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# *International Institutions Today: An Imperial Global State in the Making*

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## **Abstract**

*The article argues that a growing network of international institutions — economic, social, and political — constitute a nascent global state, whose current task is to realize the interests of an emerging transnational capitalist class in the international system to the disadvantage of subaltern classes in the third and first worlds. The evolving global state formation can therefore be described as having an imperial character. Underpinning the emerging imperial global state is a web of sub-national authorities and spaces that represent, along with non-governmental organizations, its decentralized face. These developments, it is contended, seriously undermine substantive democracy at both inter-state and intra-state levels. Eight possible objections to the thesis that a nascent global state having an imperial character has evolved are next considered and rejected. The concluding section briefly explores the question as to whether international institutions can be reformed, the vision that should inform change, and some concrete proposals in this regard. It argues the case for a complex internationalism in which statist reforms are necessary in the short and medium terms. These reforms can only be brought about by a powerful global social movement.*

## **1 Introduction: The Argument**

International Institutions (II) have today acquired a significance for third world states and peoples that they never possessed before. A network of economic, social and political IIs has been established or repositioned, at the initiative of the first world, and together they constitute a *nascent global state* whose function is to realize the interests

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of transnational capital and powerful states in the international system to the disadvantage of third world states and peoples. The evolving global state formation may therefore be described as having an *imperial* character.

There are eight *general and overlapping* features which characterize contemporary developments relating to formal international intergovernmental organizations. First, IIs have come to exist in all areas of international relations — economic, social and political — considerably limiting the autonomy of sovereign states.<sup>1</sup> This loss of autonomy has serious consequences for third world states and peoples. Second, sovereign economic decision-making authority has been relocated from states to international economic institutions (IEI) — WTO, IMF and World Bank — that possess effective enforcement powers. The chief task of IEIs is to facilitate the operation of transnational capital by creating appropriate economic and social conditions.

Third, the United Nations (UN) has embraced the neo-liberal agenda and is being geared towards promoting the interests of transnational capital, in particular by increasing the role that the private corporate sector can play within the organization(s). Fourth, the relationship between the state and the UN is being reconstituted through a reconfiguration of the principle of sovereignty and its relationship with the principle of the prohibition of threat or use of force. The phenomenon of armed humanitarian intervention and the doctrine of pre-emptive use of force are manifestations of the transformed relationship between sovereign states and the UN.

Fifth, several IIs that had adopted a critical discourse in the past have been repositioned and normalized. These include the United Nations Conference on Trade and Development (UNCTAD), United Nations Environment Programme (UNEP), and United Nations Educational, Social and Cultural Organization (UNESCO). The US has played a lead role in undermining the independent thinking of these institutions and their association with third world causes. For example, the US walked out of UNESCO in 1984

to protest the organization's growing politicization and anti-Western bias, rampant budgetary mismanagement, and advocacy of policies that undermine freedom of the press and free markets. A particularly divisive issue was UNESCO's advocacy of a 'new world information order' (NWIO) to counter an alleged pro-Western bias in global news agencies; ...<sup>2</sup>

The US has now agreed to rejoin UNESCO after it 'reforms' itself.

Sixth, a vast range of non-governmental organizations (NGO) have begun to participate in and influence in diverse ways the norm creation and decision-making process within IIs. There is also a growing consensus that where they do not as yet play such a role, as in the case of the WTO, more inclusive NGO policies should be

<sup>1</sup> In the words of Nye, 'hundreds of organizations and legal regimes exist to manage the global dimensions of trade, telecommunications, civil aviation, health, environment, meteorology and many other issues'. Nye Jr., 'Parliament of Dreams', *World Link* (2002) [http://www.worldlink.co.uk/stories/storyReader\\$1088](http://www.worldlink.co.uk/stories/storyReader$1088). For an overview of the explosion of international organizations, both intergovernmental and non-governmental, see Rosenau, 'Organizational Proliferation in a Changing World', in *Issues in Global Governance* (1995) 371.

<sup>2</sup> Schaeffer, 'Look before Leaping to Rejoin UNESCO' (2001) [www.heritage.org/Research/InternationalOrganizations/EM745.cfm](http://www.heritage.org/Research/InternationalOrganizations/EM745.cfm).

devised.<sup>3</sup> While a large number of NGOs bring the critical voice of an emerging 'global civil society' to IIs, others such as the International Chambers of Commerce (ICC) or the World Economic Forum (WEF) seek to promote the cause of transnational capital.<sup>4</sup> Even the critical voices often neglect the concerns of the Third World (for example, by attempting to link trade with labour standards in the WTO).

Seventh, a web of sub-national authorities and cities undergird IIs or the emerging global state and are, along with NGOs, the decentralized instruments of global governance. The network helps overcome the problem of state sovereignty from the inside in the same way that IIs overwhelm it from the outside. Eighth, a legitimacy/democracy deficit characterizes crucial IIs and is accompanied by a strong resistance from powerful states to put in place a transparent and democratic decision-making process. Together, these features limit the possibilities of global redistributive justice and the genuine democratization of both inter-state and intra-state relations. At the same time, however, a contrary impression is created by powerful states by steering the knowledge-production and dissemination functions of IIs.

One cannot make sense of these features of IIs without locating them within the larger global social order, in particular the historical and political contexts in which they originate, evolve and function. Such an approach allows the insight that a coalition of powerful social classes and states decides when an II is the appropriate form in which to pursue their interests, as well as its central preoccupations.<sup>5</sup> This understanding goes beyond both the neo-realist view that IIs are simply 'reflections or embodiments of state power and interests' and the neo-liberal view that IIs have an independent role in 'resolving collective action problems'.<sup>6</sup> First, it lifts the veil from states and takes cognizance of the role and influence of certain social classes and forces

<sup>3</sup> Charnovitz, 'WTO Cosmopolitics', 34 *New York University Journal of International Law and Politics* (2002) 299, at 326.

<sup>4</sup> The WEF, based in Geneva, Switzerland, and incorporated in 1971 'is an independent organization committed to improving the state of the world. Funded by the contributions of 1,000 of the world's foremost corporations, the Forum acts in the spirit of entrepreneurship in the global public interest to further economic growth and social progress... In 1995 the Forum was awarded NGO consultative status with the Economic and Social Council of the United Nations'. Its self-perception is that 'as a foundation, the World Economic Forum is impartial and not-for-profit, and is tied to no political, partisan or national interests' at <http://www.weforum.org/>. The ICC has been active for much longer. It has played a significant role since the days of the League of Nations, see Charnovitz, *supra* note 3, at 307. On the role of business groups acting as NGOs see also R. Krut, *Globalization and Civil Society: NGO Influence in International Decision-Making* (1997), at 20–21. At the national level, 'a newer kind of national business organization is the corporate front group which presents itself to the community as an NGO rather than as a business organization. Consumers for World Trade (a pro-GATT industry coalition), Citizens for Sensible Control of Acid Rain (a coal and electricity industry front), and the National Wetlands Coalition (US oil company and real estate developers) are examples. These 'astroturf' (as distinct from grassroots) NGOs, of which there are dozens in the US, are the most sincere form of flattery the business community pays to the efficacy of social movement politics', J. Braithwaite and P. Drahos, *Global Business Regulation* (2000) 489.

<sup>5</sup> C. N. Murphy, *International Organization and Industrial Change: Global Governance since 1850* (1994), at 25, 44; R. W. Cox with T. J. Sinclair, *Approaches to World Order* (1996).

<sup>6</sup> M. Miller-Adams, *The World Bank: New Agendas in a Changing World* (1999), at 10.

in shaping the policy of states and IIs at different points in history. Second, it does not neglect the ideological role of IIs in legitimizing particular policies and accompanying practices. Third, it takes into account the role that internal organizational culture and process plays in shaping the thinking of the institution.

The class which exercises the greatest influence in IIs today, and consequently on the emerging global state, is that of the transnational fractions of the national capitalist class in advanced capitalist countries with the now ascendant transnational fractions in the Third World playing the role of junior partners.<sup>7</sup> Together, they constitute a *transnational capitalist class (TCC)* which is in the process of congealing and establishing a *global state composed of diverse IIs* that help actualize and legitimize its world-view. The TCC 'is comprised of the owners of transnational capital, that is, the group that owns the leading worldwide means of production as embodied principally in the transnational corporations and private financial institutions'.<sup>8</sup> However, class is not to be viewed simply as a structural relation. It is also 'a historical phenomenon' and class-consciousness is the way in which these experiences are handled in cultural terms: embodied in traditions, value-systems, ideas, and institutional forms'.<sup>9</sup> The TCC culture is lived and produced in the First World by a network of high-profile corporate executives, bankers, brokers, financial management experts, media managers, academics and bureaucrats using the most modern means of communications to create a world of ideas that has material force. In the production of this culture the third world counterparts essentially act as 'transmission belts and filtering devices for the imposition of the transnational agenda',<sup>10</sup> although admittedly there are third world globalizing firms that also contribute to the original ensemble of practices.<sup>11</sup> The staff of key IIs, such as the World Bank, IMF and WTO, also play a

<sup>7</sup> On the emergence of a transnational capitalist class see Robinson and Harris, 'Towards a Global Ruling Class? Globalization and the Transnational Capitalist Class', 64 *Science and Society* (2000), 11–54. A 'fraction denotes segments within classes determined by their relation to social production and the class as a whole', *ibid.*, at 22.

<sup>8</sup> *Ibid.* According to an UNCTAD estimate, 'there are now over 60,000 transnational corporations, compared with 37,000 in 1990. These transnational corporations have around 800,000 foreign affiliates, compared with some 170,000 foreign affiliates in 1990, and millions of suppliers and distributors operating along their value chains'. UNGA Cooperation between the United Nations and all relevant partners, in particular the private sector: Report of the Secretary-General, (2001), UN Doc. A/56/323, at 5. It does the argument of an emerging TCC no damage to admit that it is 'a kind of superstructure' that rests upon 'resilient national bases'. Carroll and Fennema, 'Is There a Transnational Business Community?', 17 *International Sociology* (2002) 393, at 414. For as Carrol and Fennema point out, looking at structural conditions such as interlocking directorates alone 'there is some support for the hypothesis that a transnational business community is in the making', *ibid.*, at 415. But as they admit their research was limited by 'its singular focus on interlocking corporate directorships as vehicles of class formation', *ibid.*, at 416. They did not look at 'international fora and business organisations', which they concede, 'have become particularly crucial — if contested — sites for constructing capitalist hegemony in a globalizing world', *ibid.*

<sup>9</sup> E. P. Thompson, *The Making of the English Working Class* (1963) 10.

<sup>10</sup> Robinson, 'Globalization: Nine These on our Epoch', 38 *Race and Class* (1996) 19; Chaudhuri, 'Gender and Advertisements: The Rhetoric of Globalization', 24 *Women's Studies International Forum* (2001) 373.

<sup>11</sup> Sklair and Robins, 'Global Capitalism and Major Corporations from the Third World', 23 *Third World Quarterly* (2002) 81.

significant role in reproducing TCC culture. They are mostly hired from first world academic institutions and socialized into particular modes of thinking and life style. George and Sabelli, for example, observe that

the [World] Bank has its own self-reinforcing culture and its codes which set the limits on what can be reasonably believed and discussed if one hopes to be taken seriously and remain a member of the group . . . Put in the same place several hundred people who have been trained in the same schools to think in the same way, recruit them precisely because they have excelled in this training . . . [and the] probable cultural outcome will be — at least among the economists — *monolithic and fundamentalist*.<sup>12</sup>

Finally, there is the burgeoning global middle class that aspires to live the TCC culture and forms its vocal support base. In sum, the demands of the TCC are articulated by, among others, states, business organizations, a network of TCC functionaries, and the global middle class. It is a variegated and complex process with the Northern states playing a crucial role in terms of ironing out differences through communicative action and presenting proposals couched in acceptable language. In other words, there is an internal process of giving expression to the demands of the TCC in which the Northern states play the key role. Since some states are more powerful than others, they have a greater say in the actual formulation of demands of the TCC. What is more significant, however, is the consensus on the form and composition of the emerging global state.

The thesis that a nascent global state has emerged assumes a particular understanding of 'state'. First, it does not imply, at least in the short and medium term, the replacement at a *structural* level of the sovereign state system, but rather its transformation in a manner that facilitates the construction of a global state. Second, it is contended that the global state is being constituted at the *functional* level by a combination of certain legal, political, sociological and ethical elements. The legal element represents the possibility of adopting and prescribing general norms, the political element a monopoly over legitimate violence, the sociological element the demand of effectiveness, and the ethical element the justifications for obeying the general norms. The nascent global state possesses these elements, albeit *not as a single and integrated entity*. Without doubt, IIs prescribe general norms through a network of treaties that create them and by invoking relevant norms of customary international law. The UN, or a coalition of states acting on its behalf, does possess a monopoly over the legitimate use of force in international relations, albeit in certain defined circumstances. The norms in question are, however, being increasingly challenged to create expanded space for the use of force. The social effectiveness of general norms is ensured by the enforcement powers of IIs conjoined with a fragmented and incommensurate structure of states, emphasizing *the continuing significance of sovereign states* even as the global state emerges. The ethical element is satisfied by the acceptance by sovereign states of international obligations, *underlining the importance of the neo-colonial state* in the construction of the imperial global state. Of course, the neo-colonial state undermines itself in the process and embraces a legitimacy crisis,

<sup>12</sup> Cited by Miller-Adams, *supra* note 6, at 29 (emphasis added).

which explains the emerging consensus among third world peoples that IIs suffer from ‘democracy deficit’. The erosion of the autonomy of the neo-colonial state is, in other words, the reason why the issue of II legitimacy has acquired the salience it has. In sum, the neo-colonial third world states will continue to exist but essentially in the service of the TCC and the global state. The Northern/Western states, on the other hand, will continue to shape the form and content of the emerging global state to realize TCC interests.<sup>13</sup>

The constituent elements and features of the nascent global state and the negative implications of the emerging global state for the states and peoples of the Third World are elaborated in Sections II and III below. The aim is to offer a macro view of developments rather than a detailed analysis of individual regimes. Needless to add, the developments in the world of IIs are not entirely one-sided; in many ways IIs act as a shield for third world states and also empower third world peoples against their own states (for instance, human rights and environmental organizations). Indeed, it is only because IIs offer certain advantages that the collaborating ruling elite in the Third World is in a position to sell the idea of multilateralism to their people. However, the essence of contemporary developments in the field of IIs is the creation of conditions conducive to the spread and growth of global capitalism and not the improved welfare of third world peoples.<sup>14</sup> Section IV deals with some possible objections to the thesis that a nascent global state with an imperial character has evolved. The concluding section explores the question whether things can be changed and advances certain proposals in this regard.

## 2 The Emergence of a Nascent Global State: Developments

### A *International Economic Institutions: Seceding Sovereign Economic Space*

#### 1 *Prescription of Uniform Global Standards*

A principal characteristic of the ongoing globalization process is that sovereign third world economic space is being seceded to IIs. With capitalism entering the phase of

<sup>13</sup> We therefore tend to agree with Petras that ‘in the contemporary world, the national state, in both its imperial and neo-colonial form, has *expanded* its activity’. Petras, ‘A Rose by Any Other Name? The Fragrance of Imperialism’, 29 *The Journal of Peasant Studies* (2002) 139. But this expansion in their activity is the very basis of the emerging global state. For as Petras notes, ‘the activities of the state vary according to their class character and whether they are imperial or neo-colonial states’, *ibid.* Thus, as we shall suggest later, whereas the autonomy of the neo-colonial states is being eroded by seceding sovereign economic, social and political space to IIs, the Western imperial states are being strengthened by this very act of secession.

<sup>14</sup> It would be readily recognized that our political referents and priorities, be it ‘the people’ or the ‘Third World’ or ‘women’ ‘are not there in some primordial, naturalistic sense’ or ‘reflect a unitary or homogeneous political object’. H. K. Bhabha, *The Location of Culture* (1994), at 26. These need to be specified and imaginatively worked into operational categories of international law.

globalization, IIs have been assigned a role which was played by the state in the early and middle stages of capitalism in removing local impediments to the process of capital accumulation. It may be recalled that since the 16th century the development of capitalism has called for the destruction of differences in laws, standards, currencies, weights and measures, taxes, customs duties at the level of the nation-state.<sup>15</sup> Globalization, on the other hand, requires the *replacement of numerous national laws and jurisdictions by uniform global standards* in order to remove the barriers to capital accumulation at the global level. Therefore, in the last two decades the advanced capitalist world has pushed through a series of changes in international economic laws, which lay the legal foundation for capital accumulation in the era of globalization by prescribing uniform global standards.<sup>16</sup> These changes, embodied in and enforced by IIs such as the WTO, IMF and World Bank, compel sovereign states to adopt the same laws irrespective of their stage of development. The usual lament that international laws lack enforcement mechanisms does not apply to these institutions. They do not merely bark, they also bite.

## 2 WTO and the Erosion of Sovereignty

The WTO is the key institution to which sovereign economic space is being seceded. In crucial areas such as agriculture, intellectual property rights (IPR), and regulation of foreign investment and services, sovereign powers have been relocated from third world states and peoples to WTO *inter alia* through the adoption of uniform global standards. Thus, for example, be it Nepal or the US or Rwanda and Japan, the same IPR laws are to be adopted by all under the Agreement on Trade Related Intellectual Property Rights (TRIPS).<sup>17</sup> Likewise, WTO Member States cannot, *vis-à-vis* the Agreement on Trade Related Investment Measures (TRIM), impose local content or balancing requirements on foreign capital irrespective of their individual needs and concerns. The absence of local linkages can *inter alia* give rise to an 'ersatz capitalism' that faces considerable trouble with the relocation of foreign investment to other countries.<sup>18</sup> The General Agreement on Trade in Services (GATS), a framework agreement, imposes a common set of standards to be applied to service industries with respect to which states undertake obligations. Progressive liberalization would see sectors ranging from banking and insurance to critical social sectors like education and health in the Third World invaded by transnational capital. Once obligations are undertaken in the service sector it is very difficult to withdraw them, as certain conditions, including making compensatory adjustments, have to be satisfied.<sup>19</sup> On the other hand, third world countries are under pressure to liberalize, without fully

<sup>15</sup> F. Braudel, *Civilization and Capitalism 15th–18th Century* (1979), at 513.

<sup>16</sup> Chimni, 'Marxism and International Law: A Contemporary Analysis', *Economic and Political Weekly* (6 Feb. 1999) 337.

<sup>17</sup> For the TRIPS and other agreements see *WTO: The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts* (1995). These are also available on the WTO web site at [http://www.wto.org/english/docs\\_e/legal\\_e/legal\\_e.htm](http://www.wto.org/english/docs_e/legal_e/legal_e.htm).

<sup>18</sup> P. Burkett and M. Hart-Landsberg, *Development, Crisis, and Class Struggle: Learning from Japan and East Asia* (2000), at 169.

<sup>19</sup> See Article XXI entitled 'Modification of Schedules' of the GATS text.

knowing the consequences of doing so. The WTO agreements, it may be added, are enforced through a *compulsory* dispute settlement mechanism backed by an effective system of sanctions.

The prescription of uniform global standards is essentially meant to accommodate the interests of transnational corporations 'who are capital exporters, technology leaders and service providers in the world economy. For them, these new issues represent the final frontier in their global reach to organize production and trade on a world scale without fetters'.<sup>20</sup> The WTO also hopes to bring within its regulatory ambit, through the ongoing Doha round of trade negotiations, other aspects of the relationship between trade and investment, government procurement policy, competition policy, and so on.<sup>21</sup> In areas such as the interface between trade and environment, also an issue at the Doha round of trade negotiations, the interpretive route has been used by the WTO dispute settlement bodies to establish environment regulation.<sup>22</sup> It needs to be emphasized that while WTO agreements do take into account developing country concerns in a number of areas, 'the tendency has not been to grant developing countries broad exceptions to compliance with GATT rules'.<sup>23</sup> While in some instances third world countries have been given a little more time to bring their domestic regimes into compliance with WTO rules, there is no substantial special and differential treatment for them.<sup>24</sup>

### 3 *International Financial Institution Conditionalities and Third World Sovereignty*

In addition to the loss of economic sovereignty to WTO, third world countries have to contend with the international financial institutions (IFI) which encroach on other sovereign areas of national economic life through the prescription of conditionalities to be complied with if a state is to receive loans. These conditionalities more or less impose the goals of liberalization, privatization and deregulation on third world states (its only users) in a bid to pry open markets, help transnational capital take over public sector assets at throwaway prices, and avoid regulation of its activities in public interest.<sup>25</sup> Further, IFIs are currently subjecting the national currencies in third world states to growing pressure by insisting on deterritorialization. The advantages of monetary sovereignty are well known. It is, among other things, 'a possible instrument to manage macroeconomic performance of the economy; and ... a

<sup>20</sup> Nayyar, 'International Trade and Factor Mobility: Economic Theory and Political Reality', in D. Nayyar (ed.), *Economics as Ideology and Experience: Essays in Honour of Ashok Mitra* (1998) 93.

<sup>21</sup> WTO, Ministerial Declaration, Fourth Session, Doha, 14 November 2001. UN Doc. WT/MIN(01)/DEC/W/1.

<sup>22</sup> Chimni, 'WTO and Environment: *Shrimp-Turtle* and *EC Hormone* Cases', *Economic and Political Weekly* (2000) 1752; and Chimni, 'WTO and Environment: Legitimization of Unilateral Trade Sanctions', *Economic and Political Weekly* (2002) 133.

<sup>23</sup> M. J. Trebilcock and R. Howse, *The Regulation of International Trade* (1995) 324.

<sup>24</sup> *Ibid.* For the negative position of the US on the special and differential treatment demand of the developing countries in the ongoing Doha negotiations see Raghavan, 'US Caveats on S&D: Wants "Full integration" of Developing Countries' (2002), <http://www.twinside.org.sg/title/5247a.htm>.

<sup>25</sup> J. E Stiglitz, *Globalization and Its Discontents* (2002), at 53 *et seq.* A new statement on conditionalities was adopted by the Executive Board of the IMF on 22 September 2002. It remains to be seen whether this will mean any serious change on the ground.

practical means to insulate the nation from foreign influence or constraint'.<sup>26</sup> But the IMF, and its masters, actively encourage states to accept capital account convertibility, an act that considerably erodes the autonomy of states as it cannot effectively regulate marauding and hyper-mobile global finance capital.<sup>27</sup> This can have severe negative consequences for third world economies.<sup>28</sup> The loss of monetary sovereignty, as the East Asian crisis showed, also has serious fall-outs for the ordinary people in the Third World. The nightmare of unemployment can hit suddenly and their standards of living can substantially erode overnight.<sup>29</sup>

But the ability to prescribe strict conditions is not enough. The IFIs, in particular the World Bank, also seek to assure transnational capital the general technical preconditions for the process of production. The need to create a *functional unified global economic space* for the operation of transnational capital requires that IIs create appropriate economic and social conditions. Given the inability of third world states to provide the material conditions in which transnational firms can enter productive activity, IFIs intervene, as we shall see presently, to help establish necessary infrastructure and institutional conditions for its operations. Finally, the IFIs also actively support the cause of transnational capital through setting up other IIs when necessary. Thus, for instance, the Multilateral Investment Guarantee Agency (MIGA) was established in 1988 under the auspices of the World Bank. It insures foreign capital against non-commercial risks.<sup>30</sup>

## **B International Social Institutions: Creating Social Conditions for Globalized Capitalism**

A whole range of social IIs, in particular in the field of human rights and environment, have also been established that limit the autonomy of third world states and peoples to adopt social policies that suit their individual cultures and stages of development.<sup>31</sup> Social IIs are a crucial element in the emerging nascent global state as they facilitate

<sup>26</sup> Cohen, 'Money in a Globalized World', in N. Woods (ed.), *The Political Economy of Globalization* (2000) 84.

<sup>27</sup> Soedderberg, 'On the Contradictions of the New International Financial Architecture: Another Procrustean Bed for Emerging Markets?', 23 *Third World Quarterly* (2002) 607; Stiglitz, *supra* note 25, at 15–17.

<sup>28</sup> *Ibid.*; Bhagwati, 'The Capital Myth', 77 *Foreign Affairs* (1998) 7.

<sup>29</sup> Burkett and Hart-Landsberg, *supra* note 18, at 189–190; T. Van Hoa, *The Social Impact of the Asia Crisis* (2000).

<sup>30</sup> Article 11 of the 1985 Convention establishing the Multilateral Investment Guarantee Agency (MIGA) defines the non-commercial risks against which it ensures private investment. These are loss resulting from risks relating to 'currency transfer', 'expropriation and similar measures', 'breach of contract', and 'war and civil disturbance'. MIGA came into force in 1988 and has 157 members at present. For the text of the convention see <http://www.miga.org/screens/about/convent/convent.htm>.

<sup>31</sup> More generally, 'the upshot of the activities of IIs is that today most citizens greatly underestimate the extent to which most nations' shipping laws are written at the IMO in London, air safety laws at the ICAO in Montreal, food standards at the FAO in Rome, intellectual property laws in Geneva at the WTO/WIPO, banking laws by the G-10 in Basle, chemical regulations by the OECD in Paris, nuclear safety standards by IAEA in Vienna, telecommunication laws by the ITU in Geneva and motor vehicle standards by the ECE in Geneva', Braithwaite and Drahos, *supra* note 4, at 488.

the creation of social and political conditions that are suited to the operation of transnational capital. To the extent that social IIs harbour potential for a progressive transformation of global social space, their limited mandate, authority and resources act as important constraints. Indeed, both the human rights and environment agendas are being increasingly drawn up to serve a neo-liberal agenda. IFIs even play an important role in this context, i.e., in creating social conditions that assist the functioning of transnational capital.

### 1 *IFIs and Good Governance*

This objective is being pursued through a concern with ‘good governance’ in the third world. The constitutional prohibition of political activities on the part of IFIs has been overcome with the ingenuous interpretation that its scope covers ‘governance as a question of “good order” in the management of a country’s resources through rules and institutions, rather than the exercise of political power to manage its affairs generally’.<sup>32</sup> Thus, the World Bank has come to be concerned with civil service reform, corruption, legal reform (or law and development issues), budget discipline, observance of human rights, and so on:

Activities such as civil service reform, legal reform and judicial reform have been found to be relevant to the maintenance of ‘good order’ in the management of a country’s resources through the introduction and implementation of appropriate rules and institutions, and were therefore found to fall within the Bank’s mandate.<sup>33</sup>

The central motivation is of course to create conditions that facilitate the operation of transnational capital. As Shihata notes:

the establishment of the rule of law attracts private investment, to the extent that it creates a climate of stability and predictability, where business risks may be rationally assessed, property rights protected and contractual obligations honored.<sup>34</sup>

In this context it should be noted that IFIs have now established ‘field’ offices in member countries: ‘the World Bank has over one hundred field offices now, whereas the IMF has around seventy resident representatives in sixty-four countries. Until the end of the Cold War, they had very little field presence’.<sup>35</sup> Needless to add, these field

<sup>32</sup> I. Shihata, *The World Bank in a Changing World: Selected Essays* (1991) 87. The prohibition on political activities is contained in the charters of all IFIs. Thus, for example, Article IV, Section 10 of the Articles of Agreement of the International Bank of the Reconstruction and Development (IBRD) states: ‘The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of the member or members concerned. Only economic considerations shall be relevant to their decisions, and these considerations shall be weighed impartially in order to achieve the purposes stated in Article 1.’

<sup>33</sup> I. Shihata, *The World Bank in a Changing World: Selected Essays and Lectures* Vol. II (1995), at 132–133.  
<sup>34</sup> *Ibid.*, at 128.

<sup>35</sup> Rajagopal, ‘From Modernization to Democratization: The Political Economy of the “New” International Law’, in R. Falk *et al.* (eds), *Reframing the International: Law, Culture, Politics* (2002) 140. In addition, the UNDP ‘devotes a full third of its funding to good governance projects’, *ibid.*, at 150.

offices are little concerned with 'good governance' when it comes to the impact of private investment on the rights of third world peoples.

## 2 Proliferating Human Rights Organizations: Implications

In the post-1945 period a range of international human rights organizations (IHRO) have been set up, a large number of which have come into existence in the last two decades. The IHROs include UN bodies (ECOSOC, UNDP, UNHRC, ILO, UNESCO, UNHCR), expert bodies established by UN organs or under particular human rights treaties (Human Rights Committee, Committee on Economic, Social and Cultural Rights, Committee on the Elimination of Racial Discrimination, Committee on the Elimination of Discrimination against Women, Committee against Torture, Committee on the Rights of the Child, and others), and a set of activities authorized by the UN (such as in the mandates of UN peacekeeping forces). The expansion in the activities of IHROs can *inter alia* be gauged from the fact that the newly established office of the United Nations High Commissioner for Human Rights (UNHCHR) 'has tremendously expanded its size, reach, and focus through the opening of twenty-seven field offices around the world (from almost no offices in the early 1990s) and by providing project assistance to countries'.<sup>36</sup>

It would of course be churlish to deny that international human rights law and organizations have in many ways empowered progressive social forces in third world countries. Even authoritarian governments have had to take human rights on board and take cognizance of criticisms made in IHROs from time to time.<sup>37</sup> But 'rights cannot be higher than the economic structure of society and its cultural development conditioned thereby'.<sup>38</sup> Furthermore, since IHROs focus more on civil and political rights, as they lack the mandate, resources and political backing to seriously influence outcomes in the realm of economic and social rights, they have had only a minimal impact on the welfare of ordinary peoples in the third world. Indeed, the emphasis on civil and political rights allows the pursuit of the neo-liberal agenda by privileging private rights over collective social and economic rights. It is for this reason that the TCC and Northern states have made the language of human rights their own. Equally significant is the realization that IHROs can help deflect radical movements into more official channels that can be controlled through procedural formalities.<sup>39</sup> That is to say, 'as mass radical movements have increasingly emerged around the claims for human rights and democratic entitlement, a host of international organizations have emerged to program this area'.<sup>40</sup> The task of IHROs appears to be, in other words, more damage control than the production of welfare states. The role of humanitarian organizations like the Office of the United Nations High Commissioner for Refugees

<sup>36</sup> *Ibid.*, at 150.

<sup>37</sup> See T. Risse, S. C. Ropp, and K. Sikkink, *The Power of Human Rights: International Norms and Domestic Change* (1999).

<sup>38</sup> K. Marx and F. Engels, *Selected Works* Vol. 3 (1970), at 19.

<sup>39</sup> See generally Kennedy, 'The International Human Rights Movement: Part of the Problem?', 15 *Harvard Human Rights Journal* (2002) 101.

<sup>40</sup> Rajagopal, *supra* note 35, at 150.

(UNHCR), on the other hand, is to essentially look after the victims of expanding and rapacious global capitalism.<sup>41</sup> Where societal conflict cannot be prevented by the work of IHROs and human rights NGOs, they are assigned the task of creating conditions for the functioning of neo-liberal post-conflict states.<sup>42</sup>

### 3 International Environmental Institutions: Redistribution of Global Property Rights

In the field of the environment 'a growing number of UN specialised agencies and other international organisations with some measure of competence over environmental matters have become important institutions of global and regional environmental governance ... Equally important is the extensive network of supervisory bodies, conferences of the parties and commissions established by environmental treaties ...'.<sup>43</sup> IIs with a mandate to protect the environment include the UNEP, WTO, Commission on Sustainable Development (CSD), the International Maritime Organization (IMO), the World Bank (the Global Environment Facility, in particular), Food and Agricultural Organization (FAO), International Atomic Energy Agency (IAEA), UNESCO, and the five UN regional commissions.<sup>44</sup> In addition, there are the treaty mechanisms and bodies established by individual international environmental law conventions.<sup>45</sup>

As in the case of IHROs, it would be absurd to suggest that international environmental laws and institutions do not go some way towards promoting and protecting the global environment. But it is equally true that in the *absence of an effective implementation of the principle of common but differentiated responsibility based on the premise of the historic responsibility of the North in causing environmental damage*, the operation of international environmental institutions (IENI) and laws involve the redistribution of property rights in favour of the advanced capitalist countries.<sup>46</sup> For when these countries developed, 'global private rights were granted to polluters; now, developing countries are asked to agree to a redistribution of those property rights without compensation for already depleted resources'.<sup>47</sup> On the other hand,

<sup>41</sup> Chimni, 'The Geopolitics of Refugee Studies: A View from the South', 11 *Journal of Refugee Studies* (1998) 350.

<sup>42</sup> Chimni, 'Refugees and Post-Conflict Reconstruction: A Critical Perspective', in E. Newman and A. Schnabel (eds), *Recovering From Civil Conflict: Reconciliation, Peace and Development* (2002) 163.

<sup>43</sup> P. W. Birnie and A. E. Boyle, *International Law and the Environment* (2nd ed., 2002), at 34–35.

<sup>44</sup> *Ibid.*, at 47 *et seq.*

<sup>45</sup> *Ibid.* For an overview of international environmental institutions see Desai, 'International Environmental Institutions: An Overview', in R. Dolzer and J. Thesing (eds), *Protecting our Environment: German Perspectives on a Global Challenge* (2000) 231.

<sup>46</sup> Mickelson, 'South, North, International Environmental Law, and International Environmental Lawyers', 11 *Yearbook of International Environment Law* (2000) 52.

<sup>47</sup> P. Uimonen and J. Whalley, *Environmental Issues in the New Trading System* (1997) 66. According to Sachs, 'rich people are rich because ... they were lucky enough not to have some of the ecological barriers that the poor people have'. Sachs, 'Poor Man's Economist' Interview by Amy Barrett (2002) <http://www.nytimes.com/2002/12/15/magazine/15QUESTIONS.html?ex=1041393815&ei=1&en=9c2bed33e9d92c03>.

environmental laws that are irksome to the operation of transnational capital are often disregarded (for example, the Kyoto Protocol). An important reason for this is that

corporations influence almost every negotiation on the environment that has taken place under the auspices of the UN — including the Montreal Protocol to Protect the Ozone Layer, the Kyoto Protocol to the climate convention, and the biodiversity convention and its Biosafety Protocol. In the climate convention, even UN agencies such as UNEP and . . . UNCTAD have offered their services as brokers for corporations interested in emission trading.<sup>48</sup>

Finally, where possible, the environment cause is turned against the very victims of historical injustice to legitimize non-tariff barriers against their exports, as in the WTO.<sup>49</sup>

#### 4 International Criminal Tribunals: Necessary Element of an Imperial Global State

A significant new development is the establishment of international criminal tribunals. The past decade has seen *inter alia* the creation of the ad hoc International Criminal Tribunal for the Former Yugoslavia (1991), the ad hoc International Criminal Tribunal for Rwanda (1994) and the International Criminal Court (1998).<sup>50</sup> The rapid strides in international criminal law and jurisdiction, coupled with related developments in international human rights law (the *Pinochet* case) represent a movement towards making individuals accountable for their criminal conduct. The establishment of international criminal tribunals (ICT) form *a crucial element* of the nascent global state. While welcome in themselves, powerful states are unlikely to be the subject of their attention. A North-South divide characterizes the punishment of international criminal conduct. It is extremely unlikely that the leaders and armed personnel of Northern states would ever be dragged before the ICC. In any case, the US is extremely hostile to the ICC and is busy signing bilateral agreements with states to ensure that no American soldier is ever tried before it.<sup>51</sup> Indeed, the Bush administration has 'carried on a determined drive to destroy the court' before it can begin its task of judging those accused of war crimes and crimes against humanity.<sup>52</sup> On the other hand, ICTs may be used to (a) threaten third world leaders who dare to question and oppose hegemonic states; and (b) give a humane and cathartic dimension to the ravages of global capitalism for it does not involve attention to the

<sup>48</sup> A. Aggarwal *et al.* (eds), *Poles Apart* (2001) 382.

<sup>49</sup> Chimni, *supra* note 22, at 133.

<sup>50</sup> The Rome Statute establishing the International Criminal Court has already entered into force. As of February 2003, 89 states had ratified it.

<sup>51</sup> On the US unwillingness not to be party to the ICC, *The Economist* aptly noted in an editorial comment: 'In the 1990s, the United States played the key role in setting up tribunals to put on trial individuals accused of war crimes and genocide in Rwanda and ex-Yugoslavia. Yet, alone among its allies, it now opposes the permanent international criminal court . . . primarily because it could not win an absolute exemption for its own soldiers. And that attitude is nothing new: American governments have seen the corpus of international law as a useful device to restrain or vilify other nations, while refusing to let it apply to their own.' *The Economist*, 5 December 1998.

<sup>52</sup> Lewis, 'On the West Wing', *The New York Review of Books* (13 Feb. 2003) 7.

*international* causes of internal conflicts in third world societies, whose manifestation in unspeakable violence is their real subject.

### ***C International Political Institutions: The UN and the Legitimization of Neo-liberalism and Use of Force***

The UN may be described as the key international political institution in the world. Today, the relationship between the state and the UN is being reconstituted by limiting the sovereignty of the third world and affecting its ability to shape the future world order. This reconstitution is a cumulative result of (a) assigning a greater role to the corporate actor within the UN; (b) redefining the principle of non-use of force by legitimizing the use of force by the Western power bloc against third world states; and (c) adopting the neo-liberal state as a model for its member states, manifested in particular in its peace-building efforts in post-conflict societies. The reconstitution of the relationship of the third world state and the UN is critical for the emergence of the imperial global state as it, among other things, confers legitimacy on a new set of ideas and actions that go to promote the interests of the TCC. Each of the features mentioned above deserves brief elaboration.

#### *1 Growing Role of the Private Corporate Actor*

The private corporate actor is coming to play a greater and more active role within the UN system. The Global Compact idea is its embodiment.<sup>53</sup> ‘There is a danger of such linkages being exploited . . . while only paying lip-service to the ideals and principles for which the United Nations was created . . . Moreover, because the actors who are being linked up with have considerably more financial and political clout, there is a danger that the United Nations will come out the loser’.<sup>54</sup> Indeed, the attempt to *bluewash* the image of transnational corporations is not in the realm of possibility, but a reality today.<sup>55</sup>

The invasion of the UN system by the private corporate actor has been underway for some time. In the 1970s and 1980s international organizations such as UNIDO, UNCTAD and UNDP were ‘facilitating the further liberalization of international and national markets’ by heavily promoting free trade and export-processing zones of

<sup>53</sup> United Nations Secretary-General Kofi Annan first proposed the Global Compact in an address to the WEF on 31 January 1999. He challenged world business leaders to help build the social and environmental pillars required to sustain the new global economy and make globalization work for all the world’s people. The Compact’s operational phase was launched at a high-level event at UN Headquarters on 26 July 2000. The meeting, chaired by the Secretary-General, brought together senior executives from some 50 major corporations and the leaders of labour, human rights, environmental and development organizations. For more about the Global Compact see <http://www.unglobalcompact.org/Portal/>.

<sup>54</sup> J. Oloka-Onyango and D. Udigama, *The Realization of Economic, Social and Cultural Rights: Globalization and its Impact on the Full Enjoyment of Human Rights*, UN Doc. E/CN.4/Sub.2/2000/13, 15 June 2000, Sub-Commission on the Promotion and Protection of Human Rights, 52nd session; Sethi, ‘Corporate Codes of Conduct and the Success of Globalization’, 16 *Ethics and International Affairs* (2002) 100.

<sup>55</sup> See, for example, Mimkes, ‘Bayer and the UN Global Impact: How a Major Chemical and Pharmaceutical Company Bluewashes its Image’ at [http://www.cbgnetwork.org/home/UN\\_Global\\_Compact/un\\_global\\_compact.html](http://www.cbgnetwork.org/home/UN_Global_Compact/un_global_compact.html).

interest to transnational corporations.<sup>56</sup> The private corporate actor today participates more directly in the UN system. Take, for example, the International Telecommunications Union (ITU). As Braithwaite and Drahos point out,

some of the most direct forms of capture of international regulatory processes are to be found at the International Telecommunications Union (ITU), where US companies in particular use support of their government to gain the chairmanship of technical committees, which they use to write their own patents into global technical standards. Three hundred companies have succeeded in placing their employees on ITU committees.<sup>57</sup>

The UN also increasingly turns to the corporate actor for financing the Organization and is coming to adopt corporate management philosophy in the running of it.<sup>58</sup> What may thus be called *the process of privatization of the UN system* reduces the possibility of UN forums being at the centre of collective action by third world states to constrain these giant private actors. Consider in this regard the following developments over the last decade: abandonment of attempts to adopt a code of conduct for transnational corporations, the shutting down of the UN Center for Transnational Corporations (CTC), the 'repositioning' of UNCTAD, and the marginalization of development issues in the UN system.<sup>59</sup> While the UN still continues to pay obeisance to the global poor, it actively promotes the interests of transnational capital and makes futile appeals to it to serve the cause of international justice.

## 2 Embracing the Neo-liberal Mode: The Case of Post-conflict Societies

It comes therefore as no surprise that the UN is prescribing the neo-liberal state as the norm to member states. This becomes evident from the model of reconstruction recommended to post-conflict societies. Today, as the UN Secretary-General (UNSG) has noted, 'virtually every part of the United Nations system, including the Bretton Woods institutions, is ... engaged in one form of peace-building or another ...'.<sup>60</sup> Indeed, the UN pretends to be a surrogate state until 'peace building' has been successfully achieved and an accountable state put in place. The meaning of 'an accountable post-conflict state' is a state that can come to terms with the legitimacy crises and social protest generated by the implementation of a neo-liberal adjustment programme and greater integration into the world economy. In the circumstances, formal compliance with the norms of liberal democracy, as is insisted on, changes very

<sup>56</sup> B. Emadi-Coffin, *Rethinking International Organization: Deregulation and Global Governance* (2002), at 123 and 151.

<sup>57</sup> Braithwaite and Drahos, *supra* note 4, at 490.

<sup>58</sup> Bennett, 'Multinational Corporations, Social Responsibility and Conflict', 55 *Journal of International Affairs* (2002) 403; Lee, Humphreys, and Pugh, 'Privatization in the United Nations System: Patterns of Influence in Three Intergovernmental Organizations', 11 *Global Society*, (1997) 339; UNHCR, UNHCR Corporate Code of Conduct (2000) <http://www.unhcr.ch/cgi-bin/texis/vtx/home?page=PARTNERS&id=3d904d954&ID=3d904d954&PUBLISHER=TWO>.

<sup>59</sup> See South Centre, *For a Strong and Democratic United Nations: A South Perspective on UN Reform* (1997).

<sup>60</sup> UNDP, Management Development and Governance Division, Bureau for Development Policy: *Governance in Post-Conflict Countries* (2000) <http://magnet.undp.org/Docs/crisis/monograph/Monograph.htm>, para 21.

little.<sup>61</sup> The parties which participate in ‘post-conflict’ elections are compelled, given the absence of adequate resources, to follow World Bank and IMF prescriptions.<sup>62</sup> The post-conflict state therefore continues to be repressive and its resources continue to be privatized. There is consequently little possibility of implementing a reconstruction agenda that pays heed to people’s needs and frames policies with their participation in mind.

### 3 *Sovereignty and the Use of Force: Monopoly of the Western Power Bloc*

The UN is also the medium through which the Western power bloc exercises a global monopoly over the legitimate use of force. The post-Cold War period has seen the emergence of a globalized Western state conglomerate, which has been termed ‘an integrative authoritative organization of violence’.<sup>63</sup> This power bloc comprises the states of North America, Western Europe, Japan and Australasia. Shaw points out that ‘the Western state’s authoritative deployment of violence is now structurally reinforced by its increasing, if problematic integration with the legitimate international world authority-structure of the United Nations’.<sup>64</sup>

It is clear that the UN depends for both its resources and its political direction on the West, and that the united West is mostly able to mobilize the UN system to its own purposes. Despite the deeply ambiguous relationship between the main component of the West (the USA) and the UN, it is difficult to conceive of either without the other. The mutual dependence of Western power and the UN system is fundamental. Major and minor exercises of Western military power have been legitimated through the UN; the UN has not authorized or undertaken any significant actions against Western interests.<sup>65</sup>

When the Western state conglomerate cannot act through the UN it turns to its own organizations like NATO, which has been repositioned and expanded in order to meet the security concerns of the Western power bloc in the post-Cold War era. The bombing for six weeks of the former Yugoslavia in 1999 was one instance of the Western power bloc acting outside the framework of the UN Charter. But even in cases when the power bloc acts outside the framework of the UN, it returns to it for legitimacy, even if tenuous, as it did in the case of Kosovo.<sup>66</sup> While the war against Iraq disclosed differences between the Western bloc countries, it is important to remember, as Falk has pointed out, ‘even France and Germany, credited with taking an anti-American position, were arguing for an avoidance of war within the essential framework insisted upon by the U.S and the U.K’.<sup>67</sup> Second, the differences did not lead

<sup>61</sup> Ithonvbere, ‘The State, Constitutionalism and Democratization’, 490 *Seminar* (2000) 24.

<sup>62</sup> Chimni, *supra* note 42, at 165–166.

<sup>63</sup> M. Shaw, *Theory of the Global State: Globality as Unfinished Revolution* (2000) 199.

<sup>64</sup> *Ibid.*, at 200.

<sup>65</sup> *Ibid.*, at 216.

<sup>66</sup> It has thus been argued that Security Council Resolution 1244 (1999) retrospectively justified the bombing of former Yugoslavia. This is an erroneous view. See Chimni, ‘The International Law of Humanitarian Intervention’, in *State Sovereignty in the 21st Century* (2001) 115.

<sup>67</sup> Falk, ‘Resisting the Global Domination Project: Interview with Prof. Richard Falk’, *Frontline*, 25 April 2003. Available at <http://www.flonnet.com/fl2008/stories/20030425004002300.htm>.

to any action within the UN to stop the war. Moreover, when the war was over conciliatory gestures were forthcoming from all the 'dissenting' states, culminating in UN Security Council Resolution 1483 of 22 May 2003, in which the capitulation was formalized.

In terms of international law the reconstitution of the relationship between sovereignty and use of force is taking place through (a) attempts to declare the principle of sovereignty an anachronism in the context of human rights violations, thereby justifying the idea of armed humanitarian intervention;<sup>68</sup> and (b) attempts to reinterpret Articles 2(4) and 51 of the UN Charter to justify the pre-emptive use of force. The third world hopes to use the contradictions and differences of opinion within the Western power bloc on the doctrine of pre-emptive use of force to prevent a complete change in the rules governing the use of force. However, this is not a serious possibility since no Western state wants to displease the US.

## **D Global Networks of Sub-national Institutions and Spaces: Eroding Sovereignty from Below**

### *1 Web of Sub-national Authorities*

Underpinning the emerging global state is a web of sub-national authorities and spaces that represent, along with the world of NGOs, its decentralized face. A network of sub-national authorities and spaces helps deal with and surmount the problem of state sovereignty in a bid to push forward the ongoing globalization process. Their growth is crucial in eventually replacing the sovereign state with a set of disaggregated authorities that could be influenced and regulated by the emerging global state. As Slaughter points out:

The state ... is disaggregating into its separate, functionally distinct parts. These parts — courts, regulatory agencies, executives, and even legislatures — are net-working with their counterparts abroad, creating a dense web of relations that constitutes a new, transgovernmental order. Today's international problems — terrorism, organised crime, environmental degradation, money laundering, bank failure, and securities fraud — create and sustain these relations.<sup>69</sup>

Increasingly, as others have also noted, 'government regulators, mayors, professional associations, and others, operate transnationally and thereby constitute a variety of cross-border networks'.<sup>70</sup> While the role of transgovernmental order should not be overstated, it reveals how sovereignty can be disaggregated and placed in the service of the emerging global state.<sup>71</sup>

<sup>68</sup> Chimni, *supra* note 66.

<sup>69</sup> Slaughter, 'The Real New World Order', 76 *Foreign Affairs* (1997) 184.

<sup>70</sup> S. Sassen, *Global Networks: Linked Cities* (2002) 2.

<sup>71</sup> Sassen, 'The State and Economic Globalization: Any Implications for International Law?', 1 *Chicago Journal of International Law* (2000) 109.

## 2 Decentred Law-making Processes

The state is also no longer the exclusive participant in the international legal process, even though it remains the dominant actor in law-making. The globalization process is creating ‘a multitude of decentred law-making processes in various sectors of civil society, independently of nation-states’.<sup>72</sup> According to Teubner, ‘*Lex Mercatoria*, the transnational law of economic transactions, is the most successful example of global law without a state’.<sup>73</sup> It is ‘the paradigmatic case’.<sup>74</sup> Thus, for example, the work of the Basle Committee has been crucial in regulating the liquidity and solvency of banks in individual jurisdictions in the United States and the European Union.<sup>75</sup> What is worrisome is the absence of transparency and the lack of a ‘public’ voice in the emergence of law without a state.<sup>76</sup> Second, the deterritorialized legal order takes advantage of its well-honed internal practices to subvert state legal orders, in particular in third world countries. Thus, intra-firm transactions are used by transnational corporations to avoid paying taxes and respecting foreign exchange laws of these countries. Third, global law without the state often does not take into account the socio-economic context in third world countries.<sup>77</sup>

## 3 Growing Network of Cities

Finally, the global state is underpinned by a network of cities that are coming to play a crucial role in the globalization process. According to Sassen, ‘the managing and servicing of much of the global economic system takes place in a growing network of global cities and cities that might be best described as having global city functions’.<sup>78</sup> To put it differently, the firm, market and state are rendered global through a system of cities. They are today the international financial and service centres of the world. Indeed, the connectivity of these cities is the infrastructure of the emerging global state. Thus, an ‘alternative metageography of a network of cities’ is being

<sup>72</sup> G. Teubner, *Global Law without a State* (1997), at xiii.

<sup>73</sup> *Ibid.*, at 3.

<sup>74</sup> *Ibid.*, at 8. The practices of *lex mercatoria* include standard form contracts, ICC INCOTERMS, customs of trade, voluntary codes of conduct, international commercial arbitration, private institutions formulating legal rules for adoption, intra-firm contracts and the like. In response to criticism that *lex mercatoria* is still dependent on the sanctions of national courts, Teubner writes that ‘it is the phenomenological world construction within a discourse that determines the globality of the discourse, and not the fact that the source of use of force is local’, *ibid.*, at 13. In other words, the fact that the law without the state eventually invites its reinvention through international bodies like UNCITRAL or receives eventual state sanction does not take away from the fact that they originated in the practices of non-state actors.

<sup>75</sup> J. Weiner, *Globalisation and the Harmonisation of Law* (1999), at Ch. 3.

<sup>76</sup> As Alston points out, the growth of governmental networks ‘implies the marginalization of governments as such and their replacement by special interest groups ... it suggests a move away from arenas of relative transparency into the back rooms’, Alston, ‘The Myopia of the Handmaidens: International Lawyers and Globalization’, 8 *EJIL* (1997) 441.

<sup>77</sup> For example, if one accepts the fact there is no single global financial market but that ‘globalized finance consists of local markets, rooted in different socio-economic structures, patterns of savings and investment, and regulatory traditions’ then it is necessary to consider the impact of global financial deregulation and reregulation on third world countries. Picciotto and Haines, ‘Regulating Global Financial Markets’, 26 *Journal of Law and Society* (1999) 355; Weiner, *supra* note 75, at 136–139.

<sup>78</sup> Sassen, *supra* note 70, at 2.

engendered.<sup>79</sup> But it needs to be recognized that the coming together of cities has also a centralization dynamic at work that places the city in the South in a hierarchical order dominated by the cities of the North: New York, London, Tokyo, Frankfurt, Geneva and others.<sup>80</sup> This centralization dynamic is a function of concentration in control, ownership and profit appropriation. The cities in the South, on the other hand, have the significant function of recycling ideas and norms and making available in the form of subsidiary firms a set of services (accountancy, advertising, banking/finance, law, etc) for the operation of transnational capital. It is also in cities that the TCC culture is reproduced and embedded.

### **3 The Nascent Global State: Further Reflections on Process and Implications**

The global state under construction has serious implications for the states and peoples of the Third World. Among other things, the network of international law and institutions that constitute it are undermining democracy at both inter-state and intra-state levels. First, the process through which sovereign economic, social and political decision-making is being relocated from third world states to IIs is marked by an absence of transparency and effective participation. Second, despite the increasingly intrusive nature and function of IIs, they remain unaccountable in international law to those who are affected by their acts of omission and commission. The consequence of these two features is the substantial transformation of the meaning of democracy and the resulting establishment of polyarchy in third world countries. The IIs seek to sustain and legitimize the state of affairs by deploying their knowledge production and dissemination functions to discredit alternative frameworks of development (or non-development). These aspects of the operation of IIs may be considered in a little more detail.

#### ***A Absence of Effective Participation in IIs***

##### *1 WTO Negotiations: Absence of Deliberative Democracy*

Today third world states are being compelled to relinquish sovereign economic, social and political space to IIs without effectively participating in the negotiations leading to the adoption of relevant treaty regimes or, in other cases, in the decision-making afterwards. An instance of the first is the negotiation and adoption of legal texts constituting the Final Act of the Uruguay Round of Multilateral Trade Negotiations that led to the establishment of the WTO. Things have not changed since, as is evidenced by the protest of a large group of third world countries, in particular African countries, at being continually sidelined in WTO talks at the Third Ministerial

<sup>79</sup> Taylor, Walker and Beaverstock, 'Firms and their Global Service Networks', in Sassen, *supra* note 70, at 95.

<sup>80</sup> Sassen, *supra* note 70, at 6 *et seq.*

Conference held in Seattle in December 1999.<sup>81</sup> It was hoped that this protest would start a process that would inject greater democracy into the system. But these hopes have been belied. Most third world countries remained spectators in the negotiations leading up to the adoption of the Doha Ministerial Declaration.<sup>82</sup> Only a handful of them participated effectively in the process. There was little transparency in the meetings, which were manipulated by Northern states with the assistance of the WTO secretariat.<sup>83</sup> When individual third world delegates/delegations were critical of the negotiation process or were seen as being in opposition to the inclusion of the Northern agenda in the Ministerial Declaration, bilateral pressures were used by Northern states to silence them.<sup>84</sup> The situation has been no different since; the recent Cancun Ministerial Conference, notwithstanding its failure, was a repeat of the Doha experience. Small groups of states have been meeting informally to discuss and reach compromises to the exclusion of a vast majority of WTO members.

## 2 *Decision-making in IFIs: The Dominant Voice of the North*

Equally troubling is the decision-making process within the two IFIs. The IFIs have a weighted voting system that gives Northern states a dominant voice in the decision-making process,<sup>85</sup> with the result that third world countries and peoples are unable to influence in any way the content of conditionalities imposed upon them. As even friendly ‘critics’ admit, ‘the Fund’s operations have been opaque and have suffered from lack of transparency. Programmes failed times without number and yet the Fund resisted sharing information about the back-room decision making process and the parameters of its policy-frame’.<sup>86</sup> The Stiglitz critique of the IMF merely confirms the argument of third world countries that the conditionalities have little to do with the welfare of third world peoples and more to do with the concerns of powerful states and the TCC.<sup>87</sup> However, the IMF, under pressure from the growing protest of ‘global civil society’, adopted a new set of guidelines on 22 September 2002. Only time will tell whether the new guidelines on conditionality will make a difference. Nonetheless, it is highly unlikely that any substantial changes will inform the conditionalities prescribed to third world states that approach the Fund for money.

## 3 *Undemocratic UN Security Council*

Finally, there is the legitimacy deficit of decisions taken by the UN Security Council. Apart from a lack of transparency and serious dialogue, there is also the important

<sup>81</sup> A. Kwa, *Power Politics in the WTO* (2002). Ministerial level conferences are mandated to be held every two years by the Agreement establishing the WTO. For the text of the Agreement see *supra* note 17, at 1. The first two ministerial meetings were held in Singapore and Geneva, and the fourth and fifth meetings in Doha and Cancun respectively.

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.*

<sup>85</sup> Gerster ‘Proposals for Voting Reform within the International Monetary Fund’, 27 *Journal of World Trade* (1993), at 121–133.

<sup>86</sup> Khatkhate, ‘Turning the Light Inward: Evaluation of IMF’, *Economic and Political Weekly* (2002) 4628.

<sup>87</sup> Stiglitz, *supra* note 25, at 18.

question of its expansion and continuation of the unequal veto system. Increasingly, the UN is being threatened by the US, either to do its bidding or to be prepared for irrelevance. The war against Iraq only saw those threats reach a new level, with the UN's irrelevance pronounced from rooftops.

## B *IIs Unaccountable*

### 1 *No Institutional Responsibility*

In addition to the fact that crucial IIs or their bodies lack transparency and democratic participation, IIs are also not accountable to the peoples who are *affected* by their policies and decisions.<sup>88</sup> This is unfortunate for 'however effectively citizens may be able to hold their own governments accountable in connection with transnational governmental activities, democratic legitimacy depends on accountability to *those affected* by such activities'.<sup>89</sup> Such accountability is not even theoretically envisaged today. IIs cannot be held responsible in international law for the impact of their policies and decisions on the lives of ordinary peoples. It is said that states establish IIs and therefore remain responsible for their acts of omission and commission. However, as Nye points out:

First, not all the countries that are members of the organizations are democratic. Second, long lines of delegation from multiple governments and lack of transparency often weaken accountability. Third, although the organizations may be agents of states, they often represent only parts of states. Trade ministers attend the meetings of the WTO, finance ministers participate in the meetings of the International Monetary Fund and central bankers meet at the Bank for International Settlements in Basel. To functional outsiders, even in the same government, these institutions look like closed and secretive clubs.<sup>90</sup>

### 2 *Lack of Individual Accountability*

There is, in addition, the problem that IIs are modern bureaucracies that exclude the possibility of ascribing individual responsibility for acts of omission and commission. To illustrate, the UN has in recent times been responsible for inaction in the face of genocide, Rwanda being a clear instance.<sup>91</sup> Yet, given the 'democratization of blame' within modern organizations such as the UN, no individual could be held responsible for inaction. Neither the then UN Secretary-General Boutros Boutros-Ghali, who held

<sup>88</sup> 'As the relationship between international organizations and the people remains indirect, being mediated as it is by the representatives of member states and governments, ordinary people or citizens normally have no access to the international arena, nor consequently any role to play in it'. Heiskanen, 'Introduction', in J.-M. Coicaud and V. Heiskanen (eds), *The Legitimacy of International Organizations* (2001) 6. With reference to the IMF, Stiglitz writes: 'The IMF's actions affect the lives and livelihoods of billions throughout the developing world; yet they have little say in its actions. The workers who are thrown out of jobs as a result of the IMF programmes have no seat at the table; while the bankers, who insist on getting repaid, are well represented through the finance ministers and central bank governors', Stiglitz *supra* note 25, at 225.

<sup>89</sup> Marks, 'Democracy and International Governance', in Coicaud and Heiskanen, *supra* note 88, at 58

<sup>90</sup> Nye, *supra* note 1.

<sup>91</sup> M. Barnett, *Eyewitness to a Genocide: The United Nations and Rwanda* (2002).

back information from the UN Security Council, or other officials in the Department of Peacekeeping Operations (DPKO), who ignored clear warnings that genocide was impending, could be held responsible.<sup>92</sup> Thus, the UN represents, in the telling phrase of Bauman, ‘the rule of nobody’.<sup>93</sup> A myriad small decisions are taken and interpretations advanced for which no one in particular is responsible. What is true of the UN is also true of the two IFIs. Structural adjustment policies can have devastating consequences for the peoples of the country on which they are imposed, yet no one state or individual or set of individuals can be assigned the authorship of these programmes, making IIs the perfect vehicle for exploitation and dominance of subaltern states and peoples.

## ***C Undermining Third World Democracy***

### *1 Establishing Polyarchy*

The relocation of sovereign powers from states to IIs has transformed the meaning of democracy in the Third World. It has emptied it of its content for it has substantially eliminated the possibility of effecting a choice between political parties/actors with different economic and social programmes.<sup>94</sup> Thus, irrespective of which party or coalition is voted into power in general elections today, the economic and social policies that it would pursue would remain the same in their essentials. This *sameness* is a function of international obligations that are enforced by sanctions that hurt. To put it differently, international law and organizations are today institutionalizing polyarchy or formal democracy in third world countries. The possibility of creating a genuinely participatory democracy has been jettisoned by removing the element of choice. Alternative development paths can no longer be voted for. To rephrase this, free and fair elections are the norm and not just governance.

### *2 Deteriorating Condition of the Working Classes*

Most affected by the loss of sovereignty of third world states is the working class(es). Thus, for instance, labour market deregulation is an integral part of structural adjustment programmes prescribed by IFIs. It is recommended on the belief that ‘excessive government intervention in labor markets — through such measures as public sector wage and employment policies, minimum wage fixing, employment security rules — is a serious impediment to adjustment and should therefore be removed or relaxed’.<sup>95</sup> Policies of labour market deregulation have caused serious

<sup>92</sup> *Ibid.*, at 15 and 20.

<sup>93</sup> Z. Bauman, *The Bauman Reader* (2001), at 271.

<sup>94</sup> ‘By ratifying WTO law the current majority in a state puts its decision largely outside the reach of any new majority’. von Bogdandy, ‘Law and Politics in the WTO — Strategies to Cope with a Deficient Relationship’, 5 *Max Planck Yearbook of United Nations Law* (2001) 621.

<sup>95</sup> L. Lean Lim, *More and Better Jobs for Women: An Action Guide* (1999), at 19–20; Leisink, ‘Introduction’ in P. Leisink (ed.), *Globalization and Labour Relations* (1999) 1–26.

deterioration in the living conditions of third world labour.<sup>96</sup> The growing competition among third world countries to bring in foreign investment has further led to an easing of labour standards and a 'race to the bottom'.<sup>97</sup> Women workers are, needless to add, the most affected by this trend.<sup>98</sup> Above all, the popular economic and political struggles of the working class are viewed as 'potential disruptions of a preconceived industrialization strategy ... these struggles are a problem to be managed or suppressed', not human-social phenomena with which there is a need to be critically engaged.<sup>99</sup>

### 3 *Undermining Traditional Forms of Resistance*

The relocation of sovereign space in IIs has also undermined traditional forms of resistance. Among other things, those affected in the Third World are prevented by sheer physical distance from expressing their doubts *directly* to concerned IIs. Take, for example, the simple fact that the WTO has no address in India. Similarly, it is impossible for Indian farmers to protest, like their French and Belgian counterparts, in front of the WTO offices in Geneva. It is perhaps true that an international public sphere is emerging and that IIs 'offer domestic challengers institutional opportunities to transcend their national arena for consultation, collective action, and contestation at an international level'.<sup>100</sup> It may be equally true that electronic resistance may slowly replace more traditional forms of protest. But the effectiveness of either the institutional opportunities or electronic resistance is still very much in doubt, given the extremely limited participation of those directly affected by II activities.

## D *Discrediting Alternatives: Legitimizing Hegemony*

IIs not only enforce unjust rules but also possess enormous resources to legitimate them. IIs are, given their global membership, uniquely placed to suggest that the interests of the emerging TCC represents the general interests of humankind. The ideological functions of IIs assume many forms. An II actively promotes norms of international behaviour which facilitate the realization of its objectives. It also frames issues for collective debate and recommends specific policy responses, including identifying key points for negotiation in order to fill gaps in the normative framework and to adjust to changes in the external environment. IIs also evaluate the policies of member states from the standpoint of their mandate and concerns. But above all, IIs offer an 'intellectual and moral unity' to a particular vision of world order in the matrix of which their mandate and functions acquire meaning.<sup>101</sup> This vision is

<sup>96</sup> Rittich, 'Distributive Justice and the World Bank: The Pursuit of Gender Equity in the Context of Market Reform', in Coicaud and Heiskanen, *supra* note 88, at 456; Lloyd and Weissman (2001), 'Against the Workers: How IMF and World Bank Policies Undermine Labor Power and Rights', 22 *Multinational Monitor* (2001) <http://multinationalmonitor.org/mm2001/01september/sep01corp1.html>.

<sup>97</sup> Oloka-Onyango and Udigama, *supra* note 54, at para. 34.

<sup>98</sup> Rittich, *supra* note 96.

<sup>99</sup> Burkett and Hart-Landsberg, *supra* note 18, at 20 and 30.

<sup>100</sup> Tarrow, 'Transnational Contention', in K. Nash (ed.), *Readings in Contemporary Political Sociology* (2000) 182.

<sup>101</sup> A. Gramsci, *Selections from Prison Notebooks* (1971) 18; Chimni, *supra* note 41, at 370–372.

actively propagated through the dissemination of research efforts. For example, as Miller-Adams notes of the World Bank, its annual *World Development Report* ‘has a print run of 120,000 copies, compared to a standard circulation of about 1,000 to 2,000 for an economics journal or monograph’.<sup>102</sup> In other words, the World Bank actively contributes to the creation of a particular development ideology and the discrediting of alternative frameworks. The neo-liberal orthodoxy that it promotes today is one that furthers the interests of the TCC.

#### 4 Meeting Criticisms

It is time to consider some arguments against the thesis that an imperial global state is in the making. First, it may be contested that the TCC is able to have its interests translated into public international law texts embodied in IIs. The relationship between the TCC, its agencies and state structures is certainly a complex one. It is mediated by a range of factors including the changing nature of global capitalism, the organizational strength of particular interest groups, the wider cultural and international political environment within which interests are lobbied, and the nature of the political party in power in individual states. However, these factors do not introduce an element of debilitating indeterminacy in the scheme of things. Thus, for example, in the context of the intellectual property rights (IPR) regime in the WTO, it has been shown how ‘a small handful of US-based multinational corporation (MNC) executives and their advisors succeeded in amplifying its private interests into public international law’.<sup>103</sup> The chief executive officers of 12 MNCs formed the Intellectual Property Committee (IPC) in early 1986 prior to the launching of the GATT Uruguay Round of Trade Negotiations. Thereafter,

they were active at the domestic level, pushing for changes in US legislation. Transnationally, they mobilized a private sector coalition supportive of their vision of a trade-based IP regime. They actively pressed their case in international organizations prior to and during the Uruguay Round. They visited government and private sector representatives in countries known for lax IP protection and enforcement. They pleaded their case for a tough multilateral IP instrument to government officials in other industrialized states. In short, they used every available access channel to make their views known and champion their cause.<sup>104</sup>

In the end they got what they wanted also because of the changing nature of global capitalism, namely, the competitiveness concerns of the US and the rest of the industrialized world and the general acceptance of the neo-liberal model, factors which also explain the ascendancy of the TCC. The outcome, needless to add, was an IPR regime which was good for transnational capital but bad for the realization of social and economic rights of third world peoples.

Second, it may be argued that it is not merely third world states that have had to

<sup>102</sup> Miller-Adams, *supra* note 6, at 20.

<sup>103</sup> Sell, ‘Structures, Agents and Institutions: Private Corporate Power and the Globalization of Intellectual Property Rights’, in R. A. Higgott, G. R. D. Underhill and A. Bieler (eds), *Non-State Actors and Authority in the Global System* (2000) 91.

<sup>104</sup> *Ibid.*, at 94.

secede sovereignty to IIs, but *all* states. This suggests that IIs are more embodiments of cooperation than instruments of hegemony. This is without doubt true at a formal level. However, in substantial terms the 'erosion' of sovereignty is empowering for powerful states as their loss is more apparent than real: it is the very exercise of their sovereign power that continuously shapes the objectives of IIs and the rules they enforce. In contrast, the erosion of sovereignty is real in the case of third world states and peoples as they are subjected to rules in the formulation of which they have often been excluded, rules which are codified to realize the interests of the powerful states and the TCC.

Third, it is often contended that third world states have voluntarily seceded economic, political and social space to IIs. After all no third world state is compelled to join the WTO or for that matter approach the IFIs with requests for the use of one facility or another. Such an argument overlooks four different points: first, of course, is the fact of a lack of effective participation. Second, it ignores the factor of *structural coercion*.<sup>105</sup> Given the nature and character of the present global economic system, and the unequal consequences that flow from it, a third world state is compelled against its wishes to approach the IFIs. Third, strategies such as the concept of a 'package deal' and the 'single undertaking' (as in the case of the WTO) are used to ensure that third world states cannot opt out of legal obligations that are inimical to interests of their people.<sup>106</sup> Finally, overt and covert political pressures are used to get third world states on board.<sup>107</sup>

Fourth, at a time when US unilateralism is at its height, and its contempt for the UN so obvious, it would appear absurd to suggest that the TCC has unified interests which are being realized through IIs. Two points need to be made here. First, it is important not to be misled by current US policies to conclude that there is no coherent set of interests that can be attributed to the evolving TCC and that therefore IIs cannot possibly be its agents. In the same way as the task of the capitalist state is not to defend the narrow corporate interests of this or that capitalist but rather the general interests of the capitalist class or its dominant fraction, the IIs have as their focus the interests of the solidifying TCC and not the concerns of a particular segment of it, however powerful.<sup>108</sup> In more mainstream language, unilateralism is a result of the belief that short-term gains exceed long-term benefits which IIs offer. But these gains are only in

<sup>105</sup> See Dekker, 'Reconsidering the Legal Relevance of Structural Violence', in E. Denters and N. Schrijver (eds), *Reflections on International Law from the Low Countries* (1998) 324.

<sup>106</sup> The 'single undertaking' formula is used to compel a state to accept a set or bunch of agreements together. It leaves no room for a state to opt out of one agreement or another on the ground that it is not in its national interest. The rationale for such a move is that the final results of negotiations represent a 'package deal' and to allow states to opt out of one agreement or another would be to unravel the entire deal. But as third world countries have learnt through bitter experience the 'package deal' has little in it for them. Thus, third world countries were told that they would benefit greatly from the set of agreements that constituted the Final Act of the Uruguay Round of Trade Negotiations. But their hopes were completely belied. Indeed, the Northern states concede as much by calling the Doha Round the 'development round'. The worry today is that history will repeat itself in the Doha Round.

<sup>107</sup> Kwa, *supra* note 81.

<sup>108</sup> Gramsci, *supra* note 101, at 181.

some contexts (such as use of force). Moreover, the advantages of lower transaction costs, the benefits of collective legitimation, and the uncertainty of the future will tend to prevail in the end. As Nye puts it, ‘unilateral action simply cannot produce the right results on what are inherently multilateral issues’.<sup>109</sup> Second, while tensions and contradictions do exist within the TCC and between the TCC and the ‘nationalist’ capitalist classes, with these contradictions often manifesting themselves in differences between the US and EU or between the capitalist classes within states, these contradictions are unlikely to break the alliance between the US and EU. One must simply recognize that ‘the coordination problem can be satisfactorily resolved only through the existence of a superordinate power, capable of imposing discipline on the system as a whole, in the common interests of all parties’.<sup>110</sup> That hegemon is today the United States. Admittedly, the conflicting space can be used from time to time by progressive social forces and states to advance the cause of democracy and human rights in the world.

Fifth, it may be argued that since ‘global civil society’ has come to play, or at least there is a growing consensus that it should play, a significant role in IIs, it is difficult to subscribe to the view that IIs merely represent the interests of a TCC.<sup>111</sup> Four points may be made by way of response to this argument. First, many powerful NGOs (the ICC, WEF etc) represent the interests of the TCC and not the concerns of marginal and oppressed groups in the world.<sup>112</sup> NGOs can also serve the cause of business interests in the North by giving protectionist policies a progressive face (as in the case of suggested regulation of the environment and labour by WTO). Indeed, thanks to the initiatives of Northern NGOs, the trade-environment linkage has been firmly established within the WTO through the interpretative and diplomatic routes.<sup>113</sup> Second, NGOs essentially represent new social movements (NSM) to the exclusion of

<sup>109</sup> Nye, *supra* note 1.

<sup>110</sup> Anderson, ‘Force and Consent’, 17 *New Left Review* (2002) 10.

<sup>111</sup> There appears to be growing consensus in the establishment Northern academia that NGOs should be assigned a greater role in IIs, in particular in the ever expanding WTO, to come to terms with the ensuing legitimacy crisis. Keohane and Nye write that ‘some form of NGO representation in the institutions involved in multilateral governance, and in particular the WTO, could help to maintain their legitimacy’, cited by Charnovitz, *supra* note 3, at 326. Esty writes that ‘the WTO needs to develop a higher degree of connectedness to the peoples of the world. This kind of relationship can be achieved — in the absence of global politicians — through the non-governmental organizations (NGOs) that represent civil society’. Likewise, Charnovitz calls for mainstreaming NGOs ‘into the regular work sessions of WTO councils, committees, and bodies’ (*ibid.*, at 343). If that is too bold a step ‘then the General Council could start by authorizing NGO input into the WTO subsidiary bodies that study and debate issues, rather than negotiate them’ *viz* the Committee on Trade and Development and the Committee on Trade and Environment (*ibid.*, at 344).

<sup>112</sup> According to a UN Report, ‘as at August 2001, out of the 2,088 non-governmental organizations in consultative status with the Council, about 200 were business, trade, professional or industry-related associations. Most of them had roster status, with a few in general consultative status, such as the International Chamber of Commerce, the International Federation of Business and Professional Women, the International Organisation of Employers and the World Economic Forum’. UNGA. Cooperation between the United Nations and all relevant partners, in particular the private sector: Report of the Secretary-General (2001) UN Doc. A/56/323, para 51.

<sup>113</sup> Chimni, *supra* note 22.

old social movements (OSM) like trade unions, peasant and student movements. Therefore, only a particular kind of counter-hegemonic discourse finds its way into IIs. This discourse is mildly reformist and does not seriously threaten the critical interests of the TCC. Thus, the current enthusiasm for NGOs is perhaps to be explained more by the management of dissent than by the cause of democracy and human rights.<sup>114</sup> Third, the North-South divide is reflected in the world of NGOs as well, with southern NGOs not possessing the resources to intervene effectively in IIs.<sup>115</sup> Fourth, transnational or global NGOs themselves suffer from a democracy deficit as they are not accountable to anyone other than those who loosen their purse strings for them.

Sixth, the increase in regional organizations and associations is said to suggest the creation of 'regional states' rather than a global state. This view is based on the understanding that regional organizations are established in opposition to global institutions. But as one writer points out, 'globalization and regionalization are complementary processes . . . regions are important sites where the contending forces of global integration and local autonomy converge. Therefore, despite their antagonistic posturing and combative rhetoric, different regionalizations are essentially similar processes of integration and collaboration'.<sup>116</sup> Regional institutions are, in other words, not opposed to IIs, in particular IEOs, but rather complement them. They represent intermediary processes and structures that will eventually coalesce in IIs. This becomes evident from the fact that powerful regional organizations like the EU are today coordinating their activities with key IIs. Thus, for instance,

the EU's approach to international economics has become largely consistent with the mainstream policies of the Bretton Woods institutions. Indeed, making EU policy consistent with IMF and World Bank policies has become an additional aspect of coordination. Since 1996 the [European] Commission and the World Bank have adopted a series of measures towards a joint approach to Structural Adjustment Programmes.<sup>117</sup>

The coincidence of policies between IFIs and the EU is not confined merely to economic conditionalities but also extends to political conditionalities. The EU is also increasingly concerned with issues of democracy, human rights and rule of law in the third world and deploys sanctions to achieve results.<sup>118</sup>

Seventh, it may be argued that the suggestion that a TCC today has a major influence over the functioning of IIs overlooks the fact that third world states are also beneficiaries of proliferating IIs and their expanded ambits. As has been earlier conceded, to say that IIs do yield certain positive outcomes to third world states and peoples is in many respects to make an unexceptional statement. IIs not only at times

<sup>114</sup> While the NGOs are seen to 'chant nonsense slogans in the streets' their inclusion, it is believed, can help legitimize IEO activity. Charnovitz, *supra* note 3, at 353. See also Chinkin, 'Human Rights and the Politics of Representation: Is There a Role for International Law', in M. Byers (ed.), *The Role of Law in International Politics* (2000), at 140–145.

<sup>115</sup> Krut, *supra* note 4, at 13–14; Chinkin, *supra* note 114, at 144.

<sup>116</sup> Ching, 'Globalizing the Regional, Regionalizing the Global: Mass Culture and Asianism in the Age of Late Capital', in A. Appadorai (ed.), *Globalization* (2001) 292.

<sup>117</sup> M. Holland, *The European Union and the Third World* (2002), at 127.

<sup>118</sup> *Ibid.*, at Chs 4 and 7.

act as a shield for third world states against big power unilateralism, but also allow a greater role to be played by these countries in different sectors of international life than they would be able to play through bilateral channels. Furthermore, IIs such as IHROs can be used as instruments by the emerging global civil society to advance the cause of the oppressed and marginal groups in these countries. Yet, it is also undeniable that in the very period that IIs have proliferated and strengthened, the North-South divide has increased and so have internal conflicts in the South. This is in our view the result of an unjust globalization process that *inter alia* has resulted in the erosion of the autonomy of third world states in taking crucial decisions of national economic and social life. To put it differently, the character of IIs has undergone a crucial transformation in the last two decades, giving rise to a global state, to the disadvantage of third world peoples and states. In this context it may be recalled once again that several IIs such as UNCTAD and UNESCO have been repositioned and normalized.

Eighth, it may seem premature to contend that a nascent global state has emerged. In response one may suggest that our imagination of the shape a future global state may assume is often captive to the idea of a *centralized and integrated* state structure having a monopoly over the legitimate use of force. In contrast, the future global state will, at least for a long time to come, have a *fragmented structure*, with a group of states, i.e., the Western power bloc, dominating it and having a monopoly over the global use of force. This is because in the long period of transition that may be foreseen the global state *will coexist with sovereign states*. But non-Western sovereign states, along with sub-national authorities, will slowly turn into administrative units that render service to the global state. A fragmented structure also *does not mean the absence of coordination or coherence between IIs* in the policies pursued. There is already greater coordination between IIs, in particular IIEs. Thus, since the early 1980s the World Bank and the IMF, despite their dissimilar structures, 'have come to imitate each other in the policy sphere'.<sup>119</sup> The WTO is explicitly mandated to coordinate its policies and activities with the IMF and World Bank.<sup>120</sup> Even in particular sectors like the environment the Doha Round seeks to formalize the relationship between the WTO and the secretariats of multilateral environment agreements. These examples could be multiplied. Thus to quote a World Bank text,

today, there is *consensus between the UN, the World Bank and its major development partners* regarding the links between social development and a sound macroeconomic and structural policy environment and, an agreement on the need for close cooperation and partnership. This

<sup>119</sup> Miller-Adams, *supra* note 6, at 21.

<sup>120</sup> The functions of the WTO are spelled out in Article III of the Agreement establishing the World Trade Organization. Its paragraph 5 reads: 'With a view to achieving greater coherence in global economic policy-making, the WTO shall cooperate, as appropriate, with the International Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies.'

approach has been endorsed by the heads of all the UN Funds and Programs. The UN Development Group leads on this work, at the request of the UN Deputy Secretary General.<sup>121</sup>

Surely, there are those who would desire a more hierarchical and centralized global state. In a fractured world it is difficult to envisage the realization of this except by the complete subjection of third world peoples and states. This is unlikely as resistance grows to the unjust globalization process. By way of alternative, imperialism is in the process of constructing a *fractional* global state.

## 5 Democratizing the Global State: The Way Forward

### *A Four Waves of II Renewal in History: A Sense of déjà vu?*

There have been four waves of 'renewal' in the history of IIs in the 20th century.<sup>122</sup> These renewals for peace and progress came after the First World War (the founding of the League of Nations), the Second World War (the establishment of the United Nations), the Vietnam war and the decolonization process (as reflected in the new international economic order programme, the Law of the Sea Convention, and so on), and the end of the Cold War (emergence of the NGO movement, establishment of the WTO and a range of social IIs).<sup>123</sup> The renewalists in each generation 'understood themselves as mavericks, . . . representing dissident trends . . . bringing to the field the perspective of the marginal, hitherto unheard voices which promise to confound traditional categories, shake things up and validate the renewal effort'.<sup>124</sup> But an 'uncanny continuity' characterized these waves both in terms of criticism and proposals for reform; the history of each renewal could be written as a progress narrative 'away from positivism, formalism and a focus on States'.<sup>125</sup> This somewhat disconcerting conclusion coincides with the perception of third world peoples that IIs have never *seriously* addressed their concerns. In the circumstances, third world critics are confronted with a choice: they may accept the powerful *déjà vu* insight and shy away from another effort of renewal/reform or, alternatively, they may accept the view that renewalists should join local redistributive struggles rather than proposing some grand game plan to initiate global change through IIs by transforming their character.<sup>126</sup>

It is important to understand in the context of these options the reasons for the absence of serious change in the fate of third world peoples, despite successive generations of cooperation initiated by IIs. To third world peoples the sense of *déjà vu* is

<sup>121</sup> World Bank, *Comprehensive Development Framework: Questions and Answers* (2002) [http://www.worldbank.org/cdf/cdf-faq.htm#\\_Toc507393745](http://www.worldbank.org/cdf/cdf-faq.htm#_Toc507393745) (emphasis added).

<sup>122</sup> Kennedy, 'A New World Order: Yesterday, Today, and Tomorrow', 4 *Transnational Law and Contemporary Problems* (1999) 356.

<sup>123</sup> *Ibid.*

<sup>124</sup> *Ibid.*, at 357.

<sup>125</sup> *Ibid.*, at 360.

<sup>126</sup> *Ibid.*, at 375.

a function of the continuous shadow of imperialism falling over IIs. If the story of international law and institutions is read as an integral and inextricable part of the history of colonialism and imperialism it is perhaps easy to understand why the renewal efforts have had a similar structure. However, it is necessary to recognize the *different historical and political contexts* in which each wave of renewal has occurred and their *differential social impact*. Otherwise, it would be to privilege form over content and conflate diverse historical and political conjunctures. It does not require much imagination and argumentation to show how the UN system, despite all its faults, represented progress over the League of Nations. On the other hand, IIs have undergone a *quantitative and qualitative* transformation in the past two decades. The essence of these changes has been the use of IIs to realize the interests of a TCC. IIs have come to play a central, though retrograde, role so far as third world states and peoples are concerned. Indeed, a nascent global state has emerged under the influence of the TCC and powerful Northern states. Under these circumstances, to suggest that renewalists are condemned to the role of Sisyphus is perhaps to disarm third world peoples against the most significant contemporary embodiments of imperialist policies and strategies.

### **B *The Possibility of a ‘Universal and Homogenous State’***

However, what kind of reforms can possibly be recommended? To begin with, there is perhaps a need to consider transnational models as the basis for reconstructing the emerging global state. Given the domination of the West today, a proposal that deserves some attention is that of a future ‘universal and a homogenous state’ advanced by the French-Russian Hegelian philosopher and diplomat Alexandre Kojève (1902–1968).<sup>127</sup> It will be ‘universal because it admits of no further expansion, and homogenous since it is exempt from contradiction’.<sup>128</sup> The ‘universal and homogenous state’ is to be achieved, according to two of his recent interpreters, ‘not through tyranny or empire, but through legal integration between states that results in a kind of supranational constitutional order, informed and unified by a single, definitive concept of justice’.<sup>129</sup> Such a state would, they add, tolerate diversity, i.e., there would be no ‘tyrannical suppression of real, nonjuridical differences (climate, language, and so on)’.<sup>130</sup>

While the Kojève vision is a powerful one, it does have deeply troubling aspects. Its central quality is, as Anderson has pointed out, ‘its formalism . . . Universality and homogeneity — the all and the same — are categories sufficiently wide to accommo

<sup>127</sup> A. Kojève, *Outline of a Phenomenology of Right* (2000). We cannot in the space of one paragraph do justice to the complexity of the Kojève vision. For an insightful summary of the vision and argument see Frost and Howse, ‘Introductory Essay: The Plausibility of the Universal and Homogenous State’, in *ibid.*, at 1–29.

<sup>128</sup> P. Anderson, *A Zone of Engagement* (1992), at 317. In ‘The Ends of History’, the last essay in the book, Anderson offers a brilliant review of the ‘complicated pedigree’ of the ‘idea of closure of history’. He deals with Kojève, at 309–331.

<sup>129</sup> Frost and Howse, *supra* note 127, at 3.

<sup>130</sup> *Ibid.*, at 20.

date an ample spectrum of contents'.<sup>131</sup> This explains why there was 'no conceptual barrier to stop Kojève from switching the end of his story from socialism to capitalism without major adjustment', and to go on to inspire Fukuyama's end of history thesis.<sup>132</sup> Kojève thus moved away from the idea of socialism to play an active role as a French diplomat in building the European Economic Community. What is problematic, however, is not the personal switch from the goal of socialism to building transnational integrated capitalism, but the emptiness of the idea of 'universal and homogenous state'. There is a danger that it can be appropriated and mobilized by the TCC and powerful Northern states for the ends of global domination. Thus, while a great degree of global legal integration is taking place in the era of globalization, it is based not on principles of justice but also on depriving a vast majority of humankind of the equality of autonomy to shape its future. Indeed, it is arguable that global legal integration is unified by a definitive idea of injustice. Kojève would perhaps ask us to focus on the EU, with its more egalitarian legal integration. However, the EU can hardly serve as the model for a future 'universal and homogenous state'. First, what we are witnessing therein is not the expansion of social democracy (if that were to be an important criterion, as it should be) but its retreat. Second, to hold the EU as a model ignores its *external* projection of interests, in particular its dealings with third world states and peoples.<sup>133</sup> These interests manifest the vision of the TCC and inform the nascent imperial global state. In summary, it is difficult to imagine a democratic universal and homogenous state emerging in extant global conditions. Yet the merit of Kojève's imagination is that it shows the potential basis on which a democratic global state can be created once the material conditions for it have matured, as they have today, even if for the moment these conditions translate into injustice for much of the world. It is the ground for contending with Habermas that there is a need to focus attention on '*a world domestic policy that is transnational in nature*'.<sup>134</sup> The potential will of course have to be translated into a set of strategies that help shape and actualize the 'universal and homogenous state'.<sup>135</sup>

### C Statist Reforms are Necessary in the Short and Medium Term

Along with non-statist transnational models there is the need to consider and recommend more statist reforms. First, given the current state of organized global civil society dissent, and the problems that mark the world of NGOs, it is not possible to envisage radical reform in the world of IIs. Second, the neo-colonial state, despite its

<sup>131</sup> Anderson, *supra* note 128, at 323.

<sup>132</sup> *Ibid.* On Fukuyama's particular appropriation of Kojève see Anderson, *ibid.*, at 332; and Frost and Howse, *supra* note 127, at 2. For critical reflections on the Fukuyama thesis and international law see Marks, 'The End of History? Reflections on Some International Legal Theses', 3 *EJIL* (1997) 449.

<sup>133</sup> Nicolaides and Howse, "'This is my Eutopia ...': Narratives as Power", 40 *Journal of Common Market Studies* (2002) 773.

<sup>134</sup> Habermas, 'Beyond the Nation-state? On Some Consequences of Economic Globalization', in E. O. Eriksen and J. E. Fossum (eds), *Democracy in the European Union: Integration through Deliberation* (2000) 37 (emphasis added).

<sup>135</sup> For an example see *infra* the section on 'Need for a Complex and New Internationalism'.

collaboration with the TCC, is the subject of complex and contradictory pressures. The resistance of ordinary people compel it to oppose hegemonic states from time to time. It would therefore be a mistake to completely disregard its potential role in bringing about reforms in IIs. Third, in a paradoxical way the path to a democratic global state in the future lies through regaining autonomy for states so that it opens spaces for renegotiating its architecture. To put it differently, in advancing reform proposals there is a need to avoid a debilitating binary opposition between ‘globalization from above’ and ‘globalization from below’.<sup>136</sup> The need of the hour is a *complex internationalism* that allows the global labour and social movements to use all possible ways of bringing about reform in IIs. The essence of statist changes should be: ‘greater clarity about democracy, a richer understanding of accountability and a willingness to experiment’.<sup>137</sup> But what concrete recommendations can be arrived at on the basis of this formulation? These could include reforming the substantive content of obligations in different subject areas and democratizing the decision-making process in IIs, to more innovative and creative changes proposed in the spirit of ‘willingness to experiment’. Thus, for example, Falk and Strauss propose a Global Peoples Assembly (GPA).<sup>138</sup> The end aim of all these recommendations is the creation of a democratic global state, the key words being autonomy, deliberative democracy, decentralization, transparency, accountability and responsibility. Some of these proposals are elaborated below. These are neither meant to be exhaustive nor detailed.

### 1 *Change the Rules of the Game*

Current II policies and processes are justified on the assumption that what is good for the TCC is also good for third world peoples. The posited identity of interests between the TCC and third world peoples is surely illegitimate given the growing North-South divide. But the underlying criteria and analysis informing this view needs to be established on a firm basis and the results widely disseminated. In other words, there is a need to unmask the pretence of IIs being ‘neutral’ actors in hot pursuit of the common good, as opposed to being organizations that help realize sectoral interests. *The legitimacy or justness of rules and policies of IIs should, in our view, essentially be judged by the impact they have on the following groups of people in the Third World: (i) the working class(es); (ii) the landless and poor peasants; (iii) women; and (iv) other marginal sections.* Where the justness of the rules and policies is in question alternative formulations need to be advanced. For *the key to II reform lies in the change in rules and policies over which IIs preside.* The direction and shape that the globalization process has assumed is after all *not a spontaneous process.* It has been given shape by a global ruling elite through the adoption of suitable economic, social and political (including norms relating to the use of force) international laws. Their content would need to be substantially transformed if the fate of the peoples of the Third World is to change. The

<sup>136</sup> R. Munck, *Globalization and Labor: The New ‘Great Transformation’* (2002), at 20.

<sup>137</sup> Nye, *supra* note 1.

<sup>138</sup> But Nye who talks of the ‘willingness to experiment’ disagrees, *ibid.*

basic idea would be to allow national institutions autonomy and space to make the economy work for the vast majority of its peoples.<sup>139</sup>

## 2 Institutionalize Some Form of Global Citizenship

With regard to institutional changes, there is, first, an urgent need for 'the extension of democracy beyond the nation-state to bring to account those global and transnational forces which presently escape effective democratic control'.<sup>140</sup> In this context some form of *global citizenship* has to be created in response to the emerging global state.<sup>141</sup> Serious consideration must therefore be given to enshrining some form of direct democracy in IIs. Falk and Strauss have thus called for the creation of an elected global parliamentary assembly (GPA), modelled on the European Parliament.<sup>142</sup> According to them, 'the eventual goal is a world body with limited but important legislative powers that would enfranchise adult citizens everywhere'.<sup>143</sup> This objective could be achieved incrementally. For instance, 'even 20 to 30 pioneering countries that are geographically and economically diverse enough to be credible founders could launch the GPA. Its powers could initially be merely advisory, to avoid intimidating national leaders'.<sup>144</sup> The idea would be to create an international institution which would have 'a basis of authority separate from that which has been derived from the consent of states'.<sup>145</sup> Of course, other formulations and variations to advance the cause of direct democracy may be envisaged.

## 3 Embed Democratic Negotiating and Decision-making Processes

Second, there is a need to establish international negotiating and decision-making processes that allow the meaningful participation of third world states. It is absolutely imperative there be a democratization of decision-making within IIs such as the WTO. At present a whole array of undemocratic processes and measures are being used to get third world countries to sign on the dotted line.<sup>146</sup> A range of practical suggestions have been made in this regard including the rejection of the 'green room' negotiations, keeping of scrupulous records of meetings and consultations, requiring the WTO secretariat to remain neutral, adopting transparent and democratic procedures for the appointment of chairs of different negotiating groups, calling upon the quad states (US, EU, Japan and Canada) not to use bilateral pressures and coercion against third world negotiators and governments, and so on.<sup>147</sup>

<sup>139</sup> Rodrik, 'Feasible Globalizations' (2002) [ksghome.harvard.edu/~drodrik.academic.ksg/Feasible.pdf](http://ksghome.harvard.edu/~drodrik.academic.ksg/Feasible.pdf).

<sup>140</sup> D. Held, *Democracy and the Global Order: From the Modern State to Global Governance* (1995) 232.

<sup>141</sup> For a critique of the sceptical arguments relating to transnational democracy see Weinstock, 'Prospects for Transnational Citizenship and Democracy', 15 *Ethics and International Affairs* (2001) 53.

<sup>142</sup> Falk and Strauss, 'Not a Parliament of Dreams', *World Link* (2002) [http://www.worldlink.co.uk/stories/storyReader\\$1152](http://www.worldlink.co.uk/stories/storyReader$1152); Falk and Strauss, 'Globalization Needs a Dose of Democracy', *International Herald Tribune*, 8 Oct. 1999.

<sup>143</sup> Falk and Strauss, 'Not a Parliament', *supra* note 142.

<sup>144</sup> *Ibid.*

<sup>145</sup> Strauss, 'Overcoming the Dysfunction of the Bifurcated Global System: The Promise of a Peoples Assembly', in Falk *et al.*, *supra* note 35, at 92.

<sup>146</sup> Kwa, *supra* note 81.

<sup>147</sup> *Ibid.*

Likewise, there is an urgent need to democratize the weighted decision-making process in the IMF and the World Bank for they have come to exercise unprecedented influence on the lives of ordinary people in the third world.<sup>148</sup> It also needs to be emphasized that the money dispensed by the IMF 'comes ultimately from the workers and other taxpayers in the developing countries, for the IMF almost always gets repaid'.<sup>149</sup> The need to democratize the voting structure calls for imaginative solutions that temper the desire for change with a strong dose of realism.<sup>150</sup> Since the one state-one vote formula is unacceptable to creditor states, other less radical formulas need to be explored. There is, in addition, scope for improvement in undertaking reforms that further the goals of transparency and accountability.<sup>151</sup>

Finally, there is the accepted need to democratize the UN Security Council by increasing the number of permanent members and the transparency in decision-making. Perhaps the time has also come to recognize the need for judicial review of Security Council actions by the International Court of Justice, the principal judicial organ of the UN, to ensure that it acts in conformity with the UN Charter. The United Nations Millennium Declaration resolved 'to intensify our efforts to achieve a comprehensive reform of the Security Council in all its aspects'. This resolve needs to be given concrete shape.

#### *4 Hold IIs, and Their Officials, Responsible in International Law*

Third, the ways and means need to be evolved to hold IIs accountable in international law for the wrongful consequences that ensue from their acts of omission and commission. There is in this regard a need to develop the law of international responsibility of IIs. Surely a correlative of IIs possessing legal personality and rights is *responsibility*. Indeed, responsibility is 'a general principle of international law' concerned with 'the incidence and consequences of illegal acts', in particular the payment of compensation for losses caused.<sup>152</sup> This understanding awaits elaboration. According to one commentator, 'the precise nature of responsibility will depend upon the circumstances of the case and, no doubt, analogies drawn from the law of state responsibility with regard to the conditions under which responsibility will be imposed'.<sup>153</sup> What these circumstances could be and which analogies are relevant requires further examination. Above all, there is a need to develop the law with regard to individual responsibility.<sup>154</sup> This would make individuals acting for IIs accountable

<sup>148</sup> Stiglitz, *supra* note 25, at 225.

<sup>149</sup> *Ibid.*, at 226.

<sup>150</sup> Thus, for example, instead of a one state-one vote formula the third world countries as a whole could be assigned 50 per cent of the votes. See generally Gerster, *supra* note 85, at 121.

<sup>151</sup> Stiglitz, *supra* note 25, at 225 *et seq.*

<sup>152</sup> I. Brownlie, *Principles of Public International Law* (4th ed., 1990), at 701 and 433.

<sup>153</sup> M. N. Shaw, *International Law* (4th ed., 1997), at 919.

<sup>154</sup> Thus, for example, Barnett holds the then UN Secretary-General Boutros Boutros-Ghali responsible in many ways for the inaction of the Organization in the face of Rwandan genocide. According to Barnett, 'passionate pleas from Boutros-Ghali' could have 'overcome the objections' to intervention by the powerful. But 'no such words were ever delivered', Barnett, *supra* note 91, at 15. Indeed, it would appear

to those affected by their acts of omission and commission. It is time that the 'rule of nobody' ends.

### 5 *Get IHROs to Take Up the Cause of the Marginal and Oppressed*

Fourth, IHROs must be called upon to insistently raise the concerns of the marginal and oppressed peoples of the Third (as also in the First) World. They must be compelled to consistently and continuously evaluate international economic laws as well as the policies and actions of IIs, such as the WTO, IMF and World Bank, in order to assess their conformity with international human rights instruments, in particular economic, social and cultural rights. Some hesitant steps have been taken in this direction. Thus, for example, the United Nations Commission on Human Rights (UNCHR) adopted a resolution in 2000 reminding 'all Governments of the primacy of human rights obligations over economic policies and agreements'.<sup>155</sup> The resolution was passed to express concern with respect to the serious implications of IPRs for the economic and social rights of individuals. The UNCHR requested 'inter-governmental organizations to integrate into their policies, practices and operations, provisions, in accordance with international human rights obligations and principles, that protect the social function of intellectual property'. It then went on to request 'the World Trade Organization, in general, and the Council on TRIPS during its ongoing review of the TRIPS Agreement, in particular, to take into account the existing State obligations under international human rights instruments'.<sup>156</sup> This resolution strengthened the hands of those seeking changes in the TRIPS text and led to the adoption of the Ministerial Declaration on the TRIPS Agreement and Public Health at Doha in March 2002.<sup>157</sup> The authority, mandate and resources of IHROs concerned with economic and social rights need to be strengthened so that they can intervene more effectively in realizing these rights of individuals.

### 6 *Make Transnational Corporations Accountable*

Fifth, steps should be taken to make the transnational corporate actor accountable to the people of host states. This is made necessary by the growing influence of transnational corporations (TNC) on, and in, IIs. Among other things, 'the transnational corporations and offshore fund managers are playing a larger-than-ever role in establishing rules and standards. Their practices often create de facto

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that Boutros-Ghali held back crucial information from the Security Council: 'Boutros-Ghali possessed information that illuminated the nature of crimes. He had an obligation to transmit that information to the Security Council but failed to do so' (*ibid.*, at 20). In the circumstances should he not be held responsible in law for his actions?

<sup>155</sup> UNCHR, Sub-Commission on the Promotion and Protection of Human Rights, 'The realization of Economic, Social and Cultural Rights: Intellectual Property Rights and Human Rights', UN Doc. E/CN.4/Sub.2/2000/7.

<sup>156</sup> *Ibid.*

<sup>157</sup> For the text of the Declaration on the TRIPS Agreement and Public Health see 41 *International Legal Materials* (2002) 755. On its legal implications see Gathii, 'The Legal Status of the Doha Declaration on TRIPS and Public Health under the Vienna Convention on the Law of Treaties', 15 *Harvard Journal of Law and Technology* (2002) 292.

governance'.<sup>158</sup> It is therefore to be hoped that by sensitizing TNCs to the concerns of third world peoples, in particular the working classes, and making them more accountable, it will be easier to bring about changes in the world of international law and institutions. The steps to regulate TNCs could include: the adoption of a binding code of conduct on TNCs; the careful monitoring of voluntary codes of conduct adopted by TNCs; the use of shareholders' rights to draw attention to the needs of equity and justice in TNC operations; the imaginative use of domestic legal systems to expose the oppressive practices of TNCs; the assertion of consumer sovereignty which manifests itself in the boycotting of goods of those TNCs that do not abide by minimum human rights standards; and the critique of bodies like the ICC for pursuing the interests of TNCs to the exclusion of all others.<sup>159</sup>

### ***D Need for a Complex and New Internationalism***

The suggested changes cannot be brought about without a *powerful global social movement* that calls for the requisite changes in the rules and structure of IIs. Only the determined struggle of the oppressed and marginal sections of the third world in alliance with their counterparts in the North can get powerful states and TCC to respond to their concerns. In the past decade, NGOs have often successfully contested the policies of powerful states and IIs and have furthered the cause of democracy and human rights in the world.<sup>160</sup> Yet their potential is considerably overstated as they lack the resources and political roots to organize and mobilize the vast majority of working people, especially in the Third World. In fact, as much as northern NGOs encourage clientelism the 'transnational civil society is antithetical to notions of grass-roots innovation and emancipation'.<sup>161</sup> On the other hand, the pressures of globalization and the regime of flexible labour practices have somewhat weakened trade unions and leftist parties, even as the global working class doubled between 1975 and 2000.<sup>162</sup> Therefore, there is an urgent need for leftist parties and the trade union movement to strike alliances with new social movements, consumer movements, community initiatives and even spontaneous resistance. For those placed outside 'official' dissent circles also need to be given a voice.<sup>163</sup> Unless dissent itself is de-bureaucratized and made inclusive it is unlikely to generate sufficient response

<sup>158</sup> Nye, *supra* note 1.

<sup>159</sup> J. Madeley, *Big Business Poor Peoples: The Impact of Transnational Corporations on the World's Poor* (1999), at 168–180. For a review of NGO strategies in the field see Winston, 'NGO Strategies for Promoting Corporate Social Responsibility', 16 *Ethics and International Affairs* (2002) 71; Sethi, *supra* note 54, at 105–106.

<sup>160</sup> For a brief review of NGO initiatives in different social sectors and their strategies see Khan, 'The Anti-globalization Protests: Side-show of Global Governance, or Law-making on the Streets?', 61 *Heidelberg Journal of International Law* (2001) 323.

<sup>161</sup> Cheru, 'The Silent revolution and the Weapons of the Weak: Transformation and Innovation from Below', in S. Gill and J. H. Mittelman (eds), *Innovation and Transformation in International Studies* (1997) 167.

<sup>162</sup> Munck, *supra* note 136, at 8.

<sup>163</sup> Nayar, 'Orders of Inhumanity', in Falk *et al.*, *supra* note 35, at 124–125.

from the ordinary people. It is therefore important to ensure that spaces of dissent are not captured and incarcerated by sectarian social forces. The alliances would of course assume complex and contradictory shapes in the national, regional and international contexts.<sup>164</sup> But that is an inescapable reality.

The global dissent movement should, it is perhaps worth emphasizing, strive to establish networks at the level of sub-national authorities and in cities in order to create counter-hegemonic values and spaces. It is in cities that the TCC culture is produced and reproduced and therefore the movement seeking just globalization needs to pay attention to creating critical consciousness in the people who inhabit them. Imaginative use of literature, theatre and the arts can go a considerable way towards injecting critical social awareness among city authorities and dwellers. This could make disaggregated state authorities question the process and results of transgovernmentalism. This process of challenging the current transgovernmental order can become a building block in the Kojève project. In other words, what is called for is a critical transgovernmental order as opposed to a hegemonic transgovernmental order.

In conclusion, it only remains to be added that adherence to *the practice of non-violence is essential* to ensure that the global social movement is not subverted from within and outside. More significantly, non-violence, as Mahatma Gandhi taught us, is the only way to create and sustain a just world order.

<sup>164</sup> *Ibid.*, at 170 *et seq.*