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**The WTO-led system  
of global governance:  
Tactical options and  
strategic debates  
amongst civil society  
organisations worldwide**

by

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## THE SIGNIFICANCE OF 'SEATTLE'

The dramatic demonstrations in Seattle that played a crucial role in the collapse of the Third Ministerial Conference of the World Trade Organisation, in December 1999, resonated powerfully with progressive peoples social, economic, environmental and political organisations all over the world. It was highly symbolic at the end of one millennium and the start of a new – and in the very heartland of global capitalism – that thousands of such organisations, representing and reflecting millions of people throughout the world, collectively registered highly critical opposition and vocal protest against:

- the undemocratic functioning and the fundamentally anti-democratic nature and implications of the WTO as the central instrument of a new system of powerful – but undeclared – 'global government';
- the powerful corporate economic interests driving the WTO agenda – both directly as business/banking corporations and through their influence on government negotiators within the institution;
- the 'free trade' ideology used to project those interests, and the manipulation of trade as a weapon to promote – and when necessary protect – both global corporate interests and specific big power national economic and strategic interests;
- the many negative features and manifestly damaging effects of the ever more pervasive and intrusive 'globalised' commercial, industrial, agricultural, technological and financial organisations and systems under the rubric of globalisation.

The 'Mobilisation against Globalisation' that caught world public attention in Seattle did not appear suddenly or spontaneously. It had been building up for many months and years beforehand through diverse experiences and processes of investigation and analysis, and through mutual consultations amongst a very wide range of social, socio-economic, environmental and political organisations. This was facilitated by electronic communications but also, and more importantly, took place in a multiplicity of national and international conferences, seminars and workshops, and in mass gatherings all over the world and in different sectors of engagement and concern. Above all, the mobilisation drew on old and new, local, national, regional and international actions and campaigns on many issues over many years. These had never disappeared – despite the propaganda of the triumphant Cold War powers and global ideologists proclaiming 'The End of History'. The huge peasant, land, water, environmental and development movements in Asia and Latin America, for example, have slowly been expanding and deepening, although largely out of mainstream media sight; and, if noticed at all, misrepresented and minimised. But these and other Third World organisations, including a number from Africa, made determined efforts to send spokespersons to add their voices and their views to the demonstrations in Seattle; although there, too, they were largely ignored by the US and world media. The mainstream media, characteristically, focussed mainly on the more numerous presence of US demonstrators and their concerns; and, similarly, chose in the main to highlight the differences and divergences – real or perceived –

between the multiplicity of organisations demonstrating in Seattle.

What Seattle in fact reflected was the confluence of a number of 'streams' of protest against different aspects and institutions of the emerging global order, and this gave the protest added significance not less. Some of the more recent and high profile related global campaigns that contributed, directly and indirectly, through experience and example, to the mobilisation for Seattle were

- the long-standing struggles, during the 1980s, against IMF/World Bank structural adjustment programmes especially in Africa, Latin America and the Caribbean, and the ever-expanding international campaign, particularly from 1995<sup>1</sup>, against the role and very existence of these institutions as two of the key instruments, with the WTO, of the new system of global government;
- the successful opposition, from 1997 onwards<sup>2</sup>, by hundreds of organisations worldwide against the so-called Multilateral Agreement on Investment (MAI) promoted by the OECD industrialised country governments, which would have created a global charter of unassailable rights for global corporations and investors worldwide; and for which the WTO is now being targeted as the global enforcement mechanism;
- the global campaign, gaining increasing momentum from the late 1990s, for the cancellation of the spiralling debts of Third World countries<sup>3</sup>, for a definitive end to the net financial outflows from the South to governments and banks in the North<sup>4</sup>, and for an end to the deliberate utilisation of debt as an

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<sup>1</sup>The "Fifty years is enough" campaign on the occasion of the fiftieth anniversary of the Bretton Woods Institutions.

<sup>2</sup>Which in fact started with a joint NGO statement, in November 1995, against such an agreement within the WTO; was carried further during the Singapore WTO Ministerial in 1996, and took off most strongly from 1997, as it was taken up by the OECD, concerned at the resistance to the proposal in the WTO.

<sup>3</sup>Under the campaigning slogan of 'Jubilee 2000', initially led by church-based groups and focused on the millennial year but now expanding into a much broader ongoing campaign focussed on the systemic factors producing and sustaining debt and the systemic solutions; and with the Jubilee South Coalition taking an increasing leadership role.

<sup>4</sup>'The South' is used as a shorthand indicator to denote the countries of Africa, Asia and the Pacific, Latin America and the Caribbean. This is also legitimate as a political/economic concept in terms of their common historical experiences of colonisation and their contemporary location and subordination to the dominant countries of the North. However, this political/economic designation of 'the South' does not ignore the different levels of development and sometimes conflicting national interests and aims between the governments of these countries. This usage is also made with the clear understanding of the existence of a 'global South' of poor and subordinated people throughout the world, cutting across the geographical/historical definition; and, conversely, the existence of elements of 'the North in the South' in the form of the privileged domestic elites and dominant classes that identify with the dominant global forces and actively promote the system.

instrument for political and economic control by bilateral (governmental) and multilateral (institutional) 'creditors' over the so-called 'debtor' countries and peoples.

The activists engaged in these and dozens of other comprehensive sectoral or single issue campaigns converged on the WTO meeting in Seattle to voice their protests and present their respective demands on a wide array of concerns. Many belonged to innovative and evolving loose coalitions on a range of demands, such as the one and a half thousand social, environmental, labour, political and professional organisations from some 90 countries that had signed the Global Declaration against the WTO and the liberalised global economic system, entitled 'No New Round! Turn Around!'. Others were focussed on more specific sets of formally agreed organisational positions, such as the labour standards demands and employment concerns of national and international trade union confederations and other labour organisations. There were many different environmental groups "setting aside their philosophical differences to present a united front against WTO rules they consider harmful to the environment"<sup>5</sup>. In addition to such practical united fronts, formal organisational positions, and flexible coalitions, there were also many expressions of "the cross-over politics of solidarity"<sup>6</sup> during those eventful days. This included, for example, eye-opening encounters and mutual recognition and support between 'hard hat' US dock workers and 'fluttering butterfly' environmentalists; between relatively privileged and supposedly self-serving US workers, students and youth marching hand in hand with black and white church and community based organisations and African anti-debt campaigners for the total cancellation of the Third World debt; between reputedly conservative 'middle-American' family farmers and radical peasant association members from Africa, Asia and Latin America. And there were a thousand other real learning experiences, exchanges of views, sharing of problems, and serious discussions during that historic process about organisational<sup>7</sup>, institutional and systemic alternatives.

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<sup>5</sup>Wall Street Journal, New York, 2/12/99

<sup>6</sup>Raj Patel in SEATINI Bulletin, #2. 12, December 1999

<sup>7</sup>Including intense debates about tactics and strategies between the 'non-violent' majority and the minority 'direct action' participants.

The Battles in Seattle included many forms and levels of protest on the streets and in hundreds of public meeting places in opposition to the WTO as an instrument of what was identified as corporate globalisation. Even within the Convention Centre there were various forms of resistance against the major powers dominating the WTO. This was not only by non-governmental or 'civil society' forces in the corridors<sup>8</sup>, but also, even, by some of the developing country government representatives within the formal 'negotiating' processes<sup>9</sup>. Although many of the latter felt distinctly uneasy about the demonstrations on the streets outside their hotels and the conference Centre<sup>10</sup>, there can be no doubt that the protests on the streets – sometimes even contriving to penetrate physically into the conference centre – and the dramatic images dominating the media, reinforced the climate of tension and heightened contestation around and within the WTO meeting. This contributed to the unprecedented official statements of protest issued on the penultimate day of the conference by the African, Caribbean and some Latin American delegations against the entire *modus operandii* of the 'negotiations'. And this in turn contributed to the collapse of the meeting<sup>11</sup>.

The conference failed in the declared aim of the most powerful countries to use the occasion to launch a new multi-sectoral 'Millennial Round' of negotiations for the consolidation and radical extension of the new liberalised global order. At a general level, that failure, the role and scale of the popular protests and the impact on global public awareness of wide-ranging opposition against the emerging global economic and institutional order, produced a definitive shift against the hitherto seemingly unchallengeable hegemonic ideology. This dramatically reinforced the already emerging changes in the ideological balance of power, and gave a powerful new impetus to diverse forces all over the world opposed to globalisation. The ongoing mobilisation of these, and other forces not yet fully engaged, and their mutual support, cooperation and coordination within ever growing global movements to

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<sup>8</sup>Non-governmental organisations' is used throughout this paper in the literal and generic sense, and in preference to the rather more contentious concept of 'civil society' which is questioned in theory and, in practice, often used by multilateral institutions to include and even privilege business organisations. Nor does this usage of the term non-governmental organisations refer only to the more narrowly defined (usually 'development aid' and 'emergency assistance') NGOs, but to all non-governmental peoples organisations in general, including trade unions and other labour organisations, women's, family farmers, consumer, environmental and other broader social and socio-economic organisations and movements, as well as popular education training and research institutes, and so on, directly engaged with them. Where the acronym NGO is used in this paper it is to denote the more narrowly defined, professional or technical policy organisations that do not usually have mass bases, or even sizeable formal memberships, and are not oriented towards mass organisation or organisations.

<sup>9</sup>Both the terms 'developed' and 'developing' are part of mainstream discourse to refer to countries at different levels of economic development, the former referring to the most industrialised economies, which technically is a more accurate definition. These terms are employed in this paper as shorthand indicators but within the clear recognition of their inadequacy in capturing the complexities of the internal situations and global locations of most countries. And with the conviction, above all, that the use of the generic term 'developing countries' to embrace the huge number and range of countries in Africa, Asia and the Pacific, Latin America and the Caribbean does not adequately reflect their wide economic diversities or, indeed, the fact that many of them are not 'developing' but stagnating or even regressing on a number of indicators. In fact the more accurate terms would be enriched (Northern) and impoverished (Southern) countries.

<sup>10</sup>And some even interpreted the actions on the streets to be a tactical ploy driven by United States agencies to disrupt and make the participation of developing country delegates more difficult.

<sup>11</sup>Although there were, of course, other important factors in this failure, above all differences of tactic and interest between the most powerful countries; see Bridges Weekly Trade News Digest #3.48, International Centre on Trade and Sustainable Development (ICTSD) Geneva, December 1999.

create a different global system is the historic challenge now facing progressive and popular social, economic, environmental and political organisations throughout the world.

In the more immediate sense, and from the point of view of those activists who went to Seattle specifically to demand “no new round!”, the failure of the Seattle meeting was certainly a victory. But that victory has to be recognised as a successful defensive battle rather than a decisive battle, because the ‘war’ by the powers dominating the WTO and using it to drive the emerging global system goes on. After some initial high-sounding pronouncements in Seattle and immediately after about the need for “more compassionate free trade”<sup>12</sup>, and greater ‘transparency’ and better ‘access’ to the internal processes of the WTO, the major powers and the WTO secretariat quickly recovered their equilibrium. Separately and together they embarked on a concerted programme to defend and (re)legitimise the WTO; interpreting the debacle in Seattle as merely a temporary interruption in the ongoing negotiations, with the (re)launch of the processes towards a full new multisectoral Round still on course.

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<sup>12</sup>According to President Clinton at the World Economic Forum in Davos soon after Seattle; The Washington Post, 3-9/2/2000

Towards this end, in the early months of 2000, for example, the Quad (the EU, US, Canada and Japan) produced a “confidence building” package of measures in support of the Least Developed Countries (LDCs)<sup>13</sup>. The more skilful agencies have also reinforced their strategy to gain more general acceptance for a comprehensive new round by portraying it as a ‘Development Round’. This was originally proposed by the British Minister for international development, and subsequently supported by the UN Secretary General. It has also gained publicly-expressed acceptance from many developing country governments, including South Africa. The effect of such persuasive inducements – or tried and tested divide and dominate tactics – is reflected in part in the emergence of a new sub-grouping of larger and/or middle income developing countries. This is variously designated as the Southern Hemisphere group, the South-South Club, or the G-South<sup>14</sup>, and South Africa appears to be playing a leading role in it. The aim of this self-selected group is reportedly to ‘represent the developing countries’ to the WTO<sup>15</sup>. However, the indications are that the more immediate and significant role of the group is rather the reverse: that is, to ‘represent’ the WTO to the other developing countries. This is, in the first instance, in order to get the support of enough developing countries to contribute to the “relaunch of the WTO initiative”, according to SA Minister of Trade and Industry, Alec Erwin<sup>16</sup> in the immediate aftermath of Seattle.

The WTO Secretariat, itself, set up a meeting with key African representatives to achieve their “reconciliation” with the WTO in the aftermath of the Seattle affront. To this end, fifty three African trade ministers, their Ambassadors to Geneva and senior trade officials were invited to a meeting with WTO experts in Libreville, Gabon, in November 2000<sup>17</sup>. The smooth running of this reconciliation exercise would undoubtedly be helped by the difficulty of access to Gabon for outside ‘visitors’ who might want to present the African ministers and media with different views. The citizens of Gabon, similarly, have limited access to independent information and even less right to demonstrate their opinions. In the event, enough of the African delegations at the Libreville meeting resisted the blatant front-stage maneuvers and back-stage arm-twisting by the co-hosts – the WTO, EU Trade Commissioner, the US Trade Representative and the government of Gabon; and they managed to prevent what had been billed as a mere “educational” meeting from being turned into a formal endorsement of the launching of a full new round of WTO negotiations. One experienced observer in Libreville has summed up the process as “WTO trounced a second time – Seattle repeated at Libreville”<sup>18</sup>, but what is disturbing about the detailed description of the overt and overt manipulations of the proceedings and the

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<sup>13</sup> Although the much vaunted offers of improved ‘market access’, are hedged around with all sorts of qualifications and conditionalities; Bridges Weekly Trade News Digest, #4.14, International Centre on Trade and Sustainable Development (ICTSD), Geneva, 31/3/2000

<sup>14</sup> Apparently including at the outset India, Brazil, Egypt and Nigeria together with SA; Business Day, Johannesburg, 27/1/2000

<sup>15</sup> Minister of Foreign Affairs Nkosazana Dhlamini-Zuma; Financial Mail, Johannesburg, 18/2/2000

<sup>16</sup> “Erwin launches WTO initiative”, Business Day, Johannesburg, 27/1/2000

<sup>17</sup> The WTO generously offered to “foot the bill” for 33 of the 53 African delegations to the meeting

<sup>18</sup> Yash Tandon in the bulletin of the Southern and Eastern African Trade, Information and Negotiations Initiative, SEATINI Vol # 3.22, 20 November 2000

participants was how susceptible African governments are to divisive tactics and pressures. There was also the more specific role of the South African Minister of Trade in trying to insert into the final statement a call for a “broad-based” process, a subtle alteration of the wording that could be interpreted and presented as an African endorsement of a full new multi-sectoral round of WTO negotiations<sup>19</sup>.

## **THE ‘POST SEATTLE’ CHALLENGES TO POPULAR FORCES WORLD-WIDE THE ‘POST SEATTLE’ CHALLENGES TO POPULAR FORCES WORLD-WIDE**

In this context, there is an ever greater urgency for African non-governmental activists/analysts critical of the WTO, and activists/analysts world-wide to contribute to a deeper and broader understanding of the character and role of the WTO as a key instrument of economic globalisation, as well as the real character and effects of globalisation. It is essential to build active responses to the immanent dangers of a new round of global liberalisations across many new sectors. The extension and intensification of global liberalisation could, however, also take the form of sequenced, simultaneous or over-lapping sectoral negotiations. Some of these – such as Agriculture and Services – are already under way; at least formally. These on-going liberalisation processes are taking place within the so-called Built-in-Agenda of the WTO carried over from the previous ‘Uruguay’ Round of trade negotiations (1986-1993).

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<sup>19</sup>Which is precisely what was done in the parallel meeting of Asian trade ministers within the framework of APEC, according to a report by Martin Khor, SEATINI Bulletin *ibid*.

Many activist-analysts of the WTO, before and in Seattle, were already aware of these further dangers. Even in the euphoric aftermath of the victory in Seattle, the immediate observation amongst social movement analysts was that there would have to be concerted efforts to 'carry forward the spirit of Seattle', and to use the temporary breathing space to plan and mobilise for the continuing battles ahead<sup>20</sup>. However, such strategic analysis and planning also entails recognition that the 'spirit of Seattle' while characterised by an inspiring awareness - that was shared by all present – of the power of popular protest to influence events, was not a homogeneous or single, united movement. As a confluence of movements, many of those present, while focusing on an immediate common target, were marching side by side, but not all of them necessarily prepared for the same distance or aiming for the same goals. While sharing many of the same suspicions of the new global economic and political order, there were different areas of concern and emphasis, differing demands and proposals, and sometimes even divergent solutions. This was entirely to be expected. It is in the very nature of such broad social movements that they contain a wide spectrum of interests, understandings, methods and aims. And this is bound to be the case particularly in the early stages of the development of vast international movements such as those emerging against the WTO and other institutional instruments of economic globalisation such as the IMF and World Bank.

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<sup>20</sup>Seattle "was a defining moment, but we must build on it without delay because the forces of neo-liberalism, humiliated and determined to get their own back, will lose no time in regrouping", Susan George 'Fixing or Nixing the WTO'; *Le Monde Diplomatique*, January 2000

Mainstream political observers and analysts of Seattle were quick to note – and highlight – the implicit and explicit differences between the organisations gathered there. But there is also now in the corridors of power a much greater awareness of the potential influence and impact of organised social forces upon important global institutions and processes. Already, the counter-response amongst defenders of the existing order is a very deliberate strategy – as with their divisive tactics directed at developing country governments – to divide the non-governmental opponents of WTO governmental and corporate-driven globalisation. The frank advice is to target “saner NGOs” as distinct from the general “rag tag bunch”<sup>21</sup>. In similar vein, the unabashed proposal from the influential Economist magazine in a special issue in the immediate aftermath of Seattle, is that the WTO should follow the example of the World Bank. In response to the ‘Fifty Years is Enough’ campaign, the World Bank “diluted the strength of ‘mobilisation networks’ and increased the relative power of technical NGOs – for it is mostly these that the Bank has co-opted”. Although noting the WTO’s lack of the financial disbursements that the Bank was able to use, The Economist advises that the WTO “could still try to weaken the broad coalition that attacked it in Seattle by reaching out to mainstream and technical NGOs”<sup>22</sup>. The even more influential Financial Times in London reported approvingly President Clinton’s declaration at the first international meeting following Seattle, the World Economic Forum in Davos, that “it is vital to win over the sincere and well-motivated opponents of the WTO agenda”<sup>23</sup>; a theme picked up by business journalists in South Africa, suddenly converted to social and environmental causes, advising “how to bring NGOs which care for the environment and for real people inside the globalisation tent”<sup>24</sup>.

Unfortunately, within the huge number and variety of non-governmental organisations in the world today – some of which participated, in one form or another, in the processes in Seattle, and many more which did not – there is ample opportunity, for those that seek to do so, to co-opt professional economic research institutions, ‘policy’ bodies, the ‘more technical’ trade, aid and environmental NGO’s, certain ‘moderate’ labour organisations, and others. These are encouraged to act as ‘policy consultants’ or ‘advisors’ to more approachable governments and inter-governmental bodies such as the EC, as well as to more ‘accessible’ global institutions. Furthermore, within the growing trend in certain official bodies – in response to increasing public pressures – to be seen to be encouraging practices of ‘public consultation’, such collaborating non-governmental organisations are also, in the process, being projected as the ‘the public voice’ or the ‘opinions of civil society’. This tendency is particularly marked with respect to long-established, well-resourced, highly influential professional NGOs in the richer countries of the North. However, it must be recognised, above all in Africa, that more recently established, poorly

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<sup>21</sup>Mark Atkinson, ‘Business back in contention after learning the rules of the game in Seattle’; The Guardian, London, 5/6/2000

<sup>22</sup>The Economist, ‘The Non-governmental Order’, London, 11-17 December 1999

<sup>23</sup>Financial Times Weekend Edition, London, 29-30/1/2000

<sup>24</sup>Jim Jones in the Business Day, Johannesburg, 31/1/2000

resourced and relatively inexperienced non-governmental organisations in the countries of the South are also – sometimes even more – susceptible to such co-optation. This is not so much by their own (usually undemocratic) governments but by the increasingly (or apparently) more ‘accessible’ international institutions, such as the World Bank seeking to co-opt them.... and even by relatively more approachable and consultative ‘partner’ Northern governments.

Many such NGOs, North and South, are very probably well-intentioned. They would be indignant at the idea that they are acting as sources of useful information to governments and institutions whose aims are to outflank and contain, not empower, social movements. They may not be aware that they are functioning as credible and convincing conduits of pacifying influences from global institutions into potentially radical oppositional forces. It is, however, essential for all African social movement analysts and organisations to be aware of these phenomena in relation to – and within – the ranks of ‘civil society’ world-wide. It is important to analyse them dispassionately and discuss them openly in a constructive and creative spirit. As popular social, political, economic and environmental organisations world-wide work together to carry forward the symbolism and achievements of Seattle to create global peoples movements against the divisive and damaging economic and environmental, social, political and cultural effects of economic globalisation, it is essential to know not only what we are against but what we are ‘up against’. Amongst many political and organisational challenges, this means:

- knowing what we are for, as well as what we are against; and expanding the Mobilisation against Globalisation into a more proactive and positive Mobilisation for Global Justice, for example, as is already beginning to happen; which means
- knowing how the currently dominant global economic system, its ideologies, institutions and instruments function, in order to be able to convincingly expose and effectively oppose them, and to promote viable and equitable alternatives; which also means
- knowing the tactics and strategies of the economic and political forces that drive the global system and dominate global institutions; distinguishing between their ‘public relations’ political rhetoric and their real underlying aims, and working out appropriate counter strategies; which in turn means
- knowing not only the strategic aims and tactical options facing us, but the interactive relationship between immediate or short term defensive tactics or reforming aims, on the one hand, and long-term fundamental transformative aims on the other; but this means, very importantly
- knowing how these tactical and strategic choices are viewed and taken up in our own ranks, how and why different approaches are being pursued by existing and potential allies in the emerging international movements, and how we respond to them.

There are a number of significant issues for discussion and mutual engagement by peoples’ economic/social/environmental/political organisations, world-wide, on the alternative tactics and strategies to carry forward the challenges posed in Seattle. This study examines the aims and implications of a wide range of tactical

approaches being pursued within the diverse organisations engaged on these global institutions and issues. The following analysis identifies some of the more significant strategic challenges posed by such tactical approaches, as well as drawing out the ‘forward linkages’ or logic propelling such tactical engagements towards broader and more proactive strategies. Within this broader perspective, the analysis starts with the immediate, limited question of the institutional reform of the WTO itself.

## **1. REFORM OF THE WTO’S INSTITUTIONAL STRUCTURES AND FUNCTIONING**

The immediate official responses after Seattle to the political protests and technical criticisms – and what has been called a “serious ‘constitutional’ crisis” within the WTO<sup>25</sup> – have been some tentative statements from some Northern governments about reform of process within the WTO. These are accompanied by more detailed proposals by various Northern NGOs<sup>26</sup>. The fundamental issues are not new. Developing country governments, including even African governments<sup>27</sup> and Southern NGOs<sup>28</sup> have long been highly critical of

- the thoroughly undemocratic, manipulated character of the so-called consensus-based decision-making processes that created the WTO agreements in, and since, the Uruguay Round (UR), as well as the functioning of the WTO itself;
- the weak presence and capacities of most developing countries to cope with the extremely complex UR ‘implementation’ obligations demanding their attentions and limited resources, and the multiplicity of often-simultaneous negotiating and other WTO processes requiring their informed participation;
- the biased positions and functioning of the WTO secretariat and Director(s) General – not only in terms of their unquestioning acceptance of the dominant ideology driving the WTO but even in frequent public endorsements of the positions and proposals of the most powerful member states<sup>29</sup>.

Apart from general statements about greater WTO ‘transparency’ and ‘accessibility’

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<sup>25</sup>OXFAM-GB “Institutional Reform of the WTO”, p 1, Oxford, March 2000

<sup>26</sup>Ibid; and UK NGOs “Recommendation for ways forward on institutional reform of the WTO” Discussion paper compiled by Action Aid, CAFOD, Christian Aid, Consumers International, FIELD, Oxfam, RSPB, and the World Development Movement, draft, London, nd (first quarter, 2000)

<sup>27</sup>Such as the many African government trade officials participating in the Southern and East African Trade Information and Negotiations Initiative (SEATINI), Harare 1998, Kampala 1999, Harare 2000

<sup>28</sup>Most notably the pioneering organisation on these issues, the Third World Network, Penang, Malaysia

<sup>29</sup>Which is the result – and reflection – of the intransigent determination of the US and other industrial powers to ensure that the WTO Director General should be a ‘reliable’ person enjoying their confidence’.

there are various practical institutional reform proposals from governmental and non-governmental sources to improve the image and, to some degree, even the formal procedures within the WTO. Amongst these adjustments are some proposals that raise the more fundamental question of the ultimate decision-making processes within the WTO. In response to the criticisms of the WTO's un-transparent, exclusionary and undemocratic 'consensus-building' processes, the official counter-argument is that it is not possible to involve the entire membership in every stage of what are extremely complex negotiations.

The solutions from the developed countries point, therefore, towards the creation of intermediate bodies, which they argue could allow a certain element of wider participation but would ensure 'efficiency'. These apparently include a proposal from Japan for an Advisory Council of limited membership to make 'priority decisions'; from Canada for an inner Executive Council or Board of Directors modeled on the UN Security Council; and from the European Commission for an Eminent Persons Group or other "informal group meetings" that would promote "the best consultation procedures to foster consensus in a manner that is transparent and participatory, while ensuring effectiveness"<sup>30</sup>. What all such proposals have in common is the intention to create intermediate grouping(s) of some member states to build prior or preliminary consensus for presentation to the larger or total membership for formal endorsement.

Whether any one of these proposals is actually accepted by the dominant powers and how they would be implemented by the WTO is a major question. There is also much suspicion from critics that such reform proposals "might simply be designed to placate and co-opt its critics, and divide and defuse public opposition"<sup>31</sup>; or that they are "simply being used as a bait to draw developing countries into a new Round"<sup>32</sup>; or that the motivation of OECD governments is not towards genuine inclusion but the "political neutralisation" of African and other poor countries<sup>33</sup>. On these understandings, there are strong warnings to developing countries not to be "lulled into complacency by the positive messages coming from the Quad countries on institutional reform, as these countries are the stoutest defenders of the inequalities built into the structure, dynamics and objectives of the WTO, and their agenda could lead precisely to the strengthening of an organisation that is fundamentally flawed"<sup>34</sup>. However, in so far as such reform proposals are being, or seem to be, floated by some governments and given serious consideration by many influential non-governmental organisations, there are a number of specific questions to be posed.

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<sup>30</sup>OXFAM-GB, *op cit*, p 10.

<sup>31</sup>D. Keet "The Challenges Facing African Countries regarding the WTO Regime since the Third Ministerial Meeting in Seattle", Occasional Paper #25, Institute for Global Dialogue, Johannesburg, May 2000, p26

<sup>32</sup>Tetteh Hormeku of the Africa Trade Network (ATN) at Third World Network Forum during UNCTAD X, in Bangkok, February 2000

<sup>33</sup>In effect what the OECD block has learned from the effective opposition of Africa and other poor countries (in Seattle), is not that they should be genuinely included but that they should be politically neutralised", Murray Dobin and Ellen Gould, Canadian Centre for Policy Alternatives, 'Monitor', Vancouver, March 2000

<sup>34</sup>Aileen Kwa, Focus on the Global South, at The South Centre Workshop on 'WTO Institutional Reform: A Development Perspective', Geneva, 2/2/2000

Some of the reform proposals apparently point to relatively wider and more formalised inputs to the prior consensus-building, although their prime concern is actually how to manage the range of interests and opinions in order to obtain the desired results. Unless the aims of 'efficiency' are subordinate to full and genuine participation, the question is whether wider 'consultation' could merely represent a more legitimised but still controlled process of consensus-building. Furthermore, implicit in all such proposals is actually the contrary possibility for a more formalised concentration of power, which has proven to be so problematic with the UN Security Council, for example.

If, however, the aim is to ensure that such inner negotiating bodies are indeed 'representative' of the WTO membership, this in turn poses the question of the basis of selection and mandating of those countries to be included in such bodies. The possibility for this to be done on the basis of continental or sub-continental regional 'constituencies', as with representation in many UN bodies, raises the question of the appropriateness of such very broad and fixed geographical categories for fine-tuned negotiations. The alternative for such constituencies to be based on levels of development, or even on more specifically defined common interests, and to vary according to the subject under negotiation would appear to be more realistic and effective bases for representation<sup>35</sup>. The more fundamental question, however, is whether the formation of such negotiating 'constituencies', institutionalised and located within the WTO *per se*, would not displace or complicate the commitment of countries to their own independently formed, varied and changing political alliances whose bases and strategic objectives are more complex and much broader than merely 'achieving consensus' in the WTO<sup>36</sup>.

Equally importantly, the representation of 'constituencies' of WTO members by specific selected (or even elected) delegates to 'inner' meetings carries dangers of undemocratic substitutionism. There are already indications that the introduction of any 'constituency system' for selective representation in 'inner committees' is not being welcomed by smaller countries. Thus, even if the notion of 'group representation' is adopted, this would have to be based on clear prior mandates, constant communication and report backs. It would also have to include the full observation or even participation rights of any and all WTO members in all such meetings<sup>37</sup>. Such political and procedural guarantees of effective representation and accountability require, in turn, that the intensive pace of the negotiations for the expeditious conclusion of agreements is seen to be less important than the accommodating and enabling nature of the process, the guarantee of inclusive debates on all the details of the terms being negotiated, and the ultimate acceptability of the outcome to all concerned. This would require a very different

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<sup>35</sup>This was evident in the informal and fluid constituencies, or more correctly alliances, that operated in the inter-governmental negotiations at UNCTAD X in Bangkok, February 2000

<sup>36</sup>D. Keet, *op cit*, p 31-32, May 2000

<sup>37</sup>Even if the notion of 'group representation' is taken up "all members should be allowed to be present at all meetings and have participation rights", Martin Khor, "Rethinking Liberalisation and Reshaping the WTO" presentation at the World Economic Forum, Davos, Switzerland, 28/1/2000

pace, spacing and spirit for all such consensus building processes. Such terms and conditions and *modus operandii* are very different to what is currently being considered.

A more basic question, however, is whether processes of consensus-building, either in informal closed conclaves or more formalised and slightly wider meetings, should in fact be the basis of decision making in the WTO. The question is posed whether it is not more advantageous for the developing countries, who are the majority of the membership, to insist upon the implementation of the 'one member one vote' (OMOV) principle upon which the WTO is officially based<sup>38</sup>, or to introduce the idea of weighted voting based not merely on economic power (as in the IMF/WB) but on population size and a range of other related criteria. The possible gains and risks of the introduction of voting systems in the WTO have to be weighed up<sup>39</sup>. Formal voting has never been practiced in the WTO precisely because the more developed countries are in the minority. In order to evade this danger, informal so-called 'consensus-building' has always been the WTO's *modus operandii*, precisely because "consensus in the context of unequal power relations is little more than domination"<sup>40</sup>. And, now that this method is being more effectively challenged, initiatives are being taken to ensure that consensus building is upheld by being made slightly more inclusive. Utilising consensual consultation as a co-optive and pre-emptive strategy is not entirely new. It has hitherto involved the tactical *ad hoc* invitation of selected countries – on occasion including South Africa – into the privileged backroom (or 'green room') discussions and deals; although these remain deals essentially between the majors. The latest 'reform' proposals seem to be simply a more formalised extension of this approach with the possibility for an element of broader 'endorsement' of those to be incorporated.

There are, however, even more fundamental strategic questions about the proposals to 'reform' the WTO that have to be posed.

## 1.1 SOME STRATEGIC QUESTIONS.1 SOME STRATEGIC QUESTIONS

### 1.1.25\_ Technical skills .... and/or political skills?

Whatever the nature of the internal institutional 'reforms' within the WTO that are being proposed by governmental or non-governmental agencies, mainly from the developed countries, these would not in and of themselves enable the majority of developing countries to change the direction of the institution, unless they have more human and material resources and develop much more effective negotiating skills. Such 'capacity-building', currently within the remit of the WTO and largely through the financial support of Northern donors, is also being promoted by Northern NGOs<sup>41</sup>. The view of strategists in the South is that such technical preparation would be more appropriate and effective outside of the WTO, for example with UN agencies such as UNCTAD and

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<sup>38</sup>"If no consensus is reached why should the WTO not go to the vote?" Egyptian Ambassador at Third World Network Forum during UNCTAD X, in Bangkok, February 2000

<sup>39</sup>It could be argued, for example, that a more formalised voting system could "drive the real processes further underground" whereas "informal processes allow for more flexibility", OXFAM-GB op cit

<sup>40</sup>Focus on the Global South, 'Why we need an international campaign to decommission the IMF, nd

<sup>41</sup>UK NGOs Discussion Paper, op cit, p3-6

UNDP, and in conjunction with non-governmental experts and initiatives within developing countries<sup>42</sup>. Above all, technical support must be de-linked from the actual processes of specific WTO negotiations<sup>43</sup>.

However, even these technical provisions, while necessary, will have minimal effect unless the developing countries, themselves, have the political will and skill to forge tactical and strategic alliances amongst themselves to utilise their improved technical skills and any more 'conducive' institutional openings that might be introduced. This, in turn, points to the necessity for major political changes in these countries and between these countries. And it points to the necessity for political changes and challenges that are broader than the WTO *per se* and specific WTO issues.

### **1.1.2            Needing to be made 'more credible' .... or to be further dis-credited?**

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<sup>42</sup>Such as the very effective annual Southern and Eastern African Trade Information and Negotiations Initiative for African trade officials (SEATINI, 1998, 1999, 2000) under the auspices of the International South Group Network (ISGN), with the Third World Network (TWN) the Africa Trade Network (ATN) and the South Centre; and supported by the UNDP

<sup>43</sup>"One of the biggest hoaxes of 'development' is the idea of 'technical assistance' to developing countries. Through this virtual 'sleight of hand', donor states have managed to turn issues of substance into 'technical matters', thus obscuring underlying problems...(and) African countries have lost many opportunities to negotiate better trade-offs through premature acceptance of offers of 'technical assistance' ", Yash Tandon, 'The WTO Millennium Round: strategies for African countries', Global Dialogue #4.2, Johannesburg, August 1999.

It is quite evident that, in so far as the dominant countries are willing to even consider any 'reform' of the functioning of the WTO – and that is doubtful<sup>44</sup> – their aim is not to transform the power-relations within but to counter the criticisms, contain the discontent, and make the institution more legitimate to participants within, and to the general public without. It is largely a political/public relations exercise designed to make the WTO more credible and legitimate. Such internal institutional reforms are a double edged sword in other ways too. Even if some apparent 'reforms' of process are introduced they could, on the one hand, be designed and function to increase the power of the majors, if developing countries are not alert to this and united in their demands, and if they do not locate these within broader strategic objectives. Such limited institutional reforms could also be designed to pre-empt deeper or more fundamental solutions within and outside of the WTO as such (see 7 and 8 below).

More problematically in the immediate context, it would seem that some non-governmental reformers in the developed countries are apparently concerned that the WTO should be reformed to "remain credible"<sup>45</sup>. According to such an approach, the reforms should involve developing and least developed countries more, in order to "improve the functioning" of the WTO but also to "have the effect of increasing confidence in the WTO"<sup>46</sup>. Such reform proposals would appear, therefore, to be based on certain assumptions about the necessary and continuing role of WTO. These assumptions pre-empt fundamental debates as to whether the WTO should in fact be helped to become 'more credible'; or whether it should perhaps be further dis-credited, down-sized, or dis-continued altogether (see sections 4-9 below).

### **1.1.3 Real public rights and role .... without re-legitimising the WTO?**

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<sup>44</sup>On a recent visit to South Africa, WTO Director General Mike Moore, when questioned by South African parliamentarians in Cape Town, was quite dismissive of the 'reform agenda', preferring to focus on getting the next round off the ground

<sup>45</sup>"The WTO requires radical institutional reform if it is to remain credible as a multilateral organisation, rather than a rich man's club", OXFAM-GB, mimeo Statement in Seattle 3/12/1999

<sup>46</sup>UK NGOs Discussion Paper, op cit, p 2

Many non-governmental organisations, particularly those based in the North are also insistent that the greater ‘transparency’ and ‘accessibility’ of WTO processes should apply both to governmental as well as non-governmental agencies<sup>47</sup>. This is referred to as ‘internal and external transparency’ and entails full public access, especially for national legislatures, to all WTO proposals, procedures, debates and decisions<sup>48</sup>. Most developing country governments prioritise internal transparency in the WTO (for themselves) and are not favourably inclined to the idea of external accessibility, particularly where it entails the proposed right of NGOs to make submissions (*amicus briefs*) to the WTO Dispute Settlement Panels (see 6. below). This is, in part, because the resources and influence of powerful (inevitably Northern) NGO participants – some greater than those of developing country governments – could simply exacerbate the imbalances against the South. There is some justice in this argument, but it is incorrect to assume that all interventions within and in relation to the WTO by non-governmental organisations based in the North are necessarily and invariably antithetical to the interests and needs of the South. It is often very much to the contrary, and it is in the interests of the South to receive such non-governmental support from the North. This demands more active engagements with Northern NGOs by non-governmental social, political and environmental forces in the South; but these, in turn, raise important questions about the relationship of Northern NGOs to their counterparts in the South (see item 8.1.6).

Greater transparency and access for non-governmental agencies to the WTO – and all other international institutions – is unquestionably important and could be very useful. But it carries its own challenges and dangers. On this latter point, ‘access’ is often promoted by defenders of the current world order as a deliberate means to co-opt potential opponents into the *status quo*, as has already been illustrated above (see ‘The Post-Seattle Challenges para. 4 above’). On the other hand, however, many governments in the South are opposed to any accession for non-governmental actors because of their suspicions of all non-governmental forces, but especially within their own countries. Thus, the challenge for non-governmental forces in the South – and the North – is how to support the principle of greater public rights and role, *per se* without unintentionally contributing to the (re)legitimation of the WTO through an apparently greater ‘transparency’ and public ‘accessibility’. Ultimately, the strategic challenge is to ensure that such direct access and inside information is used to bring to broader public attention the functioning and nature of the WTO and further empower the critics of the system.

## **1.2 FURTHER REQUIREMENTS ..... AND ‘FORWARD LINKAGES’**

The broader challenge to all those concerned with ‘reform’ of the WTO is the relationship between such proposed institutional reforms, on the one hand, and the reform of the content of the WTO agreements, on the other. The common demand of many developing country governments and non-governmental organisations in the

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<sup>47</sup>These include OXFAM-GB, Friends of the Earth, the International Confederation of Free Trade Unions (ICFTU) amongst others

<sup>48</sup>UK NGOs op cit, p 7-8

lead-up to Seattle was for a “review, repair and reform” of the WTO agreements, in addition to the WTO itself<sup>49</sup>. There are indications from key governmental strategists that suggestions about the reform of process could be a device for postponing or deflecting attention away from the substantive reform objectives<sup>50</sup>. But, as Rubens Ricupero the Secretary General of UNCTAD observes “Process doesn’t mean a thing if it is separated from substance. They go hand in hand. There is no amount of process engineering that will solve this problem. It may even make it worse”<sup>51</sup>.

## 2. REVIEW AND REVISION OF THE SUBSTANCE OF WTO RULES AND AGREEMENTS

The criticisms building up against the WTO regime, in the years since the conclusion of the Uruguay Round in 1993, have always focused on the terms, aims and effects of its agreements, as well as on the manner in which it was formed and its functioning. Many developing country governments and non-governmental organisations, North and South, have long argued that:

- The process by which the WTO was created was thoroughly undemocratic, overwhelmingly dominated by the most powerful countries, with extremely weak – or non-existent – participation by the majority of the membership at the time or since.
- The agreements that were engineered under such circumstances reflect and reinforce the aims, interests and dominant position of – and the deals between – the industrialised countries, and are replete with inconsistencies within and between various agreements, and with extensive imbalances and inequities.
- The full negative implications of the many and very complex WTO agreements have only gradually become evident to developing country governments and non-governmental organisations through intensive, if belated, examination of their terms, and growing evidence of their adverse effects.

On these grounds, and within this understanding, a wide range of developing country governments, and a broad global coalition of non-governmental organisations, have been calling for a comprehensive retrospective review of the global agreements reached under such inequitable circumstances. All WTO member states – at the time of the UR and since – are obliged to sign onto all these agreements under the ‘single undertaking’ requirement for membership of the WTO. The most important reform proposals are for

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<sup>49</sup>Global Civil Society Declaration “No New Round! Turn Around!”, lead up to Seattle

<sup>50</sup>EU Trade Commissioner Pascal Lamy “The problems of substance can be tackled later”, Agence Europe 25/1/2000

<sup>51</sup>Bridges Weekly Trade News Digest, ICTSD, Geneva, 18/1/2000

- the most blatant inconsistencies, and some fifty identified anomalies, to be removed from WTO agreements, and for the most glaring imbalances to be subject to rectification<sup>52</sup>;
- a prior period of research and impact assessment on all agreements to be carried out<sup>53</sup>, based on multi-dimensional criteria<sup>54</sup>, in the nature of a “development audit”<sup>55</sup>, and located within gender perspectives<sup>56</sup>, and not simply focussed on trade liberalisation policies and practices;
- a moratorium to be placed on WTO dispute actions against ‘defaulting’ developing countries while such assessments are under way, and on all past/pending deadlines for their compliance with existing agreements which are to be subject to reviews/reforms;
- the eventual implementation of WTO agreements by developing and especially Least Developed Countries not to be set *a priori* but to be flexible and variable, reflecting identified needs and criteria within the respective countries, rather than the needs of ‘the global economy’;
- the prompt implementation of the WTO undertakings and obligations of the most developed countries, on the other hand, to be made an integral and essential part of the re-balancing of the inequitable WTO regime and global economy;
- such established – but unfulfilled – undertakings by the most developed countries are not to be inverted into a negotiating ‘trade-off’ in return for the acceptance by developing countries of other new demands now being tabled by the most industrialised countries (see 3. below);
- provision to be made for regular, independent external monitoring of the functioning and effects of all WTO agreements; more impartial and holistic than that currently provided for officially by WTO regular and special ‘review’ processes.

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<sup>52</sup>B.L. Das, ‘The WTO Agreements – Deficiencies, Imbalances and Required Changes’, in Trade and Development Series of the Third World Network, Penang, 1998

<sup>53</sup>UK NGOs op cit; Public Citizen, Washington, mimeo, 15/9/99

<sup>54</sup>SOLAGRAL, ‘Statement on the WTO Negotiations’, mimeo, Paris, [Solagral@solagral.asso.fr](mailto:Solagral@solagral.asso.fr) (1999)

<sup>55</sup>Aileen Kwa ‘WTO and Developing Countries’, Foreign Policy in Focus, #4.35, Albuquerque, New Mexico, December 1999

<sup>56</sup>Women in Law and Development in Africa (WILDAF) General Assembly declaration, ‘African women demand a Turn Around, No New Round of talks at the WTO’, Accra, Ghana, 26-31 July 1999

Within this general, cumulative programme of review and reform, there are also particularly controversial WTO agreements identified for specific changes. Probably the most significant is the Trade Related Intellectual Property Rights (TRIPS) Agreement that was created in the Uruguay Round as the guarantee of globalised 'patent' protection of the products, techniques and technologies of the emergent information, communications and bio-engineering (and other 'knowledge-based') industries within the most industrialised economies and 'their' global corporations. Within the reform agenda on TRIPS, the main demand from developing countries, led by the Africa Group, and supported by many NGOs, is for a prohibition on the patenting of all life forms or parts thereof, and for the recognition and protection of community knowledge rights and resources. There is also an important statement that TRIPS terms be clearly understood to allow developing countries to impose compulsory licensing for the domestic production of medicinal drugs listed as essential by the World Health Organisation<sup>57</sup>.

The other UR Agreement targeted for modification is Trade Related Investment Measures (TRIMs). This agreement takes advantage of the trade needs of all countries, and the almost desperate desire amongst most developing countries to 'attract foreign investment'. Under the implicit threat of investment boycotts by global corporations, and the explicit danger of trade sanctions that can be authorised by the WTO, member states are constrained by TRIMs from placing national terms and conditions on foreign investors where such terms are considered by them to be 'prejudicial' to their 'international competitiveness'. Requirements such as technology and management skills transfer and labour training, the input of a certain percentage of local content into production ventures, the export of an agreed proportion of production for foreign exchange income, defined periods and forms of re-investment of a proportion of company profits, and other such terms, were conceived in the 'development era' of the 1960s and 1970s to be a means to guarantee maximum (or at least some) national gains from foreign direct investment (FDI). It is semi/industrialised developing countries – such as South Africa, Brazil and India – that most directly feel the impediments imposed by TRIMs. It is notable therefore that within the TRIMs reform agenda these countries are most actively pursuing a modification of TRIMs to allow, for example, for effective local content requirements on FDI that could contribute to domestic industrial development.

In further attempts to modify WTO constraints on national strategies for economic development, many developing country governments and non-governmental organisations have identified the WTO Agreement on Subsidies as being particularly problematic. Not only does it, on the one hand, prohibit the use of specific government subsidies that could be beneficial to production development and diversification in developing countries; but, on the other hand, it exempts from WTO actions the kinds of subsidies favoured by the already more highly developed countries. This is one of the iniquitous 'imbalances' within the WTO agreements

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<sup>57</sup> Organisation of African Unity (OAU) 'Statement of Ministers of Trade on the Third WTO Ministerial Conference', Seattle, November 1999

requiring correction. The simultaneous allowance for the continuation of direct and indirect subsidies and other governmental supports to agricultural production in the most highly industrialised countries is one of the most blatant of the many inconsistencies between various WTO agreements. In similar vein, many developing countries are questioning why disputes under the Anti-Dumping Agreement – mainly used by developed countries, particularly the United States, as protectionist devices against competitive exports from developing countries – are expressly excluded from submission to the WTO’s Dispute Settlement system (see also 6. below).

To counter the pervasive bias of the URAs towards the interests of the most developed economies, and to provide a certain ‘space’ for developing countries, a proactive general strategy being increasingly pursued by developing countries<sup>58</sup> is to emphasise the importance and continuing relevance of the special and differential terms (SDTs) for developing countries. These were originally negotiated under the General Agreement on Tariffs and Trade (GATT), in the pre-neo-liberal ‘development era’, but were carried over from GATT into the WTO as a temporary trade-off for the acceptance by developing countries of the many new URAs that were already anticipated to be very onerous for developing and especially least developed countries to implement. Although ostensibly carried over in order to make some allowances to weaker economies, the UR adoption and adaptation of SDTs has not worked satisfactorily<sup>59</sup>. The modifications that are now required in respect to SDTs include the extension of the coverage and transition periods allowed to developing countries before their full compliance with WTO terms. The more innovative demand is for such time frames to be defined and determined by agreed performance criteria within less developed economies; that is to be flexible and development-based rather than set mechanically and arbitrarily in advance and from the outside. However, an even more important aim has to be the ‘rescue’ of SDTs from the recent neo-liberal re-interpretation and misrepresentation of the earlier GATT concept. This latter was the recognition of the principle that treating as equal countries that are un-equal is fundamentally inequitable. The different economic levels and needs of countries and communities require basically different considerations. This principle has now been turned into mere temporary concessions for weaker countries to ‘catch up’ and fulfill the necessary WTO requirements, as part of the UR negotiation packages.

There are many further questions that can be posed about these reform proposals, and about the revisions required in other WTO agreements if they are to be made more favourable or even less prejudicial to the development needs of most developing countries. There are, however, more general strategic questions to be posed about this ‘review and reform’ approach *per se*.

## **2.1 SOME STRATEGIC QUESTIONS.1 SOME STRATEGIC QUESTIONS**

### **2.1.1 Reforms within, and through, internal WTO ‘reviews’?**

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<sup>58</sup>Statements in the WTO by Egypt (1998), the OAU (1999), India (1999), see D. Keet, *op cit*, p 22, May 2000

<sup>59</sup>In fact ‘special and differential’ rights and exemptions are under constant pressures within the WTO, and undermined and contradicted by programmes outside of the WTO, mainly by the IMF and World Bank

The first obvious question is how to get such reforms even considered by the dominant WTO members. The possibility of infiltrating reform proposals onto the WTO agenda through the officially mandated review processes within the Built-in-Agenda could be seen to provide the opportunity for the developing countries to achieve some of the changes they require. However that would demand a much higher level of commitment and unity amongst these countries than is presently the case. In fact, within the present balance of forces in the WTO, there is the considerable danger that the review processes could and will be used by the highly skillful negotiators in the industrialised countries to introduce their own proposals and amendments. This could include, for example, slipping full investment liberalisation terms into the WTO through the forthcoming TRIMs review. Once again, this points to the importance of political changes in the balance of forces within the WTO, but this will also have to reflect and emerge from broader political processes outside of the WTO.

### **2.1.2 Reforms under the current balance of power within the WTO?**

Non-governmental organisations – North and South – promoting the reform agenda are convinced that “dealing with substantive issues is the only way to alter the balance of power in the WTO”<sup>60</sup>. But there seems to be a questionable inverted reasoning here. It is not changes in the substance of the WTO that will change the balance of power, but changes in the balance of power that are essential to change the substance. ‘Dealing with substantive issues’ to make them more favourable to the interests of the developing countries presupposes and requires a different balance of forces in the WTO. Such a change in the balance of forces would have to be a prior – if still emerging – condition, and an intrinsic part of any such process, and not only an eventual outcome.

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<sup>60</sup>The South Centre Workshop op cit, Key Points #1, February 2000

On the other hand, the rest of the above statement to the effect that “(t)he objective of WTO institutional reform should be to make the WTO work better for developing countries, rather than simply to avoid another Seattle” pinpoints the probable ‘containment’ motivations of the developed country governments, even were they to agree to significant reforms in the URAs which, thus far, is not at all evident<sup>61</sup>. However, it must also be said that even the more substantive and very well-intentioned reform agenda of some non-governmental agencies could have a similar effect of helping to create a more acceptable face on an institution that others argue to be “fundamentally flawed”<sup>62</sup>. This points to the necessity for frank tactical and strategic debates amongst opponents of the WTO to avoid what could be mutually contradictory actions. And, once again, this poses broader strategic questions about the character and continued role of the WTO.

### **2.1.3 Prioritising reforms ... and/or immediate resistance to a New Round?**

Another more immediate danger could arise from the projection of reform “as a precondition for any consideration of wider issues, such as a new round of global trade talks”<sup>63</sup>. This may be intended only as a tactical statement by NGOs as an inducement towards the promotion of their reform agendas with resistant governments. However, this could also be a serious tactical error. In the first instance, even such a minimal linkage could be picked up by very skillful government negotiators to insert such a ‘new round of global trade talks’ as one of the *de facto* components of the debate. They could even invert the connection, such that acceptance (implicit, explicit or eventual) of a New Round is itself made a precondition for consideration of immediate limited reforms, rather than the opposite. Thus NGO demands for immediate reforms have to be directly linked to an unequivocal demand, at the very least, for a moratorium on any consideration of a New Round.

Because the collective NGO document quoted above has a more immediate and limited reform purpose, this suggests an underestimation of the urgency of more proactive responses to the ongoing maneuvers, especially by the EC, to (re)launch a full new round. These demand immediate attention and concerted opposition from social and political organisations, world wide. Confronting this great danger cannot be postponed until ‘after’ certain internal reforms in the WTO have been achieved. In fact, discussions about possible internal reforms of the WTO may be a deliberate diversionary tactic by skillful government strategists to divert NGO attention and resources away from campaigns to block a new round. Any new round of global negotiations is not only questionable because it is ‘premature’ or because it would create enormous pressures and practical difficulties for most developing and especially least developed countries, and especially in Africa. The more fundamental

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<sup>61</sup>Even insofar as there have been proposals on reform of the WTO from the Quad “none addresses the need for reform of the substance of WTO agreements or rules”, Penny Fowler, OXFAM-GB, the South Centre workshop, *ibid*

<sup>62</sup>Aileen Kwa, Focus on the Global South, *ibid*

<sup>63</sup>UK NGOs *op cit*, Introduction, p 1

and proactive argument has to be that any further round of WTO negotiations should not even be considered because of the sweeping liberalisation aims and further globalisation effects that would be produced.

#### **2.1.4 Designs and dangers of a WTO 'Development Round'**

In this context, too, it is a source of much concern amongst African<sup>64</sup> and other Southern non-governmental organisations that not only are some of their own governments 'falling for' the Northern ploy to get a new global Round accepted under the persuasive cover of the 'development gains' to be made; but that even some influential Northern NGOs seem to be supporting such a Development Round<sup>65</sup>. The weaker countries may, in accepting this, cede important and immediate strategic ground to the developed countries on a comprehensive new round, without any certainty as to the efficacy or, indeed, the guaranteed achievement of the proposed development dimensions that would have to be negotiated therein. With such a strategic concession by the developing countries, the powerful industrialised countries would be positioned to achieve further major structural and functional changes in the global economy; in return for which the developing countries would, at best, receive some minor trade and possibly 'development aid' gains ... or promises. This is precisely what happened in the final stages of the UR to persuade developing countries to accept the UR package. But developing countries are still waiting for the implementation of the compensatory 'technical aid' and support promises made then, as for the full implementation of the majors' trade undertakings.

There is also much (deliberate) vagueness about these potential 'development' gains; whose nature and implementation are, anyway, not universally agreed, including within the countries most concerned, such as in Africa<sup>66</sup> (see also 9.1.2, para. 4). It has to be recognised, particularly by European NGOs, that the 'developmental' repackaging of a comprehensive new global round is a skillful negotiating ploy by the European governments in pursuit of their own strategic objectives. European social/political forces have a particular responsibility and role to play in exposing rather than – somewhat naively – promoting this. Whatever the susceptibilities of current aid-dependent governments in the countries of the South, it has to be the realities of the 'development partnership' experiences of such countries with Europe and the voices within these countries that should guide European NGOs in responding to European government tactics.

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<sup>64</sup>AfricaTrade Network (ATN), 'Statement to the Ministers and Delegations of the African Countries attending the Seattle Ministerial Conference of the WTO', mimeo, Seattle, 29/11/99

<sup>65</sup>OXFAM-GB

<sup>66</sup>Yash Tandon, 'What is Wrong with the Short Development Round', Seatini Bulletin, March 2000

## 2.2 FURTHER DEMANDS .... AND 'FORWARD LINKAGES'.2 FURTHER DEMANDS . AND 'FORWARD LINKAGES'

It must also be fully recognised that the EC is the most active amongst the majors in promoting a comprehensive new round because the inclusion of a wide range of subjects for negotiation would provide them with greater bargaining space and 'trade-offs' in defence of their controversial agricultural subsidies/protection policies which will come under increasing liberalisation pressures. Furthermore, the Europeans are pursuing a broad multi-faceted new round as another device to slip the many 'new issues' – some wanted by the EU and others by the US – onto the WTO agenda. Opposition to such 'new issues' and the widening scope of the WTO is one of the most important defensive challenges facing developing countries, and therefore has to be taken very seriously by non-governmental forces as well.

### 3. RESISTANCE TO FURTHER EXTENSION OF WTO COVERAGE, SCOPE AND POWERS

The opposition within and outside of the WTO has expanded in recent years to include resistance to the introduction into the WTO of ever more issues by the dominant governments. Many developing country governments and non-governmental organisations, South and North, are fully aware that:

- The coverage and scope of the WTO has always been tailored to the needs of the most industrialised economies, incorporating issues for liberalisation, or excluding or postponing them (as with textiles and clothing or agriculture) in terms of their own domestic economic, social and political needs.
- The most powerful countries, most notably the United States, driven by their global corporations, have also been particularly energetic since the UR in inserting new agreements into the WTO, with or without prior notification and adequate negotiation, such as on Information Technology, Electronic Commerce and Bio-Techology<sup>67</sup>.
- There is an ever-growing range of other new issues being pushed onto the WTO agenda - whether purportedly arising from previous negotiations and therefore 'not really new', or identified as the 'Singapore issues' that were tabled by Northern governments in the Ministerial Meeting in 1996, or yet other 'new' new issues being raised by both governmental and non-governmental actors since.

In this context, some of the restraints being proposed on the introduction of ever more issues into the WTO would require that:

- new issues being proposed for negotiation should first be submitted to working groups to examine their purported relevance to trade and therefore basic appropriateness even for consideration in the WTO;
- such 'study processes' should take place in appropriate fora outside the WTO "in settings more conducive to perspectives broader than the narrow

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<sup>67</sup>At the Ministerial Conferences in Singapore (1996) and Geneva (1998) respectively, and (prevented) at Seattle (1999)

- framework of trade relations”;<sup>68</sup>  
such issues should, similarly, be examined specifically for their development implications for the majority of WTO members, and that this be undertaken in conjunction with appropriate institutions such as UNCTAD and the UNDP.

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<sup>68</sup>M. Khor, 'New non-trade issues in the WTO - a comment', Third World Resurgence #108, Penang, Malaysia, August 1999

It is already evident to social movement analysts that many of the so-called new issues are inimical to the development needs of most of the developing countries<sup>69</sup>. The most notorious of these are the terms of the highly controversial Multilateral Agreement on Investment which the most industrialised countries are determined to get incorporated into one or another of the WTO agreements<sup>70</sup>. These would include the right of entry and operation of global corporate investors into any economy, without sectoral<sup>71</sup>

or geographical exclusions; and, once established, they would have to receive the same rights as any domestic company, under the requirement of 'national treatment'. If such terms were to be established in the WTO they would add further serious constraints, that are already evident with TRIMs, on the policy instruments and investment strategies available to governments for domestic production development<sup>72</sup>.

Similarly, the drive by the most industrialised countries to include 'government procurement', or tendering for public projects, under WTO terms would open up another highly lucrative sphere of business for global corporations. Insupportable pressures would be placed on smaller, weaker 'less competitive' domestic companies by the imposition of 'equal tendering rights' for international competitors; with the right of appeal to the WTO in the case of perceived discrimination. The 'non-discrimination' principle would also constrain governments, as in South Africa for example, from using the award of government tenders as one of the instruments to encourage the development of small and medium enterprises or to fulfill their legal and even constitutional obligations to exercise affirmative action on behalf of the hitherto disadvantaged black population and women.

The proposal to subject 'competition policy' to WTO terms is supposedly to ensure that there is a 'level playing field' for all companies everywhere. However, this does not reflect a concern about the highly questionable international restrictive business practices (rbp's) of global corporations. It is intended to put further pressures on those remaining national companies that still receive preferential treatment from governments against foreign competitors<sup>73</sup>. Equally significantly, the charge of 'anti-competitive practices' would be used against the remaining state enterprises and public corporations that have not yet been subject to privatisation. Many such public enterprises and public services in Africa would, under 'full and free competition' from global corporations, and the prohibition of government subsidies or other supports to

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<sup>68</sup>M. Khor, *ibid*

<sup>70</sup>In addition to the review of TRIMS, the re-opened negotiations on Services could provide a useful vehicle for introducing ever more detailed terms on financial and investment 'services'; (also Section 5)

<sup>71</sup>other than security and the armed forces

<sup>72</sup>The South African government could, for example, be prevented from using tax and other incentives towards indigenous industrial development and employment creation unless they extend the same rights to foreign companies as well

<sup>73</sup>These continue in spite of SAP prohibitions on such government supports for example in Africa and Latin America. But the main target for such global 'competition' policies are, of course, the still considerably state-supported and powerful corporations in many Asian countries

them, become more susceptible to privatisation pressures ...and thus their acquisition by the very global corporations objecting to their 'privileged' status as nationalised or public entities.

Other important new issues for inclusion in the WTO come mainly from non-governmental rather than governmental agencies in the more developed countries. The inclusion of labour rights and standards into WTO agreements, or as a WTO negotiating issue, is raised tactically - and hypocritically - by governments such as the US<sup>74</sup> as part of their political posturing to electoral forces outside of the WTO, and as useful bargaining ploys within<sup>75</sup>. The trade unions promoting the 'social clause' are concerned with protecting their jobs and national labour standards by promoting improved labour standards throughout the world, and propose the use of global trade agreements and the threat of trade reprisals through the WTO to do so. However, governmental and non-governmental actors in the developing countries see a dangerous potential for the utilisation of such clauses by the stronger members of WTO as disguised protectionist devices, and the dangerous potential of trade sanctions to actually exacerbate poor economic and employment conditions in their countries. Thus they defend the decision taken at the WTO Singapore Ministerial in 1996 that the promotion, monitoring and enforcement of global labour conventions should continue to be the responsibility of the International Labour Organisation (ILO). Other non-governmental critics of the WTO are also convinced that the WTO is not the right arena or appropriate instrument to promote improved labour rights throughout the world<sup>76</sup>.

The same applies to the campaign initiated by environmental organisations in the richest countries to promote the protection of environmental standards and rights through the WTO. Even if well-intentioned, many promoters of this new dimension are rather narrow in their understanding and aims, because they have not fully taken on board the multiple causes of 'low environmental standards' in the developing world. These are not merely the 'fault' of developing country governments, although they certainly are culpable, in part, because they acquiesce or submit to the conditions demanded by global corporations for 'de-regulated' and environmentally damaging production ventures<sup>77</sup>. However, this trend is reinforced by the free trade and 'de-regulated' investment regimes which are enshrined in the very institution that such environmental groups are, paradoxically, trying to use to improve environmental standards. There is also the clear potential for such 'standards' to be manipulated as disguised protectionist devices, or simply to function objectively as new trade barriers in the most highly developed countries against the rest of the world, whatever the intention of the environmental organisations promoting them.

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<sup>74</sup>Which has signed only two of the internationally recognised International Labour Organisations (ILO) conventions; and Washington has no intention whatsoever of allowing any international body, including the WTO, to interfere on such domestic matters (see 8.1.5, para. 3)

<sup>75</sup>D. Keet, 'Implications for Developing and Least Developed Countries', in 'Voices from the South', International Forum on Globalisation, San Francisco, November 1999

<sup>76</sup>Although they are concerned about the inadequacy of the ILO to the task; see also 7. below

<sup>77</sup>Especially in the so-called export processing zones (EPZs)

There are many further arguments that can be raised in regard to these and yet other potential 'new issues' being pushed into the WTO<sup>78</sup>. However, there are also broader strategic challenges facing social and political movements both in the developing and the most developed countries.

### **3.1 SOME STRATEGIC CHALLENGES**

#### **3.1.1 Defensive – and proactive – joint peoples' initiatives**

The first point is that a defensive stance against the introduction of such new issues, in general, is certainly justified on account of their contradictory motivations, controversial terms and problematic implications, as well as the inappropriateness of the WTO to deal with them. And such defensive tactics have to be sustained for as long as possible and used to maximum effect to change the WTO in the balance of forces within and thus in its policies. However, as always, defensive tactical positions are not sufficient in themselves. They have to be consciously located within and oriented towards broader demands and strategic goals, without which they are simply not effective or sustainable over the longer term.

But such a defensive stance is also not sufficient with respect to the justifiable aims of improved labour and environmental standards and rights, especially in the developing countries. The challenge to the mass social and political organisations in these countries, is to reject the convictions of many of their governments that low labour standards are an important 'competitive advantage' in a difficult global economy, and that high environmental standards are a luxury that they cannot afford. It requires concerted trade union and broader popular struggles to ensure that these rights and standards are improved and protected within national legislation and institutions. These are fundamentally important in themselves and this will reduce the scope for impositions from without. Above all, the very processes of such struggles will be significantly empowering to such social forces.

It is such internal popular struggles in the developing countries that counterpart organisations in the rich industrialised countries should be supporting, rather than trying – somewhat ingenuously – to further empower their own governments to impose such rights through the threat of WTO dispute cases. In the first place, governments of the industrialised countries are notorious for being highly selective and self-serving in the cases they take up or do not take up against developing countries. Furthermore, such cases could result in the destructive and thoroughly counter-productive imposition of trade sanctions against 'erring countries' – where it is workers and the people in general, not 'the governments', that pay the price.

#### **3.1.2 Delaying tactics ... and/or explicit and definitive rejection of 'new issues'?**

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<sup>78</sup>Including human rights, and even animal rights, good governance and others

The other defensive approach of subjecting such new negotiating issues to working groups, study processes, and the like, has its uses as a delaying tactic but only in so far the processes are fully used to gather further empirical evidence, formulate alternative arguments and marshal counter forces. At the same time, the most powerful countries will, themselves, use such 'study' processes to push their own arguments and prepare their own political (divide and rule) offensives. In this context, in order for delaying tactics to be valid, it is essential that the developing country governments and all non-governmental forces concert their efforts to utilise the breathing space to maximum strategic effect.

There are, on the other hand, dangers in not explicitly and definitively precluding such issues at the outset from the WTO remit altogether on clearly articulated development grounds. The joint African position in Seattle on the 'new issues', along with other developing countries, was unequivocally for the continued location of labour issues in the ILO. Africa also took a clear position against the introduction of the Working Group on Bio-Technology being pushed by the US. However the African position, in general, is that the other new issues should simply continue to be the subject of working group studies and ongoing "educational processes". This leaves it open for them to be possibly inserted into formal WTO negotiations at some later stage, which is how the WTO tends to function and this is clearly what the more adept Northern negotiators intend<sup>79</sup>. There are similar dangers in what may well be intended as a mere tactical formulation from within NGO ranks that such issues need to be "sufficiently brewed or matured" before being considered within the WTO<sup>80</sup>.

### **3.1.3 Trade-offs of yet further new 'trade-related' issues?**

Another tactical response to the multiplicity of new 'trade-related' issues is for the developing countries to table their own 'new issues' as a negotiating counterweight or as counter-arguments in the pre-negotiation positioning. These possible additions to the WTO agenda could include, for example, trade-related debt burdens, trade-related commodity price instabilities or trade-related financial instabilities encouraged by global financial deregulation<sup>81</sup>. These do all have negative impacts on the trade capacities, trade returns and development potentials of the developing countries, and could be part of the ideological or paradigmatic counter-thrust against the assumptions, the patterns and practices of the global economic system.

Such issues could also, theoretically, be used as tactical trade-offs in WTO negotiations<sup>82</sup>. However, in return for hypothetical potential gains on these issues, the developing countries could, once again, be surrendering important strategic ground without any certainty of any real gains. There are, moreover, other specialised

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<sup>79</sup> Tetteh Hormeku, 'African Ministers at Algiers: a few gingerly steps forward, but the major trap still ahead', ATN Briefing Pack at Seattle, November 1999

<sup>80</sup> Martin Khor at Third World Network Forum at UNCTAD X in Bangkok, February 2000

<sup>81</sup> The WTO is "often criticised for impinging on non-trade issues for which it lacks institutional capacity (yet) there are a number of important trade-related issues that the WTO does not even attempt to address", OxFAM-GB 'Institutional Reform, op cit, p 22

<sup>82</sup> Yash Tandon, Director's Comment, SEATINI Bulletin #2.5, 15 March 1999

forums/institutions, and debt cancellation or repudiation processes in prospect which would be more effective, and would not entail the risks of the kind of substantive trade-offs and other fundamental policy concessions that are required in WTO negotiations. In fact, even in the very unlikely event of such issues being taken up for formal negotiation in the WTO, this tactic would get these issues effectively dealt with. Nor would this approach necessarily succeed in pre-empting the introduction of the radical new issues that the governments and corporations of the industrialised countries are pursuing. These would contribute further to the growing imbalances between the purported 'rights' of global corporations and the basic rights and responsibilities of governments throughout the world.

### **3.1.4 Using and strengthening .... or opposing the WTO?**

But an even more serious challenge to social movements with respect to the ever-expanding coverage, scope and powers of the WTO, is that this expansion is actually being promoted not only by the governments of the most developed countries, in conjunction with their global corporations, but also by some of their trade unions and other labour and environmental organisations. While "the banners [in Seattle] called for the elimination of the WTO.....the environmental and labour groups actually want a stronger trade organisation; one that could enforce rules that would protect workers and forests on pain of economic sanctions"<sup>83</sup>.

Whatever their best intentions, such organisations would be strengthening a highly problematic institution that civil society forces are now much better informed on. Furthermore, utilising the WTO would be endorsing coercive methods for dealing with fundamental global concerns that basically require developmental solutions. It is in providing a deeper and comprehensive understanding of the distorted nature of global 'growth' that non-governmental activists and analysts in the South have a particular responsibility towards their potential allies, particularly in the ranks of organised labour, in the rich countries of the North (see also 8.1.6).

But it is, above all, highly questionable for trade unions and other NGOs in the North to be using the WTO as an instrument to pursue such aims because they would, in so doing, actually be utilising, legitimising - and reinforcing - the imbalances and abuses of global power. The way the WTO functions is that it is governments that institute charges against other governments through the so-called Dispute Settlement System (see 6.below). Civil society agencies may not have been aware of this when they started down this road some years ago, but persisting with this approach is much more questionable now that there is greater knowledge and insights on the internal functioning and global role of the WTO. If this approach continues to be pursued, viewed from the South, the proposals from organised labour and other social organisations in the North in support of the WTO as an instrument of global control, look like nothing less than them using, and trusting, their governments – whom social forces in the South thoroughly distrust and oppose – to

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<sup>83</sup>San Francisco Examiner, 5/12/99

solve our problems. Rather than relying, very naively, on global powers such as the US government to work for our common benefit, some serious exchanges and better mutual understanding between social movements, North and South, is clearly called for.

### **3.2 FURTHER OPTIONS ... AND 'FORWARD LINKAGES' .2 FURTHER OPTIONS AND 'FORWARD LINKAGES'**

The above debates about the relative merits and methods of defensive and proactive tactics to change or constrain the WTO are complex in themselves. But they are diametrically different to proposals to actually increase its coverage and power. This latter approach by some non-governmental organisations and particularly trade unions is all the more contradictory in the context of proposals from other non-governmental critics of the WTO that the powers and coverage of this institution should actually be reversed or rolled-back<sup>84</sup>.

## **4. REVERSAL OR ROLL-BACK OF SPECIFIC WTO AGREEMENTS**

As information on the origins of the WTO and the nature of its agreements has spread, a growing number of non-governmental organisations are convinced that there are a number of agreements and issues already within the remit of the WTO which are so inappropriate for a trade organisation and so negative in their effects that they need to be reversed. Such organisations argue that:

- The most powerful countries took advantage of the trade needs, and economic, political and technical 'negotiating' weaknesses of other member states to manoeuvre them into accepting a number of unprecedented 'trade-related' agreements during the Uruguay Round.
- The trade-related nature of such agreements are often tenuous, and the 'trade linkage' has actually been utilised as a coercive instrument of control – and this control is not only over the trade of all countries but over many other aspects of their internal economic policies.
- Such trade-related agreements have been created in response to economic and technological developments taking place in the most highly industrialised countries, and function to the advantage of these economies and global corporations, and to the disadvantage of the less developed countries.

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<sup>84</sup>"Rather than expand this flawed organisation, we need a turn around...(we) oppose any attempt to broaden the scope and power of the WTO" Pubic Citizen, op cit, 15/9/99

In this context, some of the key principles being promoted by non-governmental and even some inter-governmental organisations<sup>85</sup> are that:

- non-trade issues should not be included in the remit of the WTO;
- apparently trade-related issues should be examined for their real relevance to or effects upon trade;
- trade-related agreements should be evaluated for their effects on the development needs and prospects of all WTO members, not just the most developed economies and companies which can utilise them;
- the current location of trade-related agreements within the WTO is not an immutable given, should be subject to uncompromising examination and, if it is considered to be necessary, reversed.

The most questionable of all the trade-related WTO agreements is the Trade-Related Intellectual Property Rights agreement – on account of its aims, terms and implications. The more proactive argument is that TRIPS cannot simply be reformed on some details as indicated above (see 2, para. 3). Although it was ostensibly designed to prevent the production and trade in counterfeit goods, the abuse of labels and other patent rights of the original producers/owners, the more fundamental effect is to globalise the patenting of all new processes and products, and facilitate selective corporate appropriation of natural resources and indigenous or community knowledge throughout the world, including even the global patenting of life forms. Conversely, the protection of the ‘property’ rights of global corporations over ‘their’ scientific processes and technology, will have the effect of making access to existing and emerging science and technology more complex and costly for developing countries. This makes it more difficult for them to achieve improved process and production methods (PPMs) towards internationally ‘competitive’ standards, or even mere access for their products into the consumer markets of the most developed countries under their very demanding sanitary and phyto-sanitary standards (SPSSs). It also makes it more difficult for them to carry out manufacturing, mining and even agricultural production in their own countries according to the high environmental standards being demanded of them from the most developed countries.

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<sup>85</sup>“The WTO remit needs to be restricted to trade and trade alone”, Indian Minister of Trade Narayan, at G15 meeting, Cairo, June 2000

Under TRIPS, all WTO member states are obliged to introduce intellectual property regimes (IPRs) largely modeled on the IPR of the US which is practically/legally and financially burdensome for most developing countries and not conducive to their technological and economic development needs<sup>86</sup>. Adoption of tight patent regimes will prevent the more flexible and 'permissive' approach to technological 'borrowings' that have been the *de facto* basis for technology diffusion and economic development throughout history and in all countries<sup>87</sup>. TRIPS will, at the very least, slow down such processes, but could also serve to freeze the contemporary global distribution of technological capacities and economic development. At worst, the exclusive ownership and monopoly control over the exponential growth of science and technology within the highly industrialised economies and 'their' global corporations could reinforce the technological polarisation, or widening 'knowledge gap' between highly industrialised and semi- or non-industrialised economies, particularly in Africa, that is a central feature of the neo-liberal global economy.

There are also significant adverse public health implications from the imposition of TRIPS upon developing countries<sup>88</sup>. On all these and other grounds, TRIPS is thoroughly ill-conceived, except as an instrument for the protection of the interests of the richest and most powerful corporations and countries. It is not conducive to the economic, environmental, social and health needs of the poorer countries and the majority of the world's human, fauna and flora populations. And, as was cogently argued in a recent meeting at the UN, "(a) human rights analysis of the interpretation and implementation of the TRIPS Agreement reveals that TRIPS has skewed the balance inherent in intellectual property law systems away from the public interest and in favour of intellectual property rights holders....Contrary to some analysis, intellectual property rights do not have the character of fundamental human rights, but rather of subordinate or instrumental rights"<sup>89</sup>. TRIPS is the most blatantly tendentious and contentious of all the WTO instruments; is inimical to more balanced and sustainable development, global equity and stability, and it should be done away

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<sup>86</sup>TRIPS "is based on industrialised countries' legislation and is not suited to the rather different needs of developing countries", Friends of the Earth (Europe), "Collapsed Trade Talks in Seattle: What Next?", Briefing, March 2000

<sup>87</sup>Including the borrowing of Middle Eastern and Asian technology by the Europeans in the later middle ages that contributed crucially to the emergence and expansion of capitalism; US 'adoptions' from more advanced European technology during the 19<sup>th</sup> century, and Japanese and other newly industrialised Asian countries' adaptations of US technology during the 20<sup>th</sup>

<sup>88</sup>Such as the notorious threat by pharmaceutical companies to get the US government to institute a case against SA in the WTO for allegedly abusing 'their patent rights' by proposing to allow parallel imports of essential medicines, produced in India and other developing countries under their more 'flexible' patent laws

<sup>89</sup>Peter Prove, Lutheran World Federation, at the 52<sup>nd</sup> Session of the UN Sub-Commission for the Protection and Promotion of Human Rights, August 2000

with.

The other major WTO agreement that is thoroughly biased in its conception and inequitable in its effects is Trade Related Investment Measures (TRIMs). This is already argued by various developing countries to be in need of some modifications (see item 2, para. 4). However, more than mere reforms are needed. Like TRIPS, it is designed to serve the interests of global corporations and is an extreme interference into the domestic production policies of all WTO member states. TRIMs has many negative implications for the potential industrial development policies of developing countries.

Furthermore, like TRIPS, it actually makes it more difficult for developing countries to improve labour and environmental standards because it imposes constraints upon the rights of host governments, even were they inclined to do so, to set such terms and conditions on international investors. TRIMs allows and encourages harmful practices in health and safety, labour and environmental standards by contributing to the increasing *laissez faire* or 'deregulated' freedom that transnational companies are demanding for their operations all over the world.

The General Agreement on Trade in Services (GATS) is another WTO agreement that is clearly designed to serve the needs of the most industrialised economies and their companies. The GATT focus on trade in goods was widened during the Uruguay Round to include 'trade in services' in order to open up all countries to the operations of the giant service corporations that are rapidly becoming the major sector in the economies of the most highly developed countries. The penetration of such global corporations into the financial services, telecommunications, energy production and distribution, transport, tourism and other service sectors is already placing huge competitive pressures on national companies, which in developing countries are often also public or parastatal entities. This adds to the pressures towards further privatisation and foreign acquisition of such public enterprises or service companies. The denationalising effects of the penetration of 'global' service corporations into all countries – particularly US cultural domination promoted through the penetration of US information, communications and entertainment conglomerates – has encountered some resistance even in some of the most developed countries, such as France. However, the denationalising – and recolonising – effects are much wider and deeper in developing countries with lesser negotiating clout than such developed countries.

Negotiations on Services were mandated in the UR to recommence from the start of 2000, for the wider and deeper liberalisation of existing – and further – service sectors under GATS, and in more countries. This includes the proposed ending of the temporary exemptions and concessions in this sphere allowed to developing countries under SDTs. This trend carries the danger of highly sensitive public service sectors, such as public health and welfare, housing and education also being forcibly opened up to the competitive pressures and privatisation take-overs by global corporations – and this applies to both the most highly developed and the developing countries. The controversial proposals for sweeping investment

liberalisation might also be inserted into the pending services negotiations. This would be taking place precisely in a period in which there is increasing international debate about the need to review and re-regulate 'global financial architecture'. In this context there should, at the very least, be a moratorium on any further liberalisation of banking and insurance, accounting and other related financial services, as well as any further negotiations of services (see page 5.1.2, para. 2).

Much further research, information and campaigning work is needed on TRIPS, TRIMs, GATS and other agreements that are already in the WTO but that need to be removed or rescinded altogether. There are, however, a further range of important strategic challenges facing those non-governmental organisations that support this roll-back approach.

#### **4.1 SOME STRATEGIC CHALLENGES**

##### **4.1.1 Removal of agreements ..... and the creation of alternative models**

It must be noted, at the outset, that while the major arguments against such agreements are that they are hostile to the development needs of most developing countries, and that they should therefore be rescinded, it is simply not sufficient to call for the removal of such global agreements from the WTO. The first question would be where such agreements should be 'moved' to (see 7, para. 5). The more basic challenge to developing countries, and above all to the popular social and political organisations in these countries, is to mobilise both effective arguments and actions against the effects and against the very logic of these agreements wherever they might be located.

The WTO agreements have to be exposed as the embodiment of a particular paradigm and reflection and reinforcement of a broader political and economic system. It is the dominant paradigm and ideology of the system, and not only the institutions, that have to be dealt with. Thus efforts also have to be directed simultaneously towards alternative national, regional (and even global) social and economic development policies and programmes that could, in principle, be more feasible with the removal of such negative agreements. This requires intensification of research, public information/education and actions within developing countries, as well as various other complementary strategies, involving all non-governmental forces, North and South, within, in relation to and outside of the WTO.

##### **4.1.2 International lobbying campaigns, and/or popular mobilising?**

If the campaign for total removal of some existing, inappropriate agreements from the WTO, is to entail the cancellation of TRIPS, TRIMs, and the like, this would represent a significant reduction of the instruments created for the global operations of giant transnational corporations, and would be resisted by them and their governments. Clearly, this would require the building of effective international mass

campaigns against these agencies and their agreements. This is difficult in itself, but is made even more difficult because most NGO actors in this sphere, even the more proactive of them, are still located within the limited review-and-reform framework. This is often based on a purportedly 'realistic' assessment of the global balance of power and the possibilities for altering this (see also 9. below). However such assessments also could, and often do, actually reflect a correct (self)assessment (often unexpressed or even unconscious) of the limitations of the lobbyist methods and the persuasive 'influences' of such NGOs in and of themselves. Such positions may also reflect, in some NGOs, a distance from, lack of confidence in, or even distrust of mass organisations.

If the minimal reformist approach does reflect the limited power and influence of lobbyist NGOs to change the *status quo* apart from or without effective mass pressures, further analysis, information and much work of wider persuasion of such lobbyist organisations is necessary. And if some organisations remain committed to lobbying approaches, other organisations, especially in the South, must nonetheless pursue the mobilisation of wider popular forces which is essential to underpin and really empower the lobbying efforts – whether narrow lobbyists recognise this or not – and must also propel them forward.

#### **4.1.3 Non-governmental roles as such ... and in relation to governmental roles?**

Like the lobbyist NGOs, most developing country governments, even the more outspoken of them, do not at this stage go beyond proposing some limited reforms in some of the WTO agreements. Even where they recognise the highly tendentious nature and harmful effects of these agreements, most are gripped by a defeatist acceptance that the balance of forces does not allow such radical changes in the WTO. This reluctance or political abdication from even trying to change that 'balance of forces' is, of course, also a reflection of their economic dependence and subordination. This, in turn, is reflected in, and supported by, the growing vested interests in the neo-liberal paradigm being deliberately encouraged by global institutions such as the IMF/WB, and assimilated by the political/bureaucratic/managerial elites, and the new or burgeoning entrepreneurial classes in the developing countries.

The problematic role of these minute but powerful elites, on the one hand, and the general inadequacies of their governments' strategies towards the global system, on the other hand, pose serious challenges to all non-governmental organisations in these countries. Without the conviction and determination of the majority of WTO members, meaning developing country governments, that such agreements should and can be rescinded, the *status quo* will not be changed<sup>90</sup>. It has to be recognised that, while the efforts of non-governmental forces pursuing these changes are central and absolutely essential, they are not in themselves sufficient. Their efforts have to

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<sup>90</sup>Tetteh Hormeku, Africa Trade Network, presentation at UNCTAD X NGO Forum, Bangkok, February 2000

be aimed not only at other non-governmental organisations and social forces within their countries and internationally, but at their own governments. And the fullest challenge is that these efforts have to be premised on the necessity to change not only government policies and positions, but governments themselves, if need be (see 8.1.3).

## **4.2 FURTHER CHALLENGES ..... AND 'FORWARD LINKAGES'**

Once again, it has to be asked whether even proactive campaigns to change elements the *status quo* are sufficient. There are many other areas which are not yet fully or explicitly incorporated under the shadow of the WTO. The challenges of achieving the removal of some existing agreements from the WTO are also important for their demonstration effect with respect to the related demands that some entire economic, social, environmental and other areas should be kept out of the WTO completely. The undoubted difficulties of removing agreements once they are already in the WTO points to the necessity for a more proactive campaign for 'reserve areas' to be identified for definitive and pre-emptive exclusion from the remit of the WTO altogether.

## **5. RESERVE AREAS TO BE DEFINITELY PRECLUDED FROM THE WTO REMIT**

As the evidence has been building up on the adverse effects of WTO agreements on weaker economies and vulnerable sectors, proactive demands are being tabled to prevent some crucial areas from coming under WTO 'trade' obligations, coercive policy pressures and potential trade reprisals. Some of the key principles being promoted by non-governmental organisations, and even some developing country governments in this direction are that:

- Recognition should be firmly established that in some spheres and levels of economic activities and human endeavours, international trade is of minimal or no significance, and international trade regulations are not applicable.
- Production activities that are the very basis of peoples livelihood, family and community welfare and cohesion, should not be subject to the competitive pressures, economically damaging and socially divisive effects of international free trade.
- Other areas crucial to human welfare and security, and critical to planetary sustainability and survival, and that are judged to require governmental regulations and controls, or protections and subsidies, should similarly be exempt from prohibitions on these, which inclusion in the WTO entails.

In this respect, food production for domestic consumption is already the most widely recognised area to be excluded from WTO conditionalities and controls. Many developing countries – reduced to severe external food dependence<sup>91</sup> international market fluctuations and pressures on their fragile external balance of payments – are insisting that measures required to promote and protect their national food security should be exempt from WTO rules. The national measures required to support and promote domestic food production are alleged by neo-liberal theorists to have so-called 'anti-competitive' implications for international traders in food products (particularly cereals). But these commercial interests cannot take precedence over the necessity for countries to protect their own basic food security against the vagaries of international markets, the stockpiling of products, and price manipulations by commodity brokers and the like. Related

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<sup>91</sup>Identified in WTO jargon as 'Net Food-Importing Countries'

demands are that all small-scale agriculture, artisanal fishing and even ‘informal’ cross-border trade (largely by women in the Third World) should not be subject to WTO strictures at all.

Similar concerns about the negative impacts of free trade and commercial pressures on the planet’s natural resources and ecosystems are producing demands that global water resources, forests, wildernesses and wildlife, oceans and atmosphere be made the subject of specialised and internationally negotiated global conventions and not subject to the competitive trade and investment preoccupations and rules of the WTO. The contribution of free trade to further denuding the world’s forest and fish resources, abusing national and community rights, and contributing towards environmental crises, is already being identified as a powerful justification for these spheres to be excluded from trade liberalisation and ‘de-regulated’ production ventures. A more recent addition in this area are concerns over oligarchic and even monopolistic corporate global control over seeds and other agricultural production resources, and about the world-wide spread of genetically modified organisms (GMOs). This latter is clearly a “controversial issue” on which the WTO “has neither the mandate, the competence, nor the public trust to work”<sup>92</sup>.

Above all, the requirements of international trade and the commercial and investment interests of global corporations cannot take priority over fundamental human rights, human welfare and development. The internationally established fundamental human rights in the political, civil, environmental and socio-economic spheres must take precedence<sup>93</sup>. And there are other appropriate international institutions to deal with them. The centrality of public health care, education, environmental, transport and other public services to the security and development of individuals and communities, and the vital importance of both towards national progress and development, especially in Africa, underscores the necessity for these services to be kept out of WTO liberalisation negotiations altogether.

Yet again, there are many detailed arguments that can be, and have to be, pursued on these proactive proposals. But there are also immediate strategic challenges facing non-governmental organisations and also developing country governments in this regard.

## **5.1 SOME STRATEGIC CHALLENGES**

### **5.1.1 ‘Gutt GATS’ or ‘scrap services negotiations’?**

The first urgent challenge in this sphere is to develop effective strategies to deal with two sets of mandated negotiations relevant to these concerns and which are already,

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<sup>92</sup>Worldwide Fund for Nature, mimeo, Seattle 1/12/99

<sup>93</sup>A recent ‘historic resolution’ passed in the UN Sub-Commission on the Protection and Promotion of Human Rights in its 52<sup>nd</sup> Session, August 2000, “affirmed the primacy of human rights and environmental obligations over the commercial and profit-driven motives upon which agreements such as TRIPS are based”, report by Miloon Kothari of the International NGO Committee on Human Rights Trade and Investment (INCHRITI)

post Seattle, officially under way. The first is the re-opening of negotiations on agriculture. Fortunately, this already receives much NGO and mass movement attention, although there are various issues of debate and even differences amongst them, as in other spheres. One such issue is the utilisation by many European governments, and wide acceptance by environmental and other NGOs in the rich countries, of the concept of 'multifunctionality' and hence justification for government subsidies and other supports to the agricultural sectors in the most industrialised countries. The paradox is that it is in the overwhelmingly or heavily agricultural economies of the South that the multifunctionality of community and family-based agricultural production is most real and pressing – economically, socially, environmentally and culturally.

The other negotiation process is the WTO resumption of discussions on services – which are not yet receiving the attention of social movements that is urgently needed. One tactical approach could be to delay or block any further services negotiations, using the kind of criteria and principles outlined in 3 and 4 above. Another would be to remove as many as possible of the services from WTO consideration; in other words to "gutt GATS"<sup>94</sup>. This could also be targeted towards a broader and more radical strategic approach based on the conviction that "all negotiations on services should be scrapped"<sup>95</sup>. An immediate tactical demand has to be for a moratorium to be placed on any further services negotiations until a full impact assessments has been made of the implications for essential public service provision and human rights, and the development implications in the developing and especially least developed countries.

### **5.1.2 GATS, and Agriculture as common focuses for sectoral coalitions**

The potential for developing effective joint national and international campaigns on agriculture and services is considerable. The former would have to involve mass peasant movements, small farmer associations, and rural womens organisations, together with specialised organisations focusing on genetic engineering of plants and animals, producers', consumers' and even animal rights in this respect, as well as environmental, land and water resources and related rural concerns. Similarly, opposition to the services negotiations would be most effective integrated into campaigns already under way on issues of public health and welfare, housing and transport, education and culture, and other human rights. There is also the broad international campaign to bring the financial services sector under effective public scrutiny and democratic accountability, and social and environmental responsibility. As all these issues come under GATS, it could provide an important common focus to encourage and reinforce powerful sectoral and cross-sectoral coalitions commensurate with the enormity of the challenge posed. At the very least, more

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<sup>94</sup>'Shrink or Sink' Declaration of non-governmental organisations, circulating since March 2000

<sup>95</sup>Indonesian Consumers Organisation, Declaration, June 2000

specific sectoral campaigns would have to be encouraged to give their support to the anti-GATS campaign.

There is also a solid base for cross-sectoral coalitions to be built between such campaigns in the most developed as well as in the developing and least developed countries because the public provision and guarantee of essential socio-economic services is under increasing commercialisation/privatisation pressures throughout the world, and WTO-driven liberalisation will simply add to this<sup>96</sup>. The well documented research on the effects of services privatisation, and the resistance against this by non-governmental health and education, water, housing and public transport organisations and trade unions, especially in Europe and Canada, could provide a significant support to their counterparts in the developing countries. Conversely, although such privatisation programmes in the North are being driven by their own neo-liberal national governments (whatever political labels they give themselves), it would be significant for campaigners in such countries to see the commonalities between their experiences and the Southern experiences of the erosion and destruction of public services under IMF/WB structural adjustment programmes.

There are already indications, since Seattle, that such issues are being targeted by broad cross-sectoral coalitions of organisations from both North and South. The Mobilisation for Global Justice is one such coalition focusing demands on the IMF, World Bank and the UN<sup>97</sup>. Another international non-governmental coalition focused more specifically on the WTO is expressed in the “Shrink or Sink” declaration bringing together many of the above demands and a wide range of organisations. This is an exemplary cross-sectoral, multi-organisational coalition spanning developed, developing and least developed countries – although there is still much work to be done in this regard in Africa.

## **5.2 FURTHER TACTICAL AND STRATEGIC ISSUES ... AND OPTIONS**

Vitally important as such broad alliance building is, there is a certain ambiguity in the ‘catchy’ title of the common ‘Shrink or Sink’ platform which poses important questions about the tactics and ultimate strategic aims of organisations critical of the WTO. It can, of course, be divisive to point to possible longer term differences rather than concentrating on building on immediate commonalities and convergences. But it is also necessary not to avoid or cover up subtle differences of possible interpretation and intention, because they underpin and inform many other immediate tactical choices and practical decisions even where there appears to be agreement. For the long-term, the question is whether this declaration is a precautionary warning that the WTO has to accept being ‘shrunk’ in order to save it from being ‘sunk’; or whether this is an interrogatory declaration, posing the strategic question whether the WTO should simply be ‘shrunk’ or actually needs to be ‘sunk’. But the third tactical question is how or whether the WTO can be deliberately shrunk

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<sup>96</sup>Canadian Centre for Policy Alternatives, op cit, January 2000

<sup>97</sup>Especially in the framework of the UN's Millennium Summit consultation of NGOs

in carefully targeted areas, and in ways that will, incrementally and eventually, get it 'sunk'. In this regard, the exceptional and dangerous powers of the WTO are another obvious area to tackle in order to start reducing its power and very role.

#### 6. REFORM, REDUCTION OR REMOVAL OF THE COERCIVE POWERS OF THE WTO

As with other proposals, there are further subtle differences of approach and intention amongst critics of the WTO that also need to be recognised. Probably the most crucial of these relate to the institutional dimension or function of the WTO that undergirds its central role and specific power in the emerging system of global government; namely the Dispute Settlement Understanding (DSU) created by the UR. It is this powerful coercive instrument within the WTO that sets it apart from all other multilateral organisations; with only the UN Security Council wielding comparable powers, and even those are subject to wider participation, inputs and controls than the WTO 'dispute panels'.

These panels are supposedly the very basis, the expression and guarantee of the WTO as a 'multilateral rules based system'. It was largely this that persuaded the developing countries which participated in the UR that the proposed WTO would be an improvement on the old GATT era because it would put an end to the characteristic big power economic pressures and unilateral threats. The DSU is the "jewel in the crown of the WTO", according to its first Director General, but it is also the most blatant manifestation of the misuses and abuses of the system by the powerful; of the formalistic nature of the 'equal rights and treatment' of all members of the WTO, and of the highly biased functioning and role of the WTO secretariat.

This system, purportedly set up to receive complaints and resolve bilateral disputes between the governmental 'contracting parties' to the WTO agreements, is characterised by a range of serious problems within its very structures and functioning<sup>98</sup>, amongst these the most glaring being that:

- The disputes are taken up by very small panels of legal experts selected from a limited pool of 'reliable' specialists who are identified and assessed not only on their familiarity with WTO terms but their adherence to the assumptions of the neo-liberal theories underpinning the WTO.
- The WTO Secretariat plays a key role in setting up such panels, and its legal department is quite interventionist in the so-called adjudication processes, thereby blurring the distinction, and the necessary separation, of the executive and judicial functions within the WTO<sup>99</sup>
- The Dispute Panels are characterised by a narrow legalism in evaluating complainants' cases of damage or prejudice brought against other member states, ignoring other considerations than very literal compliance with the letter of WTO terms. Yet in some cases, the panels have made controversial rulings based on non-legal, biased and untenable political judgements; the

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<sup>98</sup>Chakravarthi Raghavan 'The WTO and its Dispute Settlement System: tilting the balance against the South', Trade and Development Series #9, Third World Network, Penang, Malaysia, 2000

<sup>99</sup>B.L. Das, 'The panel and appeal process at the WTO', Third World Economics, #236, 1-15 July 2000

most tendentious being the DS panel acceptance of the maintenance by the US of its notorious 301 trade laws on the 'assurance' given by US government trade authorities that they would not use these laws in contravention of the WTO.

At the same time, the panel deliberations are characterised by a highly problematic "judicial activism"<sup>100</sup> which not only results in questionable interpretations and cumulative extensions on WTO regulations, but are also sometimes inconsistent with one another.

Above all, the proactive decisions of the panels have led them to encroach very directly on the political decision-making or 'legislative' powers and authority of the Council of Ministers and the General Council of the WTO.

In addition to these serious flaws within the very creation and functioning of the DS panels, there are a number of other problematic features in, and in relation to, the 'dispute' system as a whole. These negate its claims to being the guarantee of justice in the application of the WTO's rules and regulations.

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<sup>100</sup>According to FriederRoessler, a key figure in the original formulation of the WTO's dispute settlement rules, reported in Third World Economics #236, 1-15 July 2000

The first is that the DSU is utilised primarily by the most powerful countries. On the one hand, they use the WTO for their offensive/defensive neo-mercantilist battles with each other, which receive much media attention, and not always favourable<sup>101</sup>. On the other hand, the more powerful governments have brought many cases against developing countries' trade and production programmes that are allegedly 'prejudicial', even to as mighty an economy as that of the United States. Furthermore, there are also clear tendencies for the decisions of the dispute panels, on the one hand, to cumulatively expand the power and 'rights' of a few industrialised countries – especially, and not coincidentally, the US – and, on the other hand, to “increase the obligations of developing countries”, according to B.L.Das, a seasoned analyst of the process<sup>102</sup>

In contrast, there are limited possibilities for recourse to such self-assertion or even self-protection by the great majority of weaker countries<sup>103</sup> in the first instance because of their limited legal resources and the vast and prohibitive costs of hiring international legal 'experts' on the WTO. The less obvious impediment for weaker countries lies in their apprehension (arising from wider experience) about possible indirect and covert economic and political reprisals against them by their stronger adversaries, in other spheres and ways, should they dare to institute formal proceedings against them through the WTO. Furthermore, the experience of some developing countries, that have attempted such actions, is that the stronger countries have been able to drag out the process. The result is that weaker complainants can be irreparably damaged in the meantime, even if the eventual panel ruling is in their favour and they are duly authorised to impose trade sanctions on their adversary.

The limited possibilities for the imposition of authorised counter-actions by weak economies against strong illustrates, above all, the formalistic nature of the 'equal rights and treatment' of all members within the WTO. There is doubtful utility, or even feasibility, in such authorised counter-actions by weaker economies. On the one hand, the impact of such measures upon the strongest economies would invariably be extremely limited. On the other hand, the economic risks would be considerable to the weaker implementers of such 'sanctions'. These can actually be counter-productive to developing countries that are dependent upon the most highly developed economies as their main export markets, and as sources of capital inflows and imports of capital equipment.

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<sup>101</sup> According to an Editorial Comment in the highly influential London Financial Times, 15/5/2000, both the US and the EU have “over-burdened” the SD system “with highly contentious cases” (whereas) “they need urgently to agree to strengthen the WTO’s dispute procedures, use them less capriciously, and abide by their results”

<sup>102</sup> B.L. Das, presentation made at the Third Southern and East African Trade Information and Negotiations Initiative (SEATINI), Harare, Zimbabwe, 27-31 March 2000

<sup>103</sup> Although, according to one expert, the role of the DSU panels “should be confined to protecting members against an abusive resort to provisions” in the WTO – Frieder Roessler op cit.

The contrary and most serious danger of all is that if stronger countries win their cases against weaker, the trade sanctions, and the 'cross-retaliations' in other sectors that can then be authorised by WTO panels can have devastating effects on weaker economies. Thus most such countries prefer to knuckle under, change their legislation, give up on production projects that they might have been planning or even have under way.

In this context, some of the basic principles being promoted by non-governmental organisations and critical legal analysts with respect to the dispute settlement system in the WTO are that:

- there must be a clear separation of responsibilities between the executive, judicial and legislative entities within the WTO;
- the highest decision-making bodies within the WTO are the Council of Ministers and the General Council, and where doubts or lacunae exist in WTO rules, they should be dealt with by these bodies ;
- the dispute panels should be selected and set up through transparent processes, from broader pools of expertise, and their hearings should be open to other members states and the general public;
- there can be no 'automaticity' in the rulings of the Appellate Bodies, and they cannot substitute for the political authorities in the WTO to ultimately decide collectively on disputed decisions;
- the decisions on specific inter-state disputes by small *ad hoc* dispute settlement panels within the WTO cannot take precedence over or contradict other multilateral agreements within the WTO, or elsewhere.

In addition to asserting these general principles, critics of the WTO's so-called dispute settlement system have produced a host of proposals to make the system more fair or simply less prejudicial to the majority of the WTO members. Suggested reforms are for time limits to be set on panel processes, for the financial costs on weaker countries to be reduced, and prompt and retroactive compensation to be given where damages have been incurred during and through dispute cases<sup>104</sup>. Measures to ensure greater fairness include a legal aid system for countries that need it; for cases to be brought to the WTO on their behalf or, better still, instituted on a multilateral basis in order to protect them from targeted but covert unilateral reprisals. A further suggestion is for the creation of reporting mechanisms to expose non-trade threats and other forms of "harassment"<sup>105</sup>. Similarly, it is proposed that the confrontational nature of the DS system be January 17, 2002 replaced by more genuinely even-handed processes. Above all, the bilateral nature of the dispute system, that creates so many difficulties for weaker countries, and possibilities for abuse by the stronger, should be replaced with effective multilateral mechanisms for enforcement of remedies and for processes of appeal.

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<sup>104</sup>SEATINI III Recommendations, March 2000, [seatini.zw@undp.org](mailto:seatini.zw@undp.org)

<sup>105</sup>Aileen Kwa, South Centre WTO workshop op cit, February 2000

It is also suggested that consideration in dispute cases should be given to a wider range of factors, especially in developing countries, than simple adherence to the narrowest definition of the law, particularly in the light of the manifest imbalances within UR agreements as presently formulated. A related proposal is that processes of independent research be undertaken on the effects of sanctions upon the more vulnerable economies, ecologies and populations; and where such sanctions are imposed, that they be closely and impartially monitored for their effects<sup>106</sup>. And, while all such proposals are being studied, imbalances are being corrected and alternative adjudication methods are being considered and developed, there should be a moratorium on WTO disputes cases<sup>107</sup>.

More radical proposals are for certain issues or agreements to be excluded from the remit of the DSU and removed altogether from the potential application of trade retaliations. This is not without precedent within the WTO itself. "Presently there are many provisions that came out of the UR that are of specific interest to the developing countries but only take the form of 'best endeavour' clauses by the developed countries. In other words they do not have the force of possible sanctions behind them. This contrasts rather sharply with issues of concern to the most developed countries which are protected by legally binding agreements"<sup>108</sup>. The best endeavour clause could be extended more widely within the WTO, especially in relation to the 'obligations' and rights of developing and least developed countries.

The even more far-reaching proposals are for the WTO's dispute panels to be replaced altogether. The alternatives include multilateral hearings by the member states, where legal 'experts' play only an advisory role; or specialised tribunals to deal with specific issues, such as cases which have environmental implications<sup>109</sup>; or joint panels with other specialised UN agencies, particularly where WTO panelists do not possess the necessary expertise<sup>110</sup>. There is also a suggestion for urgent cases to be taken to the International Court of Justice, as an interim measure, while a better system of adjudication is being developed in the WTO<sup>111</sup>. In all cases, however, there should be "superior referral bodies" to examine and resolve disputes between WTO agreements and other agreements created by other international negotiations and bodies<sup>112</sup>.

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<sup>106</sup>OXFAM-GB, op cit, p 22

<sup>107</sup>There should be a moratorium "until governments recognise the existence and validity of the precautionary principle, environmental protection, high national and international health and environmental standards, and operate in a transparent fashion" Friends of the Earth (Europe), op cit, March 2000

<sup>108</sup>"Do all agreements need to be backed by the force of sanctions? Is it possible to work out agreements or a categorisation of issues that are not necessarily legally enforceable through the threat of sanctions?" Director's Comment in SEATINI Bulletin #3.5, Harare, Zimbabwe, 15 March 2000

<sup>109</sup>The New York Times, 3/12/99

<sup>110</sup>OXFAM-GB, op cit p 15; UK-NGOs op cit, p 6

<sup>111</sup>Friends of the Earth (Europe), op cit, March 2000

<sup>112</sup>"Joint panels including the WTO and other specialised UN bodies to adjudicate in trade disputes relating to concerns about human rights and the environment may be more effective in achieving an appropriate balance between the different interests in any dispute" OXFAM op cit.

Clearly, very complex and important issues are being posed with respect to the WTO's 'judicial' functions and punitive powers, but there are, as in all other areas of debate on the WTO, also other broader strategic challenges to be faced.

## **6.1 SOME STRATEGIC CHALLENGES. 1 SOME STRATEGIC CHALLENGES**

### **6.1.1 Reforms to ensure 'impartial' application ... of biased rules?**

The range of precautionary procedures, compensatory measures and corrective provisions, such as public legal aid, that have evolved in many national judicial systems certainly go some way towards addressing imbalances and injustices. However, such reforms, while desirable in principle, are insufficient to ensure justice within the WTO because the most fundamental problem is that the very rules and agreements being applied are imbalanced and inequitable. Even if the WTO panels and the panel hearings were to be more impartial than they currently are, 'impartial' application of biased rules is intrinsically biased. Once again, it is the agreements, as such, that have to be changed.

### **6.1.2 Legal/technical issues ... and/or issues of political-economy?**

Even more fundamentally, the main challenges are not legal or organisational but political and economic, or a question of the global political-economy<sup>113</sup>. The main reason why the US, and to a lesser extent the EU, are able to dominate the WTO's DS system, and able to use its coercive powers, is because of the vastly greater financial, legal, technical/research and other resources that these countries can marshal. Due to their sheer power and dominance, they are also often able – covertly – to evade applying WTO regulations which go against their own interests, where weaker countries would not be able and allowed to do so.

Equally significantly, the way in which they use the DSU is very often to achieve, through these 'bilateral' processes, advantages for their own economies and companies that they did not manage to secure through the UR multilateral processes. Conversely, they can pre-empt such multilateral determinations by using the DS panels to create 'precedents'. These, in turn, act as a powerful deterrent to other countries against taking the risk of exposing themselves to such 'cases'. However, changing such imbalances of praxis and power is not merely a matter internal to the WTO, nor is it only a political, let alone legal matter<sup>114</sup>. This is a

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<sup>113</sup>"It is time that the issue of the DSU and the manner in which the system is functioning is seriously debated in our countries – as a serious issue of politics and political economy and not as a legalistic or technical one", C Raghavan quoted in 'WTO dispute system tilting balance against South', in *Third World Economics* #231, 16-30 April 2000

<sup>114</sup>"Tinkering with the WTO machinery" is insufficient because it will not change "the power relations which are central to decision-making and negotiation processes within the WTO", Frieder Roessler op cit

reflection of much wider global imbalances of political power and, once again, this points to the necessity for these to be dealt with (see 9.1 below).

## 6.2 FURTHER PROPOSALS ... AND FORWARD LINKAGES

In the meantime, analysing and exposing the functioning of the DSU is also important, in an immediate political sense, because it is the punitive powers of the WTO that give it a pre-eminent role in the emerging system of global government. Thus, the fallacies and failings of the DS system have to be tackled not only in and of themselves, or to 'make the WTO more just', but rather to expose the dubious 'judicial' foundation and very problematic powers vested in this institution. This understanding points inescapably to the necessity for a fundamental change in the powers of the WTO, and for a reshaping or redefinition of its very role.

### 7. RESHAPING, OR RADICALLY REDEFINING – AND RESTRICTING – THE ROLE OF THE WTO

The many proposals for the revision or even reversal of WTO agreements, for precluding specific areas from the WTO, and for reducing its coercive powers, are all based on extensive experience and intensive analysis drawing out the many problems within different dimensions of this institution. However, for an increasing number of non-governmental critics of the WTO, analysing the cumulative effects of these problems, and taking together the many negative features and the overall character and functioning of the WTO, lead to the conclusion that a more radical reframing of the entire role of this institution is required. This approach is not about piecemeal reforms within the institution, but rather about a more far-reaching redefinition of its very role<sup>115</sup>.

The more comprehensive approach argues for an extensive (re)location of all matters of national and inter-national concern, other than very specifically defined trade matters, out of the WTO altogether. Many matters other than trade have been taken on by the WTO, eroding the prime role and responsibilities on such matters within other more appropriate international institutions. To reverse this, and put the WTO 'in its proper place', it is essential that matters that rightly pertain, for example, to the work of specialised UN agencies should be dealt with by them (but see also 8.1.2). The corollary to this is that the WTO should be restricted to dealing only with trade "narrowly defined"<sup>116</sup>. All the 'trade-related agreements' that have been

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<sup>115</sup> ... what developing countries and international civil society should aim at is not to reform the WTO but, through a combination of passive and active measures, to radically reduce its power, and to make it simply another international institution, coexisting with and being checked by other international organisations, agreements and regional groupings", Walden Bello, "Why reform of the WTO is the wrong agenda", Focus on the Global South, Bangkok, February 2000

<sup>116</sup> The WTO should be brought back to dealing with matters related to trade narrowly defined as dealing in tangible goods. It should be stopped from extending its tentacles to matters that properly belong to other agencies of the UN

contrived by the most powerful governments as instruments of control – not only over inter-state trade but, using trade, over all other economies – should be removed altogether.

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system”, Yash Tandon, Zimbabwe section of the International South Group Network (ISGN) ‘Global Governance and Justice’, mimeo nd (1999?)

As to international trade as such, and the restricted trade responsibilities of the WTO, the basic proposal is that the WTO should revert to the earlier GATT-type responsibility of facilitating – not forcing – international trade, and acting as the central record/repository of its members’ respective tariff regimes. The General Agreement on Tariffs and Trade (GATT) was by no means without problems, but it “functioned reasonably well”<sup>117</sup>, and there is certainly a need for some sort of international trade body to deal with strictly technical aspects of inter-state trade relations, such as dumping complaints and anti-dumping measures. This, in turn, would demand a precise and agreed understanding as to what actually constitutes ‘dumping’, extensive research and investigation of the respective producers/exporters and importers, and genuinely impartial multilateral processes for assessing and adjudicating on such charges. Clearly, even these narrow technical trade issues are not simple, and it is very doubtful whether the WTO, as presently constituted, has either the capacity, expertise or experience, or the credibility to play such a role.

On the other hand, the United Nations Conference on Trade and Development (UNCTAD) did, and to some degree still does, carry out such useful monitoring, investigative, research and capacity building roles<sup>118</sup>, and it does so within a wider developmental remit. For example, in formulating and promoting the Generalised System of Preferences (GSP) for developing countries in the 1970s, UNCTAD provided a useful trade support to them and, in so doing, played an important complementary role to the more narrowly focused and merely technical General Agreement on Tariffs and Trade. UNCTAD also provided some useful, if belated, support to the developing countries during the penultimate stages of the Uruguay Round, and since. There are, of course, many critical questions to be posed about UNCTAD itself <sup>119</sup>, but reviving – and, in important ways, revising – the role of

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<sup>117</sup>According to Walden Bello, GATT’s dispute settlement system was “flexible and, with its recognition of the ‘special and differential status’ of developing countries, it provided the space in a global economy for Third World countries to use trade policy for development and industrialisation”, op cit

<sup>118</sup>Particularly in the earlier period, before it was severely reduced in its resources and role and subject to heavy ideological pressures – see 8.1.2

<sup>119</sup>“... although the research and policy advice provided by the rather more disinterested UNCTAD does include some useful analysis, information and suggestions, it also tends to be contained within the parameters of the WTO agreements, reflecting certain tendencies within UNCTAD to accept many of the assumptions of the ‘multilateral trade system’ and even the neo-liberal paradigm. Furthermore, UNCTAD’s advice tends to be cautious and generally lacking in strategic vision because the institution is reluctant to be seen to be challenging or even questioning the

UNCTAD has to be an integral part of the redefinition of the role of the WTO and/or the revival of GATT<sup>120</sup>.

With regard to the removal of 'trade-related', or what are not strictly trade matters from the WTO, the first question is whether their 'removal' means their re-location in other inter-national organisations, such as related United Nations bodies, or their outright abolition. Given the highly tendentious nature of these so-called trade-related agreements in their very conceptualisation and creation, aims and application, it is extremely doubtful whether they can be transformed or even merely 'improved' through minor piecemeal adjustments. This problem will apply wherever they are located. On this last point, even within such a hypothetical prospect, there would inevitably be continued and concerted efforts by powerful 'interested parties' to save or salvage such agreements in some form - even if, perforce, in organisations other than the WTO. In this light, it would be extremely risky to try to (re)consider the role and revise the terms of such highly questionable agreements as TRIPS and TRIMs even in the 'more appropriate' framework of relevant UN and other international bodies, unless this were an intrinsic part of a much broader transformational project.

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WTO in any overt way", D. Keet, op cit, p 15-16, May 2000

<sup>120</sup>"To work, the WTO needs to be part of a family of global government. Its rules must be subordinate to internationally agreed targets for social and environmental development. In this new family, UNCTAD is far better placed to lead discussion on prickly issues, such as the role of multinational companies, investment, tax evasion and the growth of monopolies", Andrew Simms, New Economics Foundation, quoted in the Guardian Weekly, London, 17-23 February 2000

The alternative proposal is not to simply ‘relocate’ and ‘reform’ such agreements, even in appropriate UN bodies, but to start from altogether different premises. This would mean viewing, for example, industrial and agricultural production, science and technology, environmental, health and social well-being, general human rights, gender and labour issues and so on, within the relevant international bodies – and on their own terms, at the outset. It would also entail seeing these concerns as being the prime – although not exclusive – responsibility of the respective specialised UN bodies together with other related international institutions. But it would recognise the inter-relatedness of all these areas and issues and the need for mutual consultation and cooperation between the agencies to analyse and incorporate the common or mutual effects into their respective policies and programmes. Within this perspective, any connection between these concerns, on the one hand, and ‘trade matters’, on the other, would similarly be approached within the framework of the agreed policies, programmes and international agreements on the various subjects in the respective UN agency or combination of agencies. The fundamental concern, then, would not be ‘trade’, as such. It would be the context within which trade takes place, the uses and impact of trade in all the respective spheres of human activity; above all human needs and fundamental rights<sup>121</sup>.

Clearly, many and much wider organisational and political challenges are posed by such proposals to relate international trade and the WTO itself to the broad family of United Nations organisations and other international agencies. However, before turning to consider the possibilities and problems in this respect (8 below), it is necessary to deal with some broader strategic challenges that are posed by the proposal to ‘redefine’ the role of the WTO as such.

## **7.1 SOME STRATEGIC CHALLENGES**

### **7.1.1 Exposing the fallacies of the ‘free’ trade paradigm**

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<sup>121</sup> See the UN Sub-Commission on the Protection and Promotion of Human Rights in its 52<sup>nd</sup> Session, August 2000 op cit

It would be a major challenge to the *status quo* to limit the WTO to ‘dealing only with trade’, but there are even more fundamental questions and challenges being posed about the nature and role of trade *per se*<sup>122</sup>. These questions relate to the current conceptualisation and projection of trade as being the driving force, the main means and measure of growth; and ‘free trade’ as being the most beneficial form of trade for all, eventually. Important challenges can be posed as to the extent to which, or whether, the global system is actually based on ‘free’ trade – or on WTO-regulated, government-controlled, or TNC-managed trade<sup>123</sup>. Furthermore, empirical studies and authoritative analyses are casting into doubt the purported causative link between the growth of trade and ‘growth’, and between both and wider sustainable development<sup>124</sup>. In fact, contrary to the claims, there is wide-spread experience in developing countries<sup>125</sup> of de-industrialisation, labour retrenchment and aggravated un-employment from rapid and extensive trade liberalisation, together with other economically, socially and environmentally damaging effects. This is evident particularly in weaker economies, but also in vulnerable economic and social sectors and disadvantaged geographical regions even within strong economies.

This experience is accompanied by a growing awareness that ‘free trade’ is always most beneficial to ‘competitive’ economic players and stronger economies. This is precisely why the theory of free trade is periodically resuscitated (historically and currently), and promoted most energetically by the strongest companies and their governments – when, where and while they are in positions of dominance<sup>126</sup>. All such experiences, evidence and insights have to become part of a concerted challenge to the highly tendentious trade paradigm underpinning the WTO, and currently dominating the whole world<sup>127</sup>.

### **7.1.2 ‘Trade distorting’ constraints replaced by ‘development promoting’ priorities**

There are more specific challenges for the weaker economies of the world. Many of these have, for years, had trade and investment liberalisation, privatisation, labour ‘flexibility’ and other deregulations forced upon them through so-called structural adjustment programmes under the aegis of the IMF and the World Bank; and now being reinforced through the WTO. After years of adherence (unwilling or willing) to these neo-liberal dogmas, there is a growing awareness in many of these countries that, amongst other neo-liberal fallacies, it is not trade but production that is

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<sup>122</sup>“We need a thorough review that looks at the trade system itself, and not just WTO procedures...(that is) a full, thorough, measured impact assessment”, SOLAGRAL, op cit, 1999

<sup>123</sup>D. Keet, op cit, 2000, p 17

<sup>124</sup>Dani Rodrick, UNCTAD Bulletin #1994; S.M. Shafaeddin ‘The impact of trade liberalisation on export and GDP growth in least developed countries’, UNCTAD Discussion Paper #85, Geneva, July 1994

<sup>125</sup>Including in South Africa and other countries of Southern Africa

<sup>126</sup>Karl Polanyi, ‘The Great Transformation’, New York, Octagon Books, 1994; F.F. Clairmont, ‘The rise and fall of economic liberalism’, Southbound, Penang, Malaysia, 1996

<sup>127</sup>“What is required is nothing less than a radical review of the whole system of trade liberalisation, and a critical consideration of the extent to which it is genuinely equitable and geared towards shared benefits for rich and poor countries alike”, report on the 52<sup>nd</sup> Session of the UN Sub-Commission on Human Rights, August 2000

primary<sup>128</sup>. Effective, expanding and diversified productive capacities are more important in creating successful trade than the opposite. However, the challenges to developing countries, particularly in Africa, go further. There is an urgent need for such countries to reject simplistic World Bank 'export-led growth' policies which will merely reinforce the particularly marked extroversion of much African commercial production, with extremely limited backward and forward linkages, with pronounced sectoral disarticulations, and economic and social distortions within African economies<sup>129</sup>.

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<sup>128</sup>The ACP (African Caribbean and Pacific) countries in their official positions presented to the EU in the context of the negotiations over the future of the Lome Convention; and also enshrined within the official joint African position prepared for the Third Ministerial Conference of the WTO

<sup>129</sup>There is also, of course, a necessity to get the World Bank out of any policy 'advice' role in African countries; see also 9.1.2

The alternative is to devise national and regional development strategies within and towards which variable and targeted preferential trade policies are deployed. It is not, as African trade ministers demanded at Seattle, that “development dimensions” should be “taken into account” in multilateral trade agreements; but rather that trade policies should be located within and shaped by development strategies. Thus the broader challenge for African and other developing countries – and for democratic non-governmental forces throughout the world – is to actually invert and transform the currently dominant global paradigm<sup>130</sup>. Instead of development strategies and government policy instruments being constrained or even forbidden by the WTO – and by the IMF and World Bank – because they are ‘trade-distorting’, the current multilateral trade regulations and the entire paradigm have to be challenged and changed, or removed altogether, because they are ‘development distorting’<sup>131</sup>.

## **7.2 FURTHER CHALLENGES ... AND FORWARD LINKAGES .2 FURTHER CHALLENGES . AND FORWARD LINKAGES**

It has already been noted at various points, above, that a campaign for the removal of even a few of the most controversial trade-related agreements from the WTO, would represent a significant reduction of the global instruments created for the global operations of giant transnational corporations, and would be resisted by them, their governments and their ideological acolytes. Clearly, this would apply even more forcibly to proposals for the redefinition of the entire role of the WTO. The challenge to the global *status quo* is enormous and the challenges are equally enormous to those who seek to really change what they see to be an undemocratic, unjust and dangerous global regime. Opponents of the WTO, at this point, can either conclude that such a logical sequence of widening tactical demands are too difficult and unachievable, and settle for limited reforms to try, at least, to reduce the damage. On the other hand, if they remain convinced that the current global regime, even with some internal reforms, is simply too dangerous to be allowed to continue, then the institutional and political alternatives can only be developed within the context of broader discussions on global governance as such; and, in order to pursue this, on the nature of the global balance of power.

### **8. RELOCATING THE WTO IN THE CONTEXT OF REBALANCED OR REDESIGNED GLOBAL GOVERNANCE**

The redefinition and restriction of the role of the WTO, and the (re)location of most matters of global concern to a range of other relevant global institutions, clearly poses the question of the ‘location’ or appropriate positioning and status of the WTO, itself - that is, between and as one of many global organisations. But these

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<sup>130</sup>“The question as posed by corporations is how to make trade rules more uniform. The proper question...is how do we make trade rules more differentiated so that different cultures, cities, people, places and countries benefit the most...”, Paul Hawken, *New Economics*, E-communication, 6/1/2000

<sup>131</sup>Martin Khor, op cit, Davos, February 2000

proposals, in turn, pose a number of fundamental questions about the nature and responsibilities of such an array or combination of global organisations, and the very conceptualisation of 'global government' and/or 'global governance'.

During the little more than five years of its existence, the WTO has rapidly become the dominant organisation in what is seen to be a highly centralised system of *de facto*, if still emerging, global government. Critical observers characterise the promotion of the WTO as "the surreptitious creation of a kind of planetary executive" together with the IMF, World Bank and the Organisation for Economic Cooperation and Development (OECD)<sup>132</sup>. Others note that "(f)or the first time in history there is effectively a world government, but in its constitution it acts as an instrument of corporate rule"<sup>133</sup>. One Geneva-based NGO more favourably inclined towards the WTO notes approvingly that "the WTO is evolving from a technical negotiating forum driven by trade ministries towards a more politically relevant organisation concerned with overall governance in global economic policy"<sup>134</sup>. This is precisely what motivated thousands of organisations from around the world, and mobilised the tens of thousands of demonstrators in Seattle to reject the WTO as an instrument of "economic globalisation" and an undemocratic tool of "corporate rule".

An increasing number and range of non-governmental organisations, and even some quite mainstream strategic analysts and 'authoritative' publications are all, in their own ways but cumulatively, producing a powerful critique of the emerging system of global government. The main criticisms are that:

- Through the exceptional powers and pre-eminent position of the WTO, trade enjoys a preponderant weight globally and there is a "clear tendency for non-trade priorities to be subject to WTO rules"<sup>135</sup>; which, it is noted, often treat human rights and environmental concerns, for example, as mere "technical barriers to trade".
- Insofar as the WTO and IMF make financial and economic policy decisions that are broader than just trade, these too are very narrowly located within neo-liberal assumptions about the primacy of fiscal, monetary and related macro-economic criteria over the real economy ... let alone society, communities, people, all life forms and the environment<sup>136</sup>.
- There are, however, policy inconsistencies and mutual contradictions in practice within the 'planetary executive' because – despite consultations amongst themselves and mutual recognition as the dominant global institutions – the IMF and World Bank carry out their 'country programmes' with little coordination with the policies of other organisations, even the

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<sup>132</sup>Ignacio Ramonet, 'A New Dawn', in *Le Monde Diplomatique*, Paris, January 2000

<sup>133</sup>Katherine Ainger, 'Trade Wars: the battle in Seattle', *Red Pepper*, London, October 1999

<sup>134</sup>International Centre for Trade and Sustainable Development (ICTSD), 'Accreditation Schemes and Other Arrangements for Public Participation in International Fora', p 4, Geneva, November 1999

<sup>135</sup>OXFAM-GB, op cit, March 2000

<sup>136</sup>"...at the international level, bodies such as the IMF and WTO take decisions on strictly economic criteria even though the implications of such decisions run far beyond the narrow market domain", Michael Prowse, 'Critics of global organisations which answer to no-one should not be dismissed as Luddites', *Financial Times*, Weekend Edition, London, 8-9 April 2000

WTO<sup>137</sup>.

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<sup>137</sup>"An illustration of these contradictions is that Special and Differential Terms (SDTs) for developing countries...are generally ignored and often directly contradicted in IMF and World Bank policy prescriptions. For example, they pressurise governments under their sway not to utilise certain protective and potentially developmental trade policy instruments; or oblige them, on the grounds of narrowly conceived and rigidly applied fiscal constraints, to remove subsidies on staple food prices, or on food and general small-scale agricultural production. These could in principle be invoked under SDTs and used by governments were they not under strict IMF/WB policy controls", D. Keet 'The implications and challenges of the WTO regime in relation to development prospects in the South, particularly by and for women', paper presented at DAWN Regional Conference, Cape Town, February 2000

- The current form of global government is also thoroughly imbalanced and institutionally very narrowly based, negating the democratic principles of collective governmental responsibilities through norms of inter-ministerial negotiation and mutually counterbalancing interactions and adjustments<sup>138</sup>.
- The dominance of the WTO, together with the IMF and World Bank, has not only created a higher planetary executive but has done so at the expense of other more inclusive and relatively more democratic and accountable 'legislative' (policy-making and decision-taking) institutions of the United Nations, as well as democratic national governments.

In this context, such analysts and activists stress the basic principles of democratic government that are so patently being flouted and undermined in the currently emerging system of global government. These basic democratic institutional norms, which have emerged over centuries of debate and experience, and out of struggles that are still ongoing, include:

- the clear separation of legislative, executive and judicial functions and powers, and particularly the independence of the latter;
- the subordination and accountability of the executive and all administrative bodies to the democratically elected legislatures, and other decision-making and independent monitoring and oversight bodies;
- the practice of subsidiarity, entailing the distribution of governmental responsibilities through various levels on the basis of the principle that matters that can be dealt with at 'lower' levels of government should be devolved from 'higher';
- the maximum decentralisation of responsibilities of government, commensurate not only with effective functioning but in order to facilitate maximum and direct public knowledge, participation and oversight;
- transparency and accountability of all governmental bodies, timeous public access to full information, right of access, freedom of expression and so on<sup>139</sup>.

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<sup>138</sup>"In a national context, a finance ministry or treasury is just one ministry among others. There is usually a cabinet or some forum in which ministers with varying responsibilities – social cultural, environmental and educational, as well as strictly economic – meet to determine a collective response to problems. Such political processes are always flawed but there is a more or less coherent mechanism for trying to reach decisions in the broad national interest. This is not true at the international level...(given) the stand-alone character of bodies such as the WTO and IMF...(which) are not effectively bound into a broader global policy-making apparatus", Michael Prowse, Financial Times op cit, 8-9 April 2000

<sup>139</sup>At this point, the list of principles of democratic government moves onto the terrain of established individual Human Rights which are, of course, fundamental to the effective and just functioning of democratic government; but is too vast a subject to deal with here

On the basis of these and other considerations, important proposals are being produced by non-governmental strategic analysts on the kind of global government and/or global governance that – would constrain the WTO, IMF and other such undemocratic international bodies controlled by the richest countries and corporations<sup>140</sup>;

- would actively counter and correct the current forms of undeclared but *de facto* global government; and
- would cater effectively to common global concerns and collective responsibilities.

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<sup>140</sup>Including the highly presumptuous self-selected Group of Seven (G7) of economically and/or militarily powerful countries; and the highly influential Trans-Atlantic Business Dialogue (TABD)

The more far-reaching proposals come from the influential policy institute, Focus on the Global South, based in Bangkok. The Director Walden Bello argues that “today’s need is not another centralised global institution, reformed or unreformed, but the de-concentration and de-centralisation of institutional power, and the creation of a pluralistic system of institutions and organisations interacting with one another amidst broadly defined agreements and understandings”<sup>141</sup>.

A different pluralistic approach, provided by the Director of the ‘Government and Civil Society’ unit of the Ford Foundation, argues that “the emerging system of global governance will not be neat or tidy; we are not heading towards a ‘global government’ but a complex patchwork quilt of agreements negotiated between governments, corporations and citizens’ groups”<sup>142</sup>. This would depend upon the relative balance of power between such unequal players; and the content of contingent agreements would reflect that. Nor does this approach acknowledge the problematics of the existing global institutions or the significance of the many existing global agreements.

Walden Bello’s vision entails a “more fluid, less structured, more pluralistic world” but one containing “multiple checks and balances”. Other proposals are for a more structured system of balanced and mutually counter-balancing international organisations<sup>143</sup>. But a common denominator of many proposals on new forms of global governance is that it will not be based on *ad hoc* pragmatic agreements. Rather, its guiding principles will reflect internationally agreed declarations and be determined by negotiated global conventions, covenants and other fundamental international treaties, and international law. Some of these are already in existence within the UN, above all the Declaration of Fundamental Human Rights. Others are located elsewhere in hundreds of specific conventions, such as the long-established ILO Conventions, down to the more recent Convention on BioDiversity and the BioSafety Protocol, and many others in between. Some agreements are on the drawing board or still under negotiation; and yet others will emerge in time.

Within this perspective, whatever global organisations or institutions are selected or created, all their deliberations and decisions would be located within and subordinate to the overarching framework of internationally agreed global conventions and principles. Amongst the most fundamental principles which all institutions and agreements would have to recognise and promote would be the primacy of human rights obligations, and the holistic nature of human rights embracing civil, political, economic, social, cultural, and environmental rights; the principles of progressive realisation of commitments and non-retrogression; the precautionary principle in the introduction of new processes and agreements; the principle of common but

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<sup>141</sup>Walden Bello, op cit, February 2000

<sup>142</sup>Michael Edwards, “NGOs: Rights and Responsibilities”, Foreign Policy Centre, New York, 2000

<sup>143</sup>Michael Prowse, Financial Times op cit, 8-9 April 2000

differentiated responsibilities according to capacities and responsibilities or culpabilities, the latter linked to the (emerging) 'polluter pays' principle; the principle of non-discrimination, together with the principle of 'special and differential treatment' for developing and especially least developed countries as compared to the more developed and highly developed.

Within this perspective also, the repeated call for "greater coherence" between UN agencies such as UNCTAD, and the WTO and the Bretton Woods Institutions<sup>144</sup>, would then be pursued within a more clearly agreed common framework, standing above and independent of any one of the organisations. At present what this 'coherence' invariably amounts to, in practice, is adjustments in the analyses, policies and programmes of UN agencies towards the currently hegemonic neo-liberal theories and policies of the more powerful WTO, IMF and World Bank<sup>145</sup>. Whereas, in a different, more balanced and legitimate global system, they should all be made to conform to the principles and requirements enshrined in fundamental and overarching global agreements.

Conversely, where there are conflicts between such fundamental global conventions, on the one hand, and specific regulations or agreements within particular organisations, such as the WTO, on the other hand, the tension should not be resolved by and within one of the contending organisations, as happens at present through the WTO DSU<sup>146</sup>. The alternative being proposed would require, for example, that the WTO's trade terms cannot over-ride more fundamental human rights and environmental protection principles<sup>147</sup>. Along these lines, there is also support expressed for "an international court of law capable of enforcing all international conventions and guaranteeing a proper balance among international institutions such as the WHO, ILO, FAO and the WTO"<sup>148</sup>.

It must be expected, once again, that, even as the debate widens on the need for a more democratic, accountable and coherent system of global government/governance, the initiators, manipulators and major beneficiaries of the existing dominant institutions will not meekly concur. This poses serious political challenges to all democratic forces worldwide (see 9.1 below). But, even before that, there are a number of other very fundamental strategic questions on the justification for, and the meaning of the 'rebalancing' or 'redesign' of 'global governance'.

## 8.1 SOME STRATEGIC QUESTIONS AND FUNDAMENTAL CHALLENGES

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<sup>144</sup>This position is commonly espoused by developing country governments, including South Africa, but such notions even slip into the analyses of non-governmental analysts opposed to the WTO and BWI; see for example, Yash Tandon, op cit, Global Dialogue #r.2, Johannesburg, August 1999

<sup>145</sup>This is very evident, for example, in UNCTAD's World Investment Reports

<sup>146</sup>"Lack of effective co-ordination between WTO rules and international human rights and environmental law means that the WTO dispute settlement system is *de facto* being left to reconcile the complex relationships between these areas on a case by case basis", OXFAM-GB op cit, p 15

<sup>147</sup>"WTO reform must be broader than just institutional. Current reform proposals must make it clear that WTO rules cannot be used to override agreements aimed at protecting people", World Development Movement, 'Action', Summer 2000

<sup>148</sup>SOLAGRAL, op cit, p 1, 1999

### 8.1.1 Forms and principles of global government and/or governance?

The first questions relate to the notions of global governance and global government. They are often used loosely and even interchangeably (as above), but they do not denote exactly the same thing and carry different implications. 'Governance' refers to the manner and methods, the 'style' or ways in which governmental functions are carried out – that is, a system of identified norms, practices and principles – without necessarily specifying the organisational means or institutional instruments. 'Government' refers more specifically to the processes of administering, operating or controlling a defined entity, and entails bodies of persons, structures and organs. In this light, it would seem that many of the global proposals being put forward by opponents of the current or emerging system led by the WTO place more emphasis on a desirable global system of values and principles than on the appropriate institutions and organisations. Yet, elements of both already exist and have to be appropriately reformed or transformed, inter-related or integrated.

But the alternatives are about much more than simply responding to and reforming the *status quo*. Far-sighted conceptualisations of some form of democratic 'world government' pre-date by far the current perverted modes and institutions. Similarly, the motivations for some political forms and institutions of world-wide human cooperation and conflict prevention/resolution are not simply a response to or reflection of 'globalisation', even if this has stimulated new thinking on the subject<sup>149</sup>. In fact, what is emerging from the ranks of civil society, particularly world-wide developmental, environmental and human rights networks, is an entirely different approach. This is based upon a deepening recognition of the rights, and necessary context, for all human development – with planet earth as a fundamentally integral (and increasingly vulnerable) unity. This is accompanied by a growing understanding of the complex interdependencies and mutual responsibilities of all members of the human family to each other, to other species and to their common planetary home. It is these needs and necessities, above all, that must now motivate and define the nature and purpose of international political cooperation.

But agreeing on epoch-changing means and modalities for this is not simply a conceptual but a political challenge because many governments and powerful vested economic interests feel very threatened and are resistant to the significant changes, to the new forms of global conditionalities and commitments required. And not even all non-governmental activists opposed to the WTO are in agreement that some form or institutions of global governance are called for. Thus an important challenge remains the discussion and dissemination of the *raison d'être*, the purpose or justification for the existence of such global governance/government. The question is: whether, or how human beings deal collectively with fundamentally important matters of universal human rights, common human concerns and shared planetary

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<sup>149</sup>For example, during the most recent G15 meeting in Cairo, in June 2000, the Prime Minister of Jamaica, P.J. Patterson, expressed the view that "Globalisation requires greater not less global governance. It demands greater and more genuine democratic government. This might turn out to be our greatest single challenge."

responsibilities; what they are, and the appropriate means for guaranteeing their effective implementation and universal observance according to agreed modalities.

### **8.1.2 Rescue, revival, and reform of the United Nations system ... and its members**

With regard to the institutional component of such a system of shared human responsibilities, it is not sufficient to look to the United Nations system, as presently constituted, and promote it as the viable and desirable alternative to the current highly undesirable 'planetary executive'. The UN system is certainly the most inclusive and legitimate expression of inter-national cooperation, and potentially has a much greater role to play. But it has been deliberately eroded and discredited, especially over recent years, by an anti-democratic, self-serving strategy driven above all by the United States. By selectively disbursing or withholding financial resources, and privileging rival organisations that can be more easily controlled<sup>150</sup>, the aim of this strategy has been to discipline, downgrade and even displace the 'unreliable' UN agencies which are considered to be rather too susceptible to the views of the majority developing countries, and overly concerned with 'development' and the like<sup>151</sup>. Huge political and ideological pressures and financial threats have been exerted, for example, on UNCTAD to make it conform to and serve the new global paradigm, or give way to the WTO entirely<sup>152</sup>. Conversely, where the more effective UN agencies, such as the UNDP, WHO, and UNICEF have managed to continue doing useful world-wide research and policy development, based on criteria broader than those of the neo-liberal paradigm, they have been targeted by the US to be placed under the direction of new 'more reliable' figures who have undergone appropriate experiences and conditioning in institutions such as the World Bank<sup>153</sup>, and even within the upper echelons of the US government.

These stratagems pose serious threats to the content, character and potential future role of these UN agencies. However, the organisational, financial, political – and moral – vulnerability of the UN system derives also from the lack of financial and political independence, and lack of serious and united intention, commitment, determination and/or democratic legitimacy of most of its member states. Thus, the multiple challenges to promoters of the UN as the basis of an alternative global system for human co-responsibility include: the formulation and implementation of long-overdue institutional reforms, including full accessibility, transparency and accountability, and especially over greater and guaranteed resources. This reform demands, above all, the 'rescue' of the UN's socio-economic agencies from neo-

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<sup>150</sup>Above all, the IMF and World Bank

<sup>151</sup>The World Bank, for example, has been actively encroaching on the terrain and, to an extensive degree, usurping the role of established socio-economic agencies of the UN, such as the UNDP, UNICEF, FAO and the WHO

<sup>152</sup>Other UN agencies have succumbed. The most notorious case is the UN Commission on Transnational Corporations (UNCTC) which has effectively been turned into a service unit for TNCs, rather than being the vigilant investigator and monitor of TNCs that it originally was

<sup>153</sup>The UN Economic Commission for Africa (UN-ECA), based in Addis Ababa, and once a useful research and policy instrument for Africa, has similarly been targeted and placed under the 'more reliable' direction of a former high-level official of the World Bank

liberal influences and organisations. But this will be extremely difficult, and the UN will not become a totally democratic, legitimate and effective system until all its participating member states are themselves fully democratised, more politically and financially independent, and imbued with a different set of understandings and principles.

### **8.1.3 Changing governments' policies .... and/or governments?**

This, in turn, poses – yet again – the more direct challenges to democratic forces in all such countries to change their governments' national policies and practices and international positions and performance; or, if that fails, to change their governments. And that does not exclude the currently/ostensibly 'democratic' governments in the North. The concomitant challenge to all democratic forces throughout the world, but particularly in the well-endowed 'democratic' North, is how to support such struggles elsewhere without trying to set the terms or substituting for the people most directly concerned, because it is the genuine empowerment of people's organisations, and all people, through such struggles, that is the real measure, and guarantee, of democracy in their countries.

And the democratic control of people over their own national governments is essential both to deal with the specific problems and particular needs within their countries, and in order to enable them to use their governments as intermediate instruments – protectively and proactively, defensively and offensively, separately and together – to deal with the gargantuan transnational corporations and banks, overweening global institutions such as the WTO, and overwhelming global processes<sup>154</sup>. It is manifestly obvious that the weak – people or countries – are immeasurably strengthened by working in combination because the united whole is always greater than the sum of the parts. In this regard, some non-governmental strategists in countries of the South<sup>155</sup> propose 'positive engagement' or even 'alliances' between Southern 'civil society' forces, including business forces, and their governments against the dominating forces of the North. Others see the inclusion of

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<sup>154</sup>"A reconceptualisation of the role and a democratisation of the functioning of the state in Africa is essential both for internal development and for the kind of proactive engagement with the global system outlined above. This is because such engagement is not only about formulating critiques and alternatives and challenging the dominant paradigm, but about changing the global balance of power", D.L. Keet 'Integrating the World Community': Political Challenges and Opportunities for Developing Countries', Southern African Perspectives #70, October 1997, Centre for Southern African Studies, School of Government, University of the Western Cape, South Africa

<sup>155</sup>Who can be described as more uncritically nationalist or Third World-ist strategists

business interests as problematic (see also 9.1.2, para. 4); and the whole idea of such national alliances raising other problems without a transformation of these states<sup>156</sup>.

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<sup>156</sup>In one such view, it is necessary to “attempt to find common ground between civil movements and the state in the South...(and create) alliances”...but... “important as the civil movement is and must be, in the reality of today’s world of as-yet corporate-led globalisation and liberalisation, a strong but democratic state – in both South and North – is an essential prerequisite for withstanding the onslaught...”, Jai Sen, “Who is the real torch-bearer? Which is the real torch”, [jai.sen@vsnl.com](mailto:jai.sen@vsnl.com), April 2000

The extremely complex strategic challenge, therefore, is how to change governments through changing their policies and/or how to change policies through changes in government or changes of government. Some of the more proactive governments in the developing world, such as the Group of 15 (G15) and even, to some extent, the G77, seem to be adopting stronger positions, verbally at least, on some of the global issues being discussed here<sup>157</sup>. They might take even more advanced – and active – positions with stronger NGO ‘persuasion’ and/or social movement pressures. However, the issues and forces facing peoples organisations in these countries are multi-dimensional and multi-directional. The functioning of the state in most of the developing world is characterised by multiple defects reflecting, on the one hand, the ineptitude, indifference and unrelenting political and economic self-interest of the domestic governing elites<sup>158</sup>. On the other hand, growing public-private collusion and corrupt self-serving practices have been actively fostered in many developing countries (and elsewhere) by IMF/WB imposition of sweeping privatisation programmes<sup>159</sup>. And the moral and political degeneration, social divisiveness and economic deterioration, and the ensuing social and environmental crises have, in turn, been aggravated by the swingeing reduction of the resources and role of the state – and its very legitimacy – as a result of IMF macro-economic prescriptions. Furthermore, even where international neo-liberal marketisation agencies, such as the World Bank, belatedly recognise that there is, indeed, a necessary role for the state in developing countries, this idea is now acceptable to Bank tacticians precisely because such national governments have been thoroughly ‘re-conditioned’ or recast and can now, fairly confidently, be relied upon to implement domestic policies that conform with those of powerful external bodies, institutional or entrepreneurial.

Clearly then, the forces to be dealt with are complex interactions of internal/domestic and international/global forces, and financial/political/ economic factors. Thus, the historic challenge to peoples’ social and political movements in the countries of the South, whether faced with well-meaning but weak or incompetent, authoritarian abusive or brutal, corrupt, collusive and compradore or – in extreme cases – ‘collapsed’ states, is to revive or recapture, re-conceptualise and restructure the national state for democracy and development. And that means both national and international. Clearly, also, there is an important strategic role in this - that goes beyond just sympathetic ‘support’ - by non-governmental analysts and activists located in the North who are positioned, physically and politically, closer to the centres of global power where they have a crucial role to play.

#### **8.1.4 Minimised government ... or multiple levels of government?**

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<sup>157</sup>G77 South Summit, Final Declaration 10-14 April 2000

<sup>158</sup>Although such features are by no means the sole preserve of developing country governments and ruling elites!

<sup>159</sup>And for many years before that by the real politique of Cold War governments, particularly the United States, and the business designs of multinational corporations

The challenges of restructuring the state do not end there. The reassertion and re-conceptualisation of the role of national governments confront non-governmental analysts and activists, North and South, with some other difficult and potentially divisive questions. The pervasive arguments by the more enthusiastic globalists proclaim the actual or immanent 'demise of the nation state': its replacement at home by 'more efficient' market forces, and, abroad, by the independent operations of transnational corporations and the policy disciplines of global institutions. However, such arguments are also taken up by some progressive writers and NGO strategists<sup>160</sup>. On the one hand, these arguments are used as part of a radical critique of the neo-liberal paradigm and in order to expose the rapidly advancing or, in some views, complete displacement of the state by 'the market'. Others, however, are motivated by (an understandable) disillusionment with the abuses and repeated betrayals by their own elected national governments, and even the failings of the erstwhile welfare state. Furthermore, they (rightly) oppose the increasing distance and divorce of government from the *demos* – whether within multi-national regional entities such as the European Union<sup>161</sup>, or on a global scale in the WTO.

However, within this perspective, there is a current of opinion that reacts by arguing not just that national governments are being replaced, but that they should be replaced. In this view, the alternative is to locate government at the local level. However, rather than reactively and simplistically rejecting the role of national government, the real challenge and the real debate that is required is on the appropriate relationship, and division of labour or delegation of powers and decision-making between local, other sub-national/provincial, national, regional(multi-national), inter-regional, continental, and global levels of government. Each has its uses, potential advantages and justifications, and none can be promoted, *a priori*, to the exclusion of any others.

The respective roles and powers of different levels of government have to be a reflection of the complex internal political, economic, environmental, social and cultural specificities of different countries and regions, as well as common needs at the global level. It is, for example, argued in many areas of the developing world, that the most urgent internal need, and an effective external strategy for them to cope with the overwhelming global economy, and Northern dominated power blocks, is to (re)group their own countries into multi-national regional entities<sup>162</sup>. This is particularly so in Africa where so many of the countries and economies arbitrarily created by colonialism, are environmentally unsustainable and socially artificial, politically fragile, structurally weak, small, land-locked, and often simply non-viable economically. They need to be combined or fully integrated. However, the re-

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<sup>160</sup>Such as Roger Burbach and Orlando Nunez 'Globalisation and its discontents – The Rise of Postmodern Socialisms', Pluto Press, London, 1997

<sup>161</sup>This is very likely to emerge as a major challenge within other emerging regional entities, such as the Southern African Development Community (SADC), where non-governmental forces are gradually becoming aware that far-reaching decisions are being taken through inter-governmental negotiations, without much popular knowledge, let alone any input

<sup>162</sup>D. Keet, 'Globalisation and Regionalisation – contradictory tendencies? Counteractive tactics? Or strategic possibilities?' Occasional Paper #18, Institute for Global Dialogue, Johannesburg, April 1999

groupment of African countries into carefully negotiated stronger regional communities of nations<sup>163</sup> is a very different process and concept to the argument that such nations are unsustainable and *passee* and can or should simply be swept away by global processes. Viewed from the South, the radical reduction and removal of the role and resources of national governments is a fundamental part of the problem not the solution, and this is particularly the case in Africa.

National and regional/multi-national forms of government have to be utilised in order to maximise the effectiveness of weaker countries in responding to the overwhelming processes and powers of the emerging global system. And all such bases of governmental activity have to engaged with in order to mobilise people where they are focused, where they have interests in common, where they are organised and feel they can and have to have influence. These are the multiple, combined or complementary bases from which to build movements that are commensurate with the huge challenges of engaging with the global system ... and with the national governments creating or colluding with it.

#### **8.1.5 National rights and national sovereignty ... and/or global hegemony?**

With respect to the need for some form of global governance/government to deal with common global concerns, shared human responsibilities and universal obligations, the further questions relate to the definition, delimitation and complex relationship between global obligations, on the one hand, and national rights or 'sovereignty', on the other. The challenge is how to defend the rights of people to pursue policies and modes of development tailored to their needs and aspirations within their own communities and national frameworks, while at the same time defining global parameters and overarching common principles that need to be observed by all. Clearly, 'national sovereignty' has to be viewed as a relative not an absolute concept, and fine balances have to be struck on what issues fall within or outside of the domain of national decision-making, and how to inter-relate these. But the most essential pre-condition is to (re)conceptualise global governance/government not as a supra-national but a multi-national or inter-national system within which nations and peoples interact through their elected representatives and agree to deal collectively with key global issues.

However the 'relativity' of national sovereignty applies to much more than the relationship between national rights, on the one hand, and global responsibilities and universal principles, on the other. The debate has to be located within the real context of the current global system and balance of power. One common and superficial response, even within the ranks of non-governmental analysts, is that

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<sup>163</sup>This was the original aim, and remains a significant potential in the Southern African Development Community (SADC), but it is under ever-growing globalist counter pressures, for example from the IMF/WB and the WTO; D. Keet, *ibid*

'globalisation has put an end to national sovereignty', just as it has (supposedly) 'ended' the role of the nation state. But the states of the more highly industrialised economies and strongest countries have never had a more powerful role than they have today, separately and together, in reshaping and running the entire world, and imposing their global 'principles' and/or interests on all other (weaker) governments and economies. The powerful states which arrogantly intrude into the affairs of weaker nations constantly invoke and conflate 'higher principles', 'good governance', and the like, with their own strategic aims and national interests.

Similarly, the so-called 'replacement of national sovereignty' by new forms of 'global accountability' and the internationalisation of many matters of government applies most invasively to the weaker and weakest countries. It does not apply similarly in the stronger countries<sup>164</sup>. The apparent ceding by EU member states of national sovereignty over foreign/trade policy to Brussels is actually designed to pool and collectively strengthen their national sovereignties vis-à-vis the outside world<sup>165</sup>. Furthermore, although much criticised by opponents of the EU, the relative adjustments of the respective domestic policies of the member states has happened through inter-governmental processes of negotiation and mutual accommodation – even if not particularly democratically, as far as the general populations are concerned<sup>166</sup>. However, in radical contrast, the erosion of national rights or the loss of national sovereignty of weaker states over much domestic policy has been to – and through – remote global forces and institutions, and in large measure beyond the choice of governments, let alone the knowledge and approval of their populations<sup>167</sup>.

Most significantly – despite the feelings and fears of many US citizens about the erosion of their internal democracy by global institutions, such as the WTO - viewed and experienced from without, the sovereign power of the United States to impose its will on the global plane "has been strengthened in spectacular fashion"<sup>168</sup>. At the same time, the US government consistently resists signing onto most global conventions and agreements, except (on rare occasions) on its own highly tendentious terms<sup>169</sup>. However, it must also be noted that "within the overall primary hegemony" of the United States, "the other Western powers participate to varying

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<sup>164</sup>"Globalisation is institutionalising a new balance of power between states that hardens the sovereignty of some, while reducing the autonomy of others", Noelle Burgi and Philip S. Golub, 'The States we are still in – has globalisation really made nations redundant?' *Le Monde Diplomatique*, April 2000

<sup>165</sup>The role of the European Union "has been less to usurp national sovereignty than to enable the member states to pursue their national interests...by combining forces into a larger unit...and by relying on the strength of a larger regional entity", *ibid*

<sup>166</sup>"There is much lamenting over the powerlessness of national governments. Yet these very governments are contributing fully to the elaboration and implementation of the new hegemonic political economy. They chose to participate actively...(and) on matters of strategic importance the influence of member states remains decisive", *ibid*

<sup>167</sup>However, it is also correct to note that "National states are not as weak as some make out – they do have power to seek alternatives. The rise of corporate power (and the WTO) is a direct result of governments actively adopting neo-liberal economic policies", Katherine Ainger, *op cit*, October 1999

<sup>168</sup>*Le Monde Diplomatique op cit*, April 2000

<sup>169</sup>Even with respect to the WTO, Washington insists, for example, that rulings of the DSU will not be accepted and enacted within US legislation and practice unless accepted by Congress. The US also refuses to change its notorious S301 trade legislation that is in contradiction with WTO principles, or to submit its highly contentious anti-dumping actions to adjudication within the DSU – that it uses so actively otherwise

degrees in a broader pattern of Western hegemony in relation to the Third World”<sup>170</sup>.

#### **8.1.6 Alliances against the domination of governments in the North over the South .... and alliances between peoples organisations North and South**

This ‘Western’ hegemony poses fundamental challenges to all progressive peoples’ social and political organisations to build South-North peoples alliances that cut across these lines and that counter and end these patterns of Western/Northern domination and exploitation of the Third World/South. There is huge potential for such South-North peoples alliances, already evident in the international environmental movement, international peasant and small agricultural producers alliances, and the international anti-debt campaign, amongst many others. However, these many and varied experiences have also raised significant questions about the unevenness of resources, the locus of initiatives, immediate tactical issues and broader strategic aims, and above all the nature of ‘leadership’ in such vast international alliances.

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<sup>170</sup>Le Monde Diplomatique, op cit, April 2000

Some non-governmental organisations located in the North have long manifested a self-confident assumption of leadership roles that, in part, reflect their greater resources and, frequently, the financial dependence of their 'partners' in the South upon them. Many NGOs in the North have also been marked by an unselfconscious paternalism that reflects these attitudes (amongst many worse) towards the South within their societies. They sometimes even mirror the presumptuousness of their governments. More seriously, some northern NGOs actually opt to work with/in their governments in international institutions and help to improve the legitimacy of their international roles and their *bona fides*<sup>171</sup>. This is completely at odds with Southern views of the interests of Northern economic agencies in their countries, and their experiences of the practices of Northern governments *vis-à-vis* the South. Fortunately there is a growing self-confidence of peoples social and political movements in the South in engaging with their counterparts in the North on these and other substantive issues<sup>172</sup>. There are also expanding mass mobilisations in the South that give them ever-greater 'authority' in their engagements with their partners in the North, as well as the mass power to contribute to changing the global balance of power (see also 9 below).

Within this broad international alliance-building, there is also the more specific challenge to peoples organisations, North and South, to build alliances with - and help to strengthen - not only organisations in 'the South' but also progressive peoples organisations within the United States. Drawing US citizens' organisations into close relations and solid alliances with their counterparts in the rest of the world is crucial in order to counter parochialism, chauvinism, racism and xenophobia within the US, and to build national and internationalist peoples movements there. These have an essential role to play in the international struggles to bring the United States as the world super-power fully into the human family of nations and emerging system of global accountability and planetary responsibility. Without this, the sincere desire of ordinary US citizens to defend their national sovereignty and democracy could serve, unwittingly, to reinforce the extremely dangerous positions and actions of the US as the global hegemon.

## 8.2 THE ULTIMATE SCENARIO .... AND LOGICAL CONCLUSIONS

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<sup>171</sup> Although some such NGOs can be useful sources of insights into inter-governmental processes to their counterparts on the 'outside'

<sup>172</sup> As expressed, for example, in the 'Jubilee South' movement's policies and positions, and promotion both of South-South and South-North dialogue and solidarity

Following on from the above far-reaching global governmental changes and epochal political challenges (amongst many others) facing all of humanity, non-governmental activist-strategists have to carry their analyses and debates on the WTO *per se* through to the logical conclusion, which is its closure. This is the most far-reaching option of all and completes the overview of all the possible scenarios with respect to the future of this particular institution within the broader global context. This scenario entails the removal of the WTO because it is the institutionalised expression of a particular, highly tendentious ideology and very specific economic and political interests. In this light, too, dealing with the WTO also entails broader and deeper ideological and systemic transformations<sup>173</sup>.

#### 9. REMOVING THE WTO ALTOGETHER, AND IN THE CONTEXT OF OTHER GLOBAL SYSTEMIC TRANSFORMATIONS

In the context of all the foregoing options that have been considered in this paper, and the many strategic questions and challenges that have been posed, the recurrent themes running through the analysis, often implicit and sometimes explicit are:

- whether popular social movements should be trying to reform and use the WTO as positively as possible, or at least to minimise its negative effects as far as possible ...or to abolish and replace it altogether; and
- whether the WTO and related institutions are the main object of attention and problem ... or only the instruments, expressions and symptoms of more fundamental underlying power relations and systemic problems.

Non-governmental opinion is not unanimous on these strategic questions, and there is, for example, some (deliberate?) ambiguity in the global civil society declaration at Seattle demanding “No New Round! Turn Around!”. Interpretations differ as to whether the ‘turn around’ refers only to stopping the drive towards a full new ‘Millennial Round’ of WTO negotiations; or whether the need is to turn around specific agreements; or whether it refers to the need to turn around the WTO as an institution and make it more amenable to the needs of all its members; or whether the need is to turn around the world system from the extremely dangerous path it is following. As with similar observations made above (see 5.2) about the more recent “Shrink or Sink” declaration, it could be seen to be divisive to draw out the differing interpretations, but avoidance of uncomfortable differences can also obscure the issues and reduce the clarity of important strategic and related tactical debates.

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<sup>173</sup>“The first step is to recognise the existence of an insidious structure that deepens and reproduces social, economic and gender inequalities, along with environmental degradation... We cannot hope to bring about a world of justice unless and until we analyse and address the structure in its entirety”, Alexandre Bendana ‘Reductionism and the Pitfalls of the Reform Agenda’, ISGN Forum on ‘Trade, Financial Liberalisation and Debt’, Bangkok, 11/2/2000

While the apparent thrust of many NGO analyses and actions is towards the reform of the WTO, others are convinced that “reform is only a viable strategy when the system is fundamentally fair but has simply been corrupted, such as the case with some democracies. It is not a viable strategy when a system is so fundamentally unequal in purposes, principles and processes as the WTO”<sup>174</sup>. Others agree that the WTO “cannot be reformed” because it is “inherently destructive to the environment, democratic social processes and equity”, but these same analysts go on to propose the convening of “a new Bretton Woods meeting ...an international convention with all segments of society to work out a way to reform the WTO so that it reflects radically different values”<sup>175</sup>. A more unequivocal view from the grassroots, expressed to an NGO forum by a woman leader of the Assembly of the Poor in Thailand is that “If the WTO is as bad as you tell us, why all this talk of reform? It should be closed down”<sup>176</sup>.

The arguments for the complete removal of the WTO derive from its intrinsically biased agreements and highly problematic functioning, and from the imbalanced nature of power relations within, examined throughout this paper. However, in the final analysis, shutting down the WTO is most convincingly argued on the grounds that it is founded and functions on the erroneous and dangerous assumptions of the neo-liberal paradigm. This economic model is based on beliefs in the rationality, efficiency – and even the sufficiency – of ‘market forces’. This demands economic liberalisation and de-regulation, entailing the removal of regulatory terms and conditions set by governments because they are held to be ‘barriers’ to market forces and create ‘distortions’ in the free, rational and stable functioning of ‘the markets’. Every one of these assumptions can be unpacked to expose the fallaciousness of the claims, the damaging and destabilising effects of unregulated markets, and the blatant inconsistencies and outright contradictions between the theory and the actual practice and impact<sup>177</sup>. The imposition of this model serves and reflects the commercial, production, property and investment interests - and speculative intentions- of capital and capitalist corporations under the ideological banner of ‘globalisation’.

From this base, the WTO is also intrinsically flawed in its instrumentalisation of trade not only to measure and manage but also to discipline and control international relations. Under the guise of ‘regulating’ trade relations, the WTO actually makes trade a tool of global government. It institutionalises and elevates inter-state competition and makes trade interests and disputes one of the very effective new weapons of international control. Yet international governance has to be developed on the basis of the common not the competing interests between nations and people, and where there is a clear need for universal regulations and global agreements but there are also conflicting interests, these have to be negotiated, adjudicated and reconciled in the most impartial forums or non-contentious arenas

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<sup>174</sup>Walden Bello, op cit. February 2000

<sup>175</sup>Debi Barker and Jerry Mander, ‘Invisible Government – The WTO: Global Government for the New Millennium?’ International forum on Globalisation, San Francisco, USA, October 1999

<sup>176</sup>NGO Forum accompanying UNCTAD X in Bangkok, February 2000

<sup>177</sup>D. Keet, op cit, 1997

possible. The WTO, as a highly charged trade negotiations arena, is definitely not conducive terrain for this, and achieving such global agreement and co-operation, which is extremely difficult in itself, is highly unlikely to be possible within or with any trade-driven, trade-based organisation. Trade, as one of the more enduring, sensitive and contentious areas of international relations is not the most appropriate basis from which to promote deeper international co-operation and shared global welfare into the future. In this light, it is argued that the WTO as a trade institution should not have any role in the alternative system of collective and genuinely cooperative global governance/government. In this scenario trade rivalries and even disputes that continue to be a real part of inter-state relations, and the remaining technical trade issues can be handed over to UNCTAD or, better still, some other impartial and credible bodies, and the WTO eliminated altogether.

However, even where non-governmental organisations around the world are agreed that the ultimate aim should be to get the WTO closed down - and this was one of the common messages on the banners in Seattle – there remain differences of approach as to how this could be pursued or achieved. One view is that “interim steps to reduce or limit the power of the WTO are necessary and desirable in their own right and they would help generate momentum to close down the WTO”<sup>178</sup>. Such a momentum does not automatically follow, however, unless the formulation and pursuit of interim measures is consciously directed towards the goal of eventual closure. It can also be argued, to the contrary, that removing some of the worst features and abuses within the WTO could have the opposite effect of making it less objectionable to cautious governmental and more accommodating non-governmental organisations and actually reduce their will to get rid of it altogether. In this way, a gradualist approach can turn out to be self-defeating – if the aim is, indeed, to get rid of the WTO altogether.

Another proposal is that reforms within the WTO can carve away at its role and powers until it becomes almost powerless and irrelevant. A similar argument is that “a strategy of attrition” can be employed to make the WTO “unworkable through democratisation within” until it “grinds to a halt”<sup>179</sup>. A counter view to this is that such tactics of pursuing erosion from within are naïve and will not succeed because, if internal manoeuvres were to make the WTO un-useful or merely less useful to the Quad, it “would become marginalised and irrelevant”<sup>180</sup>. Long before the point of impotence or paralysis would be reached, the dominant forces would have created other institutions or avenues to achieve their aims and defend their interests<sup>181</sup>. In anticipation of this, strategies based on the erosion of existing institutions from within would have to go hand in hand with the simultaneous creation of powerful

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<sup>178</sup>Robert Weissman, *Multinational Monitor*

<sup>179</sup>Walden Bello, presentation at NGO Forum, accompanying UNCTAD X, op cit

<sup>180</sup>“The WTO is a symptom of deeply-embedded power relations... and if it didn’t serve these interests it would become marginalised and irrelevant”, Raj Patel in *SEATINI Bulletin*, Harare, #2.12, 2/12/99

<sup>181</sup>This is already evident, while the WTO is stalled, in the recourse by the US and the EU to pushing bilateral free trade agreements on other countries and regions, such as Mercosur and even SADC, and the sweeping trade and trade-related proposals within the EU’s post-Lome Cotonou proposals for 77 ACP countries and the US’s so-called African Growth and Opportunities Act (AGOA) for the whole of Africa

institutional alternatives.

In this respect, some non-governmental strategists argue that, while replacement of the WTO is desirable, “until an alternative system emerges, we can’t simply abolish the WTO”<sup>182</sup>. But the alternative system will not simply ‘emerge’. It will have to be actively created – and fought for – and that will require all the energies and forces possible. In the meantime, working with/in the WTO carries the danger of its critics being drawn, imperceptibly, into its very demanding processes and institutional logic, and losing the necessary drive and detachment to work for its abolition. Some even develop symbiotic relationships with/in these institutions and ‘vested interests’ in such involvements. This is a commonly observed phenomenon in such tactical engagements with/within such institutions, whatever the original intentions of the participating organisations or individuals. It also carries the cost of the reduction or literal loss of the time and energies needed for the enormous challenges of forging alternatives.

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<sup>182</sup>Yash Tandon, International South Group Network (ISGN) NGO Forum, Bangkok, op cit

In the meantime, the WTO has to be viewed and used as a 'site of political struggle'<sup>183</sup>. This is certainly the reality for governments. But for non-governmental organisations working with and within the institution, there is, in addition to the above effects upon the participating organisations themselves, the added danger of unintentionally re-legitimising to others this highly dis-credited institution. The challenge, therefore, would be how to pursue tactical battles within or in relation to the WTO that are consistently directed towards an explicit strategy pointing to the need for institutional and systemic alternatives, and actively furthering those aims. This approach would avoid sending out conflicting messages to broader public opinion, and to the social forces which such organisations should be supporting or trying to mobilise against the WTO and the whole of the current global regime.

In fact, and in the final analysis, the tactics adopted towards the WTO should be determined by the broader anti-globalisation movement, rather than the movement focused upon the WTO *per se*. What was very evident in Seattle – and in the many follow-up mass actions since – is that what motivated the great majority of demonstrators was not only, or even mainly, the WTO itself but what it represents and reflects, and the unacceptable global system it is helping to create<sup>184</sup>. It was, as declared, a 'Mobilisation against Globalisation', even if there were differing views on the meaning of 'globalisation'<sup>185</sup>. For the great majority of protesters, then and since, the high level ministerial meetings of the WTO, and of the IMF, WB, G7, World Economic Forum, and others, enjoying the attention of the world media, are in and of themselves the objects of social movement attention and attack. But these events are, much more, the occasion for a wide array of social and political peoples organisations to marshal their own forces and encourage others', express their feelings and develop their ideas together, and try to get their opinions, demands and alternative institutional and systemic proposals heard throughout the world.

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<sup>183</sup>"... the WTO is a political construct and a site of political struggle...(but) the crucial question is how to engage with/in the WTO for purposes and in ways that advance the interests of developing countries, without becoming hostage to the institution, its rules and procedures..." D.Keet, 1997, op cit

<sup>184</sup>"It was not the intention of many of these groups to affect the WTO's day-to-day functioning, but to bring to public attention the issues raised by particular forms of social relations", Raj Patel, SEATINI Bulletin, #3.2, Harare, Zimbabwe, 31/1/2000

<sup>185</sup>But see 9.1.3

What was also striking about the formal declarations, banners, placards and chants of the demonstrators in Seattle, and even more so in the hundreds of rallies, conferences, teach-ins, seminars, workshops and sidewalk discussions, was that the participants were protesting against the inequities and iniquities of the currently dominant global economic system and proposing alternatives. Some were expressed in single slogans, such as “The World is not a Commodity!” Some were general statements of principle, promoting a more equitable, gendered, balanced and sustainable world systems<sup>186</sup>. Others were more detailed declarations expressing the interests, needs and values of particular social groups, such as women, workers, small farmers, peasants and indigenous peoples<sup>187</sup>. Many specialist NGOs provided, and continue to provide, detailed, carefully thought through sectoral analyses and proposals – on the environment, agriculture and industry, health, consumer and human rights, and much else – based on intensive analysis and extensive empirical research, and often drawing on wide experience of base constituencies.

Developing these alternatives further, with and through these constituencies, and engaging with and mobilising these constituencies is the broadest and most challenging task facing those organisations committed to ‘building global movements for a different global system’. Within and towards this, there is a final set of broader tactical and strategic issues and fundamental aims.

## **9.1 BROADER TACTICAL AND STRATEGIC ISSUES, AND FUNDAMENTAL AIMS**

### **9.1.1 Global balances of power between governments ... and between them and non-governmental popular forces**

A recurrent theme running through this discussion paper has been the question of power, and the necessity to confront and change the balance of power between the Quad and other governments within the WTO; between all governments, North and South, more generally and outside of the WTO<sup>188</sup>; and between governments and non-governmental forces. Changing the global balance of political (and military) power depends also on changes in the global balance of economic power<sup>189</sup>. This can be assisted by changes in global economic policies and agreements, but these in turn demand progressive shifts in the political balance of power within and outside of institutions. These complex interactive processes require multi-dimensional strategies. In the first instance, this means

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<sup>186</sup>Declaration of the Women’s Caucus, mimeo distributed in Seattle, December 1999

<sup>187</sup>“The whole philosophy underpinning the WTO agreements, and the principles and policies it promotes contradicts our core values, spirituality and world views, as well as our concepts and practices of development, trade and environmental protection”, Indigenous Peoples’ Declaration, distributed in Seattle

<sup>188</sup>“International balances of power are not static (and even) hegemony does not mean absolute freedom of action”, Burgi & Golub, *Le Monde Diplomatique*, op cit, 8-9 April 2000

<sup>189</sup>“(T)inkering with the WTO machinery will not change (power relations). In the longer term only changes in WTO rules and the overall development of the world economy will affect the underlying balance of power amongst WTO members”, Jake Werksman, Foundation for International Environment Law and Development (FIELD), The South Centre Workshop, op cit, February, 2000

- effective strategic and tactical alliances between developing country governments within the WTO, in general or on specific issues as appropriate<sup>190</sup>;
- broader political alliances between developing country governments<sup>191</sup> in all the other international institutions and forums against the 'Western Hegemony' of the US and the EU;
- identification by developing countries, and other democratic forces, North and South, of the subtle differences (and even divergences) that exist, or emerge on occasion, between the developed countries, themselves, and the relatively greater sensitivity and susceptibility within some of them to the views and needs of the developing world, and the world;
- carefully considered conditional alliances, co-ordinated or complementary efforts, between governments and non-governmental forces in the developing countries of the world – that is, where politically possible nationally, and politically productive internationally.

None of these alliance-building strategies is straightforward. However, alliances between governmental and non-governmental forces in most developing countries are particularly difficult. This is not only on account of the domestic policies and practices of such governments, significant as these are; nor only because they are already legally committed in the WTO; but above all, because most are deeply financially dependent and therefore politically susceptible to controls by the IMF and World Bank. There is now a growing understanding world-wide that the global balance of power is not only reflected in and maintained by the dominant governments through tactical and strategic alliances amongst themselves. This dominance is also secured through a range of multilateral institutions. Thus, non-governmental analysts and activists are also building on a decade and more of research, information and action to expose the fallacies of the IMF/WB neo-liberal paradigm, and the damaging effects of their prescriptions and programmes. They are targeting the IMF/WB for denunciation, as much as the WTO. As with the campaigns against the WTO, diverse tactical and strategic debates are under way between professional/technical NGOs, trade union and other labour organisations, and broader transnational social/political movements as to whether to redirect, regulate, restrict, reduce or replace the IMF and/or the World Bank altogether.

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<sup>190</sup>Such as the G15 or the Like-Minded Group (LMG) of developing countries that strategised together in the lead-up to the WTO third Ministerial Conference

<sup>191</sup>Such as the G77

These and many other tactical and strategic debates are a crucial part of building global movements for a different system of global relations. The necessity for alliances between non-governmental forces has also been a recurrent theme throughout this paper. The challenges to be faced are not only about global issues and external forces and about the relationships between the vast number and diversity of progressive organisations themselves. A further crucial challenge is the relationship between them and the masses of people for whom they speak or seek to speak. It is essential that all the components of the new global movements are firmly mass-oriented, mass-empowering and mass-mobilising, whether they are themselves large mass movements, or membership-based organisations, participants in multi-organisational coalitions, or research, education and training bodies embedded in and responsible to popular constituencies. These relationships are essential not only in order to answer to the standard hostile questions as to 'who NGOs represent'. It is, ultimately, because it is mobilised mass power<sup>192</sup> that, directly and indirectly, has to change 'the global balance of power' and the global system.

### **9.1.2 Challenging global corporate power ... and global systemic dynamics**

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<sup>192</sup>The preferred term and targets – in much current discourse in the North – seem to be 'public opinion'

The challenges and changes have to go yet further, however. The forces comprising the global power system include, ever more centrally, gigantic global corporations in every sphere; two hundred of the largest of them deploying and enjoying twice as much of global wealth as 80% of the world's population<sup>193</sup>. As is often observed, amongst the hundred largest 'economies' in the world today, half are global corporations. The assets and operations of global corporations constitute the greatest ever accumulation and concentration of wealth in the history of the world, together with the enormous social influence and political power that goes with it. It is not an exaggeration to see the emergence of "a world-wide corporate-financed oligarchy, in effect a plutocracy"<sup>194</sup>. Changing the global balance of power and changing the global system is inconceivable without identifying and dealing with the global powers, namely global corporations, behind and propelling governmental power and shaping/utilising institutional power.

The first fundamental question is whether corporate business forces and 'the financial markets' are, as often claimed, already so powerful that they are 'beyond the control' of:

- their respective 'home' governments, or combinations of their governments, as in the OECD;
- all the world's governments together, as in the UN and related institutions;
- the world's peoples organised to compel their governments to unite and deal effectively with the corporations;
- the world's people organised directly against the anti-democratic power, injustices and other labour/human rights and environmental abuses of the corporations, and the dangerously destabilising operations of financial gamblers.

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<sup>193</sup>As is often pointed out, the wealth of the three richest billionaires in the world is not only greater than the entire combined GDP of the 48 least developed countries of the world, but the annual turnovers of many corporations even outstrip the GDPs of major industrialised economies in Europe, such as Norway

<sup>194</sup>Paul Hawken, New Economics Foundation, E-communication, 6/1/2000

Whether or how these scenarios are possible, or which of them would be most effective, or in what combinations is a question of political judgement. It is, once again, also a question of political conviction and the political will of both governmental and non-governmental forces. This is because the second fundamental challenge is not whether the corporations can be brought under control but that they have to be brought under control, and fast. At present, corporations need and use governments to reshape and restructure national and international economic policies, conditions and institutions in ways conducive to their interests, separately and together. Corporate power also still needs governments or public agencies, funded by the populations themselves through their taxes, to fulfil important socio-economic management and social control/stabilisation functions. These are essential but difficult and not directly or sufficiently profitable for private enterprise. However, extrapolating from emerging trends, it is not inconceivable that corporations, companies and other private agencies will even take over many of these functions of government. Humanity is faced not only with the globalisation of corporations but with global corporatisation of everything<sup>195</sup>. The danger of all human activities being driven by commercial profit and all human and planetary needs subordinate to narrowly focussed business interests underscores the strategic necessity for peoples movements throughout the world to counter the 'market' ideology underpinning this and to create countervailing arguments and forces. This struggle includes, very centrally, the need to (re)capture government, revitalise and re-legitimise governments' roles, and firmly re-establish their democratic responsibility and accountability to the people first and foremost.

There is a widening agitation on this in the organised ranks of popular forces all over the world, and lively and diverse debates are under way on tactics and strategies in this direction. The strategic aims are not only to reclaim governments but to use them to restrain corporations and financial operators. As with the institutional options discussed above (8.1), there are diverse views and approaches as to how best to deal with corporate/financial power. In this renewed defence of democracy, this new struggle against ever more powerful forces threatening democracy, the reform proposals revolve around the modalities and effectiveness of:

- reigning in or (re)regulating corporations by making their production and investment operations and financial resources more transparent to governmental and general public surveillance and monitoring, as a pre-requisite to effective public action;
- ending their 'externalisation' of the social, environmental and other costs of their operations, and obliging them to 'internalise', that is to take on and pay for these costs, and for their consumption of the world's resources;
- re-establishing their obligation to make direct public financial contributions through taxation, duties, royalties and other means, and the social redistribution and reduction of their outrageously disproportionate corporate, collective and individual share of global wealth;

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<sup>195</sup>Or, as one US trade union leader declared at a labour rally in Seattle, to loud applause, "The system turns everything into a commodity. A rain forest in Brazil, a library in Philadelphia, a hospital in Alberta. We have to name this system. It is Corporate Capitalism".

- negotiating, or imposing ‘codes of conduct’ on all corporations, all businesses and all social agencies, requiring them to be socially and environmentally responsible, accountable, and subject to effective sanctions as necessary.

The more radical demands are that the economic operations, resources and powers of capital and corporations be counter-balanced, contained, reduced or displaced by a wide range of mutual, co-operative, community controlled, collective worker/employee controlled, and parastatal or state economic and socio-economic enterprises and public trusts. And the most radical, of course, is that the power and resources of private capital/corporations be taken over, by and for the people or the whole of society, and that the private ownership of public goods, especially global resources, be forbidden and eliminated altogether. These are extremely complex old/reviving and new debates.

The most fundamental question, however, is not the best means and methods or the optimal tactics required to reform, (re)regulate, restrict or reduce global financial markets and corporations. Regulating the financial markets may reduce some of their extreme destabilising effects but does not begin to deal with the vast over-accumulation and grossly distorted concentration of the world’s financial resources. Similarly, reforming individual corporations or reducing their negative effects through codes of conduct is simply not adequate, even if these were to be made universal and obligatory and effectively monitored world-wide. Even such measures would merely reduce not eliminate the most fundamental problems. The exponential growth of financial, industrial and service corporations and their very *modus operandii* are themselves the manifestation of a deeper underlying systemic logic. The ever-expanding production and feverish technological innovation of global corporations is still intrinsically driven by old-style ‘profit maximisation’ but, now more than ever before, by a pathological need to keep growing in order to avoid being wiped out or swallowed up in a ruthlessly competitive open global system. The overwhelming advantages of the economies of scale in the research, production, and marketing strategies of vast corporations are such that the tendencies towards concentration and even monopolisation inherent in capitalism are powerfully reinforced. The survival imperatives for corporations are reflected not only in the frenetic financial markets and fierce stock exchange battles, but – in the real economy and the real world – in the rapidly escalating spiral of ever-expanding production, requiring and promoting ever-increasing consumption. This mutually reinforcing dynamic is, in turn, based upon unsustainable exploitation, extravagant waste and pollution and irreversible depletion of the world resources; with ever-growing pressures upon the planetary system. This pathological dynamic – not its much-touted ‘efficiency’ and ‘innovativeness’ - is what is quintessentially intrinsic to 21<sup>st</sup> century global capitalism, and this is why this jurassic juggernaut<sup>196</sup> as a whole has to be stopped.

### **9.1.3 Understanding and confronting capitalist globalisation, and globalised capitalism**

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<sup>196</sup>To adapt the phrase applied by Walden Bello to the WTO and related institutions

Directly related to this epochal challenge are a number of further tactical and strategic questions on how to deal with what is seen by social movement analysts and activists as 'corporate-driven globalisation' or 'economic globalisation'. The ideologues of globalisation constantly try to obfuscate the economic interests – and political forces – driving the expansion of capitalism to every corner of the world. Thus, much is made of the information and communications improvements, the social, consumption and 'life-style' benefits, the cultural and entertainment exchanges, the health and educational gains, and so on, which the latest technological revolution brings – or purportedly will bring – to the whole world. At the same time, just in case these persuasive depictions are not totally convincing, the promoters of globalisation also resort to a crude economic and technological determinism to block interrogatory examinations of the full effects of liberalised and increasingly globalised capitalism, and thus block off criticisms. Globalisation is portrayed as a process being driven not only by irrefutable economic laws or logic but by irresistible technological and 'market' forces; with the argument, on the one hand, that these cannot be stopped and, on the other hand, that they should not be interfered with as they are inexorable historical processes.

Stripped of its ideological baggage, 'globalisation' is indeed a manifestation of an historical process. This is, the global spread of capitalism. International operations have always been intrinsic to capitalist development, and 'globalisation' is the continuation of its international expansion over the past five hundred years. What characterises this latest phase, however, is not simply that it is integrating economic functions, opening up and penetrating all economies and all economic, social and cultural sectors, and creating a 'global' system, but that this time it is more extensive and intensive than the earlier phases and processes of capitalist expansion. And this latest phase is being powerfully reinforced by new forms of transnationalised production, technological instruments and international political institutions – such as the WTO.

The term 'globalisation' is highly loaded with ideological content and intent and is so irretrievably tainted that it should not be adopted by progressive forces as their potentially theirs. Yet reputable institutions such as UNDP argue that it is possible to promote "Globalisation with a Human Face"<sup>197</sup>. Even some social movement strategists can be heard calling for reforms in the system through 'bottom-up' globalisation or a 'people-driven' globalisation<sup>198</sup>. If this latter approach aims for international cooperation and human integration within an economic system or systems other than capitalism, it certainly should be supported. Applied to global capitalism, such notions can create political illusions and diversions of effort similar to the proposals within national contexts to create 'stake-holder capitalism' or 'peoples capitalism'.

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<sup>197</sup>United Nations Development Programme, 'Background Papers to the Human Development Report 1999', Volume II, New York, 1999

<sup>198</sup>A Proposal presented at a workshop in Johannesburg in March 1998 by a strategic analyst within the South African National Union of Mineworkers (NUM), but widely held within South Africa and internationally

Associated with this approach are suggestions that distinctions should be drawn between the 'negative' and 'positive' effects of globalisation<sup>199</sup>; with the latter taken to be, for example, the greater ease of communication and interactions now possible between popular organisations throughout the world, and the increasing mobility and integration of all the world's peoples and cultures<sup>200</sup>. These are highly desirable, of course, but a distinction has to be drawn between what can be attributed to the globalisation of capitalism *per se* and to the deliberate aims and conscious intentions of capitalists, on the one hand; or conversely to broader political, technological, cultural and social historical processes and human initiatives. These emerged prior to and take place over, above, and beyond – even though perforce within the context of – currently dominant capitalism<sup>201</sup>.

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<sup>199</sup>The International Confederation of Free Trade Unions (ICFTU) and the European Trade Union Council (ETUC) subscribe to such views; but they are also held much more widely amongst NGOs for example

<sup>200</sup>Although it is difficult to see how these 'positive' gains are being enjoyed by the great mass of the populations of Africa, Asia, Latin America and the Caribbean, sinking into ever-deeper poverty and deprivation

<sup>201</sup>"Recognition of the multi-dimensional, long-standing and fundamental processes of human integration and planetary interdependence, and the (eventual) elimination of artificial barriers to the unity and co-operation of the human family...cannot, however, simply be subsumed into or equated with the contemporary processes and particular forms of economic integration, or 'globalisation' currently dominating the world", D. Keet, 1997, op cit, p 2

With current economic globalisation understood to be globalised capitalism, lauding the 'positive' is equivalent to arguing that capitalism has positive effects because, for example, it dramatically improved world-wide transport and communications during the 19<sup>th</sup> century<sup>202</sup>; and, during the 20<sup>th</sup> century, provided mass consumption of personal motor vehicles, domestic appliances and a host of other 'positive' inventions. At a superficial level, this is true. Deeper analysis raises vital questions such as: to whom these 'positive' effects were available, by what means, at what costs, according to whose decisions as to product development and consumption patterns; to whose greatest profit and advantage; and, above all, whether such 'positive' effects ever were, and are now available for the whole of humanity, and sustainable for the planet?

The more immediate political danger of such an approach is that the projection of the 'positive effects of globalisation' is used by mainstream analysts to defend and justify the system; or, by those that are slightly more critical but cautious, to hold up such supposed positive side-effects as compensatory off-sets against some of the recognised negative effects. Under the impact of the growing exposure, and escalating actions against globalisation, and shifts in public opinion, references to 'the negative as well as the positive' effects of globalisation now even appear quite regularly in mainstream media reports and analyses. This is a shift of recognition from the simplistic globalist triumphalism dominating the media even one year ago. Such growing recognition, even if still incomplete or partial and of doubtful intent or conviction, is to be welcomed, worked upon and pushed further through effective information dissemination and engagements with the media and other public and governmental opinion shapers.

More critical formulations are also now appearing more explicitly in some official declarations of developing country governments<sup>203</sup>. This is certainly an advance on their subordination, hitherto, to the formulations insisted upon by the major powers in international meetings on the subject. For example, at UNCTAD IX, held in South Africa in 1996, the documentation euphemistically referred to 'the challenges and opportunities' of globalisation. All the emphasis was on the 'opportunities'; and even the 'challenges' were interpreted to be positive (although with some critical voices trying to insert an acknowledgement of some of the difficulties and dangers). The ambiguity of the term 'challenges' has long been used by governmental and institutional agencies to promote the system and minimise or obscure the problems. But by UNCTAD X, in Bangkok, in February 2000, even some developed country spokespersons had been influenced enough by recent developments to refer to 'the need to extend the positive gains' of globalisation to all countries, and to 'counter-balance the negative' by 'integrating' the hitherto 'marginalised' economies and peoples more fully into the global system.

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<sup>202</sup>In relative transformational terms as great, or even greater, than the communications revolution of the later 20<sup>th</sup> century

<sup>203</sup>As in the G77 'South Summit' in Havana, op cit, April 2000

These shifts in public discourse could be seen to be an advance, although they could also signal mere tactical manoeuvres. But for those aware of the profound inequities, damages and dangers inherent in the globalised capitalist system, and for the victims of the system, such minimal adjustments are absolutely unacceptable. In fact, the main thrust of the ‘improvements’ suggested by the powers-that-be are simply to deepen and extend the ‘integration’ – in practice meaning the opening up – of all economies and all economic, social and cultural sectors within the global economy, and to intensify the penetration of global capitalism throughout the world. It is also invidious to suggest that some kind of quantitative cost-benefit analysis between positive and negative effects is feasible, and that (marginal) adjustments in the (heavy and often fatal) costs to the mass of the world’s population against the (vast) benefits to the privileged minority can make the system acceptable. The system itself is intrinsically inequitable and unsustainable. It has to go, and just and rational alternative systems created.

#### **9.1.4 Creating alternatives to capitalism**

The broadest challenges facing ‘global social movements’ ‘moving forward from Seattle’ towards the creation of a ‘different global system’ concern the alternative, or the alternatives, to global capitalism. There is no immediate, self-evident single model, institutional or systemic, being promoted by the vast and growing range and variety of forces opposed to the current global regime and economic system. There were differences of focus, emphasis and approach in Seattle, and even some implicit or potential conflicts of interest. There were also differences of tactic and strategy evident there, and these continue in the wider and ongoing debates. But, taken together, what the various alternatives amount to are a wide-ranging and multi-faceted critique of the current global order (or deepening disorder), and they provide a range of rich possibilities and modalities to be discussed and developed.

The strongest common denominator in all of these alternatives is a conviction and commitment to place ‘economics’ at the service of people and the needs of the planet, rather than the opposite. But such alternatives do not yet constitute a comprehensive, coherent and complete ‘blueprint’ to replace global capitalism. Nor, in fact, should the idea of such a total blueprint be expected, demanded or accepted, at this stage and in principle<sup>204</sup>. Critics of the currently dominant world system should not allow themselves to be driven into a corner by provocative demands that they provide immediate and total alternatives...or accept the irreplaceability and permanence of capitalism. This is not to suggest that the world’s social, economic and political movements should evade the issue, for they must indeed continue to develop alternatives and coherently related alternatives. But these will have to be, and will be, created out of ongoing struggles, cumulative experience and wide-

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<sup>204</sup>In fact, it could be argued that one of the cardinal errors of the political parties creating the first generation of post-capitalist societies, especially on the model of the Soviet Union, was that they started out confidently with preconceived and rather crude blueprints which were then implemented through extensive and damaging experiments in social engineering

ranging discussion and negotiation. This discussion paper is an attempt to contribute towards these global debates and struggles from more specifically South African, African and 'South' perspectives.

## SOME CONCLUSIONS ON STRATEGIES AND TACTICS ON THE CURRENTLY DOMINANT GLOBAL SYSTEM

### Towards 'Anarchy' .... Accommodations .... or Alternatives?

What is being indicated in all the above proposals/approaches and assessments – and in the 'strategic challenges' posed throughout this discussion paper – are the perennial debates on strategy and tactics that inform the internal processes and planning of any organisation or movement committed to advancing defined projects and achieving real change. The debates revolve around the relative weight and mutual effects of immediate or interim tactics, and defensive positions or proactive transitional demands, on the one hand; and, on the other hand, between all such tactics and longer term transformational needs and strategic aims.

As an intellectual/political engagement, this discussion paper has started from the immediate tactical options being pursued by many NGOs and pointed to some of their limitations and problematics. Within each approach or section, the analysis has also drawn out the further implications, and their linkages – and necessary linkages – into ever-broader aims and objectives. The indications and conclusions are that, even if starting out with a very limited reform agenda, in order for organisations critical of the current global system to be consistent with their own analyses and principles, they are ineluctably drawn towards an ever-wider set of strategic challenges and broader perspectives.

On the other hand, political analyses and engagements 'on the ground' should at the outset actually invert this process of relating immediate and limited tactics to longer-term strategic aims. The point of departure, the framework and touchstone for all tactical options should be the overall strategic aims. Yet, very often, NGOs focus on immediate tactics without explicitly articulating their strategic views. These are treated as self-evident facts or 'realities' that don't require discussion; and, in this way, explicit collective assessments of all the various strategic alternatives are excluded *a priori*. It may be that there is some reluctance to articulate broader strategic intentions in order not to alert the powers-that-be. Where this is the case, it suggests a degree of naivety about the extent to which strategic analysts in corporations, governments, and associated think tanks, consider all possible scenarios of resistance or opposition, whether articulated or not, and prepare pre-emptive responses anyway. Reluctance to discuss all the strategic perspectives within our own ranks can deny access to information and insights, and inputs from, popular forces .... rather than 'duping' our adversaries.

Alternatively, the evasion of strategic debates by some non-governmental actors could be in order to contain the actual and potential forces and confine the process to quite limited objectives in which the immediate tactics or means are in fact the aims or ends. Or, to the contrary, this could be for the more positive reason of trying to maintain maximum unity in action by avoiding any potentially divisive debates. But this latter approach could, in turn, result in lack of clarity and in confused or mutually

contradictory tactics and actions, which complicates the building of alliances and could even become self-defeating. In the final analysis, even if long-term aims do differ, interim tactical agreements or tactical 'divisions of labour' are essential. This is an important mutual understanding to develop between all the forces and organisations engaged on these global issues. This, however, is only possible on the basis of full and frank debate. Once the respective strategic objectives are clarified and tactical deployments are agreed, there is less risk of tactics being loose, random or *ad hoc* and mutually under-mining or counter-productive.

This is not to suggest that the interactions and mutual effects of differing tactics and strategies are simple or straightforward. As has been evident throughout this paper, there are complex relationships between immediate tactics and broader strategic aims, even where the latter have been clearly identified. The repeated observations above that interim tactical positions should be "consciously located within and oriented towards broader demands and strategic goals" have to be given specific content within each and every situation and in relation to each set of challenges. The tactical choices cannot be prescribed in advance or in the abstract. They have to be based upon careful analyses of all the forces and factors at work, and assessments made as to:

- whether or how such choices can be made to advance the further and larger aims, or
- whether they at least act to defend them; or
- whether they might be an unsatisfactory second best when more is possible and necessary; or
- whether they might actually prejudice or undermine the immediate and further aims.

Of course this is made all the more difficult because there is seldom an unqualified choice about what tactics can be pursued. The 'realities' of immediate factors do influence choices about the most propitious or possible tactics. These choices, however, are both a question of political judgement and political will. Analysis focussing only on what is immediately 'feasible' is often concerned less about whether circumstances are favourable to change, or can be made more conducive to change, and rather more about the difficulties and dangers inherent in pursuing change. The common code for this political approach is 'realism'. But 'realism' is not simply a particular political judgement as to what is possible. It is often an expression of lack of confidence, wariness, doubts or even fears about the anticipated dangers of attempting to change the *status quo*.

The relevance of these observations to the debates on 'alternatives to the current WTO-driven global regime', is that such political caution takes the form of focusing on the 'risks' of getting rid of, or even trying to change, what is perceived to be 'a rules-based system', even if an unsatisfactory system<sup>205</sup>. In this view, there is a real

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<sup>205</sup>The dangers of the majors withdrawing from the WTO are frequently posed as a precautionary warning by many NGOs, as an argument and justification for careful accommodations within the *status quo*; see OXFAM, UK-NGOs, and The South Centre, op cit

danger of a return to the kind of unilateral trade threats and pressures that have long been used by the big powers against weaker economies<sup>206</sup>. An even more threatening scenario that is often presented is a return to the belligerent protectionism and aggressive trade wars between the major economies during the 1930s that presaged the horrors of the Second World War. Such arguments are routinely used by mainstream analysts and government strategists as pre-emptive warnings and deterrents to those who might seek to challenge and change the existing order. Even some developing country non-governmental strategists refer to the threat of ‘anarchy’<sup>207</sup>.

But those prejudiced by, and those opposed to the currently dominant global system cannot allow themselves to be intimidated by such scenarios into acquiescence with highly unsatisfactory global institutions and an extremely dangerous global economic system. A genuine multilateral rules-based system is certainly desirable and necessary because it can provide protection for the weak against the strong – if appropriately designed and impartially implemented. But such ‘rules’ also need to be developed, applied and observed in all sectors of human activity and relations, not just ‘trade’, and have to be secured through a wide range of legitimate institutions and not merely within the WTO. The current WTO-based ‘rules-based system’ was created by and for the powerful and is intrinsically biased in its very conceptualisations and content. Furthermore, even that does not prevent their recourse to covert and overt unilateralism, arrogant ‘extra-territoriality’ and outright illegality, when need be<sup>208</sup>. It is not inexorable historical patterns, or abstract forces that threaten the world with a dangerous ‘anarchy’. It is powerful self-serving political and economic forces, and these require much broader, determined and skilful counter-strategies.

The currently dominant capitalist economic system and current institutions may indeed be ‘realities’ but this does not mean that they are an immutable given, irreversible or permanent ‘facts’ that we have no choice but to accept or accommodate to. This is the usual sub-text of insistence upon the necessity to ‘recognise the realities’ of globalisation. Such ‘realistic’ arguments are merely a variation on the propagandistic assertions of triumphalist capitalist ideologues of the later 20<sup>th</sup> century that humanity has reached ‘the end of history’. This is arrant nonsense. For the opponents of global capitalism, for the proponents of a just, secure and sustainable future for humanity and our planetary home there are many

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<sup>206</sup>SA Minister of Trade and Industry, Alec Erwin, Business Day, Johannesburg, 27/1/2000; or Rob Davies MP, Chair of the SA Parliamentary Committee on Trade and Industry, Business Report, 18/12/99

<sup>207</sup>Yash Tandon in ISGN Forum in Bangkok, referring to “the anarchy of unilateralism”, op cit

<sup>208</sup>Extra-territoriality refers to the imposition of national legislation and decisions beyond national borders. Once again, it is the United States that is the most blatant abuser in this regard; see also Noam Chomsky “America: the outlaw state, defying the world”, in *Le Monde Diplomatique*, August 2000

possibilities and alternatives between accepting and accommodating to the *status quo*, or precipitating 'global anarchy'. In fact, not challenging and changing the currently dominant global economic system will lead to worse than 'anarchy'. How to create the alternatives requires conviction about the necessity for change, together with incisive investigation and analysis, effective interventions, and united or co-ordinated actions by ever-expanding global peoples movements.

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