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## THE WORLD TRADE ORGANIZATION: ELEVATING PROPERTY INTERESTS ABOVE HUMAN RIGHTS

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What brought more than 50,000 trade unionists, environmentalists, human rights and social justice activists from all over the world into the streets of Seattle in late November and early December of 1999 to protest against the World Trade Organization? They all understood that “[e]conomic globalization is the number one threat to the survival of the natural world.”<sup>1</sup> The global transfer of economic and political power from national governments to multinational corporations is a disaster for human rights, the environment, social welfare, agriculture, food safety, workers’ rights, national sovereignty, and democracy.

This article analyzes the role and function of the World Trade Organization (WTO), which is dedicated to “free trade” for transnational corporations. It seeks to disprove the WTO’s myth that everyone’s interests will be protected if trade is allowed to flourish unfettered. For example, to do so, it provides examples of WTO decisions that have struck down protections for labor, the environment, food safety, and human rights as “trade barriers,” while enshrining intellectual property rights. These decisions show the WTO’s *raison d’être* is the elevation of property interests above the protection of human rights.

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<sup>1</sup> Debi Barker & Jerry Mander, *The Invisible Government: The World Trade Organization: Global Government for the New Millennium? A Primer*, THE INTERNATIONAL FORUM ON GLOBALIZATION 1, at 13 (1999).

This article also analyzes why the WTO violates international law, including the United Nations Charter, the International Covenant on Civil and Political Rights, and the Charter on Economic Rights and Duties of States.

### I. THE BENEFITS OF GLOBALIZATION DON'T TRICKLE DOWN

In a 1999 human development report, the United Nations found that even though globalization has resulted in skyrocketing net capital flows in countries such as Indonesia, prosperity has not trickled down. The gap between rich and poor has widened geometrically because of the global trading system.<sup>2</sup>

As a result of globalization, wages of low-income workers in the United States have dropped, while corporate profits have reached record highs. The affected workers include large numbers of women and people of color.<sup>3</sup> In developing countries, poverty has increased as governments have slashed funding for food and social programs in order to promote export-oriented agriculture.<sup>4</sup>

In the six years since the enactment of the North American Free Trade Agreement (NAFTA), poverty in Mexico has increased and wages have dropped.<sup>5</sup> The U.S. trade deficit with Mexico has mushroomed. Most NAFTA-related job losses have occurred in the apparel and electronics industries, prime employers of women and people of color.<sup>6</sup> A study by the International Labor Organization reported a "widening earnings gap between TCF [textile, clothing and footwear] workers in higher- and lower-income countries."<sup>7</sup>

### II. THE WTO: ACCOUNTABLE TO WHOM?

Globalization has been a boon to multinational corporations—at the expense of all of us. Ironically, the states that joined the WTO have ceded it

<sup>2</sup> See UNITED NATIONS DEVELOPMENT PROGRAM, HUMAN DEVELOPMENT REPORT 1999 (visited Sept. 11, 2001) <<http://www.undp.org/hdro/99.htm>>.

<sup>3</sup> See Sarah Anderson & John Cavanagh, *Globalization and Poverty*, INSTITUTE FOR POLICY STUDIES, 1, 4 (1999).

<sup>4</sup> See *id.* at 1.

<sup>5</sup> See *id.* at 3.

<sup>6</sup> See *id.* at 4.

<sup>7</sup> *International Labour Office, Globalization of the Footwear Textiles and Clothing Industries: Report for Discussion at the Tripartite Meeting on the Globalization of the Footwear, Textiles and Clothing Industries: Effects on Employment and Working Conditions*, (visited Sept. 11, 2001) <<http://www.ilo.org/public/english/bureau/inf/pr/96-33.htm>>.

the power to prevent them from protecting their own people, because those states are economically beholden to multinational corporations.

Who runs the WTO? The self-anointed group of security-cleared trade advisors to the WTO is a veritable "Who's Who" of representatives of global corporations and industrial interests, including several Fortune 500 corporations.<sup>8</sup> Further, representatives of the 135 WTO member countries meet in secret, excluding non-governmental organizations representing labor, environmental, human rights, and social justice interests.<sup>9</sup>

Any WTO member country can challenge the rules or laws of another country as "trade barriers."<sup>10</sup> Moreover, the WTO has the power to levy huge fines against offenders.<sup>11</sup> Its enforcement mechanism emanates from a structure encompassing all three branches of government—legislative, executive and judicial<sup>12</sup>—and aspires to wield more power than the United Nations (UN). Indeed, the United States has committed itself to abide by WTO rulings while it has routinely ignored UN resolutions opposing its actions.<sup>13</sup> In a 1994 speech promoting United States approval of the WTO, GATT<sup>14</sup> Director General Peter Sutherland said, "Governments should interfere in the conduct of trade as little as possible."<sup>15</sup> Not surprisingly, WTO rulings have upheld the interests of transnational corporations in every instance that an environmental, labor, health and safety, or human rights protection has been challenged as a "trade barrier," as this article will demonstrate.

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<sup>8</sup> See Barker & Mander, *supra* note 1, at 5.

<sup>9</sup> See *id.*

<sup>10</sup> See WTO Agreement on Technical Barriers to Trade, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS: THE LEGAL TEXTS 1 (1994), 33 I.L.M. 1226 (entered into force Jan. 1, 1995).

<sup>11</sup> See Understanding on Rules and Procedures Governing the Settlement of Disputes, THE RESULTS OF THE URUGUAY ROUND, *supra* note 10, at 404, 405.

<sup>12</sup> See Barker & Mander, *supra* note 1, at 2.

<sup>13</sup> See For Ninth Successive Year, General Assembly Calls for End of United States Embargo Against Cuba, Press Release, GA/9814, Nov. 9, 2000 (discussing G.A. Res. No. A/Res/55/20 (2000)).

<sup>14</sup> The General Agreement on Tariffs and Trade was the predecessor of the WTO. See General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, T.I.A.S. 1700, 55 U.N.T.S. 194 [hereinafter GATT].

<sup>15</sup> Ralph Nader, *Preface to LORI WALLACH & MICHELLE SFORZA, WHOSE TRADE ORGANIZATION?: CORPORATE GLOBALIZATION AND THE EROSION OF DEMOCRACY*. x (1999).

### III. ENVIRONMENTAL PROTECTIONS = "TRADE BARRIERS"

The WTO contains no specific agreement on the protection of the environment. Articles I, III, XI, and XX of the GATT actually mitigate *against* protecting the environment.<sup>16</sup>

Article I—Most Favored Nation Treatment—prohibits governments and citizens from setting standards that favor goods produced in a more environmentally sustainable manner.<sup>17</sup> For example, the WTO ruled in 1998 that a country cannot place restrictions on the importation of products such as shrimp, based on the way they are produced. In that case, the restriction in question was a provision of the U.S. Endangered Species Act that required a device to protect endangered sea turtles from being caught in shrimp nets.<sup>18</sup>

Article III—National Treatment—restricts nations from giving more favorable treatment to domestic goods that may be produced in a safer, more humane, or environmentally friendly manner.<sup>19</sup> A pre-WTO GATT ruling struck down a U.S. law that banned the importation of tuna caught in nets lethal to dolphins.<sup>20</sup> The dispute panel said that no distinction could be made between the process and the product.<sup>21</sup> In other words, the end justified the means.

Article XI—Elimination of Import and Export Controls—specifies that WTO members cannot limit imports or exports of resources or produce across their borders,<sup>22</sup> effectively eliminating a nation's right to allocate its own natural resources. This provision nullifies the prohibition against trade in endangered species. Hundreds of species are becoming endangered each year, drastically upsetting the balance of nature.

<sup>16</sup> See GATT, *supra* note 14.

<sup>17</sup> Article I contradicts several existing multilateral environmental agreements, such as the Convention on Biological Diversity, 31 I.L.M. 818 (1992), the Montreal Protocol on Substances that Deplete the Ozone Layer, Sept. 16, 1987, 26 I.L.M. 1541, the UN Framework Convention on Climate Change, June 5, 1992, 31 I.L.M. 849, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora, 12 I.L.M. 1085 (1973). These agreements do not have as powerful enforcement mechanisms as the WTO. See GATT, *supra* note 14, at art. I; see also Barker & Mander, *supra* note 1, at 16-17; LORI WALLACH & MICHELLE SFORZA, WHOSE TRADE ORGANIZATION?: CORPORATE GLOBALIZATION AND THE EROSION OF DEMOCRACY 40-41 (1999).

<sup>18</sup> See United States—Import Prohibition of Certain Shrimp and Shrimp Products—Report of the Panel, Final Report, (WT/DS58/R), May 15, 1998, 37 LLM 832 (1998).

<sup>19</sup> See GATT, *supra* note 14, at art. III.

<sup>20</sup> United States—Restrictions on Imports of Tuna, Sept. 3, 1991, GATT B.I.S.D. (39th Supp.) at 155 (1993).

<sup>21</sup> *Id.* at 155.

<sup>22</sup> See GATT, *supra* note 14, at art. XI.

Article XX—General Exceptions—provides that nothing in the WTO agreement shall prevent measures necessary to protect human, animal or plant life, or health or natural resources.<sup>23</sup> WTO apologists frequently cite this article as evidence that human and environmental concerns are protected in consideration of world trade. But when article XX has been invoked, a dispute panel has found a rationalization to avoid its application.<sup>24</sup> Thus far, the WTO study group on trade and the environment has focused more on *avoiding* environmental impediments to trade than on protecting the environment.<sup>25</sup> The WTO struck down an U.S. Environmental Protection Agency (EPA) rule requiring gasoline refineries to produce cleaner gas in order to reduce air pollution.<sup>26</sup> As a result, the EPA, which administers the implementation of the Clean Air Act, was forced to lower its standards to allow dirtier gasoline. In each and every environmental case that has come before the WTO, it has ruled against protecting the environment and in favor of protecting the interests of big business.

#### IV. FOOD SAFETY PROTECTIONS = “TRADE BARRIERS”

The World Health Organization reported in 1996 that the globalization of the food supply was a growing cause of illness worldwide.<sup>27</sup> Under WTO rules, countries are not required to maintain minimum health and safety standards, but they can be penalized for setting *higher* standards than those set by the WTO.<sup>28</sup> The WTO Agreement on Sanitary and Phytosanitary Measures restricts what governments can do to regulate food and agriculture for the protection of the environment, human, animal, and plant health, and the food supply.<sup>29</sup>

Many countries base their health and food safety regulations on the “precautionary principle,” under which a substance in question stays off the market until proven safe.<sup>30</sup> Two WTO rulings turn the precautionary principle

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<sup>23</sup> *Id.* at art. XX.

<sup>24</sup> See Barker & Mander, *supra* note 1, at 15.

<sup>25</sup> See *id.* at 19; see also WALLACH & SFORZA, *supra* note 17, at 18-19.

<sup>26</sup> United States—Standards for Reformulated and Conventional Gasoline—Report of the Panel, WT/DS52/R (Jan. 29, 1996).

<sup>27</sup> See WORLD HEALTH ORGANIZATION (WHO), EMERGING FOODBORNE DISEASES, F-S 124 (July 1996).

<sup>28</sup> See Barker & Mander, *supra* note 1, at 25.

<sup>29</sup> See WALLACH & SFORZA, *supra* note 17, at 17-18.

<sup>30</sup> For example, when faced with possible risks from the use of the drug Thalidomide, the United States avoided a potentially disastrous epidemic of birth defects by keeping it off the market. Thalidomide was responsible for an estimated 10,000+ deaths in countries where its use

on its head. In one case, the European Union banned the non-therapeutic use of artificial beef hormones, citing several studies showing that these hormones could cause cancer.<sup>31</sup> The United States successfully challenged the implementation of these regulations in Canada and the European Union. The ruling demanded a showing of scientific certainty that hormones cause cancer and voided the ban. The European Union refused to cave in to pressure from the United States and the WTO authorized \$115 million in trade sanctions.<sup>32</sup>

The United States also prevailed when it challenged Japan's health-related pesticide residue testing regulations for agricultural imports.<sup>33</sup> Because Japan's standards exceeded those of the WTO, Japanese people must now accept produce with higher levels of toxic pesticides than their own government deems safe. By allowing these watered-down standards to exist, the WTO threatens the health and safety of everyone but the global corporations.

#### V. HUMAN RIGHTS = "TRADE BARRIERS"

In Burma (Myanmar), "soldiers committed serious human rights abuses, including extra[-]judicial killing and rape," according to a U.S. State Department report.<sup>34</sup> The Special Rapporteur to the UN Commission on Human Rights reported "extra[-]judicial, summary or arbitrary executions and enforced disappearances, torture, abuse of women and children by government agents."<sup>35</sup> Violations of the rights of women—particularly "forced labor, sexual violence and exploitation, including rape"—were also documented.<sup>36</sup> The International Labor Organization found that the civilian population of Myanmar, especially women and children, was being used for forced labor.<sup>37</sup>

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was approved. See Barker & Mander, *supra* note 1, at 25.

<sup>31</sup> European Communities—Measures Concerning Meat Products (Hormones)-Report of the Panel, WT/DS26/R (Aug. 18, 1997).

<sup>32</sup> See WALLACH & SFORZA, *supra* note 17, at 6.

<sup>33</sup> WTO, Japan—Measures Affecting Agricultural Products, WT/DS/76/1 (Sept. 4, 1997).

<sup>34</sup> U.S. DEPARTMENT OF STATE, BURMA COUNTRY REPORT ON HUMAN RIGHTS PRACTICES FOR 1997 1-2 (Jan. 30, 1998).

<sup>35</sup> U.N. ECONOMIC AND SOCIAL COUNCIL, COMMISSION ON HUMAN RIGHTS, 1998 Situation of Human Rights in Myanmar (Apr. 20, 1998).

<sup>36</sup> *Id.*

<sup>37</sup> International Labor Organization, *Report on Forced Labour in Myanmar*, No. 29 (Jul. 2, 1998) (available at <<http://www.ilo.org/public/english/standards/relm/gb/docs/gb273/myanmar.htm>>); see also U.S. DEPARTMENT OF STATE, *supra* note 34, at § 6c; U.N. ECONOMIC AND SOCIAL COUNCIL, *supra* note 35, 36; AMNESTY INTERNATIONAL, MYANMAR PORTERING & FORCED LABOUR: AMNESTY INTERNATIONAL'S CONCERNS (Sept. 1996); see generally ROBERT BENSON, CHALLENGING CORPORATE RULE (1999).

As a result, in 1996, Massachusetts enacted a law barring companies that do business with Burma from bidding on large public contracts in the state.<sup>38</sup> The European Union and Japan challenged the Massachusetts law as unfair “to the trade and investment community.”<sup>39</sup> They cited the WTO 1994 Agreement on Government Procurement, which prohibits consideration of non-commercial factors, such as human rights, in governmental purchasing decisions.<sup>40</sup>

A U.S. district court in Massachusetts ruled in 1998 that municipalities and states cannot interfere in foreign policy when there is a “great potential for disruption and embarrassment.”<sup>41</sup> That ruling was upheld by a federal appellate court in 1999.<sup>42</sup> In June 2000, the U.S. Supreme Court struck down the Massachusetts law as violative of the Supremacy Clause of the U.S. Constitution, because it was inconsistent with a congressional enactment and a presidential executive order.<sup>43</sup>

China will soon join the WTO. Human rights violations by China created controversy within the U.S. Congress during debates over whether to grant China “most-favored nation” trading status.<sup>44</sup> The contradiction inherent in these considerations was aptly described by Lhadon Tethong, a Canadian-born Tibetan who represents Students For A Free Tibet:

The idea that the world trade organization [sic] can supersede sovereign countries’ laws is really terrifying when you think of it from the aspect of human rights.

We are insisting that China take some responsibility and deal with the worsening situation in Tibet, in Inner Mongolia, in E. Turkestan, in China itself.

<sup>38</sup> See MASS. GEN. LAWS. ch. 7, § 22G-22M (1996). Similar economic sanctions are credited with ending the system of apartheid in South Africa in the 1980s. See LOUIS HENKIN ET AL., HUMAN RIGHTS 704 (1999).

<sup>39</sup> See United States—Measure Affecting Government Procurement, WT/DS88/1 (Jun. 20, 1997) (filed by European Community); United States—Measure Affecting Government Procurement, WT/DS95/1 (Jul. 18, 1997) (filed by Japan).

<sup>40</sup> See *id.*

<sup>41</sup> See *Nat’l Foreign Trade Council v. Baker*, 26 F. Supp. 2d 287, 291 (D. Mass. 1998) (quoting *Zscherning v. Miller*, 389 U.S. 429, 434-35 (1988)).

<sup>42</sup> See *Nat’l Foreign Trade Council v. Natsios*, 181 F.3d 38 (1st Cir. 1999).

<sup>43</sup> *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 373-74 (2000).

<sup>44</sup> See Joseph Kahn, *Conflicting Views Hinder Dissidents on China Trade Vote*, N.Y. TIMES, May 19, 2000, at A12; David E. Bonior, *We Can Do Better Than This Trade Deal—China: Granting Permanent Trading Status Would Weaken U.S. Influence on Human Rights*, L.A. TIMES, May 19, 2000, at B9.

Ideally, we would like to work toward some economic sanctions, like the divestment campaigns that brought an end to apartheid in South Africa.

But once China gets into the WTO—which looks imminent—it can challenge any economic leverage we have and argue that it is a barrier to free trade.

We have a duty and an obligation to press for the idea that yes, trade is not a bad thing, but let's play at a fair level, a level where trade does not undermine a people's right to self-determination.<sup>45</sup>

The WTO has consistently chosen the protection of property over the sanctity of human rights.

#### VI. LABOR PROTECTIONS = "TRADE BARRIERS"

The WTO has delegated jurisdiction over labor matters to the International Labor Organization (ILO). Unlike the WTO, however, the ILO has no enforcement power when it finds violations of labor rights.<sup>46</sup> The United States has ratified only 11 of the 182 conventions of the ILO. Most of these conventions ratified by the U.S. relate to maritime labor.<sup>47</sup> Only two of them deal with fundamental human rights: the Abolition of Forced Labour Convention<sup>48</sup> and the Worst Forms of Child Labour Convention.<sup>49</sup>

According to the ILO, more than 250 million children between the ages of 5 and 15 work full-time or part-time around the world.<sup>50</sup> Although the 1995 Fourth International Conference on Women in Beijing ensured the protection

<sup>45</sup> See *Whose Trade? (real impact of economy on average person's quality of life)*, THE NATION, Dec. 6, 1999, at 15.

<sup>46</sup> See Elisabeth Cappuyns, *Linking Labor Standards and Trade Sanctions: An Analysis of Their Current Relationship*, 36 COLUM. J. TRANSNAT'L L. 659 (1998).

<sup>47</sup> See International Labour Organization (visited Sept. 4, 2001) <<http://www.inflleg@ilo.org>>.

<sup>48</sup> Convention Concerning the Abolition of Forced Labor, June 25, 1957, 320 U.N.T.S. 291.

<sup>49</sup> Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, June 17, 1999, 38 I.L.M. 1207.

<sup>50</sup> See *Primera Reunion Iberoamericana Tripartita de Nivel Ministerial. Cartagena de Indias, 8-9 de Mayo de 1997. Documento informativo num. 1 Situacion del Trabajo Infantil en America Latina*. International Labour Office, Lima, May 1997; see also, Richard E. Stearns, *Commentary: To Avoid Another Seattle, Take the Time to Listen to World Economy: Delegates in Davos Need to Hear What Developing Countries Have to Say About Their Concerns*, L.A. TIMES, Jan. 27, 2000, at B9.

of the "girl child,"<sup>51</sup> many millions of girls still work as prostitutes. Children are bonded laborers, welders, or rubbish pickers.<sup>52</sup> The only labor protection currently written into WTO rules is that countries may restrict imports of goods produced with prison labor.<sup>53</sup> If a country wished to ban imports on goods produced with child labor or apply a trade sanction on a country that was violently repressing an independent labor union, the WTO could strike it down as a "trade barrier."<sup>54</sup>

Not coincidentally, the day after the Seattle protesters "shut down" the WTO meeting, President Bill Clinton suggested that labor rights be enforceable by trade sanctions, but this noble gesture could not be easily accomplished in the near future.<sup>55</sup>

## VII. INTELLECTUAL PROPERTY RIGHTS ARE NOT "TRADE BARRIERS"

Although the economic trading rights of WTO countries trump environmental protections, labor rights, health and safety precautions, and human rights, intellectual property rights are indelibly enshrined in the WTO agreements.

The WTO Multilateral Agreements contain an agreement concerning the Trade-Related Aspects of Intellectual Property (TRIPS).<sup>56</sup> "TRIPS" is a bad trip. For centuries, indigenous peoples in many countries have developed herbs, seeds, and plants for use as food and medicine.<sup>57</sup> TRIPS gives foreign corporations the right to take traditional indigenous seed varieties developed by small farmers, "improve" them with slight genetic alteration, and patent them. In order to use them, the people who originally developed them must buy them back at exorbitant rates.

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<sup>51</sup> See *Beijing Declaration and Platform for Action*, U.N. Fourth World Conference on Women, arts. 9, 23, U.N. Doc. A/Conf. 177/20 (1995).

<sup>52</sup> See *id.*

<sup>53</sup> See *Whose Trade?*, *supra* note 45, at 17.

<sup>54</sup> See *id.*

<sup>55</sup> See Mark Weisbrot, *Mobilization Against Corporate Globalization: Round II*, Z MAGAZINE, Mar. 2000, at 11.

<sup>56</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, LEGAL INSTRUMENTS-RESULTS OF THE URUGUAY ROUND vol. 31; 33 I.L.M. 81 (1994).

<sup>57</sup> According to the World Resources Institute, more than half of the world's remaining plant and animal species live in rain forests in the Third World. See World Resources Institute (last updated Aug. 29, 2001) <<http://www.wri.org>>; see also Barker & Mander, *supra* note 1, at 32.

Some countries call it "biopiracy." India has seen mass demonstrations protesting this practice.<sup>58</sup> New hybrids that have displaced native seeds are vulnerable to pest attacks. Farmers are forced to buy these new seeds, and, thus, must purchase costly pesticides at prices which often put them out of business. There has been an epidemic of farmer suicides in parts of India that used to be prosperous agricultural regions before the "ecological and social disaster" caused by biopiracy.<sup>59</sup>

But the protection of "intellectual property" goes beyond merely bankrupting farmers. It can be deadly. When Thai companies made AIDS drugs available at a cost well below that of United States drug companies, the United States—on behalf of the drug companies—threatened a WTO TRIPS challenge for patent infringement.<sup>60</sup> Thailand, which depends on the United States for 25% of its exports, was effectively blackmailed into stopping the manufacture of cheaper AIDS drugs.<sup>61</sup>

According to UNICEF, 1.5 million infants die every year, primarily from fatal infant diarrhea caused by the supplanting of breast feeding with artificial formulas.<sup>62</sup> Gerber Food claimed on its packages that its infant formula would ensure healthy babies, and bolstered the claim with photographs of fat, healthy babies. Guatemala enacted a law, modeled after the World Health Organization Code of Marketing of Breast Milk Substitutes, intended to protect infant health.<sup>63</sup> The law required that formula producers clearly state the superiority of breast feeding on their labels. All of Guatemala's domestic and foreign suppliers of formula changed their packaging to comply.<sup>64</sup> The country's infant mortality rates dropped dramatically.<sup>65</sup> Gerber, however, induced the United States State Department to threaten a WTO challenge based on the

<sup>58</sup> See *id.*

<sup>59</sup> See Vandana Shiva, *BBC Reith Lecture: Poverty and Globalisation* (last visited Sept. 4, 2001) <<http://news2.thls.bbc.co.uk/hi/english/static/events/reith%5F2000/lecture5.htm>>.

<sup>60</sup> See Sarah Boseley, *U.S. Attempts to Stop Developing Countries Producing Cheap AIDS Drugs Have Become a Political Time Bomb*, THE GUARDIAN (London), Aug. 11, 1999 at 1, available in 1999 WL 23253202.

<sup>61</sup> See Barker & Mander, *supra* note 1, at 34.

<sup>62</sup> UNICEF data, cited in The Right Reverend Simon Barrington-Ward, *Putting Babies Before Business*, THE PROGRESS OF NATIONS (available at <<http://www.unicef.org/pon97/nutrl.htm>>) (1997).

<sup>63</sup> See Law on the Marketing of Breastmilk Substitutes, Guatemalan Presidential Decree 68-83, Jun. 7, 1988, and Rules for the Marketing of Breastmilk Substitutes, Guatemalan Government Agreement No. 841-87, Sep. 30, 1987, Article 12 a)-b) (baby images), Article 11a (labeling), and Articles 8a and 9 (unapproved donations and direct marketing).

<sup>64</sup> See Nutrition League Table, UNICEF, *Protecting Breast-Milk from Unethical Marketing*, THE PROGRESS OF NATIONS, *supra* note 62.

<sup>65</sup> See *id.*

company's intellectual property claim to its labeling.<sup>66</sup> In response, Guatemala amended its law to exempt imported baby food products.<sup>67</sup>

Intellectual property rights are well protected by the WTO—at the expense of human beings. In June, a United Nations-appointed study team labeled the World Trade Organization a “veritable nightmare” for developing countries and suggested the WTO be brought under UN supervision.<sup>68</sup> The two authors, jurists J. Oloka-Onyango of Uganda and Deepika Udagama of Sri Lanka, said the WTO rules “reflect an agenda that serves only to promote dominant corporate interests that already monopolize the arena of international trade.”<sup>69</sup>

The UN Sub-Commission for the Protection and Promotion of Human Rights responded to this report with an unprecedented and unanimous resolution, finding “there are apparent conflicts between the intellectual property rights regime embodied in the TRIPS Agreement, on the one hand, and international human rights law, on the other.”<sup>70</sup> Signaling the beginning of intense UN monitoring of WTO work by the UN human rights system, the Sub-Commission called for the WTO, and particularly the Council on TRIPS, “to take fully into account the existing State obligations under international human rights instruments.”<sup>71</sup> It also called upon UN Secretary General Kofi Annan to prepare a report on the implications of TRIPS and asked the UN High Commissioner for Human Rights and other related UN agencies to analyze the human rights impacts of TRIPS.<sup>72</sup>

#### VIII. THE WTO VIOLATES INTERNATIONAL AND U.S. DOMESTIC LAW

Both the Charter of the United Nations and the International Covenant on Civil and Political Rights (ICCPR)<sup>73</sup> memorialize human rights and fundamen-

<sup>66</sup> Frank T. Kelly, Gerber's Vice President for Latin America, Letter to the President of Guatemala (Jun. 16, 1994) (on file with Public Citizen).

<sup>67</sup> See *Gerber Uses Threat of GATT Sanctions to Gain Exemption from Guatemalan Infant Health Law*, CORPORATE CRIME REPORTER, Apr. 8, 1996, at 14.

<sup>68</sup> See *The Realization of Economic, Social and Cultural Rights: Globalization and Its Impact on the Full Enjoyment of Human Rights*, Sub-Commission on the Promotion and Protection of Human Rights, U.N. ESCOR, 52d Sess., U.N. Doc. E/CN.4/Sub.2/2000/13, par. 15, 66-67 (2000).

<sup>69</sup> *Id.* at par. 14.

<sup>70</sup> U.N. ESCOR, 52d Sess., Doc. E/CN.4/Sub.2/2000/7 (2000).

<sup>71</sup> See *id.*

<sup>72</sup> See *id.*

<sup>73</sup> G.A. Res. 2200A (XXI), 21 U.N. GAOR 22d Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976.

tal freedoms that must be respected by states parties. Treaties ratified by the United States become part of the supreme law of the land under the U.S. Constitution and are thus binding domestic law.<sup>74</sup>

The UN Charter was ratified by the United States in 1945. By signing and ratifying the Charter, the United States and other UN member countries pledge to respect the principles of "equal rights and self-determination of peoples," and agree to promote "higher standards of living, full employment, and conditions of economic and social progress and development."<sup>75</sup>

Further, the ICCPR, which the United States ratified in 1992, guarantees to all people the right to freedom of association, including the right to form and join trade unions.<sup>76</sup> Also ensured under the ICCPR is the right to self-determination of all peoples, to freely pursue their economic, social and cultural development,<sup>77</sup> and for their own ends, to freely dispose of their natural wealth and resources.<sup>78</sup>

The Charter on Economic Rights and Duties of States, passed by the UN General Assembly in 1974,<sup>79</sup> recognizes the political sovereignty of nation states to protect their public interest by regulating foreign investment.<sup>80</sup> Member nations are granted the authority to supervise the operations of transnational corporations within their jurisdictions by establishing performance requirements to ensure foreign investments serve the economic and social priorities of national development.<sup>81</sup>

Transnational corporations have certain social obligations which arise because the formation of capital is a social process that depends on the labor of others.<sup>82</sup> The Charter on Economic Rights and Duties of States requires all developed countries to cooperate with developing countries—establishing, strengthening and developing their scientific and technological infrastructures, and scientific research and technological activities, in order to help expand and transform the economies of the developing countries.<sup>83</sup> Under the Economic Rights Charter, every state has the duty to cooperate in promoting the steady

<sup>74</sup> U.S. CONST., art. 6, § 2.

<sup>75</sup> UN CHARTER, art. 55.

<sup>76</sup> ICCPR, *supra* note 73, at art. 22, § 1.

<sup>77</sup> *See id.* at art. 1, § 1.

<sup>78</sup> *See id.* at art. 1, § 2.

<sup>79</sup> G.A. Res. 3281, U.N. GAOR, 29th Sess., Supp. No. 31, at 50, U.N. Doc. A/9631 (1975) [hereinafter Economic Rights Charter].

<sup>80</sup> *See id.* at preamble.

<sup>81</sup> *See id.* at art. 2, § 2(b).

<sup>82</sup> *See* Jeanne Mirer, *International Human Rights vs. Globalization* (1999) (unpublished paper on file with the author).

<sup>83</sup> *See* Economic Rights Charter, *supra* note 79, at art. 13, § 3.

and increasing expansion and liberalization of world trade.<sup>84</sup> However, the Economic Rights Charter creates the corresponding duty of states to cooperate in improving the welfare and living standards of all peoples, particularly those of the developing countries.<sup>85</sup>

The WTO, which serves the interests of transnational corporations, including many U.S. corporations, systematically violates these international laws. WTO's defenders advocate "free trade," but in practice, free trade does not result in fair trade. Free trade theorists claim that the rising tide of trade will "lift all boats," providing economic benefits to all sectors of society. The only boats, however, that have been lifted so far are yachts.<sup>86</sup> Former Canadian Agricultural Minister Eugene Whelan observed, "[t]hese deals aren't about free trade. They're about the right of these guys [corporate agribusinesses] to do business the way they want, wherever they want."<sup>87</sup>

As detailed above, the UN Charter establishes the primacy of human rights and equality for all nations. The International Covenant on Civil and Political Rights guarantees the right to form and join trade unions as well as the right of all peoples to self-determination. Finally, the Charter on Economic Rights and Duties of States obligates developed countries to help developing countries transform their economies and improve their welfare and standards of living.

In stark contrast, under the WTO, any national, state or municipal law that may protect labor, the environment, health and safety or human rights, may be struck down if considered a barrier to trade by the faceless bureaucrats and corporate hustlers who are now empowered to decide these matters.

## IX. THE STRUGGLE CONTINUES

The anti-WTO demonstration in Seattle followed a tradition of protest in the United States. A century ago, working people organized sit-down strikes aimed at the bosses who exploited their labor. In the 1950s and 1960s, civil rights activists marched and demonstrated against the pernicious system of racism in the United States. Close on the heels of the civil rights movement, masses of people from all walks of life joined together to stop the war in Southeast Asia. In each instance, these struggles for justice and dignity resulted in social change. Because they fought and died for labor rights,

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<sup>84</sup> See *id.* at art. 14.

<sup>85</sup> See *id.*

<sup>86</sup> See Barker & Mander, *supra* note 1, at 4.

<sup>87</sup> *Id.* at 20.

workers gained the 8-hour day and the minimum wage. Because masses of people marched on Washington and Memphis, and because of sacrifices of people like Martin Luther King, Jr., the Civil Rights Act was born. Because hundreds of thousands of students at campuses across the country demonstrated, and masses of GIs refused their orders, the killing in Southeast Asia was stopped. And because people demonstrated in Seattle, the delegates to the closed meeting of the World Trade Organization were forced to consider labor, environmental, health, and human rights protections as more than simply "trade barriers." Because people were in the streets, the media was forced to broadcast the demonstrators' demands for "Fair Trade, Not Free Trade."

Perhaps the most unique feature of the Seattle protests was the international diversity of the demonstrators. People from all over the world, many from countries where struggles for human rights and freedoms have persisted for centuries, joined together for common humanitarian goals.<sup>88</sup> They were saying that it must be the people, not the WTO, who control our lives.

The WTO establishes the primacy of property interests over human rights. It also threatens the peace and security of the world, in direct violation of the UN Charter.<sup>89</sup> There is no limitation placed by the WTO on trade in weapons, which may pose a major threat to international peace and security. The survival of our global community is at stake.

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<sup>88</sup> In April of 2000, mass demonstrations took place in Washington D.C. against the International Monetary Fund and the World Bank. One year later, thousands converged on Quebec City to protest the proposed Free Trade Area of the Americas (FTAA) agreement.

<sup>89</sup> UN Members pledge "to unite our strength to maintain international peace and security." U.N. CHARTER preamble.