



**Law, Social Justice & Global Development**  
(An Electronic Law Journal)

**Confronting Trade-Related Human Rights in a GATS-  
Compatible World**

Jane Kelsey,  
Professor of Law,  
Faculty of Law,  
University of Auckland

[J.kelsey@auckland.ac.nz](mailto:J.kelsey@auckland.ac.nz)

This is a **refereed article** published on: 6 December 2007

---

**Citation:** Kelsey, J, 'Confronting Trade-Related Human Rights in a GATS-Compatible World', 2007  
(1) Law, Social Justice & Global Development Journal (LGD).  
<[http://www.go.warwick.ac.uk/elj/lgd/2007\\_1/kelsey](http://www.go.warwick.ac.uk/elj/lgd/2007_1/kelsey)>

---

## **Abstract**

Focusing on the ‘services economy’ and the General Agreement on Trade in Services (GATS) this article analyses the ideological, institutional, policy and operational layers of ‘coherence’ that advance the hegemonic power of the triumvirate of the Bretton Woods institutions and the WTO; revealing their distinct, yet synergistic, functions. Although these diverse levels rarely involve active collaboration, the cumulative effect is a seemingly impregnable edifice. The author contends that despite this ‘impregnable’ appearance, they have failed to drown out the dissident voices of the disempowered and dispossessed who demand alternatives to neoliberalism or to subdue those international organisations that still insist that services are inescapably social. This persistence suggests that the ‘trade-related’ human rights and development paradigm is more fragile than is often recognised. That, in turn, poses a challenge to articulate counter-hegemonic concepts of human rights and development in ways that can articulate an ideological platform for a post-neoliberal paradigm.

## **Keywords:**

General Agreement on Trade in Services (GATS), Trade-Related Human Rights, Bretton Woods Institutions, World Trade Organisation, Millennium Development Goals, Neoliberalism

## 1. Introduction

With remarkable prescience, Upendra Baxi observed in 1994 the ‘emergence of a market-friendly (or specifically trade-related) human rights paradigm’ that displaced ‘human’ human rights (Baxi, U, 1994). In a ‘post-Dunkel’ world,<sup>1</sup> states were becoming more the enablers of capital than the representatives of their citizens. Transnational corporations were the new recipients of internationally guaranteed and enforceable rights, with no corresponding legal responsibilities.

Paradigm shifts as radical as this do not just happen. They are impelled by material forces, in this case the reorganisation of capital on a transnational scale from the 1960s, and legitimised by a new hegemony, being the ideology and policy prescription of neoliberalism. By the time Baxi made this observation in the mid-1990s, the ‘services economy’ constituted the major platform for this rapid transformation in the capitalist economy. Services ranging from the financial, telecommunications and transport infrastructure to education, health and water promised vast and expanding profits for transnational corporations. To maximise that potential, the entire spectrum of services had to be stripped of their social essence and reduced to commodities that could be freely traded within globalising markets. States had to be encouraged through binding international treaties to exercise their regulatory powers in the economic interests of transnational service suppliers.

Those same services are the glue that binds our multiplicity of daily activities into a social existence and provide many of the necessities of life. The quality, affordability and accessibility of services like water, education, healthcare, electricity and communications hold the key to social wellbeing, cohesion and stability – and often the sustainability of life itself. They are at the heart of states’ international human rights obligations, imposing priorities, processes and outcomes that are antithetical to trade in services agreements. Indeed, intervention in pursuit of those obligations is conceived as a potential barrier to trade.

The paradigm shift from a social to a market conception of services was driven by the ‘hierarchy of inter-state power with the USA at its apex, along with its G7 partners’ who oversaw ‘an increasingly global system of political economy that serves to redistribute power and intensify inequality’ (Gill, S, 2003, p 189). This transition was achieved at the national level through neoliberal policies of liberalization, deregulation, corporatisation, privatisation and public/private partnerships. The primary catalysts were the International Monetary Fund (IMF) and World Bank in the global South and the Organisation for Economic Cooperation and Development (OECD), which acted as the policy incubator for Northern countries.

The role of enabler, catalyst and enforcer of open international services markets fell to the General Agreement on Trade in Services (GATS), a multilateral regime within the World Trade Organisation (WTO) that binds all WTO members. The GATS was essentially the creation of, and for, the powerful US corporate services lobby under the patronage of US trade officials (Kelsey, J, forthcoming). More than any other WTO ‘trade’ agreement it reaches deep behind the border, guaranteeing rights of entry and commercial operation to foreign services firms and imposing market disciplines on the policy and regulatory choices of national governments. The GATS, in turn, sets the ideological parameters and minimum legal content for a plethora of

bilateral and regional agreements that have increasingly superseded the multilateral regime in recent years.

The triumvirate of the Bretton Woods institutions and the WTO effectively trumps any other international organisation that champions a competing human rights and development paradigm. Their hegemonic power is advanced under the rubric of 'coherence'. This article analyses the ideological, institutional, policy and operational layers of 'coherence' to reveal their distinct, yet synergistic, functions. Although these diverse levels rarely involve active collaboration, the cumulative effect is a seemingly impregnable edifice. Despite this appearance, they have failed to drown out the dissident voices of the disempowered and dispossessed who demand alternatives to neoliberalism or to subdue those international organisations that still insist that services are inescapably social. This persistence suggests that the 'trade-related' human rights and development paradigm is more fragile than is often recognised. That, in turn, poses a challenge to articulate counter-hegemonic concepts of human rights and development in ways that can articulate an ideological platform for a post-neoliberal paradigm.

## 2. Ideological Coherence

The Post World War Two era of international law was dominated by the human rights and development agenda. Anghie persuasively argues that dominant Western values and concepts of individual rights and sovereign statehood were challenged, but not rejected, by vocal Southern governments and activists (Anghie, A, 2005). The resulting international legal instruments were highly imperfect and provided sites for ongoing contest over gender, culture and indigeneity, religion, collectivity versus individualism, decolonisation, self-determination and more. Despite these tensions, there was a common basic premise that the individual or collective possessor of rights was a social being and that states had a positive duty to regulate and actively intervene to achieve socially infused development objectives. The resulting international obligations that were imposed on states were often incorporated into domestic constitutions, bills of rights and other legal norms. Services were at the core of these obligations, variously described in terms of human rights, public goods or universal service obligations.

The trade in services regime conceives of those same services solely as immaterial commodities that are exchanged between buyers and sellers within increasingly borderless markets. Binding trade in services agreements constitute what Bronwyn Morgan calls 'meta-regulation': by regulating the process of regulation itself, they aim to institutionalize the presumption of pro-market governance within every-day routines of governmental policymaking (Morgan, B, 2003). Their 'constitution-like' characteristics pre-commit governments to maintain a regime of embedded neoliberalism, thereby depriving themselves and their successors of the autonomy to explore alternative ways of regulating their countries' services (Schneiderman, D, 2000). From a neoliberal perspective, governments emulate Ulysses by tying 'themselves to the mast to escape the siren-like calls of pressure groups' (Hoekman, B, and Kostecki, M, 1995, p 25). Development becomes synonymous with facilitating the participation of poorer countries within this global services market.

When the social and market prescriptions for norms, instruments and institutional mandates conflict in this way, they must either co-exist in an uncomfortable disjuncture or be reconciled by subordinating one to another. From the mid-1990s the human rights and development discourse has been progressively co-opted within the 'trade-related' paradigm. The former has not disappeared. Rather human rights has been reinvented through the medium of the Millennium Development Goals (MDGs) and the claims of the IMF and World Bank to advance 'pro-poor' policies through their Poverty Reduction Strategies, and are embedded within the trade-related notion of 'development'.

The primacy of 'trade-related' over 'human' human rights required legitimation. Three months after the WTO, and hence the GATS, came into being on 1 January 1995 a UN Summit on Social Development was convened in Copenhagen. In the opening paragraph of the Copenhagen Declaration the assembled heads of state and ministers promised to 'promote dynamic, open, free markets, while recognizing the need to intervene in markets' and committed their governments to full implementation of the Uruguay round agreements. While the governments resolved in paragraph 9(q) to 'monitor the impact of trade liberalization on the progress made in developing countries to meet basic human needs', they would pay 'particular attention to new initiatives to expand their access to international markets.' (WSSD, 1995)

Prior notions of social development were being turned on their head. The future of the world's poorest people in Africa and other continents was now tied to free markets and free trade and the fostering of international cooperation to implement the macroeconomic agenda. This was still clothed in the comforting, but increasingly empty, rhetoric of human rights, social solidarity and people-centred development. Human rights advocates, including Baxi, were outraged (Baxi, U, 1995). They were witnessing was the first step in a mutually reinforcing circuit of summitry that within seven years had realigned the social within the primacy of the market (Bond, P, 2006).<sup>2</sup>

The groundswell of so-called 'anti-globalisation' protests gave added urgency to the neoliberal project. The patrons of globalisation increasingly found themselves under siege. Trade ministers attending the WTO's second ministerial meeting in Geneva in May 1998 celebrated the GATT's 50th birthday protected by barbed wire and water cannons. Protests engulfed meetings of the World Bank and the IMF in Washington and Prague, the Asian Development Bank (ADB) in Chiang Mai, the Group of Seven/Eight major powers in Birmingham and Okinawa, the elite World Economic Forum gatherings in Melbourne and Davos. The humiliating collapse of the WTO ministerial meeting in Seattle in November 1999 made the major powers especially more determined to close ranks behind the organisation and to counteract a mounting critique from the WTO's dissident southern members and the less-civil elements of civil society.

### **2.1. United Nations Millennium Development Summit, September 2000**

The preparatory process for the UN Millennium Summit in September 2000 was carefully managed. Most of the accredited 'NGO Partners' invited to the Millennium Forum obligingly concentrated on special pleadings or reforms that stopped short of questioning the legitimacy of the Bretton Woods institutions and the WTO

(Chossudovsky, M, 1999). The final summit Declaration recited the customary commitments to development and poverty eradication, noting in paragraph 13 that success in achieving this ‘depends, inter alia, on good governance. ... We are committed to an open, equitable, rule-based, predictable and non-discriminatory multilateral trading and financial system’ (UN, 2000).

The centrepiece of the Summit was the adoption of eight Millennium Development Goals (MDGs). The first seven Goals aim to deliver the most basic services to some of the world’s poorest people by 2015. They are motherhood statements that no one can easily object to, except to say they are not ambitious enough. Goal Seven is to halve by 2015 the proportion of people without sustainable access to safe drinking water. Goals Two and Three aim to ensure that all boys and girls complete a full course of primary schooling and to eliminate gender disparity in primary and secondary education. Goals Four, Five and Six target health care to reduce child and maternal mortality and the incidence of HIV/Aids. The headline Goal One is to halve the proportion of the world’s people living in poverty by 2015. In a devastating critique, ethicist Thomas Pogge exposes the manipulation of criteria for achieving Goal One of the MDGs. The actual reduction of people living in extreme poverty in 2015 is likely to be less than 20 per cent, from 1094 million to 883.5 million (Pogge, T, 2004, p 329). This deception allows:

most citizens of the affluent countries [to] take comfort in the asserted decline of global poverty, thinking of themselves as benefactors of the global poor in the belief that the global institutional order they impose kills and scars fewer people each year. They should instead take intense discomfort in the fact that a feasible alternative global order could have avoided most life-threatening poverty and its associated evils (Pogge, T, 2004, pp 334-5).

All seven substantive MDGs are couched in aspirational language that Amin describes as ‘a litany of pious hopes [that] commits no-one’. Those aspirations are accompanied by conditions that essentially eliminate the possibility of their becoming reality and have the potential to produce ‘apartheid on a world scale, reproducing and deepening global polarization’ (Amin, S, 2006). The conditions he refers to are found in Goal Eight of the MDGs:

**‘Goal 8:** Develop a global partnership for development

Target 12: Develop further an open, rule-based, predictable, non-discriminatory trading and financial system. Includes a commitment to good governance, development, and poverty reduction – both nationally and internationally.

Target 13: Address the special needs of the least developed countries. Includes tariff- and quota-free access for exports ...’ (UN, 2001)

This is the only Goal that sets out the mechanisms for achieving the other seven. Through the sleight of hand of the MDGs, freedom from poverty and the provision of essential life-giving services, such as health care, education, water and sanitation, were no longer couched in terms of human rights, let alone social justice. Instead, as Pogge caustically remarks, ‘[h]unger will be erased through globalization and free markets’ (Pogge, T, 2000, p 39). Goal Eight of the MDGs also enables donor

governments to insist on coherency across aid, finance and trade in the name of 'good governance' and 'pro-poor' development.

The goals were successfully marketed as the response of enlightened world leaders to calls from the South and the development community for 'pro-poor', 'pro-development' initiatives. Samir Amin's account of the preparatory process reveals that they were promoted by the European, US and Japanese governments, co-sponsored by the IMF, World Bank and OECD, and drafted by a former consultant to the US Central Intelligence Agency (Amin, S, 2006). One critic describes them as a 'Major Distraction Gimmick' that co-opted the corporate NGOs who adopted the MDGs as their central platform and undermined the campaigns of genuine anti-poverty activists (quoted in Bond, P, 2006). By abstracting the MDGs from their social, political and economic context, the major powers also sidelined the question of how governments that were weakened by the combination of neoliberalism and trade liberalization could possibly achieve those outcomes.

## **2.2. The Fourth WTO Ministerial Conference in Doha, Qatar, October 2001**

Rescuing the WTO from the debacle of Seattle depended on a successful launch of a comprehensive new round of negotiations at the fourth WTO Ministerial Conference in Doha, Qatar. The meeting took place in October 2001, less than a month after the September 11 attacks in the US. A 'consensus' outcome was required, at any price. The major powers bullied, bribed and threatened Southern governments, even implying that those who opposed a new round would be siding with terrorists (Kwa, A, 2003, pp 30-32). The Doha round was launched. But it proved a fragile foundation on which to expand an increasingly troubled organisation.

Developing countries were promised that their needs and interests would be 'at the heart' of the Doha Work Programme. Paragraph two of the Ministerial Declaration affirmed that: 'International trade can play a major role in the promotion of economic development and the alleviation of poverty.' (WTO, 2001) Southern governments rejected attempts by the EC to brand an agenda that had been written by, and for, the major powers as the 'Doha Development Round' (Raghavan, C, 2004). That did not stop European Trade Commissioner Pascal Lamy and successive WTO Directors General from calling it the Doha 'development agenda'. The term was later explicitly incorporated into the General Council Decision of 1 August 2004 (generally referred to as the 'July package') (WTO, 2004). Southern governments subsequently owned that description as they pressed the major powers to deliver on their rhetoric. In 2007 Charlene Barshefsky, the United States Trade Representative (USTR) at the time of Doha, conceded that:

'The round was launched on essentially false pretenses, in two respects. First, it was launched almost immediately in the aftermath of 9/11. ... Countries believed that they needed to show solidarity with the United States and make a statement about the global economy and the importance of economic growth. ... Second, the round was called a development round. Again, as the six-year delay shows, there may have been the broad intention on the part of the wealthy nations to make this a development round, but their ability to execute has always, in important respects, been absent, something clear from the outset, rhetoric aside. ... For the most part this round has been like any other, with the focus being on the market access concerns of the major

trading powers. While large developing countries like Brazil, China and India now play a greater role in trade talks, the interests of the poorest countries still seem to be an afterthought in many ways.’ (Altman, D, 2007)

The focus at Doha was primarily on the liberalization of industrial and agricultural trade. However, a new round of services negotiations had already begun in 2000, as mandated by the commitment in the GATS to progressive liberalization. At Doha, the GATS 2000 negotiations were folded into the ‘single undertaking’ that authorized trade-offs across agriculture, non-agricultural market access, intellectual property, services and implementation issues. The major powers made it clear that gains for their transnational corporations through the further liberalisation of services was a quid pro quo for any liberalisation in agriculture.

### **2.3. UN Conference on Financing for Development. Monterrey, Mexico, March 2002**

Five months after the Doha ministerial came the UN Conference on Financing for Development, held in Monterrey, Mexico. The idea of the summit began as an initiative of the Group of 77 poorer countries to address global economic governance and democratize the international financial institutions. The US threatened to boycott the conference if the Declaration sought to tinker with the Bretton Woods institutions and the WTO (Haffajee, F, 2002) (and if Fidel Castro attended (Landau, S, 2002)). Proposals for creative financing initiatives and institutional reforms were accordingly purged from the text, which was reduced to a list of platitudes on development (UN, 2002). Paragraph eleven on ‘good governance for sustainable development’ blended respect for human rights, including the right to development, with the implementation of market-oriented policies.

The MDGs provided the formal reference point, to be achieved through ‘policy and programme coordination of international institutions and coherence at international and operational levels’ (paragraph 52). Trade-led economic growth, supported by aid and foreign direct investment, were confirmed as the drivers of ‘development’. Southern governments made multiple commitments to implement ‘sound’ pro-market economic policies, demonstrate ‘good governance’ and apply the rule of law. Not one specific obligation, target or deadline was imposed on Northern governments. The US ruled out cancellation of unpayable and unconscionable debt and insisted that private sector provision was essential to achieve the MDGs. There would be no new or additional funding to address the critical issues of disaster relief, aid and debt cancellation beyond the much-criticised Heavily Indebted Poor Countries (HIPC) initiative.

The two key themes of the so-called Monterrey Consensus legitimised the market model of services. The first theme endorsed multiple layers of ‘development partnerships’: between developed and developing countries; donors and recipients; private sector and governments; local and foreign businesses; and different agencies within national governments. These partnerships were premised upon the illusion of apolitical stakeholders who cooperate to produce a fully inclusive and equitable global economic system. The inequality that pervades the main avenues of development financing (being aid, debt and trade) was effectively submerged.



The second theme, 'coherence for development', aimed to ensure consistent policies and cooperation within and across national and international domains and agencies (in paragraphs four, 52 and 69). Governments (in this context, of the South) promised in paragraph ten to create an enabling environment for markets and regulatory frameworks to promote and protect investment. The section on trade focused almost exclusively on agriculture and industrial tariffs and reiterated the development rhetoric of the Doha round. The solutions to problems of social infrastructure, identified in paragraph 16, centred on 'effective partnerships' between donors and recipients through 'nationally owned paths of reform' (paragraphs 40, 43 and 56).

Social activists denounced the outcome as the 'Washington Consensus in a sombrero' (Haffajee, F, 2002, p 12). Germany's Third Way government hailed the summit for replacing 'market rule' with 'partnerships for development'. Venezuelan President Hugo Chavez was spokesperson for the Group of 77 plus China; but his call for 'actions, not words' and for governments from the South to take control of their destinies fell on deaf ears. Most Southern governments conformed to the North's agenda and focused on increasing the available funding and loosening the strings of conditionality. Only Cuba's Fidel Castro refused to sign the final Declaration, which he condemned as 'a project of consensus that has been imposed upon us by the masters of the world ... in which we resign ourselves to humiliating, conditional and interventionist handouts' (Cevallos, D, 2002, p 13).

#### **2.4. World Summit for Sustainable Development, Johannesburg, August 2002**

Six months after Monterrey came the UN-sponsored World Summit on Sustainable Development (WSSD) in Johannesburg. Those who recalled the Earth Summit in Rio de Janeiro some ten years before might have expected another talkfest on traditional 'green' issues of deforestation, biodiversity, animal conservation and fisheries, and 'brown' issues like rights of access to health, water and sanitation. Instead, the preparatory phases and the Summit itself became a further contest over which paradigm would shape the world's social, environment and development agenda.

Once again, the Summit was dominated by the major powers. What became known as the Juscanz group (led by the US with Japan, Canada, Australia and New Zealand), supported by numerous corporate lobbies, insisted that the Johannesburg Declaration echoed the assertion in the WTO's founding document that trade liberalization enhances sustainable development. Their attempt to insert wording that explicitly subordinated development and environment measures to the requirement of WTO-consistency was defeated after a pitched battle on the plenary floor. One critic noted the irony that the UN was being asked to 'commit suicide by adopting a declaration that depletes itself of its own power and willingly hands it over to the WTO' (quoted in Khor, M, 2002).

The summit's Political Declaration and the Plan for Implementation formally sought to deliver on 'Agenda 21' of the Rio Summit and on the MDGs. But paragraph 9 of the declaration left no doubt about the parameters:

'Between Rio and Johannesburg, the world's nations have met in several major conferences under the auspices of the United Nations, including the International Conference on Financing for Development, as well as the Doha Ministerial Conference. *These conferences defined for the world a*

*comprehensive vision for the future of humanity.*' (WSSD, 2002) (emphasis added)

That 'comprehensive vision' pervaded the Implementation Plan. Referring back to the Monterrey Consensus, paragraph 3 asserted that what were now known as 'Type II Public Private Partnerships' between governments of the global North and South and (cryptically) between 'governments and major groups' were 'key to pursuing sustainable development in a globalizing world.' The text was replete with the familiar catch cries of 'sound environmental, social and economic policies' and a 'dynamic and enabling international economic environment', particularly in the areas of finance, technology transfer, debt and trade. WTO-compatibility was a defining feature of the three 'interdependent and mutually reinforcing pillars' of sustainable development identified in paragraph 2, being economic development, social development and environmental protection.

The pivotal, and most controversial, part of the Plan was Section V: Sustainable Development in a Globalizing World (Khor, M, 2002). The final text committed governments to complement their pursuit of the Doha Work Programme by undertaking further action at the national, regional and international levels 'to enhance the benefits for developing countries, as well as for countries with economies in transition, from trade liberalization, including through public/private partnerships' (paragraph 96). The trade in services agreements, although never mentioned, would be the primary vehicle for achieving this synergy between trade liberalization and the contractual form of 'stakeholder partnerships' between the private sector, governments and selected (corporate-friendly) NGOs.

The transnational corporations had invested heavily in securing the endorsement of the world's leaders for market-driven 'sustainable development'. The summit venue at the elite Johannesburg suburb of Sandton underscored the exclusion of the 'social' from their agenda (Shiva, V, 2002). A protest march of some 20,000 people from the depressed township of Alexandra provided a poignant contrast, as local community groups shone the spotlight on a life and death battle with the post-apartheid government over policies of corporatisation and privatisation, which had seen water and electricity services to poor households terminated for non-payment and led to outbreaks of lethal disease, such as cholera.

The Johannesburg Summit effectively privatised the Rio agenda, transforming 'Rio + 10' into 'Doha + 10' (Shiva, V, 2002). Government representatives from the South and critics outside the summit demanded enforceable international rules to regulate the activities of transnational corporations. Their challenges were swept aside. Instead, corporate responsibility became the codeword for greater corporate control through privatised financing, delivery and regulation of environmental and social services. The new pathways to sustainable development of energy, housing and food, and for meeting MDG targets for clean drinking water and sanitation, would be market-driven and WTO-compatible – dovetailing neatly with the GATS 2000 negotiations and emergence of more extensive regional and bilateral agreements on trade in services.

These summits served four important functions. First, a decade of cross-referenced, mutually reinforcing international declarations from (almost) all the world's leaders

could be paraded as a consensus commitment to a neoliberal version of ‘sound’ economic policies and ‘good governance’. Each summit was the site of diplomatic contest by some participating governments and more trenchant opposition from external critics. Yet the final declarations invariably reflected the agendas of the major powers and recited the new mantra of trade-driven development in an integrated global economy. Southern governments were promised rewards of debt cancellation and new loans for adopting policies that immersed them more deeply in international capitalism. Deviant states that displayed ‘bad governance’ were marginalized or denied debt relief and trade preferences, while the seriously recalcitrant were demonised as a threat to the integrity of global economy and freedom loving people everywhere.

Second, these summits were hosted by the United Nations - the institutional home of the ‘human’ human rights and development paradigm. Each declaration reinforced the need for ‘coherence’: horizontally across the UN agencies, the Bretton Woods institutions and the WTO; and vertically by ‘mainstreaming’ neoliberalism, especially trade liberalization, within countries’ national development plans and Poverty Reduction Strategy Papers (PRSPs) and in their international trade commitments.

Third, the declarations deployed a depoliticised discourse. Neutral terms like ‘coherence’, ‘partnership’, ‘stakeholders’, ‘safety nets’, and ‘sound’ economic policies implemented within an ‘enabling’ environment disguised the structural disparities of power. Likewise, the epithets of ‘civil society’ and ‘non-state actors’ conflated the corporate lobbies and more accommodating transnational non-government organisations (NGOs) with the social movements and activist NGOs that rejected neoliberal globalization. In practice, those NGOs who were prepared sit alongside the Fortune 500 corporations to advance the civilizing mission of the global market economy were given recognition and sometimes funding. The ‘uncivil society’ whose popular struggles challenged the geopolitical ambitions of the major powers was excluded or chose to boycott the events.

Fourth, the summits consolidated the MDGs as the normative reference point for trade-driven human rights and development, and its source of virtue. Situating the new paradigm amidst goals on poverty and pandemics bestowed an unearned legitimacy on free markets and free trade, and conferred the primary mandate for achieving the MDGs on the IMF, World Bank and WTO (WDM, 2005).<sup>3</sup> Even though MDGs One to Seven made no reference to trade in services, the GATS was the link between the new orthodoxy that health care, education, water and other essentials services should be achieved through markets and the trade liberalization agenda of MDG Eight. The legal obligations on states to deliver ‘human’ human rights had been reduced to ‘trade-related’ aspirations that could only be achieved through competitive markets.

### **3. Institutional (In)coherence**

The Bretton Woods institutions and the WTO provide the fulcrum for the new orthodoxy under the supervision of the major powers. The legal mandates of the three organisations provide a common platform. Only the WTO’s is explicit and reflects its origins in the era of neoliberal globalization. Article III: 5 of the Agreement Establishing the World Trade Organisation 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. (WTO, 1995)<sup>4</sup>

Article I of the IMF's Articles of Agreement lists as one of its purposes: 'to facilitate the expansion and balanced growth of international trade'. Likewise, the purposes set out in Article 1(iii) of the Articles of Agreement of the International Bank for Reconstruction and Development (here 'the World Bank') include 'to promote the long-range balanced growth of international trade ... by encouraging international investment for the development of the productive resources of members'. However, their institutions coherence arises more from converging ideological and policy prescriptions than actual collaboration.

In 1996 the three institutions formally agreed to hold regular high-level consultations, grant reciprocal observer status at key meetings and communicate on matters of mutual interest. They would also establish protocols for cooperation and communications between staff (WTO, 1996). But active collaboration met practical and organisational obstacles (Sampson, G, 1998).<sup>5</sup> The Bretton Woods institutions have complementary mandates and instruments. Trade policies espoused by the World Bank have to be consistent with the IMF's macroeconomic framework, while the Fund's trade liberalization conditionalities have traditionally depended on aspects of the Bank's structural adjustment programmes (Sampson, G, 1998, p 260). The WTO's activities are defined solely with reference to the legal texts, and have the potential to intrude on the functions of the bank or the fund.<sup>6</sup> The financial character of the Bretton Woods institutions, their common location in Washington and their shared governance arrangements foster a mutuality that is not shared with the WTO. The governance arrangements of the WTO involve one-country-one-vote, meaning the major powers have to rely on the less-predictable methods of back-room deals, persuasion and coercion (Hilary, J, 2004). The Bretton Woods institutions have vastly greater resources than the WTO Secretariat, but relatively small specialist trade departments. The Bank's trade directorate was strengthened after 2000 by employing several former WTO economists, including GATS specialist Aaditya Mattoo who authored the short extract on GATS in the World Development Report on Services in 2004 discussed below.

These institutional distances are overcome by their underlying ideological convergence. This is most evident in the World Bank's 2004 World Development Report entitled *Making Services Work for Poor People* (World Bank, 2003). The report focuses on health, education, water and sanitation services, with peripheral references to energy and transport; its consistent refrain urges governments to rely on the private sector, or at least a private sector model, to deliver their development goals. The report came three years into the GATS 2000 negotiations. For critics of the GATS, the link seemed obvious. The World Bank and the GATS share the same basic premise: private firms operating in competitive markets are the best means to guarantee access to efficient, affordable and accessible services in (rich and) poor countries. Critics vigorously attacked the draft report during the Bank's consultation process.<sup>7</sup> Most condemned the draft for promoting the privatisation of essential social and public services for the benefit transnational corporations, who could then secure

enforceable rights of market access, national treatment and business-friendly regulation under the GATS (eg. Bretton Woods Project, 2002; Bretton Woods Project, 2003). This market model of services ran roughshod over the human rights of poor people and diluted the positive obligations of states under international law. Some developing countries reportedly raised their concerns in the Special Session of the Council for Trade in Services, suggesting the Bank was undermining their negotiating positions in GATS 2000 by arguing for competition in service sectors, which would remove any protection for 'public services' under the GATS Article 1(3).

The report's authors say this reaction took them by surprise.<sup>8</sup> In their view, the GATS was ill defined, had limited impact and is basically about foreign investment and temporary migration. Moreover, the WTO was not concerned with the question of whether the poor have access to services. They had not planned to mention the GATS. In response to the fuss made by the NGOs the final report included a 1-page box headed: 'Is the GATS a help or a hindrance?' This is the only reference to the GATS in the 288-page document. The text box demonstrates how the World Bank and GATS complement each other organically without the need for active collaboration: the Bank makes services 'free trade ready', while the GATS and other trade in services agreements lock them in and create pressure for further liberalization. The claim that the report's authors did not think this connection was relevant seems rather extraordinary. The author of the text box, Aaditya Mattoo, was a former WTO official and in regular contact with the WTO Secretariat, and has authored many papers on the GATS. Indeed, in September 2003 he published a more detailed version of the text box as a World Bank *Trade Note* addressing services in the Doha round (Mattoo, A, 2003).

As the circuit of international summitry shows, all three institutions and the major powers can and do join forces to suppress a challenge to their agenda where necessary. This common cause is also apparent in their relationship with UN agencies that continue to espouse a social paradigm for services, expressed primarily through human rights and development discourse. Back in 1995 the Programme of Action from the Copenhagen Summit on Social Development had proposed strengthening inter-institutional coordination in economic and social development programmes, including joint meetings at the UN Economic and Social Council (ECOSOC). At a high level economic policy dialogue during the first ECOSOC session of 1995 the newly appointed World Bank President James Wolfensohn and the Director General of the newly established WTO, Renato Ruggiero, both made it clear that they had neither the mandate nor the inclination to engage with the UN's development paradigm (Khor, M, 1995).

Particular UN agencies came under intense pressure to conform. UN institutions with an explicit human rights mandate were marginalized. A preliminary report on trade and human rights from the UN Sub-Commission on the Promotion and Protection of Human Rights in June 2000 referred to the WTO as a 'nightmare' for human rights and provoked a furious response from the WTO (quoted in Picciotto, S, 2007, footnote 3). In 2002 the Sub-Commission produced a further report on 'Liberalisation of trade in services and human rights'. This report argued for a human rights approach to trade through which 'these two processes – progressive realization of human rights and progressive trade liberalization – can be implemented simultaneously and coherently' (UNHCHR, 2002, p 11). What the report (necessarily?) left unsaid was

that affording human rights equal status to, let alone primacy over, trade liberalization would intrinsically negate the core principles of guaranteed market access, non-discrimination and least-trade restrictive domestic regulation that give primacy to the interests of foreign services suppliers under the GATS.

The report reiterated the state's role as the primary bearer of the duty to implement human rights. Moreover, 'The adoption of any deliberately retrogressive measure in the liberalization process that reduces the extent to which any human rights is protected constitutes a violation of human rights' (UNHCHR, 2002, pp 10-11). While not opposing liberalization, they argued for evidence-based assessments to determine its right form and pace. States should 'undertake public, independent and transparent human rights assessments of the impact of liberalization policies – both past policies and future options – on the enjoyment of human rights, through a participatory and consultative process with concerned individuals and groups'. Where assessments were not available, governments should take a cautious approach to new commitments. 'Where assessments indicate negative effects of past liberalization policies on the enjoyment of human rights', other WTO members should allow those governments the maximum flexibility to withdraw their liberalization commitments (UNHCHR, 2002, p 30).

The sub-committee's 2002 report was ignored by the WTO. By contrast, a contemporaneous study on WTO agreements and public health that was co-authored by the World Health Organisation and WTO was profiled on the WTO website. The report spent remarkably little time on the GATS, stressing the voluntary nature of commitments and potential gains for developing countries from exporting health services. It concluded that WTO agreements are sensitive to health issues, which can take precedence where necessary. The primary recommendation was for closer national and international cooperation so that 'health and trade policy-makers can ... ensure coherence between their different areas of responsibilities.' (WHO, 2002, p 22)

UN development agencies also came under pressure. The primary target was United Nations Conference on Trade and Development (UNCTAD). Its role as a partisan for the South before and during the Uruguay round saw it marginalized and starved of resources. A submission by the South Centre to the Panel of Eminent Persons on Enhancing UNCTAD's Impact in 2006 described how a 'concerted effort by major economic powers to deprive the United Nations of its Charter functions in the economic field and whittling down its role and authority' had reduced inter-governmental deliberations in UNCTAD

'...to a charade and its research and policy analysis work had lost its earlier élan, punch and distinctiveness. ... In the name of coherence, [UNCTAD] is being required to conform to the mainstream views espoused by developed countries and their preferred international organizations ... and is not being allowed to question the existing world order or to bring out its inequalities and imbalances' (South Centre, 2006, p 5).<sup>9</sup>

Although UNCTAD's promotion of the concept of 'policy space' in 2003 had opened the possibilities for a more pluralist approach, 'certain powerful countries refuse any reference to the concept in UNCTAD' (South Centre, 2006, p 10). The appointment of former WTO Director General Supachai Panitchpakdi as Secretary-General of

UNCTAD in 2005 was expected to bring any dissident elements to heel. Trade ministers of larger Southern governments are also believed to have pressured UNCTAD's research staff to abandon any leftist positions. UNCTAD still produces several flagship reports. Their orientations vary according to which division produces them. The annual *World Investment Report* is the work of the Division on Investment, Technology and Enterprise Development. Its 2004 report *The Shift Towards Services* documented the uneven distribution of trade in services, noting that most poor countries had fallen further behind as the major powers had accumulated greater control through their transnational corporations (UNCTAD, 2004). In what was now UNCTAD's standard line, the report promoted foreign direct investment in services provided governments had effective regulatory regimes and could preserve the flexibility to pursue their national objectives.

Other divisions of UNCTAD pushed the boundaries of what the major powers would tolerate. The 2006 *Trade and Development Report* produced by the Division on Globalization and Development Strategies was published under Supachai's signature. It was replete with references to 'pragmatic' policy approaches, 'strategic trade integration', 'flexibility' that requires an 'appropriate balance between national policy space and international disciplines and commitments' (UNCTAD, 2006a, XI-XX). It criticized the prevailing macroeconomic orthodoxy of the international financial institutions and the attempt to establish a homogenous regulatory framework under the WTO as being unlikely to take adequate account of asymmetries between rich and poor countries. Moreover, the proliferation of free trade agreements had widened the gap between legal equality and equality of economic constraints. The report floated the possibility that an individual party might opt out of commitments for a limited time under agreement-specific criteria. Taking a swipe at the anti-democratic practices of the WTO, it remarked that a fully inclusive process and flexibility to reflect the needs of all members were necessary to avoid a deadlock in the WTO's Doha negotiations.

The US expressed 'regret' at recommendations that ran counter to the 'foundations of sound economic and trade policy' and the research of other international organisations, and 'disappointment' that trade issues were presented as a North/South dichotomy 'at odds with the economic reality of modern global trade'. An aggregated concept of 'policy space' fostered the harmful perception that all developing countries wanted to opt out of their international commitments. Too little had been said about the importance of liberalizing infrastructure services (United States Mission to the United Nations in Geneva, 2006).

The other main UN economic development agency, the UN Development Programme (UNDP), periodically questioned the trade-driven agenda for services. Its Human Development Report for 2003 promoted a human rights approach to policies on the private provision of health, education and water (UNDP, 2003). The same year the UNDP's Socio-Economic Development Group published a review that was critical of Goal Eight of the MDGs. The authors said the assumption that trade increased economic growth, which in turn reduced poverty, had mostly failed the poor. Their position on the GATS was carefully phrased: 'From a human development perspective, it is vital that countries preserve adequate policy space for sequencing the progressive liberalisation of basic public services such as water, health, education and social protection.' Liberalization of those services cannot be imposed as 'a blank

prescription'. The potential application of the dispute settlement and cross-retaliation mechanisms of the GATS was inappropriate for the liberalization of such basic services. Concerns about the private management of utilities, especially water concessions in Latin America, showed the need for caution (Vandemoortele, J, et al., 2003, p 8).

At the level of institutional coherence, two points are especially noteworthy. First, despite the failures of the IMF and World Bank structural adjustment programmes, and the paralysis that enveloped the WTO from the late 1990s and through the Doha round, the triumvirate effectively dictated the ideological parameters for the conception and regulation of services in the new millennium. Second, those institutions that remained wedded to the old human rights paradigm were largely impotent, but did not totally surrender. They maintained an irritating presence that reminded governments that their prior 'human' human rights obligations still endure.

#### **4. Policy Coherence**

Coherent ideology and institutional synergies have to be translated into concrete policies. The neoliberal literature talks of a two-phase process for securing a new policy paradigm: initiation of radical policy change followed by a period of consolidation that normalizes and embeds the new regime (Haggard, S, and Kaufman, R, 2002).

The initiation phase in the South rested primarily with the Bretton Woods institutions. Initially, this was pursued through the crude Washington Consensus template of fiscal austerity, anti-inflationary monetary policy, capital account liberalization, light handed regulation, trade and foreign investment liberalization, privatisation, labour market deregulation and consumption-based taxation. By the 1990s there was abundant evidence that the Washington Consensus prescription had failed poor countries; so had the radical laissez-faire approach foisted on Eastern Europe in the early 1990s (Hellinger, D, et al., 2001; Stiglitz, J, 2002; Henisz, W, et al., 2005). Major financial crises in East Asia and elsewhere compounded the credibility crisis facing the structural adjustment model. The IMF and World Bank began re-branding their programmes, announcing jointly in late 1999 that lending would be realigned to centre on poverty reduction, including the effective provision of social services. The new centrepiece would involve national development strategies that were designed and owned by the debtor nations themselves and set out in Poverty Reduction Strategy Papers (PRSPs). Each institution established new programmes: the IMF created a Poverty Growth Reduction Facility and a Finance Programming Framework; the World Bank introduced Country Policy and Institutional Assessments that fed into its Country Assistance Strategies. Their major shareholders also endorsed an 'enhanced' version of the HIPC initiative for debt cancellation in least developed countries, to replace the discredited version they had created in 1996. To qualify, governments had to demonstrate a 'good reform performance' and prove they would use the freed resources to reduce poverty. This would be evidenced by their PRSPs, which effectively became new conditionalities. In theory, these PRSPs would be generated and 'owned' locally through the widespread participation of civil society - in contrast to the top-down structural adjustment programmes and the onerous conditionalities of the original HIPC scheme.



The key principles of each Poverty Reduction Strategy required them to be country-driven with broad based participation, comprehensive and results-oriented, take a medium to long-term perspective and be partnership-oriented (IMF/World Bank, 2003). Between 2000 and 2005 a number of independent reviews showed the 'nationally owned' PRSPs were still being designed to meet the imperatives of the institutions and the donors (Abugre, C, 2000; Marshall, A. and Woodroffe, J, 2001; Chavez Malaluan, J, and Guttal, S, 2002; de Barra, C, 2004, Hermele, K, 2005). The institutions allowed no space to analyse the causes of poverty that fell outside the authorized diagnosis and remedies. Problems in providing education, health care, clean drinking water, sanitation, and energy were attributed, in market-speak, to scarcity, inefficiency, poor quality political decisions and lack of market disciplines.

One evaluation conducted by Coopération Internationale pour le Développement et la Solidarité (CIDSE)/Caritas International described the Poverty Reduction Strategy as preoccupied with process, providing a theatre in which actors fulfil their roles to get the funding or meet 'best donor practice' while the real policy discussions happen offstage (de Barra, C, 2004, p 7). Even where citizens placed priority on improved access to high quality services during their country's PRSP consultations, the formal documents almost always proposed the same recipe: competitive markets, reduced subsidies and social entitlements, user charges at market rates with targeted exemptions, privatisation through long term concessions or Build Operate and Transfer 'partnerships', and private property rights over natural resources, including water. When PRSPs did have a poverty focus their content rarely flowed through to national budgets and policies, which were more likely to be driven by competitive export strategies.

Behind the façade, the PRSPs were of marginal relevance to the lenders. The main determinant for IMF loans was its Poverty Reduction Growth Facility, which relied on briefing papers that were drafted secretly in Washington and subject to minimal negotiation. Similarly, the World Bank's own secret scorecard, the Country Policy and Institutional Assessments, triggered lending under the Country Assistance Strategy and Poverty Reduction Support Credits (de Barra, C, 2004, pp 9-10). Those facilities were complemented by the Bank's private sector lending agency, the International Finance Corporation. Even the institutions' own independent evaluation agencies found the PRSPs wanting (IMF, 2004; World Bank, 2004). Perhaps predictably, the joint internal review by the World Bank and IMF in 2005 was largely uncritical, except of debtor governments. There were, it concluded, no magic bullets, so the institutions should build on 'best practice' and continue to tailor the process towards the needs of individual countries (IMF/World Bank, 2005).

The institutions perceive 'success' as the introduction of the neoliberal prescription, not its positive outcomes. This ideological closure excludes the authentic voices of people whose aspirations are still framed by the language and concepts of human rights, social justice and self-determination. The persistence of those voices and the risk of further policy failures require a more coercive mechanism to secure the new orthodoxy. This is where the trade in services agreements come in. Their role is to lock in and expand the liberalization process and consolidate the markets that the Bretton Woods institutions have initiated. The core pillars of most-favoured nation status, market access, national treatment, transparency and least-trade restrictive regulation of various activities privilege transnational corporations and allow their

patron states to enforce those rules in a supranational tribunal. Preferences for local services providers, or regulation to meet social objectives or even human rights obligations, risk being GATS-illegal.

To date, the GATS has failed to fulfil its potential as a tool of consolidation. Most of its disciplines only cover those services that a government commits in its schedule. The current GATS schedules were signed off in 1994. The level of services liberalization in the mid-2000s far exceeds those commitments. Southern governments face intense pressure to commit their new 'status quo' in the GATS 2000 negotiations. Some have been encouraged by a seductive, but legally meaningless, possibility in the GATS Article XIX(3) to seek 'credit' for making their liberalization policies irreversible. Others remain very reticent, insisting that the GATS guarantees them flexibility about what commitments they make, if any.

There is one major instance in which the GATS has been effective - the pernicious process of accession by some of the world's poorest states to the WTO (Adhikari, R, and Dahal, N, undated; Charveriat, C, and Kirkbride, M, 2003; Oxfam, 2005). To accede, a government must secure consensus support from a self-appointed Working Party of existing WTO members. Each participating state has an effective power of veto. Virtually every accession package sets a progressively higher threshold for states that follow. The major powers consistently seek to establish 'high quality' precedents and avoid low-level commitments, so they can bolster their demands in the WTO negotiations and the accession of major countries, such as Russia (or previously China). The US is notorious for demanding an extensive list of services commitments (Grynberg, R, et al., 2006). Such practices defy the decision of the WTO General Council in December 2002 in which members pledged their sensitivity to development objectives and mutual self-restraint towards least developed countries (WTO, 2003).

The World Bank Institute confirms that the commitments made by countries that acceded to the WTO since 1995 are wider and deeper than those made by existing WTO members during the Uruguay round. Many acceding countries have also made commitments to undertake new liberalisation, which most existing members have not (WBI/WTO, 2006, p v). A comparative analysis of the services schedules of WTO members and acceding countries published in 2006 exposes the shocking extent of these disparities (Grynberg, R, et al, 2006). Six of the twenty new members were least developed countries. While GATS 1994 commitments are generally higher for higher income WTO members, the acceding members' commitments were higher still:

'At the most aggregate level, while WTO members have on average taken up some kind of commitment in six sectors out of a maximum of 12, the comparable figure for acceding countries is 11. At the 2-digit level, acceding countries took commitments in 36 sectors, compared to only 14 for WTO members. Finally, at the most disaggregated level, acceding countries have made commitments in more than twice as many sectors as WTO members: 100 as against only 42' (Grynberg, R, et al 2006, p ix).

The lower the national income, the greater the disparity is between original members and acceding countries. Acceding least developed countries took, on average, 183 commitments at the most disaggregated level, compared to 20 by original least

developed country members. Accessions also routinely include GATS-plus obligations. For example, OECD countries commonly insist on commitments to privatise utilities and services, and require periodic reports on the progress of privatisation (Grynberg, R, et al., 2006, 5). The legal justification for this is that Article 30 of the Treaty of Vienna provides that a subsequent treaty, such as a bilateral agreement reached during accession negotiations, supersedes its predecessor (Grynberg, R, et al., 2006, 4).

Most acceding countries have already undertaken high levels of 'autonomous' liberalisation under IMF and World Bank tutelage. It is not surprising that the World Bank promotes universal WTO membership and its most active involvement with the WTO process is to provide research, advice and advocacy to countries undergoing accession. The main rationale for accession is that developing countries gain improved market access, protection against discriminatory practices and access to dispute resolution (Evenett, S, and Primo-Braga, C, 2005, p 22). Accession is also said to attract foreign investment by providing evidence of a government's commitment to maintaining pro-market economic policies. Both these arguments are highly contestable (Gay, D, and Joy, R, undated; Kelsey, J, 2005). Because the accession process is conducted in secret, and commitments are not revealed until the Working Party report is signed off, it is impossible to provide strong empirical counter-arguments (unless the Working Party report is leaked, as occurred with Tonga).

The standard riposte is that the governments concerned have chosen to join the WTO. Yet there is suspicion that the international financial institutions sometimes make accession a condition for loans. That is hard to prove, given the confidential nature of the loan contracts. However, there is some evidence to support the suspicion. Vanuatu, a small South Pacific island and a least developed country, signed a Comprehensive Reform Programme with the Asian Development Bank in 1998. A key element required the government to encourage private sector-led growth through a more open economy, in part by forming regional trade blocs and acceding to the WTO. Vanuatu signed off its Working Party report in November 2001. After unconscionable pressure from the US, supported by the WTO Secretariat, it had made fifty specific commitments in ten services, far higher than neighbouring Pacific Island WTO members. Vanuatu was to have been the first least developed country to accede to the WTO at Doha in 2001. Days before, the government realized the implications of its GATS schedule and suspended its accession 'for technical reasons' (Gay, D, and Joy, R, undated). In 2004 Vanuatu's trade minister wrote to the US Trade Representative (USTR) seeking to reopen the accession package and withdraw commitments to foreign investment in health, education, environment, audio-visual, wholesale and retail services. The US eventually replied that it was prepared to revisit the schedule - on the terms of the GATS Article XXI that would require Vanuatu to negotiate compensatory concessions for any adjustments (USTR, 2005).

While the GATS has had a limited impact at a multilateral level, the major powers, urged on by the transnational services lobby groups, have had much greater success through bilateral and regional agreements that include chapters on both trade in services and investment. Political pressure can be applied more directly and less publicly on weaker governments to make extensive commitments and agree to GATS-plus rules. Changes to the legal architecture of the GATS increases the potential for

governments to make extensive ‘standstill’ and ‘rollback’ commitments, with a corresponding risk where negotiators have a poor understanding of the implications or simply make an error. Some of these agreements, notably those involving the EU, also subordinate aid to trade. This is a central platform of the Cotonou Agreement 2000, which commits African Caribbean and Pacific (ACP) states to negotiate Economic Partnership Agreements (EPA) with the EU by December 2007. Critics point, for example, to the ‘coherence’ between the EU Water Facility, which funds the commercialisation of water in the name of MDG Seven (Ensure Environmental Sustainability), and the EU’s insistence that ACP states must include services and investment liberalization in their Economic Partnership Agreements.<sup>10</sup>

Once again, high degree of synergy between domestic and international domains has been achieved with little active collaboration. The institutions that dominate the policy domain through the coercive mechanisms of debt conditionalities, enforceable trade commitments and aid tied to trade have effectively imposed a market model of services that excludes the ‘human’ human rights paradigm.

## 5. Operational Coherence

At the operational level, the institutions and donor states facilitate the implementation of neoliberal policies and trade in services commitments in the name of ‘capacity building’ and ‘technical assistance’. Because the neoliberal parameters have been so firmly established, a much more catholic approach to interagency cooperation is possible. The most prominent initiative is the Integrated Framework for Trade-related Technical Assistance to Least-developed Countries. The Integrated Framework was created at the Singapore WTO ministerial meeting in 1996 and involves the IMF, World Bank, International Trade Centre (a WTO-UNCTAD entity), WTO, UNDP and UNCTAD. The framework has two objectives: to ‘mainstream’ trade into national development plans and/or Poverty Reduction Strategies; and to deliver trade-related technical assistance. To be eligible a least developed country must be committed to trade integration, be starting its PSRP process and have a ‘conducive operational country environment’. The government asks for a ‘diagnostic trade integration study’ to assess the economy and identify sectors that have actual or potential for trade. The outcomes are then incorporated into an action matrix (Integrated Framework, 2007).

This programme has been repeatedly ‘enhanced’ in response to criticisms. A 2003 review found anecdotal evidence that the institutions had improved their coherence and consistency in promoting ‘mainstreaming’, but the goal had ‘yet to be fully embraced at the national level’ (Capra, 2003). A further internal review concluded in 2006 that ‘trade is inadequately seen, by both donors and recipients, as an integral aspect of economic development and poverty reduction, so does not feature high enough on their priorities’ (WTO, 2006a). Yet another ‘enhancement’ was made to complement the ‘aid for trade’ package brokered at the Hong Kong ministerial in 2005. By mid-2007, forty-three countries were involved in the framework, twenty-five of which had completed ‘diagnostic studies’. Many were least developed countries engaged in accession.

The Joint Integrated Technical Assistance Programme (JITAP) is designed to speed up the integration of African countries into the multilateral trading system. Established in 1998, JITAP’s second phase ran from 2003 into 2007 (JITAP, 2007). It

is described as a multi-stakeholder 'partnership' involving the International Trade Centre, WTO and UNCTAD and is funded by the major powers. The Centre developed generic tool kits for sixteen African countries who had demonstrated their commitment to 'mainstreaming of trade as an engine for poverty reduction'. The African Union asked for the continuation and extension of JITAP past 2007, but also for the current and potential participants to be involved in conceptualising JITAP III (African Union, 2007).

Most international organisations also have their own initiatives. The WTO runs an Institute for Training and Technical Cooperation, which was subject to a relatively critical independent strategic review in 2006 (WTO, 2006b). In response to the suggestion that their 'neutrality' stance to assistance and training might appear to some participants as 'pro-liberalization', the Secretariat replied that advocating liberalisation was the WTO's core function and was supported by economic and empirical evidence (WTO, 2006c, para 16).

The World Bank sponsors its own forums to catalyse country or regional discussions. The World Bank Institute provides training courses and seminars on trade policy, sometimes with the WTO. Countries in accession receive special attention. More academic-oriented programmes are run jointly with high-profile university centres. The regional development banks in Africa, Latin America, Asia and Eastern Europe undertake similar activities.

UNCTAD also plays an active role in technical assistance and capacity building, especially on WTO accession. Some view this as an important counter-balance to other institutions. An independent review in 2006 praised UNCTAD's 'objective, evidence-based and development focused support', despite its overstretched resources (UNCTAD, 2006b). On the other hand, the South Centre argues that 'UNCTAD's foray into technical assistance has been a negative development ... at the cost of its negotiating role and research and analysis work [and] has given the donors the leverage to drastically remould UNCTAD's other functions in the direction of their interest' (South Centre, 2006, p 19).

## **6. A Fragile Hegemony**

At one level, the mutually reinforcing layers of ideological, institutional, policy and operational coherence represent a totalising hegemony. The essential social function of services that was expressed during the 20<sup>th</sup> century through 'human' human rights discourse has been formally subordinated to a neoliberal paradigm that redefines 'services' as 'tradeable commodities', 'rights' as 'goals', and state 'obligations' as 'aspirations' to be achieved through globalized markets. There is no effective institutional counter-weight to the IMF, World Bank and WTO or to the potency of their legal instruments.

The champions of the neoliberal paradigm assume that this condition will endure forever. Yet a hegemonic project requires a modicum of consent or at least acquiescence. The more it relies on legal coercion, the more unstable it becomes. It is most vulnerable when the conceptual foundations on which it is built are flawed, the objectives are overtly partisan and the activities it mandates are not socially or politically sustainable. When it also closes off the political and legal space for

governments to respond to chronic system failure, to give priority to social objectives to alleviate human suffering or respond to a disabling political crisis, it creates the conditions for its own demise.

There are signs of fragility even from the limited examples noted in this article. Rhetorical appeals to MDGs, development partnerships, 'pro-poor' PRSPs and trade-driven development, and legal artifices like the GATS or bilateral 'trade' agreements have not been able to purge services of their social essence or conceal the deep disparities that are perpetuated through globalised services markets. Strategies of exclusion have failed to silence dissenting voices, whether they are expressed as the aspirations of people during cosmetic consultations over PRSPs, the continued assertion of 'human' human rights by marginalised UN agencies, or the resistance of mass movements on the streets during the international summits.

The trade-related human rights paradigm may have displaced the prior discourse of human rights and development, for now. But the principles of social justice and self-determination that drove people's determination to give a progressive meaning to those concepts last century remain equally resonant in the struggle for a progressive alternative to neoliberal globalization in the 21<sup>st</sup> century.

## Endnotes

<sup>1</sup> The reference is to Arthur Dunkel, the Director General of the GATT during the Uruguay round and author of the 'Dunkel draft' text in 1991.

<sup>2</sup> For an official account of these summits see Chasek, P, and Sherman, R, 2004, ch 3.

<sup>3</sup> The proposal in the Secretary-General's list of recommendations to establish an International Finance Facility to help fund the MDGs was also not adopted.

<sup>4</sup> Both the Doha Declaration 2001 and the Hong Kong ministerial declaration reiterated this objective.

<sup>5</sup> For a critical commentary on Sampson's views by the Bank's representative during the Uruguay round see Baneth, J, 1998.

<sup>6</sup> This relates especially to their responsive powers when member states face balance of payments crises; see Siegel, D, 2002.

<sup>7</sup> The consultation process was initiated following claims of undue pressure on the authors of previous reports; see Wade, R, 2001.

<sup>8</sup> Interviews with Aaditya Mattoo, Will Martin and Shanta Devarajan, World Bank, Washington, November 2004.

<sup>9</sup> The South Centre was established in 1990 as a think tank to provide research support and promote South/South cooperation in Geneva, in part to fill the gap created by the neutralisation of UNCTAD.

<sup>10</sup> Although the language on services in the Cotonou Agreement does not require immediate negotiations the EU insisted that services form part of the EPAs. The fallback position by November 2007 was that goods agreements would be signed in 2007 and services negotiations continue into 2008.

## References

Abugre, C (2000) *Still SAPping the Poor: a Critique of IMF Poverty Reduction Strategies* (London: World Development Movement).

Adhikari, R and Dahal, N (Undated) 'LDCs Accession to the WTO: Learning from the Cases of Nepal, Cambodia and Vanuatu' <<http://www.un-ngls.org/sawtee.doc>> 1 August 2007.

Altman, D (2007) 'Charlene Barshefsky on Doha', *Managing Globalization*' <<http://blogs.iht.com/tribtalk/business/globalization/?p=342>> 4 August 2007.

- Amin, S (2006) 'The Millennium Development Goals: A Critique from the South', 57 (10) *Monthly Review* <<http://www.monthlyreview.org/0306amin.htm>> 1 August 2007.
- Anghie, A (2005) *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge University Press).
- African Union (2007) 'African Union Conference of Trade Ministers, Third Extraordinary Session 15-16 January 2007, Addis Ababa, Ethiopia, Ext/Min/Trade/Decl.1(III)' <[http://www.thecommonwealth.org/.../36E03B3E-0B58-4A37-9B8A-32708B58D7FF\\_WTO\\_DECLARATION\\_final\\_ENGLISH.pdf](http://www.thecommonwealth.org/.../36E03B3E-0B58-4A37-9B8A-32708B58D7FF_WTO_DECLARATION_final_ENGLISH.pdf)> 20 November 2007.
- Baneth, J (1998) 'Comment on Paper by Gary P. Sampson' in Krueger, A O (ed.) *The WTO as an International Organization* (Chicago: University of Chicago Press).
- Baxi, U (1994) 'Human Rights Education: The Promise of the Third Millennium?', Paper to the launch of the UN Decade on Human Rights Education, December 1994, <[http://www.pdhre.org/dialogue/third\\_millennium.html](http://www.pdhre.org/dialogue/third_millennium.html)> 4 August 2007.
- Baxi, U (1995) 'Summit of Hope' in the Depths of Despair? Social Development as Realization of Human Rights'. (On File with Author).
- Bond, P (2006) 'Global Governance Campaigning and MDGs: From Top-Down to Bottom-up Anti-Poverty Work', *Third World Quarterly* 27, pp 339 - 354.
- Bretton Woods Project (2002) 'No Pain, No Gain: WDR 2004 on Services', *Update* 31, <<http://www.brettonwoodsproject.org/art.shtml?x=16259>> 4 August 2007.
- Bretton Woods Project (2003) 'Debate Continues Over Services Report', *Update* 34, <<http://www.brettonwoodsproject.org/art.shtml?x=4425>> 4 August 2007.
- Capra, Trade Facilitation Office Canada Consortium (2003) 'Evaluation of the Revamped Integrated Framework for Trade Related Technical Assistance to the Least Developed Countries, Final report August 2003', Paper presented to the WTO Integrated Framework Steering Committee, WT/IFSC/6/Rev.2, <<http://www.oecd.org/dataoecd/62/2/37033500.pdf>> 4 August 2007.
- Cevallos, D (2002) 'Castro, Chavez Decry Inequalities, Condemn IMF', 277 *Third World Economics* 13 <<http://www.twinside.org.sg/title/twe277h.htm>> 4 August 2007.
- Charveriat, C and Kirkbride, M (2003) 'Cambodia's Accession to the WTO. How the Law of the Jungle is Applied to the World's Poorest Countries', Oxfam International, <<http://www.globalpolicy.org/soecon/bwi-wto/wto/2003/0903cambodia.pdf>> 4 August 2007.
- Chasek, P and Sherman, R (2004) *Ten Days in Johannesburg – A Negotiation of Hope* (Cape Town: Struick Publishers).
- Chavez Malaluan, J.J.C and Guttal, S (2002) *Structural Adjustment in the Name of the Poor. The PRSP Experience in the Lao PDR, Cambodia and Vietnam*, (Bangkok, Focus on the Global South) <<http://www.focusweb.org/publications/Research%20and%20Policy%20papers/2002/PRSP.pdf>> 7 August 2007.
- Chossudovsky, M (1999) 'Seattle and Beyond: Disarming the New World Order', <<http://www.transnational.org/SAJT/forum/meet/seattle.html>> 4 August 2007.
- de Barra, C (2004) 'PRSP as Theatre – Backstage Policy-Making and the Future of the PRSP Approach', Background Paper, CIDSE - Caritas International, <<http://www.cidse.org/docs/200409271723027101.pdf>> 4 August 2007.

Evenett, S J and Primo Braga, C A (2005) 'WTO Accession: Lessons from experience' 22 *Trade Note* <<http://siteresources.worldbank.org/INTRANETTRADE/Resources/Pubs/TradeNote22.pdf>> 4 September 2007.

Gay, D and Joy, R M (undated) 'Vanuatu', UNESCAP Trade and Investment Division', <[http://www.unescap.org/tid/publication/t%26ipub2278\\_van.pdf](http://www.unescap.org/tid/publication/t%26ipub2278_van.pdf)> 5 September 2007.

Gill, S (2003) *Power and Resistance in the New World Order* (Basingstoke: Palgrave Macmillan).

Grynberg, R, Dugal, M and Razzaque, M A (2006) *An Evaluation of the Terms of Accession to the World Trade Organization. A Comparative Assessment of Services and Goods Commitments by the WTO Members and Acceding Countries* (London: Commonwealth Secretariat).

Haffajee, F (2002) 'Monterrey meet – Washington Consensus in a sombrero', 277 *Third World Economics* <<http://www.twinside.org.sg/title/twe277f.htm>> 10 August 2007.

Haggard, S and Kaufman, R R (1992) 'Institution and Economic Adjustment', in Haggard, S and Kaufman, R R, (eds.) *The Politics of Economic Adjustment* (New Jersey: Princeton University Press).

Hellinger, D, Hansen-Kuhn, K and Fehling, A (2001) 'Stripping Structural Adjustment Programmes of their Poverty-Reduction Clothing. A New Convergence in the Challenge to Global Economic Management' (Washington, The Development Gap) <[http://www.developmentgap.org/worldbank\\_imf/Stripping\\_Adjustment\\_Policies.pdf](http://www.developmentgap.org/worldbank_imf/Stripping_Adjustment_Policies.pdf)> 5 September 2007.

Henisz, W J, Zelner, B A and Guillén, M F (2005) 'The Worldwide Diffusion of Market-Oriented Infrastructure Reform', *American Sociological Review* 70, pp 871 - 897.

Hermele, K (2005) 'The Poverty Reduction Strategies. A Survey of the Literature' (Stockholm, Forum Syd) <[http://www.sarpn.org/documents/d0001450/PRStudyfinalForumSyd\\_June2005.pdf](http://www.sarpn.org/documents/d0001450/PRStudyfinalForumSyd_June2005.pdf)> 6 August 2007.

Hilary, J (2004) 'Divide and Rule: The EU and US Response to Developing Country Alliances at the WTO' (Den Haag, ActionAid International), <[www.actionaid.org/docs/divide\\_rule.pdf](http://www.actionaid.org/docs/divide_rule.pdf)> 5 September 2007.

Hoekman, B and Kostecki, M (1995) *The Political Economy of the World Trading System. From GATT to WTO* (Oxford: Oxford University Press).

Integrated Framework (2007) 'IF Process', <<http://www.integratedframework.org/process.htm>> 20 September 2007.

International Monetary Fund (IMF) (2004) *Evaluation of the IMF's Role in PRSPs and the PRGF* (IEO: Washington).

IMF/World Bank (2003) 'PRSP – Detailed Analysis of Progress in Implementation, 15 September 2003', <<http://www.imf.org/external/np/prspgen/2003/091503.htm>> 20 September 2007.

IMF/World Bank (2005) '2005 Review of the Poverty Reduction Strategy Approach: Balancing Accountabilities and Scaling up Results, 19 April 2005', <[www.imf.org/external/np/pp/eng/2005/091905p.htm](http://www.imf.org/external/np/pp/eng/2005/091905p.htm)> 20 September 2007.

Joint Integrated Technical Assistance Programme (JITAP) (2007) 'Partnership for Trade Development in Africa', <[www.jitap.org](http://www.jitap.org)> 20 September 2007.

Kelsey, J (forthcoming) *Serving Whose Interests? The Political Economy of Trade in Services Agreements* (London: Routledge).



Kelsey, J (2005) 'World Trade and Small Nations in the South Pacific Region', *Kansas Journal of Law and Public Policy* 14, pp 247-306.

Khor, M (1995) '“Don't tell me what to do” says World Bank Chief to UN', 117 *Third World Economics* 2, <<http://www.chasque.net/frontpage/suns/trade/areas/develop/07070195.htm>> 10 August 2007.

Khor, M (2002) 'Report on WSSD, No. 2' <<http://www.aprnet.org/index.php?a=show&t=issues&i=9-30k>> 20 September 2007.

Kwa, A (2003) *Power Politics at the WTO* (Bangkok: Focus on the Global South).

Landau, S (2002) 'Lies, Truth and Transcendent Issues in Monterrey', *Radio Progreso Weekly*, 11 April 2002 <<http://www.tni.org/archives/landau/lies.htm>> 20 September 2007.

Marshall, A and Woodroffe, J (2001) 'Policies to Roll-back the State and Privatise? Poverty Reduction Strategy Papers Investigated' (London, World Development Movement) <<http://www.wdm.org.uk/resources/reports/debt/rollback01042001.pdf>> 7 August 2007.

Mattoo, A (2003) 'Services in a Development Round', *Trade Note* 11 <<http://siteresources.worldbank.org/INTRANETTRADE/Resources/Pubs/TradeNote11.pdf>> 7 August 2007.

Morgan, B (2003) 'The Economization of Politics: Meta-Regulation as a Form of Non-Judicial Legality', *Social & Legal Studies* 12, pp 489 - 523.

Office of the United Nations High Commissioner for Human Rights (2002) 'UN Sub-Commission on the Promotion and Protection Human Rights on 'Liberalisation of trade in services and human rights. Report of the High Commissioner', E/CN.4/Sub.2/2002/9, 25 June 2002.

Office of the United States Trade Representative (2005) 'Non Paper', July 2005. (On File with Author).

Oxfam (2005) 'Blood from a Stone', Oxfam International Briefing Note <<http://www.oxfam.qc.ca/pdf/etudes/tonga.pdf>> 8 August 2007.

Picciotto, S (2007) 'The WTO as a Node of Global Governance; Economic Regulation and Human Rights Discourses', *Law, Social Justice and Global Development Journal* 2007(1), <[http://www2.warwick.ac.uk/fac/soc/law/elj/lgd/2007\\_1/picciotto](http://www2.warwick.ac.uk/fac/soc/law/elj/lgd/2007_1/picciotto)> 25 November 2007.

Pogge, T W (2000) 'The Moral Demands of Global Justice', *Dissent* 47, pp 37 - 43.

Pogge, T W (2004) 'The First UN Millennium Development Goal: A Cause for Celebration?' in Follesdal, A and Pogge, T (eds.) *Real World Justice* (Netherlands: Springer).

Raghavan, C (2004) 'Framework for Modalities or 'Platform' for Future Careers?', *South-North Development Monitor (SUNS)*, 21 July 2004 <<http://www.twinside.org.sg/title2/twninfo141.htm>> 8 August 2007.

Sampson, G P (1998) 'Greater Coherence in Global Economic Policymaking: A WTO perspective', in Krueger, A O (ed.) *The WTO as an International Organization* (Chicago: University of Chicago Press).

Schneiderman, D (2000) 'Investment Rules and the New Constitutionalism', *Law & Social Inquiry* 25, pp 757 - 787.

Shiva, V (2006) 'The Great Betrayal. Why Civil Society Walked Out and Withdrew Consent from the WSSD' in Schroyer, T and Golodik, T (eds.) *Creating a Sustainable World. Past Experiences/ Future Struggles* (New York: Apex Press).

Siegel, D E (2002) 'Legal Aspects of the IMF/WTO Relationship: The Fund's Articles of Agreement and the WTO agreements', *American Journal of International Law* 96, pp 561 - 599.

South Centre (2006) 'Reinventing UNCTAD', 7 Research Papers, Geneva: South Centre, <<http://www.southcentre.org/publications/researchpapers/ResearchPapers7.pdf>> 5 September 2007.

Stiglitz, J E (2002) *Globalization and its Discontents*, (New York: Norton & Co).

United Nations (UN) (2000) UN Resolution adopted by the General Assembly, 55/2. 'United Nations Millennium Declaration', 8 September 2000, <<http://www.un.org/millennium/declaration/ares552e.htm>> 20 September 2007.

UN (2001) 'Road Map Towards the Implementation of the United Nations Millennium Declaration. Report of the Secretary-General', A/56/326, 6 September 2001, <<http://www.un.org/millenniumgoals/documents.html>> 20 September 2007.

UN (2002) 'Report of the International Conference on Financing for Development', Monterrey, Mexico, 18-22 March 2002 A/CNF.198/11 (Monterrey Consensus) <[http://www.un.org/esa/sustdev/documents/Monterrey\\_Consensus.htm](http://www.un.org/esa/sustdev/documents/Monterrey_Consensus.htm)> 10 September 2007.

United Nations Conference on Trade and Development (UNCTAD) (2004) *World Investment Report 2004: The Shift Towards Services* (New York: UNCTAD).

UNCTAD (2006) *Trade and Development Report 2006* (Geneva: UN).

United Nations Development Programme (2003) *Human Development Report 2003. Millennium Development Goals: A Compact Among Nations to End Human Poverty* (New York: UNDP).

United States Mission to the United Nations in Geneva (2006) 'UNCTAD: Trade and Development Report 2006: Remarks by Ann Low, First Secretary, U.S. Mission to the United Nations', <<http://geneva.usmission.gov/Press2006/0928TDR2006.html>> 7 August 2007.

Vandemoortele, J, Malhotra, K and Lim, J (2003) *Is MDG8 on Track as a Global Deal for Human Development?* (New York: UNDP).

Wade, R H (2001) 'Making the World Development Report 2000: Attacking Poverty', *World Development* 29, pp 1435 - 1441.

World Bank (2003) *World Development Report 2004: Making Services Work for Poor People* (Washington: World Bank).

World Bank (2004) *2003 Annual Review of Development Effectiveness: The Effectiveness of Bank Support for Policy Reform* (Washington: Operations Evaluation Department).

World Bank Institute/World Trade Organisation (2006), 'Joint WBI-WTO Training Workshop on Trade in Services', December 2006, <<http://econ.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTRESEARCH/EXTPROGRAMS/EXTTRADERESEARCH/0,,contentMDK:21147934~menuPK:51428254~pagePK:210082~piPK:210098~theSitePK:544849,00.html>> 9 August 2007.

World Development Movement (2005) 'Media briefing: Analysis of the Draft Declaration of the UN Millennium Development Goals Summit', <<http://www.wdm.org.uk/resources/reports/other/G77mediabriefing01082005.pdf>> 9 August 2007.

World Health Organisation (2002) *WTO Agreements and Public Health* (Geneva: WHO).

World Summit for Social Development (WSSD) (1995) 'Report of the World Summit for Social Development', Copenhagen, 6-12 March 1995 A/CONF.166/9, 19 April 1995, <<http://www.un.org/esa/socdev/wssd/agreements/index.html>> 20 September 2007.

World Summit for Social Development (2002) 'Declaration of the World Summit on Sustainable Development and Plan of Implementation', 4 September 2002, A/CONF.199/L.6/Rev.2  
<<http://www.unep.org/wssd/>> 20 September 2007.

World Trade Organisation (WTO) (1995) 'Marrakesh Agreement Establishing the World Trade Organization' <[http://www.wto.org/english/docs\\_e/legal\\_e/04-wto\\_e.htm](http://www.wto.org/english/docs_e/legal_e/04-wto_e.htm)> 20 September 2007.

WTO (1996) 'WTO Agreements with the Fund and the Bank', WT/GC/W/43, 4 November 1996.

WTO (2001) 'Doha WTO Ministerial 2001: Ministerial Declaration', WT/MIN(01)/DEC/1, 20 November 2001, adopted 14 November 2001  
<[http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm)> 20 September 2007.

WTO (2003) 'Accession of Least-Developed Countries', Decision of 10 December 2002, WT/L/508, 20 January 2003.

WTO (2004) 'Doha Work Programme. Decision Adopted by the General Council on 1 August 2004', WT/L/579, 2 August 2004.

WTO (2006a) 'An Enhanced Integrated Framework. Report of the Chairman of the Task Force on an Enhanced Integrated Framework, including recommendations', WT/IFSC/W/15, 29 June 2006.

WTO (2006b) 'Strategic Review of WTO-provided Training and Technical Assistance (TRTA)', WT/COMTD/W/152, July 2006.

WTO (2006c) 'Strategic Review of WTO-provided TRTA', WT/COMTD/W/153, 17 October 2006