful transnational corporation must take some account of the local culture, and many cultures may be more tenacious and adaptable over time than had been thought.¹⁴⁰ Furthermore, global communications can enable cross-fertilization of ideas which can nurture and support groups working in apparent isolation in their own state.¹⁴¹

However, there is the risk that the diverse voices of women, indigenous groups, refugees, and ethnic minorities may be silenced. A type of homogenized, universal, Americanized culture aided by the globalized communication industry, as seen in the opening quotation to this article, may develop.¹⁴² The extent to which this has already occurred is tabulated in the respected magazine, *The Economist*, which, for more than a decade, has produced a "Big Mac Index" in which the price of a Big Mac produced by McDonald's is used, with an increasing degree of seriousness, as an international currency benchmark.¹⁴³ The index uses data from the vast

138. See ICCPR, *supra* note 36, art. 27. Article 27 protects the rights of ethnic, religious, and linguistic minorities within a state. *Id.*

139. The term "culture" is problematic, particularly for questions about whose culture is being invoked, what is the status of the interpreter, in whose name the argument is being advanced, and who the primary beneficiaries are. See Arati Rao, *The Politics of Gender and Culture in International Human Rights Discourse*, in *WOMEN'S RIGHTS, HUMAN RIGHTS* 167, 174 (Andrea Wolper & Julie Peters eds., 1995).

140. See Gwynne Dyer, *World's "Little Languages" Speak Up*, *CANBERRA TIMES*, 11 Oct. 1997, at C4 (showing that "there is not a shred of evidence to show that English threatens the position of other languages in their own home market.").

141. For example, the Woman and Law in Southern Africa research project has been assisted by communications in uncovering common problems such as patriarchal interpretation of laws and customs. See generally ALICE K. ARMSTRONG, *STRUGGLING OVER SCARCE RESOURCES: WOMEN AND MAINTENANCE IN SOUTHERN AFRICA* (1992).

142. For example, ROBERT J. FOSTER, *NATION MAKING: EMERGENT IDENTITIES IN POSTCOLONIAL MELANESIA* 151-81 (Robert J. Foster ed., 1996) has concluded that certain fragments of a national culture contained in individual national advertisements are transferred to the consumer. The consumer then becomes part of an imaginary national community of consumers thereby creating a sense of common, national identity and citizenship. This argument could be transposed to the international level as in the opening quotation about McDonald's. Worryingly, some writers have even suggested that promoting American cultural values as a universal norm is appropriate. See Seita, *supra* note 6, at 431-33. David Rothkopf also advocates "Americanizing" the world. He illustrates his argument with a picture of a McDonald's restaurant in China, captioned "unveiling a new global culture." David Rothkopf, *In Praise of Cultural Imperialism?*, 107 *FOREIGN POL'Y* 38, 46 (1997).

143. See, e.g., *Big MacCurrencies*, *ECONOMIST* (London), 12 Apr. 1997, at 71.

array of states in which McDonald's foods is sold and is based on the notion of "purchasing power parity" by which an American dollar should buy the same amount of goods in all states. The existence of this index shows the depth of the impact of globalization throughout the world, including the extent to which cultures are subject to external pressures to change.

The globalized communications industry enables globalization and propounds certain market-based philosophies shared by the globalized economic institutions and transnational corporations. It offers opportunities for the protection of human rights through its ability to provide information. However, globalization of the communications industry also presents dangers because its information is not always reliable and it may be silent on many important issues.

VII. CONCLUSIONS

Economic globalization does have an impact on the protection of human rights. It simultaneously creates opportunities and presents challenges for the international legal protection of human rights. While there are understandable concerns about both economic globalization and the international legal protection of human rights in terms of their philosophical bases, both are part of the process of globalization in which political, economic, social, civil, and cultural relationships are not restricted to territorial boundaries and are not solely within the control of any one state. As a result, globalization and the international legal order are opportunities to end the absolute sovereignty of the state,¹⁴⁴ and, hence, to further the realization that how a state deals with those within its territory is no longer a matter exclusively within the domestic jurisdiction of a state. It is now a matter of legitimate international concern.¹⁴⁵ In fact, "[n]o modern state can now turn back the rising tide of expectations among the dispossessed within its boundaries, nor demands for free movement and expression: for these are externally triggered, not necessarily by deliberate pressure but simply by communications and involuntary example."¹⁴⁶

Nevertheless, international human rights law, caught within its framework of state responsibility for human rights violations, is unable to deal fully with the changes to state sovereignty accelerated by the process of globalization. Where the violator of human rights law is not a state or its agent but is, for example, a globalized economic institution or a transnational

144. See Agenda for Peace, *supra* note 2, ¶ 17.

145. See Vienna Declaration, *supra* note 21, Part I, ¶ 4.

146. Bernard Crick, *The High Price of Peace*, in *THE ELUSIVE SEARCH FOR PEACE: SOUTH AFRICA, ISRAEL AND NORTHERN IRELAND* 261, 270 (Hermann Giliomee & Jannie Gagliano eds., 1990).

corporation, international human rights law finds it difficult to provide any redress to the victim. In such cases, international human rights law focuses on the responsibility of a state to adopt constitutional, legislative, judicial, administrative, and other measures to ensure that human rights within its territory are protected, no matter who the perpetrator may be.¹⁴⁷ However, this approach tends to be ineffective where a state is unwilling or unable to take these measures due to the possible effect on investment by globalized economic institutions. Therefore, international human rights law needs to take the opportunities presented by globalization to develop a more flexible framework within which responsibility for human rights violations is not state-based; states must provide appropriate mechanisms for all individuals, groups, and others to have standing to bring claims for any violation of human rights.¹⁴⁸

The other major opportunity offered by economic globalization for the protection of human rights emerges from the decision-making processes of the globalized economic institutions. As has been indicated, human rights issues are now occasionally taken into account by these institutions. This is occurring for a variety of reasons, including perceptions of increased likelihood of returns on investment, fear of consumer boycotts, pressure from non-governmental organizations, and, possibly, concern for the rights of human beings. Furthermore, a relationship between human rights and economic growth, development, and political institutions is being gradually recognized, so that these issues are no longer seen as separate or discrete from one another.

However, pressure still needs to be exerted to ensure that the globalized economic institutions do take international human rights law explicitly into account in all stages of their decision-making.¹⁴⁹ Decision-making is still primarily driven by economic factors. As has been shown, there are some grounds for arguing that economic factors can improve human rights

147. See ICCPR, *supra* note 36, art. 2.

148. See Robert McCorquodale, *Human Rights and Self-Determination, in THE NEW WORLD ORDER: SOVEREIGNTY, HUMAN RIGHTS AND THE SELF-DETERMINATION OF PEOPLES* 9, 25 (Mortimer Sellers ed., 1996). A human rights

approach affords flexibility in finding solutions for protecting that right and resolving conflicts without dictating one solution. It could even comprehend flexibility in sovereignty—for example, by giving separate British and Irish nationalities to inhabitants of Northern Ireland as a means of protecting the right of self-determination in that situation.

Id.

149. See MICHAEL SINGER, *THE FUTURE OF INTERNATIONAL HUMAN RIGHTS LAW* 12 (International Rule of Law Ctr. Occasional Papers, 2d ser., No. 2, 1997). Some have argued that there is a need to create new international economic institutions “to lend structure and direction to the global marketplace.” Richard N. Haass & Robert E. Litan, *Globalization and Its Discontents: Navigating the Dangers of a Tangled World*, 77 *FOREIGN AFF.*, May/June 1998, at 2, 4.

protection. However, because economic globalization is generated by a philosophy in which markets must be allowed to flourish while states are relegated to the role of assisting this flourishing, any benefits for human rights protection tend to be incidental and fragmentary. The globalized communications industry constantly restates these philosophies. Accordingly, as has been indicated, the dangers of economic globalization for human rights can outweigh these incidental benefits. This is made clear in a report by the United Nations Secretary-General:

Development strategies which have been oriented merely towards economic growth and financial considerations have failed to a large extent to achieve social justice; human rights have been infringed, directly and through the depersonalization of social relations, the breakdown of families and communities, and of social and economic life.¹⁵⁰

Furthermore, there is the possibility of the fragmentation of states. This fragmentation is fostered by shifting the decision-making processes away from governments and people to globalized economic institutions and transnational corporations which have a limited interest in the social and cultural welfare or the human rights of people in developing states.

A danger of economic globalization is its impact on the concepts and application of human rights. An example of this was seen in the right to development where only certain types of development, such as the construction of transportation infrastructures, have been included within the concept of this right.¹⁵¹ Another example is the dominance of globalization's focus on certain rights (civil and political) to the virtual exclusion of other rights.¹⁵² But the greater danger is that the values of the international community, embodied in the international legal order and created to protect human rights, are being challenged by the values of the global economic free market. As Alston observes:

In the world of globalization, a strong reaction against gender and other forms of discrimination, the suppression of trade unions, or the denial of primary education or health care, can often require not only showing that the relevant practices run counter to human rights standards but also a demonstration that they are offensive to the imperatives of economic efficiency and the functioning of the free market. . . . In some respects the burden of proof has shifted—in

150. *Question of the Realization of the Right to Development: Global Consultation on the Realization of the Right to Development as a Human Right, Report Prepared by the Secretary-General Pursuant to Commission on Human Right Resolution 1989/45*, U.N. ESCOR, Comm'n on Hum. Rts., 46th Sess., Agenda Item 8, ¶ 153, U.N. Doc. E/CN.4/1990/9/Rev.1 (1990).

151. See *supra* note 72 and accompanying text.

152. See *supra* notes 118–20 and accompanying text.

order to be validated, a purported human right must justify its contribution to a broader, market-based 'vision' of a good society.¹⁵³

It is these challenges to the values established by international human rights law that must be countered if the human rights of all are to be protected. These values need to be constantly asserted and given meaning because, as Eleanor Roosevelt said:

Where after all, do universal human rights begin? In small places, close to home—so close and so small that they cannot be seen on any map of the world. Yet they are the world of the individual person: the neighbourhood he lives in; the school or college he attends; the factory, farms or office where he works. Such are the places where every man, woman, or child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere.¹⁵⁴

There are a number of opportunities for human rights to be asserted within the current international community. This includes advocating for the inclusion of human rights in international treaties such as the Multilateral Agreement on Investment (MAI) and the WTO;¹⁵⁵ demanding that human rights be considered in the making of foreign policy and in the IMF's policy of "good governance"; and insisting that the activities of transnational corporations are consistent with international human rights law. It is vital that those who seek to protect human rights, particularly through the international legal system, are aware of the opportunities and dangers of globalization for the protection of human rights. Only then can they seek to ensure that the dangers are diminished and the opportunities are taken.

153. Alston, *supra* note 57, at 442.

154. Celina Romany, *State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law*, in *HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES* 90 (Rebecca Cook ed., 1994) (quoting Eleanor Roosevelt).

155. See *supra* note 94; Marrakesh Agreement Establishing the World Trade Organization, opened for signature 15 Apr. 1994 (entered into force 1 Jan. 1995), reprinted in 33 I.L.M. 1125, 1144 (1994).

