

ABHANDLUNGEN

The Anti-Globalization Protests: Side-show of Global Governance, or Law-making on the Streets?

*Rahmatullah Khan**

Introduction

Anti-globalization demonstrations have by now become a standard feature of meetings of institutions associated with globalization. (As I finalize this piece, there is a raging demonstration that is going on in Genoa, Italy, at the G8 summit.)¹ The response to the phenomenon has varied: the media, barring a few exceptions, goes hysterical over them; the academia ignores them; and the general public seems to be bemused. I view them with some fascination; for, I suspect anti-globalization demonstrations have begun to have a measurable impact on global governance, and are forcing us to view afresh the structured layers of international policy and law formation.

First, I seek to describe the rancor and rage that drives the demonstrators against the chosen targets. Then, I isolate and discuss the issues that are sought to be pushed by them to the forefront of the international agenda. The impact of the effort is assessed at the end in terms of doctrine. A word of caution is sounded at the outset. Both the phenomenon of globalization and the protests are too contemporaneous to admit value judgments at this stage. And it's a field where the distance between the sublime and the ridiculous is indeed but a step (quoting Napoleon's famous statement at the calamitous retreat from Moscow). The second caveat is: the analysis of the substantive issues in section II is based on popular, media account and not on economic doctrine.

* Formerly Jawaharlal Nehru Chair of Environmental Law, and Rector of Jawaharlal Nehru University, New Delhi.

¹ For an early account of the event, see, Maria Livanos Cattau, *Back Away From the Vandals Who Give NGOs a Bad Name*, International Herald Tribune (IHT, hereafter), 19 July 2001; Charles McLean, *What if Media Paid Less Attention to the Violence*, id.

I. The Strategies and the Targets

The anti-globalization demonstrations have targeted the WTO, the World Bank and the IMF which, in the demonstrators' view, are the vehicles of globalization. The attack against WTO was launched, as we all know, at Seattle in December 1999. A few thousand activists gathered in the streets of Seattle to protest against the scheduled meeting of the WTO. The latter resorted to violence, ransacked Nike stores, incongruously wearing Nike high-tops! The looting and window-smashing by a handful of self-described anarchists led to nearly 600 arrests. The incident forced the early retirement of the city police chief. The demonstrators prevented the UN Secretary-General from delivering his speech. And the meeting ended prematurely without transacting any business.

The Seattle fiasco led to serious soul-searching amongst policy-makers and in the media. One knee-jerk reaction of a columnist is worth noting: "WTO with an annual budget of \$80 million, not enough to buy an F-22 fighter for the US Air Force was not the real target of the Seattle demonstrators. It was merely a symbol, a bureaucratic metaphor for the idea that the markets have become the real governing force of the 1990s."²

The Seattle veterans reassembled in Washington in April 2000 to target this time two "older, richer and savvier agents of the global economy: the World Bank and the International Monetary Fund."³ The World Bank today employs about 11,300 people and has a loan portfolio of about \$200 billion. The IMF has a smaller balance sheet and payroll – 2,200 employees and \$90 billion in new loans. The size of their budgets and loan portfolios, however, are not indicative of their enormous economic and political clout.⁴ At Washington, an unusual "blue-green" alliance was forged in which the American trade unions joined the protest rallies in Washington, D.C. against the World Bank and the International Monetary Fund. The attack on these institutions in Washington went off peacefully, thanks to the preparation and tactful handling of the local police.

The polyglot group of environmentalists and anti-free-trade activists raised the ante at Melbourne in September 2000 at the meeting of the World Economic Forum. The demonstrators clashed with riot police and blocked the conference site by forming a human chain across every entrance. The Melbourne police was not as considerate as the Washington police. According to the organisers of the demonstration, 50 protesters were injured and 11 hospitalised in the fracas. The police minister of the Victoria state government defended the rough police action on the alleged ground that "it was not a peaceful protest but something verging on riot, where we had ball bearings, marbles, screws, glass and urine thrown at police officers."⁵

² David E. Sanger, *For Opponents of the WTO, a Kind of Woodstock*, IHT, 6 December 1999.

³ Joseph Kahn, *Seattle Protesters Are Back, With a New Target*, The New York Times (NYT, hereafter), 9 April 2000.

⁴ See, Sanger (note 2), IHT, 29 November 1999; and John Burgess, *At IMF Headquarters*, Washington Post, 13 April 2000.

⁵ See, Mark Landler, *Anti-Free-Trade Protests Disrupt Economic Forum in Melbourne*, NYT, 12 September 2000.

The World Bank-IMF meeting in Prague in September 2000 was more problematic. The assortment of protesters, this time, included Spanish anarcho-syndicalists, communist splinter groups from across Europe, neo-fascist skinheads, etc.⁶ Things went out of control. The “peaceful” demonstrations turned violent. A squadron allegedly of European anarchists wearing black masks ripped cobblestones from Prague’s medieval streets and hurled them at the police. Some joined the melee throwing home-made gasoline bombs, Molotov cocktails that ignited the uniforms of officers stretched in a line across the street.

Prague had made preparations to meet the challenge, turning back suspected protesters at the borders, and deploying about 11,000 officers to control an expected 20,000 protesters (only 6,000 actually turned out, according to official estimates). The riot policemen responded by firing tear gas, concussion grenades and water cannon at the protesters. The organiser’s plan to peacefully bottle up delegates with human chains was thus botched by a tiny minority of protesters.⁷ The protests degenerated into mayhem.

For the Prague citizens the violent protests had a ring of tragic irony, as commentators noted. The last time mass demonstrations were witnessed in Prague was in 1989, when some 300,000 people gathered in Wenceslaus Square shaking their key rings and shouting “we have had enough” as the country then known as Czechoslovakia rose up against its Communist government. Not a window was broken, not a bone smashed. In three short weeks of peaceful protests, the Communist regime was overthrown in what came to be known as the “Velvet Revolution”. This time around, the chants were. “Smash, Smash, Smash the IMF”, “Yuppie Scum, Your Time Has Come,” “London, Seattle, Continue the Battle.”⁸ Some sixty persons, most of them policemen, were injured. Some were jailed for unruly assembly and rioting.

One of the prime targets of the anti-globalisation protesters has been the World Economic Forum which has organised since 1982 an annual meeting of heads of state, senior political figures and business leaders at Davos, a chic Alpine ski resort. If globalisation has a brand name, it is surely this prosperous resort town. The protesters clashed with the police on the streets of Davos in 2000 in which shops and vehicles were damaged. In 2001, the Swiss authorities deployed 600 officers to handle the protesters. The situation was considered serious enough for the US State Department to issue a negative travel advisory on Davos.

In June 2001, anti-globalisation protests in Barcelona resulted in injuries to 32 demonstrators. A World Bank meeting was cancelled in anticipation of the protests. Burger King restaurants and Swatch stores were the targets of the demonstrators’ ire this time.⁹ The European Union summit in Gothenburg (Sweden) was equally vicious. The demonstrators conducted an orgy of violence

⁶ See, Peter S. Green, Protesters and Police Gearing Up in Prague, IHT, 25 September 2000.

⁷ See, Joseph Kahn, Protests Distract Global Finance Meeting, NYT, 27 September 2000.

⁸ See, William Drozdiak/Steven Pearlstein, Protesters Paralyze Prague, Washington Post, 27 September 2000; Peter S. Green, Street Violence Angers Many Czechs, IHT, 27 September 2000.

⁹ See, AP report titled: 32 Injured in Anti-Globalization Protest in Barcelona, NYT, 25 June 2001.

and forced leaders of the summit to flee from their hotels, abandoning a scheduled dinner, and end the discussions abruptly. The damage caused was estimated at \$8.8 million. Extensive arrests were made by the local police. The violence forced the organizers to discuss ways to prevent such incidents in the future. The incident led some leaders to wonder "whether Europe's open borders are promoting a form of violent tourism." An Italian newspaper reported that officials planning the July 2001 G-8 meeting in Genoa were so chagrined by the anti-globalization unrest that some of them suggested holding the meeting on a ship at sea!¹⁰

The pattern of protests now seems to be set. The anti-globalisation protests seem bound to continue. So seems the rancour and the frustration over the processes, the phenomena, and the institutions that symbolise globalisation. Quebec, Salzburg, and other trouble spots reinforced the conclusion, and Doha, one fears, will.¹¹

As this essay was being processed for the press, the most serious event of anti-globalisation protests took place in Genoa, Italy on 19–21 July at the G8 summit. One demonstrator was killed and more than a 100 were injured in a confrontation with about 20,000 policemen deployed to control the violent ones among the mostly peaceful crowds. Following the set pattern, about 200 demonstrators fought a pitched battle with about the same number of policemen, throwing bricks, bottles and cobblestones ripped from Genoa's medieval old town. Police typically responded with volleys of tear gas and water cannon. The incident constitutes a turning point in the anti-globalisation demonstrations.¹²

Why this rage on the streets? What exactly are the grievances that drive the anti-globalisation demonstrators? Before addressing the issues, let us note who these anti-globalisation demonstrators are. The conservative section in the media project them as "protectionist labor leaders, Naderite consumer gadflies, environmentalists ranging from reasonable greens to anti-worker ecological nuts and a lunatic fringe of anarchists and hate mongers."¹³ The disdainful dismissal of such protesters is not new. Thirty years ago, Wade Rowland had characterised a similar crowd in Stockholm, at the UN Conference on the Human Environment in 1972, as "a colourful collection of Woodstock grads, former Merry Pranksters and other assorted acid-heads, eco-freaks, save-the-whalers, doomsday mystics, poets and hangers-on."¹⁴

There is a convergence on strategy amidst the raft of causes espoused by the demonstrators. There were amongst them some who believed that such demon-

¹⁰ See, report in the *Frankfurter Allgemeine Zeitung*, English language supplement to IHT, 19 June 2001.

¹¹ For the varying assessments after the Quebec City demonstrations, see Paul Blustein, *NEWS ANALYSIS: Amid Furore, Trade Protesters Win a Few Points*, IHT, 23 April 2001; Paul Krugman, *Why Sentimental Anti-Globalizers Have It Wrong*, NYT, 23 April 2001; Michael Kelly, *Globalization: No Pain, No Gain*, Washington Post, 25 April 2001.

¹² See, Alan Friedman, *Violence Rages at G-8 Talks*, IHT, 21–22 July 2001.

¹³ William Safire, *A Good Result for Health and Labor Standards*, IHT, 7 December 1999.

¹⁴ Wade Rowland, *The Plot to Save the World: The Life and Times of the Stockholm Conference on the Human Environment* (1973), 1.

strations had a long romantic history. Centuries ago, they note, peasants had stormed the castle walls and overthrew tyrannical monarchs in Europe. More recently, protesters had challenged Communist regimes in East Europe and repressive regimes elsewhere and toppled them. In the United States, civil rights marchers in the 1960s awoke the conscience of the nation to the unjust treatment of its black citizens. Many protesters in Seattle and other places mentioned believe that they are heirs to this historic tradition.¹⁵

Compared to the traveling hordes of leftists who moved in the 1970s from Portugal to Spain to Nicaragua cheering revolution wanting to change the world, the present day anti-globalization protesters are much more numerous, more violent and less focussed. But their success has been quite impressive, in that governments which used to welcome international summit meetings for the attention and prestige they brought now worry about how to avoid the tumult, says Flora Lewis. She also mentions that among the protesters are the "sovereignists" the new name for nationalists opposed to removing barriers to movement of people and goods.¹⁶ Also among them are shrewd strategists who believe, like the British anarchist, Martin Shaw, one of the organisers of the Prague protests, that "there is a terrible psychological strain on delegates when they know they are surrounded by the people they are supposed to be representing."¹⁷

The demonstrators also feel encouraged by the support and advice they get from the liberal section of the media. One commentator, for instance, upholds the causes that drive the protesters, but regrets their taking to the streets, for "when a worthy cause spills into the streets, it inevitably attracts those who like the drama of the street more than they grasp the dimensions of the cause they support, which in any case becomes vulgarised and diminished by its reduction to slogans." Nonetheless, it is argued that "the demonstrators did not seem to understand that their battle had, in principle, been won," and that "the street did succeed in imposing its will: No revolution was necessary."¹⁸ Has the battle been won? Has the street really succeeded in imposing its will?

One way of answering this is to identify the issues that drive the demonstrators to the street, and to assess the impact of such demonstrations on global governance.

II. The Issues

The two most rankling issues perpetually hammered by the demonstrators are: free trade and the problem of global poverty and inequities. The anti-globalisation protesters are convinced that globalisation fails to address these issues.

¹⁵ See, Klaus Schwab/Claude Sma dja, *The Work That Matters in Davos will Be Going On Indoors*, IHT, 23 January 2001.

¹⁶ See, Flora Lewis, *The Anti-Globalization Spoilers Are Going Global*, IHT, 6 July 2001.

¹⁷ See, Green (note 6).

¹⁸ William Pfaff, *The West's Globalization Drive Is Proving a Massive Failure*, IHT, 29 September 2000.

1. Free Trade

Votaries of free trade project it as a talisman for curing the world's ills.¹⁹ They argue that trade has been an enormous force for good. Since 1950, they point out, the world economy had expanded six-fold to about \$30 trillion of output. In the same period, trade rose 14-fold to about \$5.4 trillion of exports. Countless countries have benefited from this increase in trade, through higher incomes, better diets and longer life expectations.²⁰ Some argue that despite the weaknesses of the existing WTO system, the "developing countries have more to gain than to lose" by free trade; that "[t]hey, not the demographically challenged old rich, are the future of world trade growth"; and that they should "stop wrangling over obscure points and cut deals."²¹

The magic of the market place and the virtues of free trade are seriously contested by the anti-globalisation activists. The contestants argue that free trade had indeed brought enormous prosperity to the developed world, but had failed to alleviate poverty in many parts of the Third World. There are still 3 billion people – about half of the world's population – living on less than \$2 a day, they contend. The challenge is not restricted to the street. One will find advocates of this view in the academic world. Dani Rodrik, professor of international political economy at Harvard, takes the position that "in their zeal to promote the virtues of trade, the most ardent proponents are peddling a cartoon version of the argument, vastly overstating the effectiveness of economic openness as a tool for fostering development ... Neither economic theory nor empirical evidence guarantees that trade liberalization will deliver higher economic growth ..."²² As someone said, WTO "is currently blinkered by its monochrome marketplace view of the world's multicolored reality. Developing countries would benefit from having their resources valued properly, and not just in the terms dictated by today's free traders, whether ours or their own."²³

Seattle continues to loom large on the future trade round talks. Inadequate preparations were blamed, among several other things, for the failure at Seattle. WTO's new head, Mike Moore, sought to avoid this problem for the Doha meeting in November 2001. But the preparatory meeting in Geneva in June 2001

¹⁹ Included in this category are an assortment of free-market philosophers, like Harvard professor Jeffrey Sachs; billionaire George Soros; former chairman of the US Federal Reserve, Paul Volcker, former US Treasury secretaries Lawrence Summers and Robert Rubin, all considered prophets of American capitalism. The distinguished Indian economist, Jagdish Bhagwati has joined this elite club, according to the reviewer of his book, *The Wind of the Hundred Days: How Washington Mismanaged Globalization*. The review in reference is by another Harvard don, Jeffrey Frankel, *Foreign Affairs*, March/April 2001, at 155–161.

²⁰ Robert J. Samuelson, *The World Trade System Doesn't Need Another Agreement*, IHT, 30 November 1999.

²¹ Philip Bowring, *Globalization's Also-Rans Ought to be Scrambling on Board*, IHT, 2 May 2001.

²² See, *Trading in Illusions*, *Foreign Policy* 80, No. 2 (2001), accessed from FP web site on 13 March 2001.

²³ Letter to the Editor, by Elizabeth Young, *Trade and Environment*, IHT, 7 June 2001.

witnessed deep divisions among the participants on the agenda and the scope of the next round. The European countries, in an effort to make trade concessions domestically palatable, wanted the new trade round to include food safety, environmental standards, foreign direct investment and national competition policy in the talks. The US negotiators favored a “focussed agenda” concentrating on better access for services and agriculture and industrial goods – an agenda that would exclude fractious subjects like anti-dumping rules, limits on import surges etc.

The developing countries that make up the bulk of the trade organization, on the other hand, wanted limits on anti-dumping actions to be high on the agenda. They bitterly opposed making labour standards a matter for the WTO. They were generally opposed to the new trade round because they felt that their interests received inadequate attention at the Uruguay Round, which ended in 1994. India’s trade envoy, Srinivasan Narayanan, said about the plans to start a new round at Doha: “We are not ready for it. We’ll lose more than we’ll gain.”²⁴

Citing World Bank figures, it is argued that tariffs and quotas applied in rich countries cost LDCs about \$2.5 billion annually in lost foreign exchange earnings. The US, one of the worst offenders, accounts for almost half of this total, mainly because of restrictions on textile imports. For every \$1 provided to Bangladesh in aid, the US takes away \$7 through import barriers. While industrialised countries shut the doors to their markets, the LDCs compelled to follow the structural adjustment programmes of the World Bank to liberalise their markets at break-neck speed, often have disastrous results. Bullied by powerful lobbies, rich countries subsidise their agricultural sectors. Last year, the 25 wealthiest nations in the OECD spent more than \$360 billion on agricultural subsidies – a sum equivalent to the gross national product for all of sub-Saharan Africa.

The EU, according to an estimate, spent close to \$300 billion last year on export subsidies that reward its farmers for creating surpluses which are then dumped in many Third World markets – at prices below production costs. This practice destroys the farm communities in poor countries which cannot compete with cheap imports. The IMF-World Bank imposed liberalisation of rice markets in Haiti, for instance, led to a surge in imports from the United States and reportedly destroyed thousands of rural livelihoods, undermining national food self-reliance in the process.²⁵ That’s a very short-sighted way of promoting markets of the future in developing countries, it is contended. And, in the circumstances, the demand of the developing world for a fair price to their products seems quite justified. This view is endorsed by non-academic practitioners, too.

The secretary-general of the United Nations, Kofi Annan, echoed the developing countries’ apprehension at Seattle that they “were being taken for a ride” on

²⁴ See, Elizabeth Olson, *Seattle Failure Weighs on Future of New Trade Talks*, NYT, 26 June 2001.

²⁵ See, Kevin Watkins, *More Hot Air Won’t Bring the World’s Poor in From the Cold*, IHT, 16 May 2001. William Drozdiak provides another striking example of the trade barriers created by Europe for exports from the poor countries, such as Morocco, stifling their economies. See, *Poor Nations May Not Buy Trade Talks*, Washington Post, 15 May 2001.

opening up their markets. He suggested that the transnational companies that were “the prime beneficiaries of economic liberalisation must share some of the responsibility for dealing with its social and environmental consequence.” Annan called for a substantial reduction of tariffs and other trade restrictions on developing countries. And for the least developed countries, Annan urged scrapping duties and quotas altogether, and noted: “On top of the gross imbalance of power and wealth between industrialized countries and developing ones, there is now a second imbalance: the gap between the integration of the world economy and the continued parochialism of political and social institutions.” That is why, he said, people in both developed and developing countries “feel vulnerable and helpless.”²⁶ And in January 2000, at the World Economic Forum summit in Davos, Annan reminded the overconfident West “that globalization might not raise all boats (only the yachts) and in the process might wind up overturning a lot of canoes.”²⁷

Kofi Annan’s views on free trade, one may note, reflect in substance those of the anti-globalisation demonstrators. In the next section on the Millennium Declaration, it will be further observed that the objections of the street protesters seem to have become official doctrine.

2. Global Governance and Poverty

The other and equally important issue that raises the ire of the anti-globalisation demonstrators concerns the nexus between globalisation and world poverty. The perceived weak linkage between the two phenomena, leads them to squarely blame globalisation’s institutional reflections, the World Bank and the IMF.

The question why so many countries stay poor or become poorer has agitated many individuals and institutions for long. The United Nations Development Programme puts the blame on bad governance in its 2000 report.²⁸ The report seeks to demonstrate that good governance is a critical building block for poverty reduction. It further argues that embracing democracy is not enough. Free and fair elections only promote accountability, but democracy by itself is no vaccination against poverty. The report questions the historic practice of channelling foreign aid to the central governments, with the observation that much of such aid is siphoned off in corruption. The report built on its pioneering annual human development reports which factored adult illiteracy, the proportion of children under 5 who are underweight and the probability of dying before 40 etc., to measure human development. Surveying 140 of the United Nations’ 188 members, the

²⁶ Annan to WTO: Open Development Road, Excite News, 1 December 1999.

²⁷ See, Tom Plate, Coming Next, in Bangkok, a Chance to Put Seattle Behind Us,” IHT, 20 December 1999.

²⁸ United Nations Development Programme: Overcoming Human Poverty: UNDP Poverty Report 2000. The US secretary of state, Colin Powell, has recently expressed the view that assistance and investment will be “ineffective in societies that are closed, corrupt or callous.” See, Powell’s article entitled: The IMF, the World Bank and the WTO Are Helping, IHT, 2 May 2001.

report finds most regions lagging on all three fronts, and sometimes moving backward, even as democracy spreads and economic growth rates rise.

The fault lies with the WTO, World Bank and the IMF, for the above sorry state of affairs, according to the demonstrators at Seattle and Washington, and for other critics of these institutions. The critics contend that projects such as petroleum pipelines harm the environment and their market opening policies cost jobs in poor countries and encourage the creation of sweatshops. They also argue that the loans burden poor countries with debt-service obligations that drain resources that could go to health, education and food programmes.

The rabble raisers on the streets are not the only ones that deride these institutions. Numerous commissions and experts have examined the Bank's lending policies and have found that it had laid too much emphasis on the middle-income nations and had not done enough for the world's poorest. The IMF is accused of imposing strict budget-balancing and interest rate requirements on the Asian countries when they were hit by the 1998 contagion. A lot of legitimate questions are being asked as to the Bank's projects and how well they get executed. The impression has gained ground that the Bank's rhetoric did not match its realities. In the spate of recent assessments, sometimes contradicting each other, there is general agreement that the two institutions ought to return to their core competencies – poverty reduction for the World Bank and crises management to the IMF.²⁹

The anti-globalisation demonstrators claim credit for forcing the issues of free trade and poverty to the forefront of the global agenda. And Kofi Annan's endorsement of most of the criticism made by them reflects the impact of such criticism on global governance. The endorsement has taken a normative undercurrent in Annan's Millennium Report and in the Millennium Declaration.

3. The Millennium Report and Declaration

The anti-globalisation sentiment has found its way into secretary-general Kofi Annan's Millennium Report and the Declaration adopted at the Millennium summit in 2000.³⁰

"Globalization and advances in technology," the Declaration notes, "create significant opportunities for people to connect, share and learn from each other. At the same time, corporate-driven globalization increases inequities between and within countries, undermines local traditions and cultures, and escalates disparities between rich and poor, thereby marginalizing large numbers of people in urban and rural areas. Women, indigenous peoples, youth, boys and girls, and people with disabilities suffer disproportionately from the effects of globalization."³¹

²⁹ See, David Sanger, "World Bank Defends Itself to Critics," IHT, 17 April 2000.

³⁰ See, We the Peoples Millennium Forum, Declaration and Agenda for Action, Strengthening the United Nations for the 21st Century: <http://www.millenniumforum.org/html/papers/mfd26May.htm>.

³¹ Id., at 1.

Globalisation, according to the Declaration, should be made to work for the benefit of everyone. The Declaration states that to some globalisation was an inevitable process driven by new technologies in electronic communication and transport, enabling information, persons, capital and goods to cross borders and reach the most remote corners of the globe at unprecedented speed, transforming the world into a global village and ensuring prosperity for all its inhabitants. To most, however, globalisation is a process of economic, political and cultural domination by the economically and militarily strong over the weak. The Declaration goes on to narrate how the combined assets of the top 200 corporations had gone up from 16% of the world's GDP in the 1960s to 34% in 1995. In the same period, the ranks of the poor had swelled, pushing an increasing number into extreme poverty, and governments into a state of perpetual dependence. According to an estimate, with all the wealth in the world, the world still has 1.3 billion people living in extreme poverty, more than 150 million children forced to work, 125 million children who don't go to school and many millions more who drop out before getting a basic education. Market-led globalisation, the Declaration notes, is leading the world to the race to the bottom.

The Declaration goes a step further and argues that poverty is a violation of human rights; that poverty eradication is not an automatic consequence of economic growth; it requires purposeful action to redistribute wealth and land, and so on. It therefore urges the UN to reform and democratise itself; develop a legally binding framework for regulating the actions of big business; exempt the developing countries from implementing the Trade-Related Intellectual Property Rights; and generally to move towards democratic political control of the global economy so that it may serve the world as envisioned above. Governments are similarly urged to recognise that aspects of globalisation seriously threaten environmental sustainability, cultural diversity and heritage, as well as the common good.

The secretary-general's Millennium Report,³² similarly, notes that globalisation projected a "world that is interconnected as never before – one in which groups and individuals interact more and more directly across State frontiers, often without involving the State at all."³³ Annan paints the stark dangers the process posed: crime, narcotics, terrorism, disease, weapons moving back and forth faster. Annan challenges the notion that information revolution brought benefits to all.

The opportunities presented by globalisation, notes Annan in his Millennium report, are unequally distributed. In a telling example, he points out that half of the human race was yet to make or receive a telephone call, let alone use a computer. One can't say they are taking part in globalisation; it would be "insulting their poverty," states the secretary-general.³⁴ Globalisation, he adds, cannot

³² Titled: *We the Peoples: The Role of the United Nations in the 21st Century*, the Report is accessed at <http://www.un.org/millennium/report/state.htm>

³³ *Id.*

³⁴ *Id.* The International Labour Organisation's *World Employment Report 2001 – Life at Work in the Information Economy* endorses the UN secretary-general's position. The Report finds that despite the communications revolution taking place in the world today, increasing numbers of

bypass over a billion people who are struggling to survive on less than one dollar a day, without safe drinking water, and when half of all humanity lacks adequate sanitation.

Painting a grim picture of the state of humanity in the era of globalisation, the secretary-general proposed a series of targets to secure what he called freedom from want³⁵: halving the population living in extreme poverty in the next 15 years; ensuring full primary education for all the children, and halting the spread of HIV/AIDS; and in the next twenty years, transforming the lives of one hundred million slum dwellers around the world.

The Millennium Declaration adopted at the end of the New York Summit endorsed the secretary-general's view "that the central challenge we face today is to ensure that globalization becomes a positive force for all the world's people."³⁶ The Declaration endorsed UNDP's position that development and poverty eradication depend, *inter alia*, on good governance, and supported the recommendations made in the Millennium Report, i.e. duty-free access for all exports from the least developed countries; debt relief, and more generous development assistance.

The Millennium Declaration quite obviously constitutes an endorsement of the demands from the street. It articulated and affirmed "an animating vision for the United Nations in the new era," as the secretary-general wanted. The Declaration, significantly, was the end-product of a unique blend of participants in the summit. True to his plan, secretary-general Annan had brought a remarkable variety of groups to UN headquarters to prepare for the Summit: civil society organisations, presiding officers of parliaments and, for the first time, religious and spiritual leaders. The interaction with the first was most interesting. Some 1,350 representatives of over 1,000 non-governmental organisations and other civil society organisations from more than 100 countries responded to the secretary-general's call to meet at the UN headquarters on 22–26 May 2000 "to draw the attention of governments to the urgency of implementing the commitments they have made, and to channel our collective energies by reclaiming globalization for and by the people."³⁷

workers are unable to find jobs or gain access to the emerging technological resources needed to ensure productivity in an increasingly digitalized global economy. The Report also finds that, given its different speed of diffusion in wealthy and poor countries, the information and communications technology (ICT) is resulting in a widening global "digital divide." It further noted that despite the phenomenal growth of ICT in the industrialised world and its increasing penetration into developing countries, vast swathes of the globe remain "technologically disconnected" from the benefits of the electronic marvels revolutionising life, work and communications in the digital era. Increasing globalisation and trade liberalisation, the Report posits, are creating greater insecurity for many income earners. See, ILO Press Release, ILO/01/03, 24 January 2001.

³⁵ The Millennium Report groups and analyses the other challenges under freedom from fear, and freedom of future generations to sustain their lives on this planet.

³⁶ See, Draft Millennium Declaration, Fifty-fifth session, Item 61(b) of the provisional agenda, The Millennium Assembly of the United Nations. <http://www.un.org/millennium/declaration/a55L2.htm>.

³⁷ See, We the Peoples Millennium Forum, Declaration and Agenda for Action, Strengthening the United Nations for the 21st Century: <http://www.millenniumforum.org/html/papers/mfd26May.htm>.

Interestingly, The Millennium Summit was not without its share of the by-now usual street demonstrations. The same assortment of protesters, a shade more colourful perhaps, sought to push the concerns described above at the Millennium Summit of the UN General Assembly. Since Seattle, the movement had acquired the dimension of a battle against globalisation/capitalism, sparking fears of an anarchist revival.³⁸ The demonstrators at the Millennium Summit included the Falun Gong followers, Israeli peace advocates, and opponents of the Pakistani and Iraqi governments. The American Anti-Slavery Group announced that the Guardian Angels, a group known for its efforts to patrol New York city subways, would attempt a citizen's arrest of Sudan's leader for his alleged enslavement of Christians in southern Sudan. The then US Senate Foreign Relations Committee chairman Jesse Helms urged the State Department to block Cuba's Fidel Castro from attending the Summit. Some human rights groups released a 1,115-page report on deaths and mutilations from land mines.

The Millennium Declaration will henceforth be cited as the common platform and agenda of both the UN and the anti-globalisation activists. The Declaration embodies a Plan for humanising the process of globalisation. It also suggests solutions. Actions of states that endorsed the Declaration will be measured by its targets. That is no mean achievement for the anti-globalisation demonstrators. But it would be a mistake to give full credit to them alone. They could at best be credited with creating the "atmospherics." A large measure of the credit belongs to the NGOs which work on the fringe, and inside the conference halls, the corridors, and the toilets, lobbying the official negotiators, nudging them to accommodate their concerns.

One, however, hesitates in lavishing praise on states either for making such a positive response to the Millennium Declaration. Would they fulfil the promises, and live up to the commitments, made by them in the Declaration? There is some scepticism about it. According to one view, Seattle chipped away the credibility of WTO. And the wreckers were not the anti-globalisation demonstrators, but the governments that had spent the period since the Seattle fiasco "blithely breaking promises and shoring up their own national interests." No confidence-building measures have been taken. Rich markets remain shut, especially in textiles and agriculture. Resources promised to poor countries to build up their capacity have not materialised. Rich countries continue to maintain high levels of domestic farm subsidies while forcing developing countries to open their agricultural markets. They have failed to provide tariff-and quota-free access for all products exported from the world's 48 poorest countries, which are home to 10 percent of the world's people and account for a mere 0.5 percent of world trade. Forsyth, therefore calls for "a rule-based system of global governance that places people

³⁸ The riotous May Day demonstrations against capitalism and multinational companies witnessed this year indicate a larger agenda and participation in the future. See, a Reuters account, For Globalization Foes, May Day Is No Holiday, IHT, 2 May 2001. For an alarmist account of the phenomenon, see Joseph Khan, Globalization Sparks Another Anarchist Revival, IHT, 7 August 2000.

before corporate power, and shares the benefits of globalisation more equitably. But we need to get the wreckers [the rich governments] under control.”³⁹

Such criticism has not gone completely unheard, however in the institutional structures of globalisation. Thanks to such attacks, over time, the World Bank has shed some of its lending policies. It has made significant reforms, written-off debt owed by desperately poor countries, phased out obsolescent lending programmes, and has attained a fair degree of transparency by releasing once confidential documents. Yet it attracts criticism not only from “some Andean Marxist dudes” and other radical left, bereft of “a coherent and compelling vision of an alternative society” and motivated only by hate, as a commentator viciously described the street protesters,⁴⁰ but also from the powerful right. Many US legislators fault the institutions as big, wasteful and unaccountable, run by an elite drawing large tax-free salaries, and peddling policies that aided the “Wall Street fat cats”⁴¹ more than the targeted recipients in the poor countries. A Congress-appointed commission headed by economist Allan Meltzer of Carnegie Mellon University has added fuel to the right wing fire by recommending major overhauls, including essentially pulling the World Bank out of better-off countries such as China and limiting IMF aid in most cases to countries that have carried out reforms before they get into trouble.⁴²

The dean of Harvard University’s John F. Kennedy School of Government, Joseph S. Nye Jr., on the other hand, has urged WTO to take the protesters seriously, especially their demand for more democratic functioning and greater transparency in that organisation’s functioning. NGOs could be welcomed as observers, as the World Bank has done, or allowed to file “friend of the court” briefs in WTO dispute settlement cases. Hybrid networks that combine governmental, inter-governmental, and non-governmental representatives, such as the World Commission on Dams, are avenues worth exploring to obviate the alleged “democratic deficit” in the functioning of the organisations under attack. “Increased accountability for the WTO, World Bank and other official transnational organizations will address many of the legitimate concerns of anti-globalization protesters, while neutralizing their more dubious criticisms. International institutions are too important to be left to demagogues, no matter how well-meaning,” says Nye Jr.⁴³

III. The Role of NGOs

The NGOs have played an important role in “humanising” globalisation. If the street demonstrations provide the “atmospherics,” the NGOs create the “ambi-

³⁹ Justin Forsyth, *The Southern Chorus at the WTO Sounds Like Seattle Again*, IHT, 30 November 2000.

⁴⁰ *Id.*

⁴¹ See, John Burgess, *At IMF Headquarters*, Washington Post, 13 April 2000.

⁴² *Id.*

⁴³ Joseph S. Nye Jr., *Take Globalization Protests Seriously*, IHT, 25–26 November 2000.

ence” in which the sharp edges of globalisation are blunted. And that fits in with the status accorded to them in the UN system, and their track record.

4. NGOs and the United Nations

The post-Westphalia international state system centred on the state as the principal actor and the locus of authority and power. In that international order the state enjoyed an autonomous control over activities within its borders, and asserted sovereign equality with other members of the international community. Non-state actors, including NGOs, had no role to play in the post-Westphalia state system. The emergence on the international stage of non-state actors like the United Nations, the International Committee of the Red Cross etc., combined with the acquired status of the individual forced a reappraisal of the status of NGOs in international law. Political scientists paid attention doctrinally to the status and activities of NGOs earlier than the community of legal scholars.⁴⁴ The latter grasped the importance of the contributions being made by professional groups, like the Institute of International Law, the International Law Association, and other bodies such as the international unions and commissions. The United Nations family too realised their importance and showed willingness to grant a space for NGOs in its policy formulation.

The UN recognition of the utility of NGOs came about in a rather round-about way. Conscious of the failure with the League of Nations experiment, the United States was keen to promote adherence to the UN by enlisting the support of the NGOs and other groups. Reflecting this anxiety, the US delegation at San Francisco had on it some very influential NGO representatives as members. They enjoyed a unique consultative status. The intensive lobbying by the NGO representatives at San Francisco led to the adoption of Article 71 of the Charter.

Article 71 authorises the Economic and Social Council (ECOSOC) “to make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence.” It could do so with both international and national organisations. Pursuant to that authorisation, ECOSOC adopted a system of NGO recognition with different privileges of consultation accorded to three different categories. ECOSOC resolution 1296 of 1968 laid down the criteria of such consultative status as follows:

“The organization [seeking consultative status] shall be concerned with matters falling within the competence of the Economic and Social Council ... the aims and purposes of the organization shall be in conformity with the spirit, purposes and principles of the Charter of the United Nations ... The organization shall undertake to support the work of the United Nations and to promote knowledge of its principles and activities ... the organization shall be of representative character and of recognized international standing ... The organization shall have an established headquarter, with an executive

⁴⁴ For a useful survey of literature on the subject, see Peter Waterman, *Globalisation, Civil Society, Solidarity, Transnational Associations*, 2/1994, 66, and 3/1994, 158.

officer. It shall have a democratically adopted constitutionb ... which shall provide for determination of policy ... by a representative body ... The basic resources of the organization shall be derived in the main part from contributions of the national affiliates ... or from individual members.”

Resolution 1296 classified organisations into three categories. Large organisations with interest and competence in a broad range of subjects were placed under category I. Those with primary focus on ECOSOC issues were subsumed under category II. Others that made occasional contribution to the work of the Council were listed on a Roster.

The small percentage of those with category I status are given opportunities to attend meetings, submit written advice, and occasionally speak at conferences. In 1998, more than 100 NGOs were accorded the category I status; while nearly 1,500 enjoyed some form of consultative status at ECOSOC, as compared to 978 in 1995, and 41 in 1948. The specially created Committee on Non-Governmental Organisations was empowered to make a determination on the placement of organisations seeking consultative status. The accreditation process was severely tested when numerous national and international organisations sought a role in the negotiations leading to the UN Conference on Human Environment at Stockholm and thereafter. Realising that the new area of global concern was not exactly its speciality the United Nations eagerly sought and encouraged participation of NGOs that had special competence in the field.

UN-NGO co-operation in subsequent years gained further momentum culminating in the UNCED negotiations at Rio de Janeiro in 1992. NGOs provided expert knowledge and advise to the decision-making bodies and the secretariat which was called upon to implement decisions that required such input. NGOs came to represent important constituencies not fully represented in national delegations; served as conduits of information and education; and in some cases, like the UN High Commissioner for Refugees, serve as partners in carrying out UN missions. Although direct participation in negotiations has not been conceded yet, NGOs have served in forging policy consensus by corridor consultations and “non-meeting” meetings which characterise much of the UN negotiating process these days.⁴⁵ As Rice and Ritchie note,

⁴⁵ See, Andrew Rice/Cyril Ritchie, *Relationships between International Non-Governmental Organizations and the United Nations*, *Transnational Associations*, 5/1995, 254. The authors note earlier contributions on the subject at the end, some of which are: Bernard Pickard, *The Greater United Nations: An essay concerning the place and significance of international non-governmental organizations* (1956); Berhanykun Andemicael, *Co-operation between NGOs and United Nations Agencies*, UNITAR (1978); Angus Archer, *New Forms of NGO Participation in World Conferences*, UNITAR (1978); Henry and Joanne Esterly, *The Changing Role of NGOs in Recent United Nations Conferences: Walking with the People*, paper prepared for the International Studies Association (1978); Yolanda Kakabadse/Sarah Burns, *Movers and Shapers: NGOs in International Affairs*, World Resources Institute, Washington (1994).

“NGO participation in the initiating, drafting and negotiating of many UN Conventions, Covenants, and Treaties (on human rights, drugs, torture, endangered species, the child, desertification, biological diversity, women) has been remarkably strong. Indeed, NGOs’ roles have been so vital in so many such instances that it is difficult to see how governments can sensibly cut themselves off from such critical intellectual and specialist input.”⁴⁶

NGOs are often welcomed by international organisations for another important reason. They are, in some contexts, the only source of information for international organisations, apart from government reports. Consequently, they are often consulted in drafting texts formally espoused by governments at international conferences. This pro-active role has been recognised in the participation of Greenpeace in the negotiations leading to the London Dumping convention.⁴⁷ They have sought and were given the opportunity to make statements in the proceedings. In fact, at the 1996 UN Conference on Human Settlement (Habitat II), NGOs were not only permitted to make interventions from the floor but also to propose amendments to draft resolutions.⁴⁸

Addressing NGO representatives at the UN in September 1994, secretary-general Boutros Boutros-Ghali was expansively generous:

“I want you to consider this as your home. Until recently, these words might have caused astonishment. The United Nations was considered to be a forum for sovereign states alone. Within the space of a few short years, this attitude has changed. Non-governmental organizations are now considered full participants in international life.”

“Today, we are well aware that the international community must address a human community that is transnational in every way ... The movement of people, information, capital, and ideas is as important today as the control of territory was yesterday... peace in the largest sense cannot be accomplished by the United Nations system or by Governments alone. Nongovernmental organizations, academic institutions, parliamentarians, business and professional communities, the media and the public at large must all be involved.”⁴⁹

Kofi Annan similarly was appreciative of the role of the NGOs in the attainment of the objectives of the UN:

“non-governmental organizations are now seen as essential partners of the United Nations, not only in mobilizing public opinion, but also in the process of deliberation and policy formulation and – even more important – in the execution of policies, in the work on the ground.”⁵⁰

⁴⁶ Rice/Ritchie (note 45), at 259.

⁴⁷ See, Jo Ann Fagot Avel, NGOs and International Affairs: A New Dimension of Diplomacy, in: James P. Muldoon Jr. [et al.] (eds.), *Multilateral Diplomacy and the United Nations Today* (1999), 156–166, at 158.

⁴⁸ Id., at 160–161.

⁴⁹ Boutros Boutros-Ghali, in: Foreword to Thomas G. Weiss/Leon Gordenker (eds.), *NGOs, The UN and Global Governance* (1996).

⁵⁰ Kofi Annan, Opening Address to the Fiftieth Annual Department of Public Information/Non-Governmental Organization (DPI/NGO) Conference, UN Press Release SG/SM/6320, PI/1027, 10 September 1997.

The involvement of NGOs in the policy-making chores of the UN has actually taken the form of a fully-fledged partnership.

UNCED established a unique pattern of admitting NGOs to a participatory role without going through the formal process of acquiring consultative status. The pattern continued at major international conferences in subsequent years, such as those on nutrition (1992), human rights (1993), population (1994), social development (1995), women (1995), habitat (1996) and so on. The realisation has been mutual. Participation of NGOs at these conferences has registered a dramatic increase. Less than 300 NGOs attended the Stockholm Conference on the Human Environment.⁵¹ In 1992, 1,400 NGOs registered with the Rio Conference, and 18,000 NGOs attended the parallel NGO forum.⁵² In parallel exercises, the NGOs adopted by consensus more than 46 "citizen treaties" on the environment and development. The draft treaties were developed through an electronic conference on EcoNet by citizens world-wide including those that couldn't attend the conference. Alicia Ba'rcena describes the phenomenon as "a defining moment in the dialogue among global citizens."⁵³

The UN Secretariat and agencies take NGO partnership seriously. The UN Department for Humanitarian Affairs hosts regular meetings every four to six weeks with the main operational NGOs in the humanitarian areas. The Inter-Agency Standing Committee co-ordinates the work of UN agencies and NGOs involved in complex humanitarian emergencies. The International Federation of Red Cross Societies and the UN High Commissioner for Refugees have regularly involved NGOs in their operations. The World Bank has established an NGO committee and included NGOs in the design and execution of World Bank-financed projects. The UN Non-Governmental Liaison Service in Geneva facilitates the work of the many NGOs working with the UN on development projects.

The UN agencies find NGOs useful in building public support for the agreements, monitoring commitments made, and co-ordinating activities through networking after international conferences. NGO participation is viewed as a step toward promoting accountability of governments to the promises and commitments made by them. Some daring experiments at equality of participation are also being attempted. For example, the heads of four agencies – UNDP, UNESCO, UNICEF, and the World Bank – invited governments, inter-governmental organisations, and NGOs to participate in the preparatory process and in the World Conference on Education for All in 1990 on the basis of complete equality of status and decision-making power among all participants.⁵⁴

⁵¹ See, Sally Morphet, NGOs and the Environment, in: Peter Willetts (ed.), *The Conscience of the World: The Influence of Non-Governmental Organisations in the U.N. System* (1996), 144.

⁵² See, Thomas G. Weiss/David P. Forsythe/Roger A. Coate, *The United Nations and Changing World Politics* (2nd ed. 1997), at 239.

⁵³ Alicia Ba'rcena, *The Role of Civil Society in Twenty-First Century Diplomacy*, in: Muldoon Jr. [et al.] (note 47), 190–200, at 195.

⁵⁴ See, Weiss/Gordenker (note 49), at 184.

The question of equality will be pursued in a moment. Here, one must note the role played by modern information technology in the accretion of power of the NGOs. John Gamble and Charlotte Ku depict this phenomenon well:

“New technologies such as the Internet have created enormous opportunities for NGOs. Enterprising individuals with little institutional infrastructure beyond a computer can mobilise thousands of people over huge distances. The drawing power of computers is enormous because it allows individuals who are similarly equipped (set up with computers) to join a cause based on their own interests without solicitation. Technology permits NGOs to organize large numbers from multiple sectors, and to do so quickly, empowering NGOs in the international political and international law-making arenas.”⁵⁵

In a stimulating article in “Foreign Affairs”, Jessica Matthews has argued that the information revolution is shaking the foundations of the state authority established in 1648.⁵⁶ Three years earlier, in the same prestigious periodical L. Salamon had stated that “we are in the midst of a global ‘associational revolution’ that may prove to be as significant to the latter twentieth century as the rise of the nation-state was to the latter nineteenth.”⁵⁷ The validity of these assertions is borne out by the successful campaigns waged by NGOs in the recent past.

IV. The Campaigns

1. Precedents and the Perspective

The narrative on the campaigns is to be preceded by a brief account on the extent of the proliferation and power of the NGOs that has been simply breathtaking. In France, 54,000 new associations have been established since 1987. In Italy, 40 percent of all associations have been set up within the last 15 years. The phenomenon is not confined to developed countries alone. Within a short space of time 10,000 NGOs have been established in Bangladesh, 21,000 in the Philippines, and 27,000 in Chile. The mushroom growth has been so overwhelming that it led secretary-general Boutros-Ghali to say that the phenomenon “is today shaking international society.”⁵⁸

Save the Children, Oxfam, Amnesty International, *Médicins sans Frontiers*, the International Federation of Red Cross and Red Crescent Societies, and Care are house-hold names in many societies. In the environmental field, some of these have earned a unique status. EarthAction, for example, is one of the largest global networks with over 700 member associations in about 125 countries. The global umbrella organisations strive to pursue common goals and objectives, but

⁵⁵ John King Gamble/Charlotte Ku, *International Law – New Actors and New Technologies: Center Stage for NGOs?* 31 *Law and Policy in International Business* 31 (Winter 2000).

⁵⁶ Jessica T. Matthews, *Power Shift*, *Foreign Affairs* 76, No. 1 (1997), 50,51.

⁵⁷ Lester M. Salamon, *The Rise of the Nonprofit Sector*, *Foreign Affairs* 73, No. 4 (1994), 109.

⁵⁸ See, Leon Gordenker/Thomas G. Weiss, *Pluralizing Global Governance: Analytical Approaches and Dimensions*, in: Weiss/Gordenker (note 49), at 25.

there are significant shifts in emphasis, tolerated amongst national members to accommodate local needs. The massive numbers are matched by the financial muscle. In 1994, over 10 percent of public development aid (\$8 billion) was channelled through NGOs, surpassing the value of the combined UN system (\$6 billion) excluding the World Bank and the IMF. About 25 % of US assistance is channelled through NGOs.⁵⁹

The rise of the NGOs to the centre stage of international law has led some scholars to over-react to it. For John King Gamble and Charlotte Ku the phenomenon represents a change in the allocation of power and authority in the international system with non-state actors "assuming decision-making roles previously reserved primarily to states."⁶⁰ The authors cite Keohane and Nye and Jessica Mathews to the effect that this change has caused the relative decline of states and the rise of non-state actors, and that it has challenged the "300-year-old fundamental operating assumption of the international system that the authority and structure of states will dwarf all other elements." Citing James Rosenau, the authors note that there is a movement beyond governments, which are tied too closely to states, to the broader concept of governance which will be "transcendent" in the late twentieth century.

To illustrate the enormous power acquired by NGOs by global networking with the help of the new information technology, three cases are usually cited: the participation of NGOs in negotiating the 1982 UN Convention on the Law of the Sea; the 1997 Ottawa Convention on Land Mines, and the successful campaign against the OECD-sponsored Multilateral Agreement on Investment (MAI). One may cite other examples, such as the notable contribution made by the NGOs in the drafting of the Convention on the Rights of the Child,⁶¹ and the spectacular success achieved by them in getting the prices slashed for the treatment of AIDS.

2. NGOs and UNCLOS III

In the case of the UNCLOS III, the facilitating factors were the complexity, the length and the enormous number of participants (at times more than 5,000). Although the principal actors with the formal negotiating and decision-making power were only 160 states, NGOs played a significant role gaining access to conference sessions as observers and sometimes as part of national delegations. The diversity of interests and the technical details were so daunting that national delegations were forced to depend upon the data scrupulously collected by NGOs. In negotiating, for example, Part XI of the Convention (on deep seabed mining) many official delegates needed assistance in understanding technical issues

⁵⁹ King Gamble/Ku (note 55).

⁶⁰ The original references are: Robert O. Keohane/Joseph S.Nye Jr., *Power and Independence in the Information Age*, *Foreign Affairs* 77, No. 5 (1998), 81, 93-94; Mathews (note 56), 50-51.

⁶¹ Cynthia Price Cohen, *The Role of Nongovernmental Organizations in the Drafting of the Convention on the Rights of the Child*, *Human Rights Quarterly* 12 (1990), 137.

the information over which was available with NGOs. Their participation helped in harmonising the divergent interests of the mining industries with those of the international community.

Complementary to the harmonising role of the NGOs in the unstructured international conference negotiating process is what Ramesh Thakur and William Maley call "social networking across national frontiers."⁶² NGOs have had a stellar success in this function in the case of the 1997 Ottawa Convention on Land Mines. NGOs mobilised massive support for this treaty in a short span of time, obviating thus the usual inordinately lengthy gestation period of treaty negotiation. Mobilisation of support for the Convention was shrewdly orchestrated at the national level, forcing national governments to seriously contemplate national legislation and sympathy for the international initiatives. A co-operative international network of NGOs was forged with unprecedented speed by Jody Williams with the help of the electronic mail. Hundreds of grass-roots groups were activated at the villages and in national capitals. Legislators, the media and the opinion makers were enlisted in the process. Inter-governmental organisations lent valuable support. The synchronous action thus marshalled produced a treaty of tremendous humanitarian significance.

3. The MAI Campaign

NGOs can also claim credit for frustrating an insidious proposal put forward recently by the OECD for the formation of a Multilateral Agreement on Investment (MAI). The proposed instrument covered investment in stocks and bonds, as well as foreign direct investment and contract rights, intellectual property, real estate, etc. It set strict performance requirements, and sought to impose the much contested conditions on expropriation, and unacceptably elastic dispute settlement procedures. The major problem with the proposed treaty was that it was proposed by the club of the rich, representing twenty-nine economic powers, all of Western Europe plus Japan, the US, Canada, Korea, Australia and New Zealand. The membership, of course, accounts for about 90 percent of the world's direct foreign investment, but the beneficiaries of this "largesse" are overwhelmingly the developing countries. Seen starkly, it was a legal dispensation sought to be imposed by the rich over the poor. Nothing could have been more insensitive and unresponsive to the developing countries. And it was stopped dead in its tracks, mostly by the NGOs.

While 29 wealthy nations were negotiating the MAI, over 600 organisations in nearly 70 countries were busy unleashing "a tidal wave of electronically amplified public opposition to MAI ... cited on more than fifty other Web sites and in 200

⁶² Ramesh Thakur/William Maley, *The Ottawa Convention on Landmines: A Landmark Humanitarian Treaty in Arms Control*, *Global Governance* 5 (1999), 273, 283. For a look at the political dynamic of the campaign that led to the Landmines Convention, see the account of Robert O. Muller, a co-founder of the campaign: *New Partnership for a New World Order: NGOs, State Actors, and International Law in the Post-Cold War World*, *Hofstra Law Review* 27 (1998), 1.

news group postings comprising what Guy de Jonquieres of the Financial Times has described as ‘network guerrillas’ – a horde of vigilantes who ambushed the negotiations.”⁶³ The campaign, seen as “a triumph of civil society over civil servants,” sparked a widespread grassroots opposition taking the form of Web sites, news groups, bumper stickers, newspaper advertisements (like: “Should Corporations Govern the World”), and even street demonstrations. It prompted 14,000 people to write to the U.S. State Department.⁶⁴ In a milieu of what is perceived by some as “traumatic systemic changes” engendering power shifts from states to the market. MAI served as a “lightning rod” and became a rallying point for opposition to a global economy.⁶⁵ The conclusion, in Kobrin’s words:

“The Information Age gives new powers, and new responsibilities, to the wide variety of actors forming the core of the new global, electronically interconnected civil society. It is a large virtual community that unites like-minded groups across great distances; some estimates have put the total number of transnational NGOs at 20,000 ... As one observer of the MAI debate has noted, the NGOs have ‘tasted blood’ and will be back. No longer satisfied with simply opposing whatever proposals the negotiators happen to place on the table, there is growing talk among them that their organizations should play a direct role in drafting the agenda.”⁶⁶

This enormous power of the NGOs has raised fears in some circles that NGOs can do as much harm as good and can produce gridlock on a global scale. Co-optation and assimilation, according to an observer, are the best ways of taming the power of the NGOs:

“Although many traditional centers of power are fighting a rear-guard action against these new players, there is no real way to keep them out. Instead, the real challenge is figuring out how to incorporate NGOs into the international system in a way that takes account of their diversity and scope, their various strengths and weaknesses, and their capacity to disrupt as well as to create.”⁶⁷

NGOs, in turn, seem to have realised that street demonstrations and banners off buildings can be supplemented by innovative media campaigns using the Internet, faxes, e-mail, news letters, and even comic books. The campaign to conclude a treaty banning land mines launched by a coalition of more than 350 humanitarian and arms-control NGOs from 23 countries was a conspicuous example of their effectiveness. Interestingly, some governments seem to have realised the importance of co-operating with the NGOs in some campaigns, like the Canadian government did in the land mines campaign. Their contribution in securing the signatures of 122 nations in 14 months fetched for them the well-deserved Nobel Peace Prize in 1997.

⁶³ Stephen J. Kobrin, *The MAI and the Clash of Globalizations*, *Foreign Policy* 77, No. 112 (1998), 97–98.

⁶⁴ *Id.*, at 102.

⁶⁵ *Id.*, at 104–105.

⁶⁶ *Id.*, at 108.

⁶⁷ P.J. Simmons, *Learning to Live with NGOs*, *Foreign Policy* 77, No. 112 (1998), 82, at 83.

The prestige accrued as a consequence of the Nobel Prize has helped NGOs in forcing leaders and policy-makers to pay attention to issues of global concern. NGOs have also demonstrably enhanced their utility in helping nations craft compromise solutions to complex issues over, for instance, the 1997 Chemical Weapons Convention. Their earlier record of building trust and breaking deadlocks when negotiations reached an impasse is now recognised. The role of the Environmental Defence Fund and the World Business Council for Sustainable Development in reconciling environmental and commercial interests is cited with approval. So also the remarkable contribution of the Italian NGO, the *Comunità di Sant'Egidio*, which, in 1990, had started the informal meetings between the warring parties in Mozambique that eventually led to a peace settlement. Another example mentioned in appreciation of the useful role of NGOs is their role in forging, with the co-operation of the South African government, a compromise that led to the permanent extension of the Treaty on the Non-Proliferation of Nuclear Weapons in 1995.⁶⁸

Also worth noting here is the fact that NGOs with humanitarian and development concerns have enjoyed favoured status on the ground because of their perceived neutrality and experience. The International Committee of the Red Cross, for instance, has been able to deliver health care to political prisoners. Oxfam International provides rapid relief during and after complex humanitarian disasters in lieu of their neutrality over alleged human rights violations on the ground. In view of the considerable financial resources these and other NGOs muster (amounting, as mentioned earlier, to about \$8 billion in 1992) their interventions are tolerated by the warring parties.⁶⁹ There is, however, a negative side to it too. Some 40 percent of NGO budgets represent public funding – in contrast to only 1.5 percent in 1970, which makes them beholden, as *Simmons* notes, to national governments, compromising their independent character.⁷⁰

NGOs have learned to utilise the UN conferences to expand and integrate dialogue in the workshops held before and during those conferences. They have served as conduits of information on the intricacies of the negotiating process. Despite being kept out of the sensitive drafting sessions,⁷¹ and official delegates showing “a significant degree of incivility” toward NGOs,⁷² NGOs have demonstrated a remarkable degree of success in modulating the global agenda. On that score, however, making claims of parity with states would be futile and doctrinally

⁶⁸ *Id.*, at 86.

⁶⁹ *Id.*, at 87. Eight major families or federations of international NGOs, according to *Simmons*, each control about \$500 million in the \$8 billion relief market. They are: 1. CARE; 2. World Vision International; 3. Oxfam Federation; 4. *Médecins Sans Frontières*; 5. Save the Children Federation; 6. Eurostep; 7. CIDSE (*Coopération internationale pour le développement et la solidarité*); 8. APDOVE (*Association of Protestant Development Organisations in Europe*). See chart at 92.

⁷⁰ *Id.*, at 94.

⁷¹ The exclusion of NGOs from such sessions was nicely described by one as a situation in which “the delegates, as hosts, invited the NGOs into their sitting room, but then disappeared into the kitchen to cook, keeping their guests waiting and hungry.” *Id.*, at 18.

⁷² *Id.*, at 21.

unpalatable. "State sovereignty sets the limits of global civil society,"⁷³ as a perceptive scholar notes. Although visions of NGOs eclipsing the role of the state are patently exaggerated, they do, one must concede, create conditions, the ambience, that facilitate the international negotiating process.

Finally, the role played by NGOs in the campaign to cut the costs of drugs to combat AIDS has come to be recognised as their ultimate triumph. The campaign to cut the cost of medicines for poor people was led by NGOs with what one may describe as "information blitz." Oxfam International played a major role in highlighting the facts relating to AIDS. In a paper⁷⁴ brought out by Oxfam it was pointed out that in the course of the next year, around 11 million people, most of them in developing countries, will die from preventable and treatable infectious diseases – an equivalent of 30,000 deaths a day. The toll is shown in all its deadly diversity: pneumonia will claim 3.5 million lives; diarrhoea, 2.2 million; malaria, 1.1 million; gonorrhoea, 62 million. Almost half of the victims will be children under the age of five. The vast majority will be from the poor countries.

4. The HIV/AIDS Campaign

HIV/AIDS deserves a special mention. This affliction is almost (95 %) a poor people's disease, occurring in the developing world. Africa has about 70 percent of the world's 36 million people infected with HIV, the virus that causes AIDS, and 17 million Africans have died of the disease. It affects over 25 million people in sub-Saharan Africa alone. According to an estimate, between 10 percent and 60 percent soldiers in sub-Saharan Africa were infected with HIV virus. The infection rate in Tanzania, to give one example, in the country's armed forces is said to be between 15 percent and 30 percent.⁷⁵ Outside of Africa, India probably has the largest AIDS victims – an estimated 3.7 million – fallen prey primarily to heterosexual sex and blood transfusions.⁷⁶

Comprehending the social and economic consequences of the AIDS pandemic in Africa and other countries is difficult. The average age of infection in Botswana, for instance, is said to be 18 for women and 24 for men, which means that the youth of that country have only a decade of adulthood. The pandemic cuts down young people in their prime; schools lose teachers faster than they can be replaced; and technicians are decimated frustrating all efforts at development.⁷⁷

Most of the death and disability associated with these diseases could be avoided, if the poor people had access to affordable medicines. The tragedy is that those

⁷³ *Id.*, at 35.

⁷⁴ CUT The COST: Patent Injustice: How World Trade Rules Threaten the Health of Poor People: An OXFAM (GB) paper released in February 2001. Oxfam Report, hereafter.

⁷⁵ See, Barbara Crossette/David E. Sanger, *Annan in Washington to Seek AIDS Funds*, NYT, 10 May 2001.

⁷⁶ See, editorial on India's plight in NYT, 27 March 2001.

⁷⁷ See, Salim Ahmed Salim/K.Y. Amoako, *Leaders Meet to Rally Africans Against a Plague*, IHT, 24 April 2001.

most in need are least able to afford treatment. Across the world, poverty, compounded by inadequate health services, places effective treatment beyond the reach of the poor. For the poor, the cost of treating sickness is often prohibitive. For instance, in Zambia, where two-thirds of rural households live below the poverty line, it costs one such household US\$ 9 to treat a single case of childhood pneumonia – an amount equivalent to half the family's monthly income. Meager national health budgets with derisory levels of spending on medicines per capita (ranging from 13–14 cents in countries like India and Mali, to 40–50 cents in Tanzania) make it impossible for these countries to face the challenge. The annual cost of treatment for HIV/AIDS, estimated at US\$ 3,000 is just beyond the means of all victims in the developing world, barring the miniscule minority at the top of the economic ladder.

An interesting case in this connection is that of Botswana. The tiny country to the north of South Africa has a population of 1.5 million, compared to South Africa's 44 million. A third of Botswana's work force in the diamond mines is HIV positive. Thanks to its revenues from the rich diamond mines, it enjoys a \$3,600 GNP per capita, seven times higher than the average for sub-Saharan Africa. The publicity over the life sustaining drug cocktails available in the Western countries that have transformed AIDS from a killer into a chronic illness,⁷⁸ has motivated Botswana's diamond company, Debswana, to announce a plan covering 90 percent of the cost of treating its infected employees.⁷⁹ Debswana, a joint venture between the government and mining giant De Beers, is reported to have mined 24 million carats from its mines last year, and diamond sales accounted for more than 40 percent of government revenues. In 1999, the company reported \$1.8 billion in revenue. The company could afford the expense on its AIDS-infected employees – estimated at \$600 a person for a year's treatment. That is roughly the cost of the generic substitutes, not the patented drugs.

Under the WTO regime, developing countries are allowed up to 10 years to bring their patent laws in conformity with the WTO regime. That provision has been utilized by countries like India and Brazil to permit manufacture of generic versions of more than half of the 15 anti-retroviral drugs used to slow the spread of HIV in the body and combat its symptoms. Brazil has provided a combination of anti-retroviral drugs known as triple-drug therapy free to its people. Nearly 100,000 of the 580,000 Brazilians infected with the AIDS virus are on the strict daily regimen and the rate of infection is holding steady at 2.5 percent. In contrast,

⁷⁸ Deaths due to AIDS are reported to have dropped by 73 percent in the US. See, Barry R. Bloom, *AIDS: The Drugs Won't Be Enough*, Washington Post, 9 March 2001.

Recent research has indicated that sex workers in a Kenyan township Kokutona had not contacted the AIDS virus despite having sex five to ten times a day, in stark contrast to those in the Nairobi red light area in which two-thirds of the prostitutes were infected. The cause is attributed to a "killer T-cells" found in the bodies of the former that knocked the HIV virus flat. The discovery has led to a search for a vaccine containing the T-cells that could prime the body to infection. See, Karl Vick, *AIDS Vaccine Hopes Rise From Africa*, Washington Post, 11 May 2001.

⁷⁹ See, Rachel L. Swarns, *New Life for AIDS Patients in Africa*, IHT, 9 May 2001.

less than 2 percent of the estimated 4.7 million infected South Africans take anti-retroviral drugs. The country's anxiety to attract foreign investment and be a "good boy" in the opinion of the international financial institutions, and generally to play by the rules of the globalization game are said to be responsible for its failure to take effective measures to combat the AIDS/HIV menace.⁸⁰

Other poor countries have demonstrated greater resolve in seeking alternative means to combat the AIDS/HIV problem, like local licensing and parallel imports of generic medicines. The latter remedy has been found so attractive, and has come to be so widely practiced that highly sophisticated generic industries have developed in poor countries with strong scientific infrastructures, like India, Thailand, Egypt, Brazil and Argentina. Across sub-Saharan Africa, most medicines used to fight infectious diseases are imported from generic drug suppliers, made available at prices ranging between one-fifth and one-tenth of those for patented brand-name products.⁸¹ The on-going controversy involving anti-HIV drugs has brought to light the cost advantage of the generic drugs.

The anti-HIV drug fluconazole, for example, is marketed by the patent-holder for \$10.50 in Kenya, \$27 in Guatemala, and \$8.25 in South Africa. The generic product of the drug is available in Thailand for \$0.29, and in India for \$0.64. Zidovudine (AZT) is a drug used in the prevention of mother-to-child transmission. Its generic product is sold for less than half of what South Africa pays for the patent price. In Pakistan, where generic industry is not developed and the patent regime is strong, the consumer pays 3 to 8 times more for some non-infective drugs, like Norflaxacin and Ciprofloxacin, and 14 times more for the anti-ulcer drug Ranitidine. The same drug is marketed in different countries for prices varying by a factor of 3 to 45! provoking the Oxfam report to say:

"Pharmaceutical pricing is more of an art than a science. Companies charge different prices for drugs across countries, dependent on, among other factors, estimates of what the market will bear. The principle is relatively simple: companies charge what they can get away with, while people and governments pay what they can afford."⁸²

The generic drug industry thus became a serious cause of concern to the pharmaceutical companies. According to an estimate, one of them, PhRMA, loses \$1.5 billion in Argentina, Brazil and India alone because of those countries' permissive patent regimes.⁸³

The pricing policies of the pharmaceutical companies was severely tested in South Africa. Given the AIDS menace, South Africa passed a law that authorized the health minister to "prescribe conditions for the supply of more affordable

⁸⁰ See, Jon Jeter, Global Issues Dog S. Africa on AIDS, Washington Post, 20 April 2001.

⁸¹ India has one of the strongest generic drug industries: 250 large pharmaceutical firms and 16,000 small producers. A few of the former, like Cipla and Ranbaxy, not only cater to the local markets but have also turned into important exporters. Similarly, Egypt relies on local producers of generic drugs for 90 percent of its consumption. Local drug industry is equally developed in Brazil, Argentina and Thailand. Oxfam Report, at 21.

⁸² Id., at 28.

⁸³ Id., at 27.

medicines in certain circumstances so as to protect the health of the public.” The law, it will be noticed, did not deal with generic drugs, but with patented ones. It nonetheless outraged the pharmaceutical industry, which retaliated by closing the factories and canceling investments. More significantly, the Pharmaceutical Association of South Africa and 39 international drug companies sued South Africa in 1998 charging the government with violation of international patent laws.

The case prompted a lively debate on the pricing policies of the pharmaceutical industry. The companies argued that patent protection for drugs was essential for innovation; that patents were not a barrier to treatment of AIDS, even generic drugs were out of reach for countries that spend less than \$10 a year per person on public health and lack doctors and clinics to deliver the medications. John Kearney, general manager of the South African branch of GlaxoSmithKline said that at a cost of \$4 a day for private patients and \$2 a day for public patients, South Africa already had among the lowest prices in the world for AIDS medication.⁸⁴ Moreover, the argument was, in many countries of Africa besides South Africa, AIDS drugs were not patented.

The case against South Africa was fought, more vigorously perhaps, by NGOs than the government. The latter was quite aware of the magnitude of the problem but did nothing because of its anxiety to attract foreign investment. It was the feisty AIDS activists, led by Oxfam, Doctors Without Borders and the South African Treatment Action Campaign, the “little guys ... [that] loaded their slings against the pharmaceutical industry Goliath and felled him,” as the “Washington Post” put it in an editorial.⁸⁵ The slings and stones used by the “little guys” were the Internet, faxes and phones, street demonstrations, and signature campaigns – in addition to the judicial proceedings in the Pretoria High Court.

Pitted against them were drug industry giants Merck, Bristol-Myers Squibb and GlaxoSmithKline. The financial power of the pharmaceutical industry is enormous, as the Oxfam report notes. Taken collectively, the largest five drug companies have a market capitalization greater than the economies of India or Mexico – and twice the GNP of sub-Saharan Africa. In a \$350 billion industry, the drug manufacturers of the industrialized North⁸⁶ account for over 90 percent of global patents.⁸⁷ AIDS drugs represent only a fraction of their total revenue. More than 90 percent of the \$3.8 billion in worldwide AIDS medicines sales last year were made in just five advanced countries; the US, France, Italy, Germany and the UK.⁸⁸

⁸⁴ See, Rachel L. Swarns, *Drugmakers Drop AIDS Suit Against South Africa*, IHT, 20 April 2001.

⁸⁵ *The Real AIDS Scandal*, Washington Post, 25 April 2001. The “indifference, echoed to varying degrees in capitals throughout the world, is the real scandal of the international system,” thundered the editorial.

⁸⁶ Paul Blustein/Barton Gellman, *HIV Drug Prices Cut For Poor Countries*, Washington Post, 8 March 2001.

⁸⁷ Oxfam Report, at 11.

⁸⁸ See, Melody Petersen, *Copycats: A Shadow Drug Supply*, IHT, 25 April 2001.

The counter-weight on the other side was more moral than financial. The campaign was launched in South Africa with Nelson Mandela, with Kofi Annan making common cause later. The suit exposed the industry's insensitivity, and helped generate a global consensus that medicines, especially medicines to treat AIDS, need to be available in nations that cannot afford to pay world market prices. The "worldwide revolt of public opinion," in Kofi Annan's words, consequently drove the drug prices down sharply which, in turn, forced the plaintiff companies in the Pretoria High Court to withdraw the suit against the South African government.⁸⁹

In the course of the judicial proceedings, the pharmaceutical industry felt so pressured by the AIDS activists campaign that some of them made drastic cuts in the prices of the drugs. Merck, which makes two of the most widely used (and costliest) anti-retroviral drugs offered to sell them to the developing countries at tenth of the price charged in the developed countries.⁹⁰ Bristol-Myers Squibb announced that it would no longer try to stop generic-drug makers from selling low cost versions of its HIV drugs in Africa. Yale University, which owns the right to the Zerit patent with Bristol-Myers, agreed to go along.⁹¹ Cipla, an Indian manufacturer of generic medicines, asked the South African government for permission to sell inexpensive versions of eight of the fifteen anti-HIV drugs that, in varying combinations are used in the cocktails. It offered an AIDS regimen for \$600 per year per patient – as compared to \$10,000 to \$15,000 that Americans pay.⁹² Some pharmaceutical companies, like the Swiss Novartis, announced significant price cuts in the powerful medicine they manufacture to fight malaria in Africa.⁹³

Pfizer offered the governments of more than fifty of the world's poorest nations an unlimited free supply of a powerful drug to combat fungal infections associated with AIDS, provided those governments agreed to distribute them free.⁹⁴ Pfizer also promised to train African doctors in administering the most advanced AIDS drugs available.⁹⁵

It is of course facile to view the court victory as a solution to the problem of AIDS. As noted above, the pitiful per capita incomes in most of Africa and Asia and health care budgets averaging only a few dollars a year per capita do not permit the victims to seek medication even at the sharply reduced patented drugs or

⁸⁹ See, Karen DeYoung, *Makers of AIDS Drugs To Drop S. Africa Suit*, Washington Post, 19 April 2001.

⁹⁰ See, *AIDS Help for the Poor*, NYT editorial, 14 March 2001.

⁹¹ See, Melody Petersen/Donald G. McNeil Jr., *Maker Yielding Patent in Africa for AIDS Drug*, NYT, 15 March 2001.

⁹² See, Sheryl Gay Stolberg, *AIDS Drugs in Africa: If Cedes to When*, NYT, 10 March 2001. Also see, Rachel L. Swarns, *AIDS Drug Battle Deepens in Africa*, NYT, 8 March 2001.

⁹³ See, Melody Petersen, *Swiss Company to Slash Price of Its Malaria Drug in Africa*, IHT, 4 May 2001.

⁹⁴ See, Barbara Crosette, *AIDS Fungus Drug Offered to Poor Nations*, NYT, 7 June 2001.

⁹⁵ See, Karl Vick, *Pfizer to Train Doctors in Use of New Medicine*, Washington Post, 12 June 2001.

their generic versions. The fight against AIDS lies more in prevention than in merely finding a cure. While drugs and vaccines are critical components of a comprehensive response to the HIV/AIDS epidemic, drugs alone are not enough. Progress in this direction lies in building rural clinics, urban laboratories, delivery systems and the health care infrastructure that goes along with it.⁹⁶

Equally important is the creation of web of home-grown self-help responses by civil society and community institutions. These range from peer groups of women educating other women, to families and villages coming together to take care of AIDS orphans, to widespread education about condom use. Ghana is said to have achieved success in the latter with the help of imaginative campaign ditties.⁹⁷

The largesse of the pharmaceutical companies, it is generally believed, is not going to stop the epidemic. Most governments with large afflicted populations are not in a position to buy the drugs at the reduced prices. And the manufacturers of the medicine are not likely to invest large funds for developing a vaccine, because they see little chance of recouping their costs. Of the 1,223 drugs licensed between 1975 and 1987, only 13 were for tropical diseases.⁹⁸ The \$100 million grant from the Gates Foundation, one hopes, will motivate them for greater investment.⁹⁹

Gro Harlem Bruntland, director-general of WHO, described the situation in which fewer than a tenth of the 36 million people infected by HIV can afford the drugs used to treat the disease as outrageous. She called for the promotion of the fundamental principle of public health, namely the supply of essential medicines on the basis of need rather than on the ability to pay.¹⁰⁰ The cost estimates and the strategies advocated to fight the AIDS pandemic vary. UNAIDS has estimated that a minimum of \$3 billion a year is needed to establish basic HIV prevention and non-anti-retroviral treatment in sub-Saharan Africa alone. Adding the anti-retroviral drugs, even at bargain basement prices, would bring that total to about \$10 billion. International contributions currently total less than \$1 billion a year.

⁹⁶ Coca Cola, Africa's biggest employer has offered to lend its enormous transport facilities to move drugs and condoms to hospitals in Africa's interior. See, Donald G. McNeil Jr., *Coca Cola Joins AIDS Fight in Africa*, NYT, 21 June 2001.

⁹⁷ Thomas L. Friedman, *It Takes a Village*, NYT, 27 April 2001.

⁹⁸ See, Michael Kremer/Rachel Glennerster, *Creating a Market for Vaccines*, NYT, 1 June 2001. Unattractive financial returns are compounded by governmental apathy, according to a commentator who believes that the initial response of the Reagan administration to the discovery of the disease led to the spurt in AIDS-related deaths. See, Bob Herbert, *Twenty Years of AIDS Plague and Still No Cure*, IHT, 1 June 2001. Since 1981, a million Americans have been infected with the virus, and about 450,000 have died, according to one estimate. See, David Brown, *HIV on Rise in Young Gay Men*, Washington Post, 1 June 2001. The United States Census Bureau has projected that the annual toll of some 40,000 can be reduced to a few thousand by proper treatment in the country; but it admits that it will continue to be devastating in the developing countries, especially the African states. See, Michael S. Gottlieb, *The Future of an Epidemic*, NYT, 5 June 2001.

⁹⁹ The \$100 million, to be contributed over an unspecified number of years, is in addition to \$350 million the foundation has already contributed to global efforts to stop the spread of HIV. See, Karen DeYoung, *Gates Commits to AIDS Fund*, Washington Post, 20 June 2001.

¹⁰⁰ Gro Harlem Bruntland, *Cheaper Drugs Offer Hope in the War Against AIDS*, IHT, 14 February 2001.

According to the US General Accounting Office, that translates into per capita expenditures for sub-Saharan African countries ranging from \$0.78 in Zambia to \$0.03 in the Democratic Republic of Congo.¹⁰¹

Kofi Annan quite appropriately thus called for a “war chest” of \$7 billion to \$10 billion for the purpose.¹⁰² His appeal for donations has been sent to governments, as well as private charities. Annan’s proposal received a positive response from the World Bank. The bank has not yet made a specific pledge, but expects to do that after concrete contributions in dollar terms are firmed up at the special meeting of the UN on AIDS scheduled in June 2001. The bank’s director of health, Chris Lovelace, confirmed Annan’s estimate of the requirement for the purpose at \$7 billion to \$10 billion, and said that such an investment could possibly prevent 2.2 million premature deaths each year.¹⁰³

The proposal for a global AIDS Fund has triggered three streams of argument. The first is over who should run it. The rich donors want to keep it free of UN bureaucracy and want it administered by the nimbler organisations like the World Bank. The poor countries prefer the UN because it gives them more say. The second argument concerns the balance between prevention and treatment, both of which have found increasing emphasis in recent debates after the concessions offered by pharmaceutical companies which have made treatment a possibility. The third argument relates to the quantum of aid that ought to be forthcoming from the developed countries to fight the virus. Although Kofi Annan’s proposed \$7 to \$10 billion fund is considered too ambitious, saner elements in the debate consider the setting of such an ambitious goal as befitting to the enormity of the problem.¹⁰⁴

The court victory in South Africa cannot be celebrated for another reason. The pharmaceutical industry relies more on national executive sanctions than on the judiciary. Barring a recent reference to it about the Brazilian¹⁰⁵ waiver of patent protection laws in the case of AIDS medicine by the US, even the WTO has not been used to protect the TRIPS regime. The United States has used a more potent weapon of trade sanctions under the “Special 301” trade law provision. Sixteen countries, including India, Egypt, the Dominican Republic and Thailand – have been threatened with this weapon if they did not strengthen their patent protec-

¹⁰¹ See, Karen De Young, *Global AIDS Strategy May Prove Elusive*, Washington Post, 23 April 2001. De Young says that there is confusion among planners as to what the right strategy is to fight AIDS; turf wars among institutions claiming primacy on AIDS; and an inglorious scramble for the “money in the air” similar to that of “sharks when there is blood in the water”, as a UN observer is said to have commented.

¹⁰² Kofi Annan, *Mobilization Plus a Global Fund to combat AIDS*, IHT, 27 April 2001.

¹⁰³ See, Steven Pearlstein/Karen De Young, *AIDS “Trust Fund” Idea Advances*, Washington Post, 1 May 2001.

¹⁰⁴ Supporting the target, the Washington Post editorial said that “the Bush administration should be ashamed by its meagre offering of \$200 million”, *Taking AIDS Seriously*, reproduced in IHT’s issue of 25 June 2001.

¹⁰⁵ For an account of the attack on Brazil’s vaunted model treatment programme, see Stephen Buckley, *U.S., Brazil Clash Over AIDS Drugs*, Washington Post, 6 February 2001.

tion laws. The targeted nations have strong generic industries, and action was initiated against all of them at the initiative of the Pharmaceutical Research and Manufacturers of America.¹⁰⁶

The resistance of the industry to lower the prices of life-saving drugs is based on the argument that the average cost of a new drug is around \$500 million, and that the rewards for risking such an enormous amount must match. They claim that as only five percent of the current WHO Model List of Essential Drugs is under patent, the pricing issue is inconsequential. Critics of the TRIPS regime, on the other hand argue that this year 11 million people in developing countries will die from preventable infectious diseases, many of them because they are unable to afford basic medicines.

With their immense financial clout, the pharmaceutical industry pushed WTO to adopt the Agreement on Trade Related Intellectual Property Rights (TRIPS) which, as the Oxfam Paper notes “is a dream come true for trade lawyers, and a nightmare for the general public.”¹⁰⁷ To reward the industry for the investment made, TRIPS protects patents for 20 years. It imposes conditions on patent rights to improve access to drugs; obliges the patent holder to disclose the patent; and allows developing countries a five-year transition period to get their patent laws into conformity with the TRIPS regime. As Mike Moore, director-general of WTO, noted in his advocacy of the TRIPS, it also permits differential pricing by pharmaceutical companies, and “early working” of patented pharmaceuticals by generic competitors. AIDS cannot be eradicated until other “basics, such as clean water, good sanitation, better nutrition and more condom use” are provided to the communities. “Most of this,” regretted Mike Moore, “is outside the WTO’s remit.”¹⁰⁸

Mike Moore’s position that TRIPS does not prohibit generic drugs is worth noting. It recognizes the fact that even in the advanced countries generic medicines are routinely produced and marketed. According to an estimate, 40 percent of the prescription drugs sold in the United States were generic.¹⁰⁹ ACIC Fine Chemicals Inc., based in Brantford, Ontario, has been producing AZT and three other AIDS medicines for more than a decade and selling them to countries like Brazil, Argentina, Peru and Mexico.¹¹⁰

V. Conclusion

The Millennium Summit thus lent legitimacy to the participatory role of NGOs in international policy making. It recognised their contributions in setting the global agenda. It endorsed the NGOs demand of a globalisation process with the

¹⁰⁶ See, Kevin Watkins, A Harsh Campaign to Prevent Affordable AIDS Treatment, IHT, 12 February 2001.

¹⁰⁷ Oxfam Paper, at 18.

¹⁰⁸ Mike Moore, Yes, Drugs for the Poor – and Patents as Well, IHT, 22 February 2001.

¹⁰⁹ See, TAC Fact Sheet, accessed at www.tac.org.za/pmavsgov.txt, 15 May 2001.

¹¹⁰ See, Melody Petersen, Copycats: A Shadow Drug Supply, IHT, 25 April 2001.

human face. Issues of inequities and poverty were forced to the top of the concerns of the global leadership. It is now conceded that NGOs have now demonstrated “a capacity to influence multinational organisation policy and to intervene directly in choices traditionally reserved to individual sovereign states under international law.”¹¹¹ From that position one could make a doctrinal assumption of equality for NGOs with the sovereign states. That, however, would be a mistake.

The co-option of the multi-layered networks of global civil society by the United Nations has not, however, changed the organisation’s basic character. “The UN has remained,” as Richard Falk correctly notes, “very much of a statist instrument and, beyond that, operates within limits set by a few dominant or hegemonic states, especially in relation to the peace and security activities of its principal organs.”¹¹² But Falk concedes that the UN nevertheless has “opened up spaces that have allowed access of impressive proportions to the new multilateralism of transnational social forces.” He notes in evidence the spate of UN global conferences, from the Stockholm Conference on Human Environment in 1972 to the Beijing Conference on Women and Development in 1995. Though the mode of participation was indirect, Falk adds, by way of counter-conference formats, the consciousness-raising impact of the NGOs, by way of media treatment and in shaping the shape of the final documents, cannot be ignored.

The emergence of non-state actors, described as the “international civil society” is, according to some, affecting statehood from the legal perspective.¹¹³ Stephan Hobe sees the possibility of granting “a partial subject status” to international NGOs in recognition of their significant contributions in the fields outlined above.¹¹⁴ By reference to the doctrinal accommodation made by the International Court of Justice in the *Reparations* case when it recognised the legal personality of international organisations, Hobe argues that the number of subjects of international law is not “a closed shop.”¹¹⁵

Another mistake one may make is to equate that the successes scored by NGOs in terms of their participatory role in international policy making with their successes in solving global problems. Solutions to the big global problems such as the environment, AIDS and the spread of poverty, as a commentator noted, “seem to be receding rather than getting nearer.” It is now frankly admitted “that current efforts to solve problems are not working. Global warming is

¹¹¹ Dan Tarlock, *The Role of Non-Governmental Organizations in the Development of International Environmental Law*, *Chicago-Kent Law Review* 68 (1992), 61, at 65.

¹¹² Richard Falk, *The Quest for Human Rights in an Era of Globalization*, in: Michael G. Schechter (ed.), *Future Multilateralism: The Political and Social Framework* (1999), 153–78, at 165.

¹¹³ See, Stephan Hobe, *Global Challenges to Statehood: The Increasingly Important Role of Nongovernmental Organizations*, *Global Legal Studies Journal* 5 (1997), 191. Also see, Diane Otto, *Nongovernmental Organizations in the United Nations System: The Emerging Role of International Civil Society*, *Human Rights Quarterly* 18 (1996), 107.

¹¹⁴ *Id.* at 207.

¹¹⁵ *Id.* at 200.

getting worse. The destitute countries of Africa are becoming poorer and more disease-ridden. The digital gap between the wired haves and the unwired have nots is growing.”¹¹⁶ The poverty profile of the world continues to be frightening. Hunger afflicts 830 million people around the world because of natural disasters, armed conflict and grinding poverty that consigns the poor to chronic malnutrition. The World Food Programme has drawn up a map of the world’s hunger “hot spots”, identifying large swathes of territories in sub-Saharan Africa and Asia. Of the 830 million undernourished people, 791 million live in developing countries – 180 million in sub-Saharan Africa; 525 million in Asia; 53 million in Latin America and the Caribbean. The World Food Programme, based in Rome and operating in 80 countries, claimed that it had fed 80 million people in 2000.¹¹⁷

The power and proliferation of NGOs on the international level, however, should not lead one to the conclusion that a global civil society equal in status to the sovereign state has emerged. That would be a dangerous over-simplification. A comparative study of NGO participation in UN conferences on the environment, human rights and women made by a group of political scientists indicated that while despite the dense global interactions, important enough to represent a new sector of influence upon states, it would be facile on the basis of that evidence to conclude that a global civil society circumscribing states’ relative autonomy is already in existence.¹¹⁸ It would be equally wrong, however, to dismiss NGOs, the authors argue, as a side show of international politics, as the realist school does. The thousands of NGOs attracted to the UN conferences are increasingly developing shared procedural repertoires. There is growing evidence of deepening common frames among NGOs. The UN conferences have provided for the NGOs a convenient locus for networking with each other.

NGOs have learned to utilise the UN conferences to expand and integrate dialogue in the workshops held before and during those conferences. They have served as conduits of information on the intricacies of the negotiating

¹¹⁶ David Ignatius, *Try a Network Approach to Global Problem-Solving*, IHT, 29 January 2001. The account on Davos is based on this and other despatches of participating columnists, including: Elizabeth Olson, *Davos Forum is Braced for Round of Protests*, NYT, 25 January 2001; Lisa Guernsey, *If Protesters Can’t Take to the Streets, They Can Go to the Mountain*, NYT, 25 January 2001; Alan Friedman, *At Davos, Jitters Over Economy and Questions Over Bush*, IHT, 25 January 2001; William Pfaff, *Anti-Davos Forum is Another Sign of a Sea Change*, IHT, 27 January 2001; Richard Cohen, *Excess Techie Baggage and More on the Way*, IHT, 31 January 2001; Thomas L. Friedman, *The Wired Serfs May Soon Rise up in Cyberland*, IHT, 31 January 2001; Philip Bowring, *Thinking at Cross-Purposes About Globalization*, IHT, 1 February 2001; *How to Battle Sweatshops*, Editorial in *Washington Post*, 2 February 2001; Jonathan Clarke, *World Domination isn’t Supposed to Be the American Way*, IHT, 8 February 2001; Walden Bello, *The Super Rich at Davos Are the Voice of the Past*, IHT, 9 February 2001; Sebastian Mallaby, *NGOs Can Make Rules but Governments Control the Money*, IHT, 27 February 2001.

¹¹⁷ See, Christopher S. Wren, *U.N. Report Maps Hunger “Hot Spots”*, NYT, 9 January 2001.

¹¹⁸ Ann Marie Clark/Elisabeth J. Friedman/Kathryn Hochstetler, *The Sovereign Limits of Global Civil Society – A Comparison of NGO Participation in UN World Conferences on the Environment, Human Rights, and Women*, *World Politics* 51 (1998), 1–35, at 1.

process. Despite being kept out of the sensitive drafting sessions,¹¹⁹ NGO representatives have found ways to lobby with the delegates many of whom depend on them for information. Clark, Friedman and Hochstetler have come up with evidence of official delegates showing “a significant degree of incivility” toward NGOs.¹²⁰ At the same time, one will also notice that governments may be accepting certain roles for NGOs. The threat to their effectiveness, the authors argue, lies in their own failings rather than in the attitude of the governments. NGOs are badly divided on the North-South lines.¹²¹ Also significantly, the NGOs that have earned acclaim, like Friends of the Earth, Christian Aid, Jubilee 2000 and Oxfam, have distanced themselves from the anarchists who indulge in violence on the streets.¹²²

The division also extends to their differing perceptions of lobbying and networking. Some of them lose their effectiveness by their increasing dependence on official funding. The emergence of the government-organised NGOs (such as the All China Women’s Federation, the Human Rights Society of China) is yet another cause of their ineffectiveness. The authors conclude that notwithstanding the advances made by NGOs in modulating the global agenda, “[s]tate sovereignty sets the limits of global civil society.”¹²³ Although claims that NGOs are eclipsing the role of the state are patently exaggerated, they do, one must concede, create conditions, the ambience, that facilitate the international negotiating process.

¹¹⁹ The exclusion of NGOs from such sessions was nicely described by one as a situation in which “the delegates, as hosts, invited the NGOs into their sitting room, but then disappeared into the kitchen to cook, keeping their guests waiting and hungry.” *Id.*, at 18.

¹²⁰ *Id.*, at 21.

¹²¹ Clark et al. distinguish NGOs from the North and South, in terms of their lobbying and networking strengths: “The strongest, most active, and most effective lobbying organizations came from the North, while the South, often represented by Latin American groups, spearheaded the NGO networking ... [citing a newsletter, they add, that at Rio] ‘the Africans were watching, the Asians listening, the Latin Americans talking while the North Americans and Europeans were doing business.’ In general, lobbyists’ and the networkers’ repertoires were mutually interdependent, although not always harmonious.” *Id.*, at 12.

¹²² See, Thomas L. Friedman, *Time for Globalization Protests to Get Their Act Together*, IHT, 21–22 July 2001.

¹²³ *Id.*, at 35.

