The Common Good Under Fire
Is Globalization Delivering the Ultimate Victory to Manchester Capitalism?

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Globalisation is both unavoidable and of great benefit to the world as a whole. At least that has been the conventional wisdom for more than two decades now, except at the far fringes of the radical, antiglobalization left and the xenophobic, protectionist right. But is it true?

David Rieff[1]

A. Introduction

In a nutshell, this article will argue that neither of the above statements is true. Globalization is avoidable and it does not benefit the world as a whole.

To be more precise, the article will argue that individuals and even entire countries can cut themselves off from globalization, albeit at great cost. Whoever is willing to bear this cost, does not have to participate in globalization. For these individuals, firms, or countries, globalization is avoidable, although the cost is not.

Furthermore, the article will argue that globalization, as it is presently evolving, does not necessarily provide a significant net benefit for the world as a whole. It may actually harm the world as a whole. True, globalization has opened up great opportunities that did not exist before and would not exist without it for many countries and individuals. For example, the flow of Western know-how and investment into China and the commensurate flow of inexpensive goods from China to Western markets has created millions of jobs, has lifted hundreds of millions of individuals in China out of dire poverty and has contributed significantly to the bottom-line of Western multinationals and

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[1] New York Times Magazine, 26 March 2006, 13-14, at 13.

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the affluence of Western consumers. However, the real winner in this contest is not the world as a whole. The true winner is a particular system, namely what used to be known as Manchester capitalism and what should now be more accurately called the American way of life as personified, in particular, by the presidencies of Ronald Reagan and George W. Bush. Unless the reader supports the idea of making the rich even richer and doing so at the expense of more or less everyone and everything else, this victory can hardly be seen as a benefit to the world as a whole, even if the system overall is generating more money than before.

However, the article will also argue that globalization can be harnessed and made to benefit a much larger segment of the global population and that globalization can promote rather than destroy the common good. Finally, the article will show some steps that need to be taken to make this happen.

B. Definitions

I. "Bonum Commune" or the Common Good

The Latin term "bonum commune" is commonly translated into English as "common good". Ronald Barker from the London School of Economics and Political Science defines "common good" as

> Theory of shared interests. There exists a desirable end for governmental or public policy which is good for the whole society. This "common good" can be discovered by informed and reasoned thought, and though it may overlap with the good of particular groups or individuals, is different from and greater than the interest of any one of them.[2]

Even more straightforward, according to the online encyclopaedia Wikipedia,

> The common good is often regarded as a utilitarian ideal, thus representing "the greatest possible good for the greatest possible number of individuals". In the best case scenario, the "greatest possible number of individuals" would mean *all* individuals.[3]

For the present article, however, a somewhat different definition is suggested. Accordingly, the common good shall be seen not so much like an object, a thing that can be described, increased, diminished, or lost. Rather, the common good shall be seen as a dynamic state that needs to be defended and re-created constantly. Whenever an institutional or an individual actor takes a decision about future conduct, this decision is implicitly or explicitly a decision for or against the common good. Institutional actors would include states, international organizations, NGOs, public bodies and authorities within a state, in particular regions, municipalities and other territorial authorities, administrative

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2 *See* his entry in J. Bothamley (Ed.), Dictionary of Theories 103 (1993; 2002).

3 http://en.wikipedia.org/wiki/Common_good. *See also* below, note 20, about Jeremy Bentham's work.

agencies, courts, educational institutions, etc., as well as individual politicians, officials or civil servants. On the private side, institutional and individual actors would include undertakings, investors, associations, whether for profit or not, as well as individual professionals, employers, employees, and generally all human beings. These actors have different tasks and pursue different goals and on their way implement different plans and strategies. In so doing, they constantly take decisions, each of which either emphasizes or even maximizes self-interest, often at the expense of the common good, or renounces self-interest more or less completely, to contribute to the common good. The ethical assessment of such decisions can focus either like a snapshot on individual decisions or can cover, like a film, the overall impact of an actor on the common good over a longer period of time.

Naturally, the analysis here presented is not value neutral. Principally, decisions are preferred if they make a positive contribution to the common good. At least the sum total of a series of decisions over time should be positive. At the same time, the analysis is not utopian. It acknowledges that an actor cannot be expected to *consistently* take decisions for the common good and to the detriment of self-interest, in particular in an environment that is increasingly competitive and in which the competitors are usually not restricted by anybody or anything from pursuing selfish maximization of profit.

Sustainable promotion of the common good, therefore, requires that all relevant actors – or at least a large majority of them – become 'civilized' of sorts, i.e. seek to establish an overall balance that is favourable for the common good.[4] To achieve this goal, additional and more effective incentives need to be developed, i.e. rights and duties, rewards and sanctions, that stimulate desirable behaviour. From a legal perspective, additional and more effective normative standards need to be developed that successfully prevent behaviour resulting in gross damage to community/humanity and that achieve an overall balance between self-interest and common good that is tilted towards the latter.

II. Globalization

After a slow start, the literature on globalization, meanwhile, can fill a sizeable library.[5] Publications have dealt with globalization in general, as well as many

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[4] In support of the theory that human beings need normative guidance lest they mostly pursue selfish choices to the detriment of the common good, *see* the empirical study of the life in the Italian town of Montegrano in the 1950s that could be reduced to the formula: "Maximise the material, short term advantage of the nuclear family; assume that others will do likewise." *See* E. Banfield, The Moral Analysis of a Backward Society (1958).

[5] The term globalization itself can be traced back to the global village in the writings of Marshall McLuhan. *See* M. McLuhan & Q. Fiore, War and Peace in the Global Village (1968), and by the same authors, The Medium is the Message (1967).

A highly subjective selection of 'the better' works on globalization includes P. L. Berger & S. P. Huntington (Eds.), Many Globalizations – Cultural Diversity in the Contemporary World (2003); J. Bhagwati, In Defense of Globalization (2004); D. Cohen, Globalization and Its Enemies (2006); Th. L. Friedman, The Lexus and the Olive Tree (1999); Th. L. Friedman, The facets of it, such as economic globalization, political globalization, cultural globalization, social globalization, and many more, often with different emphasis and definitions.[6] For the purposes of the present article, two components of globalization have to be emphasized more than the others.[7] The

World is Flat (2005); I. Goldin & K. Reinert, Globalization for Development (2006); C. Hay & D. Marsh (Eds.), Demystifying Globalization (2000); R. O. Keohane, Power and Governance in a Partially Globalized World (2002); F. J. Lechner & J. Boli (Eds.), The Globalization Reader, 2nd ed. (2004); H.-P. Martin & H. Schumann, Die Globalisierungsfalle – Angriff auf Demokratie und Wohlstand, 10th ed. (1998); R. Robertson, The Three Waves of Globalization (2003); S. Sassen, Globalization and Its Discontents,* (1998); A. Shipman, The Globalization Myth – Why the Protesters Have Got It Wrong (2003); J. Stiglitz, Globalization and Its Discontents,* (2002); M. Wolf, Why Globalization Works (2005). *See also* the website of the Yale Center for Study of Globalization at http://www.ycsg.yale.edu/.

*Both Sassen and Stiglitz were probably inspired by Sigmund Freud, whose 1930 book *Unbehagen in der Kultur* was translated into English that same year and published in London and New York as *Civilization and Its Discontents.*

6 A concise version of what is probably the common ground definition for globalization in general was provided by Eduardo Aninat, Deputy Managing Director of the IMF: "Globalization [is] the process through which an increasingly free flow of ideas, people, goods, services, and capital leads to the integration of economies and societies"; *see* Aninat, *Surmounting the Challenges of Globalization*, Finance & Development, March 2002, 4-7, at 4.

7 For somewhat different purposes, Thomas Friedman has identified "ten forces that flattened the world," namely i) the fall of the iron curtain in 1989/90 and the simultaneous introduction of the computer system Windows and hence the capacity of pretty much every computer to communicate with pretty much every other computer in the world; ii) the general and free availability of Netscape, the first internet browser, which paved the way for pretty much every successful internet application by showing the usefulness of the medium itself; iii) the development of work-flow software that allows different people in different locations to work simultaneously or consecutively on the same project, and other standards for digital communication, including the money transfer system PayPal; iv) open source software, that means people from around the world getting together in virtual groups to write software for particular applications that is shared for free and can be improved upon by anyone, in particular the example of the Apache web server, that is at the root of about two-thirds of all web sites in the world; a similar development can now be seen with bloggers creating virtual open-source newsrooms or with scientists and others contributing to the virtual and open-source encyclopedia Wikipedia; v) the Y2K computer problem and the huge amount of relatively basic programming it required, which was when multitudes of American companies discovered the benefits of outsourcing knowledge work to India; as chance had it, the dot com bubble led to the installation of enormous bandwith of fiber optic cable and the subsequent bust drove the cost of using the cables – for example between Bangalore and Silicon Valley – down to almost zero and this really got outsourcing going; vi) China's entry into the WTO in 2001 as a quantum leap for offshore manufacturing and the (re-)invention of truly global supply chains; vii) Wal-Mart and it's super efficient sourcing and distribution system as the benchmark for the global retail industry; viii) full-service logistics providers like UPS and FedEX who are 'insourcing' work for their clients to accelerate services such as computer repairs; ix) Google and other web-search services that have been revolutionizing the acquisition and distribution of information in recent years; and x) the 'steroids' for our interconnected world, in particular the ubiquitousness of wireless access to the internet and to e-mails. *See* Th.L. Friedman, The World is Flat, *supra* note 5.

As can be easily seen, the majority of Friedman's items are part and parcel of something that was quite elegantly coined "the genie of global information flow" that got out of the bottle with first component could be called the 'CNN-Revolution'. Before this revolution, we largely had to rely on hearsay for any knowledge about the living conditions of the poorest inhabitants of many third world countries or the exploitive slash-and-burn farming in Brazilian rainforests. Traditional TV news as everyman's window to the world did broadcast the one or the other image, but the children in Asian sweatshops rarely made the cut among the dozen or so items before the weather forecast. This widespread state of innocence came to an end when modern TV stations, following the lead of Ted Turner's CNN, began to bombard us 24/7 with images from around the world, which are specifically selected to generate strong emotional reactions. More recently, as high speed internet access has become widely available for millions of households, the internet is supplementing, if not overtaking, the flow of image-enriched news that reaches us every day. As a result, consumers are nowadays willing to pay a higher price for dolphin-friendly tuna and demand from their political leaders to do something about blatant violations of human rights in Rwanda and other far away countries. Thanks to the information revolution as invented by CNN, dry statistics have been converted into images and faces and we are suddenly not only aware of but actually concerned about events that happen half a globe away.

The second component is the interdependence of countries and markets in otherwise distinct geographic regions. Although goods and people have been moving around the globe for centuries, the quantity and speed of such exchanges have taken on entirely new dimensions in the 20th century.[8] Political decisions and the implementation of economic policies or business transactions, but also natural disasters, epidemics, or terrorist attacks, that occur in one corner of the world, are directly impacting the living conditions and the level of wealth and prosperity in other parts of the world. The point can be illustrated with two examples.

The outbreak of SARS[9] in China and parts of South-East Asia in November 2002 became the main reason for the bankruptcy of several Western airlines, who were already suffering from decreased demand after the terror attacks of 11 September 2001 (another example for the intensified global interdependence). Stock prices fell in all major markets and millions of people around the world lost money and jobs. In this way, ordinary citizens in Europe and America, most

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no chance of turning back, *see* K. Ohmae, The End of the Nation State – The Rise and Fall of Regional Economies (1995), at vii.

[8] Something similar happened during the *Industrial Revolution*. As Drucker points out, capitalism and technical innovation had both been around for centuries. However, between 1750 and 1900, they accelerated greatly and began to "reach across cultures, classes, and geography", to become global phenomena and convert "capitalism into 'Capitalism' [...] and technical advances into the 'Industrial Revolution'", i.e. into global systems. *See* P. F. Drucker, Post-Capitalist Society 19 (1993). Accordingly, the present developments may have to be called the *Interdependence Revolution*.

[9] SARS stands for Severe Acute Respiratory Syndrome, which is an atypical type of pneumonia and is caused by a corona virus. For more information see http://en.wikipedia.org/wiki/SARS.

of whom had never been to Asia, let alone exposed to the SARS virus, became victims of the initial helplessness and incompetence of Chinese health officials.

The other example is the strategic decision of the Chinese Government to maintain a fixed exchange rate between the Yuan and the US Dollar.[10] Because of the very significant trade surplus China maintains with the United States – some 200 billion US Dollars in 2005 alone[11] – the exchange rate would normally have adjusted long ago, in favour of a more expensive Yuan and a less expensive Dollar. By contrast, the fixed or managed exchange rate has resulted in artificially low prices for Chinese goods (and services) in Dollar denominated export markets, giving a boost to export oriented industries in China at the expense of their competitors in the US and – to a slightly lesser extent – in Europe. A direct consequence of this economic strategy is the continuing loss of jobs in America and Europe, in particular in manufacturing, where China has long moved beyond the production of toys and textiles.[12]

In summarizing, the term "globalization" is used in this article as the phenomenon caused by a dramatic facilitation and acceleration of global communication, transportation, and travel opportunities, combined with a dramatic decrease in the cost of these transactions.[13] Capital transfers have been liberated from regulatory barriers and have gone through a technological revolution permitting the transfer of billions of dollars from one country to another with the click of a computer mouse at next to no cost. The transformation of the GATT to the WTO secured the permanent and almost all encompassing elimination of major barriers to trade in goods and services. The containerization of shipping and other innovations in logistics have reduced the cost of physically taking goods from one side of the world to another to almost negligible levels. More recently, people are not only travelling in large numbers for purposes of tourism. In the last twenty years or so, an ever increasing army of transnational workers and service providers has come into being, offering

[10] From 1994 to 2005, the exchange rate was maintained at 8.28 Yuan to the US Dollar. On 21 July 2005, a potentially far-reaching change was introduced. The Yuan is now no longer pegged to the US Dollar alone but to a basket of different currencies. At first this led to an appreciation of the Yuan of about 2% to 8.11 Yuan to the US Dollar. Subsequently, additional minor adjustments were permitted and the exchange rate stood at around 8.011 Yuan to the US Dollar in summer 2006. For arguments defending the maintenance of the fixed exchange rate *see*, *for example*, R. McKinnon, *China's Exchange Rate*, Asian Wall Street Journal, 27 June 2003, avaiable at http://www.stanford.edu/~mckinnon/briefs/WSJopedrev.pdf.

[11] *See* US Census Bureau, *Foreign Trade Statistics*, available at http://www.census.gov/foreign-trade/balance/c5700.html#2005.

[12] From 1965 to 2005, the share of US workers involved in durable goods manufacturing has decreased from 19% of the workforce to 8% of the workforce. By contrast, the share of workers providing professional or business services and the share of those in education and health care – where outsourcing is not possible or not as easily possible – has increased from 8% to 15%, respectively from 7% to 16%. *See* New York Times, 22 January 2006, p. BU5.

[13] Thomas Friedman has calculated that a three minute phone call from New York to London in 1930 cost something like 300$ – calculated in 1996 prices; see Th. L. Friedman, The Lexus and the Olive Tree (2000), at xviii. Via traditional phone lines, such a call costs less than 1$ today and via Skype and other internet services it is completely free.

their input at all levels of the economy, wherever it is wanted and paid for, regardless of traditional geographic, political, linguistic, religious, and cultural differences and borders. Finally, the growing and accelerating stream of goods, services, capital and people around the world and the communication revolution accompanying all of this, are also providing a much greater and faster exchange of ideas and ideologies. As a result, global strategies are no longer the prerogative of multinational enterprises with multi-billion dollar balance sheets. For a majority of medium sized enterprises and for ever growing numbers of small firms and even individuals, it has become perfectly normal to buy and sell goods and services internationally. As Tom Friedman puts it, the world has become flat again.[14]

C. The Good and the Bad Sides of Globalization

Ever since the industrial revolution took off in Britain in the 1780s,[15] some philosophers and social theorists have argued that scientific and technological progress would ultimately lead to globalization, or rather to one single global form of social organization.[16] For Karl Marx, this was going to be global egalitarian communism.[17] Auguste Comte foresaw a de-politicized technocracy implementing scientifically based government.[18] Herbert Spencer[19] advocated

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[14] Friedman, The World is Flat, *supra* note 5.

[15] A good source for dates and further information is E. Hobsbawm, The Age of Revolution: 1789–1848 (1962) (reprinted in New York in 1996).

[16] US President Ulysses S. Grant said in 1873, "As commerce, education, and the rapid transition of thought and matter, by telegraph and steam have changed everything, I rather believe that the great Maker is preparing the world to become one nation, speaking one language, a consummation which will render armies and navies no longer necessary." Here quoted from E.J. Hobsbawm, *The World Unified*, first published as part of The Age of Capital 1848-1875 by Weidenfeld & Nicolson (1975), at 48 *et seq.*; later republished *in* F.J. Lechner & John Boli, The Globalization Reader (2004), 58-62, at 58. The passage "speaking one language" – which presumably was meant to be the English language – indicates a common phenomenon, namely that most of the thinkers and writers imagined the one single future global form of social organization much like their own present one.

[17] Marx wrote of the "universal interdependence of nations" as a tool of capitalist exploitation, which would, however, become a progressive force for one global socialist civilization, after the revolution of the working class (K. Marx and F. Engels, The Communist Manifesto (1848), here quoted from R. Tucker (Ed.), The Marx-Engels Reader (1979); the quoted expression can be found at 476); *see also Manifesto of the Communist Party*, *in* Economic and Philosophic Manuscripts of 1844 Karl Marx and the Communist Manifesto by Karl Marx and Frederick Engels 203-243, at 213 (1988).

[18] According to Comte's 'law of three phases', the world was going to move from a *theological phase* during which people explained the unknown with references to (a) supernatural being(s), to a *metaphysical phase* during which natural phenomena were explained with impersonal, obscure forces, to a *scientific* or *positive phase* in which all irrational beliefs were given up in favour of rational and logical explanations. A. Comte, The Positive Philosophy of August Comte (1853). Comte has been called 'grandfather of *sociology*', 'father of (French) *positivism*' and, inter alia,

the ultimate victory of laissez-faire capitalism. Jeremy Bentham,[20] and John Stuart Mill[21] predicted the spread of utilitarianism because societies giving people the freedom to pursue their individual happiness would be more successful than others, provided they had some ground-rules for the general good.

In spite of the differences of approach, all of these philosophers and social theorists were ultimately optimists. At the bottom line, they all believed that *their* model of social organization would not only prevail over all others but that it would prevail because it was the superior model, in particular concerning the allocation of scarce resources and the promotion of general well-being and prosperity.[22]

Today it is becoming more and more obvious that this optimism was unfounded or at least premature. While scientific and technological progress would meanwhile enable humanity to provide 'basic needs'[23] such as food, water, shelter, sanitation, healthcare, and education for all its members at decent levels,[24] in spite of the almost exponential growth of the global population, this

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coined the term *'altruism'*. *See* http://en.wikipedia.org/wiki/August_Comte, and Michael Ruse *in* T. Honderich (Ed.), The Oxford Companion to Philosophy (1995).

[19] If Comte was the grandfather of sociology, Spencer has been called the 'father of sociology' (for example by Michael Ruse, *see* previous note). His version of laissez-faire or Social Darwinism (of which Wikipedia makes him the 'father' because his writings preceeded those of Darwin, whose work should accordingly be called 'darwinian Spencerism', *see* http://en.wikipedia.org/wiki/Herbert_Spencer) can be found in H. Spencer, First Principles (1862).

[20] Bentham's *utilitarianism*, according to which the proper conduct to be followed was always the one to bring about 'the greatest happiness for the greatest number' had profound influences on John Stuart Mill on the one side, and the reform of law and government, higher education and the penal system in Britain on the other. *See* J. Bentham, *A Fragment on Government*, first published *in* a volume edited by J.H. Burns and H.L.A. Hart (1977; reprinted 1988); for additional reading *see, for example*, H.L.A. Hart (Ed.), Essays on Bentham: Jurisprudence and Political Theory (1982).

[21] J. Stuart Mill, Principles of Political Economy (1900; reprinted by Prometheus in 2004) and J. Stuart Mill, *Utilitarianism*, edited by George Sher (2002). *See also* F.R. Berger, The Liberal Self: John Stuart Mill's Moral and Political Philosophy (1984).

[22] *See also* J. Gray, *The Global Delusion, in* The New York Review of Books, Vol. LIII, No. 7, 27 April 2006, at 20.

[23] The 'basic needs' model stems from development discourse; the present list is taken from http://en.wikipedia.org/wiki/Basic_needs.

[24] As the Worldbank has pointed out,

> What constitutes a good life is highly subjective, and the relative importance accorded to different aspects of well-being varies for individuals, societies and generations. But on some elements most people could probably agree. Having the ability and opportunity to shape one's life – which increase with better health, education, and material comfort – is certainly one of them. Having a sense of self-worth is another, enhanced by family and social relationships, inclusiveness, and participation in society. So is enjoying physical security and basic civil and political liberties. And so is appreciating the natural environment – breathing fresh air, drinking clean water, living among an abundance of plant and animal varieties, and not irrevocably undermining the natural processes that produce and

is clearly not happening. By contrast, we are witnessing stagnation or even regression in many developing countries, a rapidly increasing spread between the rich and the poor in most countries, growing inequality within and between nations, continuing environmental degradation, accelerated depletion of energy and other natural resources, growing violence in many parts of the world, and what seems to be the gradual destruction of the very fabric of democratic societies.

Thomas Friedman quotes the following African proverb: "Every morning in Africa, a gazelle wakes up. It knows it must run faster than the fastest lion or it will be killed. Every morning a lion wakes up. It knows it must outrun the slowest gazelle or it will starve to death. It doesn't matter whether you are a lion or a gazelle. When the sun comes up, you better start running." He concludes that since the entry of China into the global economy, everybody has to run faster and faster.[25] In many ways, he is right. Outsourcing of specific tasks, such as back office work or call centers, to service providers in India, and the re-organization of the supply chain with more and more components and entire products being sourced from China and other low-cost countries, are putting enormous pressure on Western labour markets and have fuelled a powerful movement that wants to turn the clock back to the relatively cozy days before globalization.[26]

This picture of globalization as survival only of the fittest is one-sided, however. Globalization has had many beneficial sides and it could potentially work for the best of very nearly all of humanity. In this respect it is first of all necessary to recall what a non-globalized world would look like. Some examples shall suffice. First of all, the range of goods available to us in our supermarkets would shrink enormously. Many products that we take for granted today cannot be produced locally or at least not at reasonable cost. During the often glorified good old days, that is before globalization, these products were simply not available at all or they were so expensive that they were de facto available only to a very small portion of the population. We are not talking only about strawberries at Christmas or mineral water from France or Italy or exotic

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> renew these features. Indeed, peoples' self-reported happiness and satisfaction with life are closely associated with all of these factors.

See World Development Report 2003 (2003), at 13 (footnotes omitted). In effect, it is argued here that very nearly all of "these features" could be provided for very nearly all human beings very nearly all of the time, if we would only reform our political, legal and economic systems to promote the common good rather than individual benefit at the expense of the common good.

[25] *See* Friedman, *supra* note 5, at 114.

[26] On this subject *see*, in particular, J. Bhagwati, In Defense of Globalization (2004); G. Burtless, R. Z. Lawrence, R. E. Litan, & R. J. Shapiro, Globaphobia – Confronting Fears About Open Trade (1998); D. Cohen, Globalization and Its Enemies (2006); K. Danaher, 10 Reasons to Abolish the IMF & World Bank (2001); J. Mander & E. Goldsmith (Eds), The Case Against the Global Economy (1996); A. Shipman, The Globalization Myth – Why the Protesters Have Got it Wrong (2002); L. Sklair, Globalization – Capitalism & its Alternatives (2002); The International Forum on Globalization (Ed.), Alternatives to Economic Globalization (2002); and M. Wolf, Why Globalization Works (2004).

fruit, the names of which we can barely pronounce. Rather, we are talking here about many things of daily use, starting with pepper and many other spices, rice, orange juice, salt-water fish and much of our seafood, and even clothes made from cotton or silk, and of course the heating oil, gas, and the fuel for our cars and other means of transportation. Northern European countries would have to survive their long winters without fresh vegetables and salad, while wine, tobacco and many other daily pleasures would once again be reserved for only the wealthiest families.

Business trips to far away countries would again be dangerous and adventurous as in the day and age of Marco Polo and recreational trips would be long, tedious, and expensive as they were when Goethe made his way to Italy. Thus, travel would again be the prerogative of a tiny minority of wealthy, educated, and adventurous people, in particular those who do not have to work themselves because they can let others work for them.

Our modern societies are impossible to imagine without globalization. The opponents of globalization either do not want to face up to this reality or are dreaming of a world where we can pick out only the good sides of globalization and give back the bad ones. The abovementioned examples are illustrating in particular that one frequent argument against globalization is simply wrong, namely that it benefits only the wealthy, the rich investors, the multinational enterprises, i.e. the capitalists. By and large, the opposite is true. Wealthy merchants for centuries, if not millenia, have had the financial and other means to make use of and benefit from the riches of distant countries. Precisely because it was difficult and expensive to import goods from far away countries, the prices were astronomical and the profit margins commensurate!

Globalization – and only globalization – has effected a true democratisation of these attractions by eliminating many barriers to international trade in goods and services and, in this way, dramatically lowering the transaction costs. As a result, it is nowadays not only much cheaper to trade goods and services across borders, it is also much easier and, therefore, much more accessible for many more economic operators. The ensuing competition forces undertakings to pass a large part of the financial advantages resulting from globalization on to the consumers in form of lower prices. Long gone are the times when a Swiss trader by the name of Christoph Merian could earn phenomenal profits in just a few years by circumventing Napoleon's continental blockade, i.e. by smuggling coveted goods into closed markets, which made him the wealthiest man in all of Switzerland in his day and lay the foundations for a commercial empire that would last for centuries. Only in countries that cut themselves off from globalization or that are excluded from it by the world community, as it was the case with Iraq under Saddam Hussein, is it still possible for a handful of well connected and protected traders to get rich quickly at the expense of the general population.

This analysis shows that globalization per se does not have to be a bad thing. Whether a continent, a country, a nation, a region, a city, an industry, a company, or an individual becomes a victim of globalization or a winner, is determined by the way he, she or it – and others around it – react to the challenges of globalization. And this determination is done again and again, whenever some new development demands a reaction and even if the individuals and decision-makers are oblivious to the challenge or consciously decide to ignore it.

D. The Common Good Under Fire

Common good is expensive. A high level of environmental protection and occupational safety, a sufficiently highly developed welfare state that is able to care for those who, whether by their own fault or not, are temporarily or permanently unable to take care of themselves, a health care system that includes those who cannot afford this care on their own, an educational system that provides high quality education to everyone, including those who cannot pay the market price for it – all these institutions cost money and have to be paid by someone. At least in Europe, we have become very much used to the fact that this "someone" is the state, which in turn charges all of us for its services in the form of higher and higher taxes. Unfortunately, we have also become used to the fact that the state shifts an ever larger part of the present-day costs over to future generations in the form of public debts. Nevertheless, the system works on the whole, as long as a sufficiently large percentage of the beneficiaries, i.e. the present-day population, makes a sufficiently large contribution to it, primarily in the format of productive activity and tax payments.

The system is endangered, however, when the percentage of economically active people in the overall population is decreasing without there being a commensurate increase in productivity. If the taxable economic activity in the country decreases – in absolute terms or at least in value – the state cannot sustain the level of welfare and other services provided to the people unless it finds other ways of funding them. A good example is the continuing high level of unemployment in Germany, combined with an overall aging population with more and more retired people, which keeps forcing the state to make ever more painful cuts into the social system and ever higher public debts.

Unemployment and population aging is not the only challenge to the state's ability to fund the services we expect from it. If a growing number of tax payers is able to avoid paying taxes, in particular by shifting taxable revenue into low-tax or no-tax jurisdictions, or if large tax payers, i.e. high income individuals and corporations, move away altogether from their home state, the latter is increasingly stuck with those private and corporate citizens that cost more than they contribute.

If this happens, a state or national economy theoretically has several possibilities of dealing with the problem. They all boil down to one of two alternatives, however: Either the state has to increase its revenue or it has to decrease its expenditure. When it comes to cutting back the expenses, a state would seem to have many options. Unfortunately, even a superficial glance at the larger budgetary positions will easily show that serious cuts are hardly possible without cuts into social services and other features of the welfare state. Other public spending is either unavoidable or relatively less significant.[27]

When it comes to increasing revenue, there are again only three options and they all have similar and negative effects on the economy. After unnecessary state holdings in private enterprises and other assets have been sold, the state can a) print more money, which creates inflation; or b) borrow more money, which increases public debts and drives up interest rates; or c) increase taxes and/or broaden the tax base by making more activities and/or individuals subject to taxation. All three measures have the same effect, namely private and corporate citizens get less money for their economic activities and/or get less value for their money. This, in turn, decreases their incentive to pursue economic activities and increases their incentive to avoid taxes lawfully, for example by moving economic activities to lower tax jurisdictions, or to evade taxes unlawfully, in particular by hiding economic activities or their revenue.

While these facts have always been true, globalization has added to the challenge faced by nation states and their national economies. First of all, it has become much easier and much less expensive for large and small firms and even individuals to move their residence and/or their economic activities to countries where taxes are lower. With the facilitation of shipping of goods and the digitization of many services, economic operators have more and more choices to work and live in one country, where labour and other costs and taxes are low, and to sell their good and services in another country, where they (still) find consumers who can afford these goods or services. Second, the risk involved in such relocations and other forms of foreign direct investment has gone down considerably because of the permanent elimination of many barriers to trade by the WTO and the even more far reaching elimination of barriers to capital transfers, including the repatriation of profits. Furthermore, international commercial arbitration and various investment protection agreements contribute

[27] The exception to the rule is the United States, where the second largest item on the federal budget is defense spending. With some $495 billion for defense in 2005 (excluding the war in Iraq), the United States is spending almost as much as the rest of the world taken together. In light of the fact that the cold war has ended and that there is no major enemy out there that might require big sticker weapon systems, such as aircraft carriers, submarines, fighter or bomber aircraft, nuclear warheads, etc., the defense budget may seem the obvious choice for large scale savings in the US However, this budget position is particularly resilient to cuts in light of real or perceived global strategic needs, real or perceived global threats (in particular from terrorism), and a powerful lobby. Even if significant cuts into defense could be made, this item represents "only" 20% of federal spending, while "human resources", including education, health, medicare, income security, social security, and veterans benefits, accounted for $1,586 billion in 2005, or 64% of federal spending. For federal budget time-line tables 1946 to 2011 *see* http://www.whitehouse.gov/omb/budget/fy2007/pdf/hist.pdf. In the several states, expenses related to welfare and social services are anyway the largest single budgetary item, just as in other developed nations.

significantly to the reduction of the risks involved in off-shore[28] investment and production.[29] Third, our Western welfare states have lost much of their ability to restrict the outsourcing and off-shoring[30] of services and manufacturing. Traditionally, a country could increase tariffs or impose non-tariff barriers against imports of goods or services to protect its (remaining) domestic manufacturers from aggressive competitors based in low-cost countries and to protect its balance of trade from a flood of imports. However, as part of the WTO agreements, countries have entered into "commitment schedules", fixing their maximum import tariffs, and have agreed to discontinue most non-tariff barriers. In this way, the participating countries[31] have given up much of their ability to change their trade policy in reaction to changes in the global trading environment. This was done precisely to create economic efficiency, namely to enable innovative undertakings to allocate their resources where they find comparative advantages such as low-cost labour or lower taxes and to pass on at least some of the benefit to their customers in the form of lower prices. There is downside, however, as this low-cost competition may become an existential threat for less innovative or less flexible undertakings and their employees in the Western industrialized countries. Last but not least, globalization has also made it more easy for multinational enterprises to shift profits between different facilities in different countries. For example, a multinational may internally charge too much or too little for goods delivered from one country to another in order to accumulate profits where taxes are lower (so-called "transfer pricing"). Or a multinational may charge intangible services, such as R&D or marketing, to its facilities in high-tax countries in order to move some of their revenue to a low-tax country.

As globalization provides these opportunities to internationally minded undertakings, it reduces the policy choices of governments, in particular when it comes to tax increases. If a country charges too high taxes or announces tax increases, it inevitably loses existing economic activities to low-tax countries and/or discourages the expansion of existing or the creation of new economic activities. This effect can be observed not only with respect to the tax burden. Stringent environmental or safety standards, as well as other areas of regulatory oversight that have a direct impact on the cost of production, may cause an

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28 The term "off-shore" is used here in a value-neutral sense, merely indicating that activities are taking place abroad, versus "on-shore", which would be within the respective country or jurisdiction.

29 For a more comprehensive analysis why transnational companies invest abroad *see, for example*, C. Roe Goddard, *Defining the Transnational Corporation in the Era of Globalization*, in C. Roe Goddard, Patrick Cronin, and Kishore C. Dash (Eds), International Political Economy – State-Market Relations in a Changing Global Order 435-456, in particular 443 *et seq.* (2003).

30 "Outsourcing" refers to the delegation of limited functions to independent service providers, for example, if an American insurance company hires an Indian service provider to operate its call center. "Offshoring", by contrast, refers to the relocation of entire production sites, for example a computer chip factory, from one country to another. *See also* Friedman, *supra* note 5, at 114.

31 In summer 2006, membership in the WTO stood at 149 out of some 200 countries in the world. Of the remaining countries, only a few are significant trading nations, such as Algeria, Russia, Ukraine, or Vietnam. *See* http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm.

undertaking to relocate itself or at least certain economic activities to countries with less stringent standards and/or less effective enforcement.

The combination of the opportunity of relocating economic activities to a country that offers cost advantages and of relocating revenue to a country that offers tax advantages – without having to give up access to the traditional markets where the purchasing power is (still) located – opens entirely new perspectives for large and medium sized enterprises. Before globalization, the states were able to dictate and enforce the terms of trade via their legislative and police powers. Today, the undertakings seem to have all the trumps in their hands. With 150 or more countries competing for their investment and the jobs it promises, undertakings can hold a beauty contest to see which country offers the best conditions. Since undertakings are profit oriented and answer first and foremost to their shareholders, the "best conditions" are those that offer the highest profits in the short term. Long-term goals and values that remain external to the revenue and expense calculations of an undertaking, such as environmental protection, can only play a minor role, if any. As a result, the initial home country of a multinational enterprise may nowadys be used only as the final destination for the finished products, while the jobs and tax revenues related to their production – and the (uncontrolled) pollution – may have moved elsewhere.[32]

If countries try to outdo each other to attract or retain a major investment, the longer term and non-financial values may become casualties of a veritable race to the bottom. Countries trying to resist these pressures, by contrast, may fall into a different kind of downward spiral. While they retain their high standards for protection of workers, the environment, etc., they lose tax revenue and jobs. If they do not react by cutting back their social services but instead increase

[32] On the connection between trade liberalization on the one hand and different environmental standards on the other see, for example, M. N. Harris, L. Kónya & L. Mátyás, *Modelling the Impact of Environmental Regulations on Bilateral Trade Flows: OECD 1990-1996*, 25 (3) The World Economy 387-405 (2002); A. Levinson, *Environmental Regulations and Manufacturers Location Choices – Evidence from the Census of Manufacturers*, 1996 Journal of Public Economics 5-29; J. A. List & C. Y. Co, *The Effects of Environmental Regulations on Foreign Direct Investment*, 1999 Journal of Environmental Economics and Management 1-20; P. Low & A. Yeats, *Do Dirt Industries Migrate?,* World Bank Discussion Paper No. 159, (1992); R.E.B. Lucas, D. Wheeler & H. Hettige, *Economic Development, Environmental Regulation, and the International Migration of Toxic Industrial Pollution 1960-88*, World Bank Policy Research Working Paper 1062 (1992); M. Mani, S. Pargal & M. Huq, *Does Environmental Regulation Matter? Determinants of the Location of New Manufacturing Plants in India*, World Bank Policy Research Paper No. 1718 (1997); B. K. Smarzynska & Shang-Jin Wei, *Pollution Havens and Foreign Direct Investment – Dirty Secrets or Popular Myth?*, World Bank Research Paper (2001); J. A. Tobey, *The Effects of Domestic Environmental Policies on Patterns of World Trade: An Empirical Test,* 43 (2) Kyklos 191-209 (1990); D. Wheeler, *Racing to the Bottom? Foreign Investment and Air Pollution in Developing Countries*, World Bank Policy Research Paper No. 2524 (2000); J. Douglas Wilson, *Capital Mobility and Environmental Standards: Is There a Theoretical Basis for a Race to the Bottom?*, *in* J. N. Bhagwati & R. E. Hudec (Eds.), Fair Trade and Harmonization: Prerequisites for Free Trade? 393-428 (1996); J. S. Wilson, T. Otsuki, & M. Sewadeh, *Dirty Exports and Environmental Regulation: Do Standards Matter to Trade?*, World Bank Research Paper (2002).

their taxes on income and/or profits in order to be able to fund the same high level of social services as before, the conditions for economic operators in those countries deteriorate further and additional activities will move away and more jobs are lost. The tax burden gets spread out over fewer and fewer people who still have jobs and undertakings who have not (yet) moved away and eventually the state has to pull the emergency brake and make painful cuts across the board of all state activities. This, however, further dampens the economic outlook and attractiveness of the country and does not bring back any jobs either.

In short, globalization moves different national systems into a much more direct competition and reduces the transaction costs in the broadest sense, i.e. the costs of shipping, import duties, etc. that used to serve as buffers between different national economies. In this way, globalization delivers the direct – and largely undistorted – competition of systems.

From a purely economic perspective, this development is welcome. Production factors should be put to use where they generate the highest revenue.[33] If computers can be produced at lower cost in Taiwan than in Germany, they should be produced in Taiwan and not in Germany any more. The resulting benefit should then be shared between the two countries in the form of lower computer prices in Germany and higher employment and wages in Taiwan.[34] In this way, humanity as a whole would be better off. However, not every human being would be better off as a result. Specifically, those natural and legal persons who used to be involved in computer production in Germany either have to find a new area of activity where they can be globally competitive or they have to accept (dramatic) income losses. The function of the state should be first and foremost to create excellent framework conditions via suitable policies on economy and education to enable individuals who lose their jobs in one industry to easily find work in another industry where they will be (more) competitive. Additionally, the state should provide financial aid for the transition.

An example of how not to allocate resources is provided by the coal mining sector in Germany. Coal and steel were the backbone of German industrialization in the 19th century and core industries for the reconstruction after World War II. In the meantime, the coal deposits that were relatively easily accessible and held high quality, i.e. low sulphur coal, have long been depleted. Nevertheless, Germany continues with the exploitation of its coal, in particular because a lot of jobs – still over 60,000 in the mines and another 140,000 in ancillary industries – in the respective regions depend on it. Many countries hang on to sunset industries for reasons of regional policy and to avoid or at least delay painful adjustments. The situation in Germany is particularly drastic, however.

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[33] *See*, in particular, M. E. Porter, The Competitive Advantage of Nations (1990).

[34] The theory that the wages and other cost factors eventually converge because demand will drive up wages and costs in the low cost country while declining employment will drive down wages and costs in the high cost country, cannot be verified empirically and has been largely given up, *see* L. A. Rivera-Batiz & M.-A. Oliva, International Trade – Theory, Strategies, and Evidence 92-93 (2003).

In order to be able to produce the coal at a price that is bearable for the consumers – mostly electric power plants – the sector is heavily subsidized. According to some estimates, the direct subsidies and indirect costs amount to at least 35 billion Euro per year.[35] In this way, every single coal miner costs the German tax payers between 70,000 and 80,000 Euro per year.[36] This far exceeds the salary of the miners. All of this might even be justifiable if Germany depended on domestic coal for its energy production. However, coal can be imported from as far away as the USA or Australia at a fraction of the cost of the production of coal in Germany.[37] Finally, the imported coal is much lower in sulphur and, therefore, more environmentally friendly.

This German insanity has been going on for decades now and an end is not in sight. At the same time, Germany has starved out its higher education sector. While 100 years ago the world went to Germany to study at its top universities, today there are only two German universities among the top 100 in the world – and none among the top 10 in Europe – while even the small neighbour Switzerland has four schools on the top 100 list.[38] This development could easily be reversed, if the government would finally phase out the coal subsidies and shift just a fourth or a third of the money over to the higher education sector.

What needs to be understood in the day and age of globalization is not so much that states should not pay long-term subsidies to sunset industries. This was a well known fact essentially since Adam Smith wrote his Wealth of Nations. The problem is not even so much that the economic model globalization brings with it is one of open and, therefore, tough global competition, in which any state can ill afford to make too many mistakes in its economic and social policies. The problem ultimately lies in the fact that the rules for trade in goods, services, and capital have been globalized, while other elements of the legal framework of international commercial activities have not. Although we cannot and should not impose the Western level of protection for labor, the environment, etc., on the developing and industrializing countries, certain minimum standards reflect universal values and should be universally applicable. However, exactly this has not been achieved so far. Traditional public international and national constitutional law reserves the regulation of so-called internal affairs to the respective states.[39] In practice this means that it is

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[35] *See* Bundesverband Erneuerbare Energie (BEE), http://www.energieverbraucher.de/de/Umwelt_und_Politik/Energie__und_Verbraucherpolitik/Deutschland/site__1035/.

[36] *See* H.-J. Selenz in Saar-Echo, 14 June 2005, available at http://www.saar-echo.de/de/art.php?a=23524. For an opposing view see the website of the regional government of Nordrhein-Westfalen at http://www.nrw-online.de/bergbau/argument.htm#finanzen_ba.

[37] *See* Selenz, *supra* note 36. *See also* http://www.cesifo-group.de/portal/page?_pageid=36,161420&_dad=portal&_schema=PORTAL&p_itemid=112164.

[38] The ranking is published annually in the Times Higher Education Supplement. The 2005 data are available at http://en.wikipedia.org/wiki/Times_Higher_Education_Supplement#Top_universities_overall_.28worldwide.29.

[39] This goes back to the doctrine of non-intervention in internal affairs of sovereign states first expressed in the treaty on the Peace of Westphalia in 1648 and nowadays enshrined in Article 2

up to each and every state to determine the level of protection it wants to afford to its environment and nature resources, the safeguards it wants to have for the workers in its factories, the protection it wants or does not want to provide for vulnerable groups in society, whether or not it will have some sort of minimum wage, the extent, if any, to which it wants to protect human rights and fundamental freedoms, and whether or not it will provide effective legal remedies for cases in which even its lower national standards have been violated. As a result, newly industrializing and other countries can compete for foreign investment not only with abundant natural resources and with cost-advantages based on genuine comparative advantages.[40] A potential location can be attractive for foreign investors not only if it offers better conditions in fair competition but also if it allows more ruthless exploitation of the workforce and/or environmental resources.

Unfortunately, the anti-globalization movement does not distinguish carefully what is fair and what is not and thereby hurts its own cause. If employees in India or China are willing to do comparable work for a fraction of Western wages, this is not bad per se but an expression of the labor market, i.e. a function of offer and demand in that country. Lower wages – and for that matter lower costs – in foreign countries are not unfair per se. The situation becomes problematic, however, when the workers in India or China are prevented from getting organized in labour unions and to fight – in their own country – for market-driven wages and working conditions. Finally, the situation becomes totally unacceptable if cost advantages of producers in certain countries are based on the exploitation of child labour, slave labour, or theft of somebody else's intellectual property.

The same applies in the area of environmental protection. As such, one cannot and should not object to the fact that grassland for cattle ranchers is abundant and, therefore, inexpensive in Argentina or that coal can be produced in Australia in open-pit mining at a fraction of the cost of the deep pits in Germany. To say it again, competition does not become unfair simply because the others are winning and/or favoured by nature. However, the situation is quite different if Mexican fishermen are (unnecessarily) drowning hundreds of thousands of dolphins in their tuna fishing nets[41] or when huge areas of rainforest in Brazil become victim to slash-and-burn methods to become

(4) of the UN Charter. For further information *see, for example*, A. Cassese, International Law (2001); or B. Simma (Ed.), The Charter of the United Nations – A Commentary (2002).

[40] The "discovery" of comparative advantages, which provide incentives for specialization and trade even between countries that at first glance would not seem to have any such incentives because everything can be done cheaper and better in one of them than in the other, goes back to David Ricardo. *See* D. Ricardo, Principles of Political Economy and Taxation (1817; reprinted Dover Publications 2004); *see also* S. Hollander, The Economics of David Ricardo (1979).

[41] According to estimates of the Trade and Environmental Database (TED), inadequate tuna fishing nets caused the drowning of up to 300.000 dolphins per year in the 1960s and 1970s (*see* http://www.american.edu/TED/TUNA.htm), and still as many as 133.000 died in 1986 (*see* http://www.maninnature.com/Fisheries/Tuna/tuna1a.html). Nowadays mortality rates are in the range of 2.000 to 5.000 per year (*ibid.*).

available for a few years of primitive agricultural use with rapidly declining fertility. Cost advantages should be earned by market-driven and honest means and not by market failure and abusive practices.

Unfortunately, world trade law is ill equipped to contain problems such as those outlined here. When it comes to purely internal activities, such as the destruction of the rainforest in favour of subsistence farming, there is simply no tradeable product against which sanctions could be imposed. However, even in the case of dolphin-unfriendly tuna, world trade law struggled for a long time to find an adequate solution. According to GATT and WTO law, a country is entitled to restrict the importation of a certain product only if and when that product itself is dangerous for the environment or the consumers in the importing country. On the one hand, as long as it respects the most favoured nation clause[42] and the principle of national treatment,[43] any country is entitled to demand that all imported automobiles are equipped with catalytic converters for the exhaust fumes. On the other hand, a country cannot impose trade restrictions simply because it does not approve of certain conditions of production in the country of origin of the goods. As a consequence, if a factory somewhere abroad does not treat its waste water and instead releases it uncleaned into a local river or lake, that is a serious environmental problem; however, it is subject only to the regulatory and administrative oversight in the respective country. The sovereignty of each state and the principle of non-intervention in internal affairs prevent other countries from prescribing specific production methods or any kind of domestic legislative or administrative standards merely because they are trading partners.

This traditional approach in international law is the more unsatisfactory the more a particular production method destroys assets of transboundary or even global importance. The dolphins are a good example because they were not Mexican dolphins or even dolphins in Mexican waters. The Mexican fishermen were operating in international waters, i.e. on the high seas, where each state

[42] The most favoured nation or MFN clause is enshrined in Article I of the GATT 1947. It requires that each contracting party of the GATT – and nowadays each member state of the WTO – treats all imports equally, regardless of their country of origin. Specifically, the importing country has to award to each trading partner the same treatment it grants to its "most favoured nation". For further analysis *see, for example*, J. H. Jackson, W. J. Davey, & A. O. Sykes, International Economic Relations, 4th ed. (2002); M. Trebilcock & R. Howse, The Regulation of International Trade, 2nd ed. (2005); J. H. H. Weiler (Ed.), The EU, the WTO and the NAFTA (2000).

[43] This principle is codified in Article III of the GATT 1947 and requires non-discriminatory treatment between foreign i.e. imported and domestic goods. As a result of both principles, an importing country has to submit all imported cars, regardless of their country of origin, as well as its domestically produced cars, to the same rules about environmental protection, consumer safety, etc. The claim that certain regulatory measures are designed to protect these kind of non-economic goals – and do not mainly serve to make import competition more difficult – is only credible if the country is equally concerned about pollution and safety risks caused by its domestic goods and not only about the risks caused by imported goods. For further reading *see* Jackson, Davey & Sykes, Trebilcock & Howse, and Weiler, all in the preceding note.

can and should have certain interests.[44] Similarly, toxic emissions from factories and other polluters do not respect national boundaries and often do not confine themselves to the country of origin.[45] Another example where outside intervention may be justifiable are serious and persistent violation of essential human rights. The problem is, however, where the line should be drawn. The concern that importing countries in the West use human rights, labour and environmental protection, and other seemingly benign arguments, to interfere more and more in the production methods and other internal affairs of the developing countries, with the ultimate and protectionist goal of preventing the latter from using their comparative advantages in the global marketplace, is by no means unrealistic or unfounded.

At the end, the answer cannot be an all or nothing approach. More creative solutions are required.

E. Motivators of Behaviour For and Against the Common Good – The Blame Game

Since globalization brought us worldwide ubiquitousness of information via the CNN Revolution and worldwide interdependence via the elimination of most barriers to and costs of international transactions, undertakings and public bodies that hardly knew of each other are suddenly competing head to head. This has far-reaching implications for decision-making mechanisms. A local gas station can be forced to lower its prices if another local gas station across the street does so first. If the former cannot survive with the reduced price because of its higher cost, it may be forced out of the market. This is nothing new and

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[44] The WTO redeemed itself eventually. After the establishment of the Dispute Settlement Body (DSB), a renewed quest for legitimacy led to a re-evaluation of the importing countries' rights to protect endangered animals on the high seas beginning with the *Shrimp-Turtle* case. *See, for example*, J. Scott, *On Kith and Kine (and Crustaceans): Trade and Environment in the EU and WTO*, *in* Weiler (Ed.), *supra* note 42, at 125-168. On the DSB *see*, in the same volume, at 35-70, R. Howse, *Adjudicative Legitimacy and Treaty Interpretation in International Trade Law: The Early Years of WTO*. *See also* A. E. Appleton, *Shrimp/Turtle: Untangling the Nets*, 2 (3) Journal of International Economic Law (JIEL) 47-496 (1999). For the subsequent case before the International Tribunal for the Law of the Sea *see* S. Marr, *The Southern Bluefin Tuna Cases: The Precautionary Approach and Conservation and Management of Fish Resources*, 11 (4) European Journal of International Law 815-831 (2000).

[45] For an important early international example *see* the two rulings of an Arbitral Tribunal in 1938 and 1941 in the *Trail Smelter Case*, involving emissions from a Canadian zinc smelter just North of the US border causing damage to farming and logging industries in the Columbia River Valley. *See* Government Printing Office (Ed.), Trail Smelter Arbitration Between the United States and Canada Under Convention of April 15, 1935 (1941). *See also* United Nations Reports of International Arbitral Awards, Vol. 3, at 1905 (1947); as well as 33 American Journal of International Law 182 (1939) and 35 American Journal of International Law 716 (1941). For further analysis *see* M. A. Drumbl, *Trail Smelter and the International Law Commission's Work on State Responsibility for Internationally Wrongful Acts and State Liability*, Washington & Lee Public Law Research Paper No. 03-06 (2003).

we have always accepted it as part of Western market economy, not least since the basic cost structure of the two gas stations – the cost of electricity and water, the wages and taxes they have to pay, etc. – have always been similar or the same. This was perceived as fair competition on a level playing field.

Today, a machine tool maker in Germany not only faces competition from other factories in Germany, France, Italy, and other parts of Western Europe. Competition from low cost countries in Central and Eastern Europe and Asia forces her to constantly trim production costs in order to survive. The first factor to be taken into consideration when looking at motivators of behaviour for and against the common good is, therefore, the naked fear of survival in the market place.

Government incentives and disincentives are the next factor, which needs to be examined in a differentiated way, however. First, different countries pursue at least in part different and sometimes opposing goals. Second, it is important to bear in mind that states are not monolithic in their decision-making but consist of multitudes of individuals who, in turn, may pursue different and sometimes opposing goals. The result is a cacophony of signals for undertakings and investors that does not always send a clear message. Furthermore, these undertakings and investors are increasingly self-confident and consider all kinds of positive and negative state incentives or sanctions subject to negotiation.

Finally, the most powerful factor is personal benefit, where the range begins with the satisfaction of essential needs and ends with ruthless and boundless greed. In this respect, the question is whether there needs to be an inevitable progression along this range, i.e. whether it is an inescapable part of human nature that we always want more. The life of individuals like Mother Teresa and many others like her would seem to testify that humans can indeed be content and even self-sacrificing. On the other hand, we do not need to go to the most corrupt and ruthless leaders in distant and underdeveloped countries of the world[46] to find excess that can only be called obscene.[47]

While we would need visionary leaders working towards less inequality and more social justice on a global scale, it seems that more and more people in the

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[46] The list of the world's most corrupt individuals who have embezzled the largest amounts of money is led by Mohamed Suharto, former President of Indonesia (about $30-35 billion), Ferdinand Marcos, former President of the Philippines ($5-10 billion), and Mobutu Sese Seko, former President of Zaire ($5 billion), see http://www.infoplease.com/ipa/A0921295.html (quoting Transparency International Global Corruption Report 2004). What remains a mystery is why anybody would crave personal wealth in excess of a couple of hundred million dollars, amounts that arguably nobody could conceivably spend in a lifetime.

An example of a very different kind is William ("Bill") Henry Gates, the wealthiest man in the world, who not only earned his wealth in a lawful way but is nowadays giving more than 90% of his money away for charitable causes.

[47] To give but one example of many, Lee R. Raymond, the former chairman and chief executive of Exxon Mobile, during his eleven years at the helm of the world's largest oil corporation, received an average compensation of $144,573 per day, *see* New York Times, 15 April 2006, at A1 and B4. At the same time, more than 1.2 billion people around the world have to survive on less than $1 per day.

wealthy industrialized countries, with our politicians in the lead, are taking to fight tooth and nail for the preservation of a presumed birthright to affluence and ever greater personal wealth in spite of ever more competition for a global pie that is shrinking in some areas and growing slowly in others but in any case not growing as fast as the number of people that want to share in it. In the resulting distributive battles, individual success or failure is not determined in fair competition on a level playing field. While we saw a period of genuine quest for social justice, inclusiveness and meritocratic selection in Western democracies during the second half of the 20th century, culminating in the 1980s and 90s, there has been a turnaround since.[48] Success in the battle nowadays depends again – and maybe more than ever – on factors that have little or nothing to do with personal effort and achievement, primarily factors such as capital and income derived from capital – rather than work. What we are witnessing since the end of the Cold War is not so much the victory of Western democracy and market economy over socialism or communism. What we are witnessing is the victory of the American version of capitalism over all other systems.

Using the examples of environmental protection and the rights of employees, it shall now be illustrated which actors tend to pursue goals in line with the common good and which tend not to.[49] Among other things it will be shown that globalization does not (necessarily) pit the developed North versus the less developed South and is not just another word for North-South Conflict.[50]

As has been mentioned, pursuit of the common good is usually more expensive than pursuit of self-interest, at least in the short term. The fact that the cost-benefit analysis may look entirely different in the long term is, unfortunately, of little relevance in our fast paced world. Undertakings are assessed by the stock market on the basis of their quarterly reports. Politicians rarely think beyond the next elections. Therefore, investments that will bear fruit only after years, let alone decades, are not attractive to our leaders in the private or the public sector, no matter how important the return is going to be one day – and be it only in the prevention of harm or damage.

The costs associated with pursuit of the common good have to be borne first and foremost by the actors themselves, mainly the undertakings and the local,

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[48] In 1990, the average American CEO earned approximately 107 times more than the average ordinary worker in his or her company. By the year 2000, this ratio stood at 525 times the income of the average worker. *See* New York Times Magazine, 16 April 2006, at 11 (quoting surveys from the Institute for Policy Studies and United for a Fair Economy using data from Business Week and Bureau of Labor Statistics). By contrast, European CEO pay packages are still almost modest in comparison. However, the trend is clearly toward a globalization of the American model. *See* G. Fabrikant, *US-Style Pay Deals for Chiefs Become All the Rage in Europe*, New York Times, 16 June 2006, at A1 and C4.

[49] For more detailed analysis *see* F. Emmert, *Labor, Environmental Standards, and World Trade Law*, 10 (1) University of California Davis Journal of International Law and Policy 75-167 (2003).

[50] On the latter topic *see, for example*, R. Reuveny & W. R. Thompson, *World Economic Growth, Northern Antagonism, and North-south Conflict*, 46 (4) Journal of Conflict Resolution 484-514 (2002).

regional, and national public bodies. These costs are then passed on to the customers in the form of higher prices and to the citizens in the form of higher taxes. The question how much pursuit of the common good and undertaking in a Western industrialized country can afford depends on how much of the resulting costs it can pass on via higher prices. The tougher the competition in the respective industry, the less of the luxury of common good will be pursued beyond the statutory minimum. Once the competitive pressure becomes too much to bear, i.e. once the enterprise can no longer cover the costs imposed on it by government regulation and market forces at its seat via competitive prices that are accepted by the market, there are few choices other than to relocate to a lower cost location or to exit from the respective product market altogether.[51]

Of course, private enterprises are not primarily pursuing the common good; they are pursuing the maximization of their profits for the benefits of their shareholders. That is why undertakings coming under pressure from low cost competition cannot wait until the relocation of their production and/or the relocation of their taxable revenue to low cost and low tax jurisdictions is becoming inevitable. If there are structural long-term changes in the competitive situation, enterprises will seek to protect their profitability by acting early, unless there are compelling reasons not to do so. As a consequence, a number of negative incentives for pursuit of the common good can be identified: a) gross differences in the cost of production in different locations; b) the ease of shifting production and/or taxable revenue to a low cost country; and c) the first-mover effect, if one of several competitors in a high-cost country makes the move to a low-cost country and, thereby, increases the competitive pressure even more.

By waving the card of job creation or job retention, undertakings are increasingly trying to play out one country against another and to accelerate the race to the bottom. Instead of playing along and reducing their standards in order to reduce costs, the respective countries should become more creative in order to protect the level of social and environmental protection they have already achieved, for example by collaborating with other countries and by agreeing on minimum standards that no country will go below. However, this would require that all countries had an interest in maintaining their present standards, let alone in seeking further improvement of existing standards. In particular in developing countries this is often not the case, unfortunately. These countries are usually characterized by extreme differences in income and wealth. While the large majority of the population struggles to survive at or below the margin of subsistence, there is a small elite, some 5% of the population or less, that controls the vast majority of political and economic

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[51] If a company exits from a specific market, for example the market of personal computers, that does not necessarily mean the end of the undertaking as such. In most cases, the undertaking will explore other markets, i.e. other products, where it can be more competitive. Discontinuation of all economic activities is normally considered only if other markets are not promising or if the undertaking no longer has the resources to successfully develop other products.

power. In between there may or may not be a marginal middle class, which in turn is a good measure for the state of development of the respective country.

The tiny elite in these developing countries regularly consists of businessmen and politicians with family and other ties. The business leaders – and owners of the bulk of all economic assets – are either active in politics themselves or maintain the politicians like a zoo where the inhabitants have to be fed but, in return, are quite domesticated. Similar to the early age of industrial revolution in Europe, the business leaders profit from a combination of low standards of protection for workers and environmental assets, as well as high import duties and multiple non-tariff barriers that keep out the international competition. In addition, there are usually neither strong and independent trade unions nor truly democratic elections in their way.

The bottom line is a coalition against pursuit of the common good and for maximization of self-interest. It consists of the multinational enterprises located in the industrialized world and the leading family clans in the newly industrializing and developing countries. For different reasons, neither of these groups is particularly interested in high levels of social services, workers' rights, environmental protection, public health care, public education, etc. Who opposes these forces? In principle, it should be the goal of all democratically elected governments to pursue the common good, i.e. the greatest possible benefit for the greatest possible number of individuals. After all, this should maximize their chances for re-election. However, there are two problems: First, globalization has reduced the instruments available to the governments around the world, including the governments of the economic superpowers USA, EU, and Japan. Second, it is more and more apparent that even the governments of democratic Western states are not all that vigorous when it comes to preventing sliding standards at home and unfair competition from abroad. Even the worst exploitation of employees and the coarsest environmental sins in the developing countries receive only sporadic attention, in spite of the fact that many promising proposals have been discussed in academic circles and among NGO representatives for years. Sometimes one wonders whether this could have something to do with the fact that Western multinationals, who continue to need Western markets for their goods even after they have shifted labour intensive production to low-cost countries, also contribute the largest amounts to Western political parties and employ the best lobbyists?[52] *Honi soit qui mal y pense!*

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[52] Before China entered the WTO, the annual discussion whether or not to continue unilateral MFN treatment for China in spite of problems with human rights was a regular part of the American political ritual. We can be certain that none of the Chinese leaders ever had sleepless nights over this ritual. With billions of dollars of investment by American companies in China, almost exclusively for the supply of inexpensive goods to the American markets, the lobbyists of these very American companies made sure that Washington never went beyond rhetoric on the issue.

F. "The Market Takes Care of Itself" or Yearning for the Strong State?

The Chicago School of economists claims that the market is better than any other mechanism or player when it comes to solving problems such as the ones illustrated above, at least in the long term. That may be true. However, there are several problems with such an approach. First, we must ask ourselves whether we have enough time to wait for the self-healing powers of the market. When it comes to environmental protection, this is objectively in doubt.[53] When it comes to the protection of workers rights and human rights – including the prevention of child labour, trafficking of women, etc. – the "long term" is simply cynical.

Second, there are quite a few problems that we do not leave to the market to resolve even in the national context. Although admittedly to a different degree, all Western states are intervening in the market for the protection of consumers, environmental assets, workers' rights, and other values that form part of the common good. Another example for such intervention is antitrust law. By contrast, there are to date no effective mechanisms for the protection of these very same assets in the international context. Instead, Manchester capitalism rules.

What would the future look like if indeed we continued to allow the free forces of the market to control the way globalization changes the world? The market price for unskilled workers in China will only go up once there is a shortage of such workers. That could still take a while in light of the fact that there are some 100 million people unemployed or underemployed in China. Furthermore, some enterprises facing rising costs in the coastal regions in China are already relocating to Vietnam, Cambodia, and other countries in South-East Asia where they find even cheaper labour. The normal market mechanisms – increased demand driving up wages – are not going to work in such an environment. For the foreseeable future, therefore, the large multinational enterprises have the cards stacked in their favour, not least since the activities of free and independent labour unions are restricted in these countries. Of course, in the long term, the wages to be paid for unskilled or poorly skilled labour are still going to become similar, regardless of location. The problem is that the future level of such wages will not be the Western level but closer to the Chinese level of today. Therefore, the relocation to China and other parts of South-East Asia of production facilities for goods which are intended for Western markets is more likely to come to an end because Western consumers run out of money to buy these goods for lack of well-paying jobs.

[53] The example of global warming can illustrate the point. From what we can tell, greenhouse gases survive many years and even decades in the higher layers of the atmosphere. Therefore, even if we would discontinue the emission of any such gases as of today, the impact of past emissions would continue to worsen the climate for many years. With the general acceleration of life and ever shorter product life cycles, the market may have become just another player who is hardly able to keep up.

Similarly, the market does not work with regard to environmental protection. Damage to the environment is *the* classic externality that will be taken into account by an undertaking in its cost calculation only if that is mandated by law or if the damage gets so large and extensive that it impairs the production or sale of the respective goods or services. In the international context, Western multinationals can ignore the damage they[54] are doing to the environment in the developing world until these countries introduce meaningful legislation to prevent such damage *and* efficient and workable enforcement mechanisms. Alternatively, the damages can be ignored until they become so large and extensive that so many people in the developing countries become so ill that they are unable to work in the factories or that the pollution reaches the West and impairs our financial capacity to buy the respective goods or services or at least spoils our appetite to do so. In the medium term, global warming and climate change may just do the latter. In the short term it seems, Western multinationals – and their suppliers – only have to be concerned about the first alternative. However, stricter laws, let alone effective enforcement of such laws in developing countries can usually be prevented or at least delayed quite conveniently by donations to the relevant political parties and their leaders.

In conclusion, it is argued that globalization has been one-sided. What we have globalized are the trading rules and opportunities for private enterprise. What we have failed to globalize are the laws and other mechanisms to protect the common good, i.e. assets that are insufficiently valued by the market. This development on the international scale resembles the early phases of industrialization when Manchester capitalism ruled on the national level. Only today it is American-style capitalism and the level is universal. Back in the 19th and 20th century, we introduced a broad range of protective legislation and supervisory mechanisms to secure workers rights, environmental and consumer protection, high quality health care and public education and many other aspects of what we call today our Western welfare states and – ultimately – Western civilization. This was the heyday of the nation state. Only strong states with large and powerful governments were able to deliver these goods for the common good. In the face of globalization, however, it seems that our nation states have become too small and powerless to provide for us the way they used to. Since there is no strong government on the global scale, one possible conclusion to the conundrum would be to demand a strong global government, with democratic structures, a powerful administration, independent judicial oversight, and effective enforcement mechanisms. Would this be the (only) answer to the challenges of globalization or would it just be new wine in old wineskins? The next and final chapter will discuss alternatives.

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[54] Western multinationals will be quick to point out that their operations in China and other developing countries are complying with all local laws and often exceed the standards for the protection of workers and the environment mandated by these countries. However, what is the real gain if Nike discontinues collaboration with a sweatshop in South-East Asia (after protests by its Western customers) and Wal-Mart steps in and now distributes the same shoes in the US under a different trademark?

G. Enforceable Mechanisms for the Protection of the Common Good Beyond National Borders – The Reunification of Common Good and Globalization

If the globalization of the market via the liberalization and facilitation of trade and communication has brought about the current dilemma with regard to the common good, there are logically two ways to deal with the problem. First of all, we could seek to reverse globalization by restricting the free flow of goods and services, i.e. by reintroducing trade barriers. This could be done by eliminating the WTO or by giving the nation states new rights within WTO law to restrict imports by introducing higher tariffs and non-tariff barriers to trade. This would be the re-nationalization of trade law to bring it back to the level of the nation state, where the protection of the common good has always remained. Production of many goods in low-cost countries would not be worthwhile if these goods could not be sold in Western markets because of barriers to trade and could not be sold in significant numbers in developing countries either because of lack of purchasing power. In this way, re-introduction of barriers to trade would eliminate a crucial element of globalization and would re-empower the nation states.

However, this solution is sub-optimal in economic terms. The allocation of resources would once again be determined more on the basis of political choices than market forces. Global efficiency gains based on efficient sharing of labour and generating overall benefits for humanity, would be lost. While the one or the other job in the Western industrialized world would be recovered, this would happen at the expense of many jobs in the developing world. These countries would experience disinvestment, capital flight, decreasing technology transfers and other measures hampering their development, pushing them back into poverty and potentially creating political unrest and migratory pressures towards Western countries. Even in Western countries, the overall balance would be negative because of rising prices for a broad range of goods and services that could no longer be produced with cheap labour from developing countries and declining corporate profits. Fortunately, such a scenario is unlikely to happen because of the vested interests of many large and medium sized enterprises and investors who will do their share to prevent such a turning back of the clock.

The second alternative would go in the same direction as globalization itself. Instead of reversing the liberalization and facilitation of trade and communication to bring it back to the national level, this would involve the globalization of the rules and mechanisms for the protection of the common good. If the nation states are no longer in charge of trade and, therefore, no longer able to secure the common good, the protection of the common good should also move to the international level to catch up with the liberalization of the economy.

In order to achieve such an internationalization, there is first a need to create normative instruments, i.e. we need protective laws and regulations with global reach, and then there is a need to create executive instruments, i.e. we also need efficient mechanisms for the enforcement of the new laws and regulations, as well as judicial oversight. Of course, there are strictly speaking no laws and regulations on the international level because sovereign states do not recognize and are not subject to a global legislature. By contrast, binding international rules are created in consensual procedures, mainly via international agreements. Actually there is no lack of such international agreements. Already, we have dozens of agreements for the protection of human rights, workers rights, environmental assets, etc., many of which offer quite decent standards of protection.[55] A good number of these agreements has even been ratified, i.e. accepted as binding, by fairly many countries around the world. Of course, improvements could and should be made in details but the problem of protecting the common good on the international level is not first and foremost a problem of insufficient legislative instruments.

Rather, the problem is one of enforcement of the norms and standards and it has multiple facets. By contrast to enforcement of domestic law in the national context, international law does not provide for international courts with jurisdiction to hear all kinds of cases brought by all kinds of actors for the enforcement of all kinds of agreements ratified by all kinds of states.[56] There is generally no standing for natural and legal persons before international courts; at the same time, national courts are poorly suited for the enforcement of

[55] In addition to the well known instruments for the international protection of human rights (beginning with the Universal Declaration of Human Rights (The Universal Declaration was adopted by General Assembly Resolution 217 A (III) of 10 December 1948. It is available at http://www.un. org/Overview/rights.html, also *published in* I. Brownlie & G. Goodwin-Gil (Eds.), Basic Documents on Human Rights, 4th ed. (2002), at 18-23), the International Covenant for Civil and Political Rights (ICCPR) (999 UNTS 172-346), and the International Covenant for Economic, Social and Cultural Rights (ICESCR) (903 UNTS 3-106). The two Covenants are also *published in* I. Brownlie & G. Goodwin-Gil (Eds.), Basic Documents on Human Rights, 4th ed. (2002), at 172-181 and 182-198 respectively.) as well as the regional protection systems (Inter-American, European, etc.), there are many ILO conventions concerning international labour law and related issues (available at http://www.ilo.org/ilolex/english/convdisp1.htm), and many international agreements for the protection of the environment, for example the Washington Convention on International Trade in Endangered Species (CITES), or the 1989 Basel Convention on the Control of Transboundary Movement of Hazardous Waste and their Disposal (available at http://www.basel.int/text/documents.html). *See also* the OECD Guidelines for Multinational Enterprises, which contain only non-binding standards, however.

[56] Although the International Court of Justice in the Hague is, in principle, available for the settlement of all kinds of disputes under international law, there are a number of important limitations. First, states are subject to the compulsory jurisdiction of the ICJ only if they have so accepted (*see* Article 36 (2) of the Statute). Furthermore, only states can bring claims or have claims brought against them; in particular natural and legal persons have no standing before the ICJ (*see* Article 34 of the Statute). Finally, taking another state to the ICJ is considered an unfriendly act and will be done only in politically opportune cases.

international law because they may not have jurisdiction of the defendant(s) and/or they do not recognize the direct effect and direct applicability of the respective rules in the domestic legal order. Furthermore, there is no prosecutor or other entity that could bring cases based on international law on behalf of individuals before national or international courts or tribunals.

International law works quite differently from national law in these respects. When a state ratifies an international agreement this merely creates an obligation for the state to implement the agreement into its national legal order and to ensure its observation by whatever means it chooses. The implementation is by no means automatic. Usually it requires at the very least the adoption of commensurate legislation by the national parliament. Frequently, it may also require the creation of supervisory procedures or authorities and/or the creation of enforceable rights and sanctions. Thus, a country takes political decisions at every junction in the road, first about the signing and ratification of the agreement, then about the whether and how of national implementation, and finally about the means of enforcement, if any. These political decisions are not in any way connected or conditional upon each other. Therefore, a state can signal goodwill and compliance on the international level by supporting and even ratifying an international agreement while at the same time avoiding any real consequences by remaining totally inactive on the national level or by casting the national implementation into vague and unenforceable language. In particular when it comes to the protection of human rights, workers rights, and environmental standards, this practice is widespread.

Sooner or later somebody will, of course, discover that the state in question is not meeting its international obligations. However, the natural and legal persons who are concerned by this violation of international law can do very little about it. They have no standing before international courts and if they address themselves to the national courts they will most likely hear that the international agreement as such is not self-executing or directly applicable, hence unable to directly create rights and obligations for and against individuals that can be enforced by the national courts, and that the national implementing legislation is either missing or too vague and cannot be enforced either.

Solely the other contracting parties to an international agreement, i.e. the other states that have signed and ratified that agreement, have certain means to address violations of the principles enshrined therein. However, these other states are usually not directly concerned, for example if the former state does not enforce its minimum wage provisions effectively or does not protect its endangered species adequately. Furthermore, the other states may themselves be struggling with the full application and enforcement of the rules under the agreement. And even if one or more of the other states adopt a political decision to take up a matter against the former state, their possibilities are quite limited.

The classic instruments provided by public international law for the enforcement of rights and obligations of states always begin with negotiations. If such negotiations are unable to resolve the matter, there are certain diplomatic means: Sending a diplomatic note or letter of complaint, summoning the ambassador of the respective country, suspension or even termination of diplomatic relations, etc. Then there are retorsions, i.e. certain lawful but unfriendly acts such as the termination of an agreement on friendship and navigation, or of a beneficial trade agreement, or of development aid. At the next level, there are acts that would normally not be lawful in and of themselves but that may be taken in response to a breach of the law by another state. These measures are called reprisals and include, for example, the suspension of mutual obligations under the agreement in question according to the rule of tit for tat. Trade embargoes are among the more drastic measure of this kind. Finally, at the end of the scale, there are various forms of use of force, in particular humanitarian intervention and war. Proceedings before international courts or arbitral tribunals are part of this instrumentarium only to the extent they are foreseen in the respective agreement(s).

As can be seen quite easily, these classic instruments of enforcement of rights and obligations are designed and suitable only for the enforcement of classic rights under international law, such as the mutual treatment of diplomats or the enforcement of general trade concessions. At least when a dispute concerns countries of comparable size and power, these instruments can usually bring about a pragmatic resolution of the underlying disputes and re-establish respect for the mutually accepted obligations. This is already less the case if a dispute involves countries of very different size and power. To give but one example, trade sanctions of New Zealand against the EU will necessarily be less impressive than the other way around. Finally, the classic instruments provided by international law are largely useless when it comes to the protection of the common good.

Ever since the prohibition of the use of force has been universally recognized, trade sanctions are pretty much the most powerful means to compel another country to abide by its international obligations. Trade sanctions have the advantage that they are not only hitting the government of the respective country; they are directly affecting commercial interests in that country and thereby create domestic pressure on the government to fix the problem. However, as has been outlined above, trade sanctions are limited by WTO law to the cases where the problem travels with the imported goods or services. Punitive tariffs and other forms of import restrictions must not be used to put pressure on another country to bring its internal affairs into compliance with international norms and standards. At least theoretically, that could be changed in the future!

As early as 1994, the GATT and WTO rules were supplemented with the TRIPS Agreement, pursuant to which a country can be punished with trade sanctions if it violates international standards for the protection of intellectual property or if it does not enforce these standards effectively against violations by private parties.[57] A similar bridge to trade law has been discussed for years

[57] The Agreement on Trade Related Intellectual Property Rights (TRIPS) was negotiated during the Uruguay Round (1986-1994) as part of the package constituting the WTO Agreements. It belongs to the core agreements that have to be accepted by all WTO member states. For further information go to http://www.wto.org.

for the protection of workers' rights and for environmental protection, since both of these areas also have direct impact on production costs and – consequently – the fair or unfair competition between producers in different countries.[58]

The problem with the construction of such a link lies in the fact that it can only be done if all members of the WTO agree and, at least at present, the developing countries are strongly opposed to the idea. In addition to the abovementioned concern that such a link would open the door to protectionist measures that have more to do with the inability of sunset industries in the West to compete with low cost producers in the newly industrializing countries than with unfair standards in the latter, there are two main issues to be resolved: First, there is no consensus about the standards that could or should be respected universally. Which level of protection of the common good can be expected from developing and newly industrializing countries? Is it not precisely part of the development process that *luxuries* such as paid holidays or unemployment insurance become available only when a society is generally able to satisfy more basic needs for the overwhelming majority of its population? Many voices from the Western industrialized countries, in particular from the camp of labour unions, have rather hurt their own cause in this respect by demanding equivalent levels of protection and wages in developing countries before agreeing to open trade regimes.

Second, and this is probably the most significant roadblock hampering the Doha Round of WTO negotiations and any other efforts at connecting labour and environmental standards to trading rights, it has become very obvious that 60 years of GATT and WTO law have benefited the Western industrialized countries much more than they have benefited the developing and newly industrializing countries. Therefore, the latter are not at all inclined to help the former to ensure that this trend will continue in future. Countries such as India, Brazil and Argentina have become very vocal about the fact that the promised benefits of free trade have yet to benefit them. Admittedly, foreign direct investment has created jobs in these countries. However, these jobs are often for poorly qualified and low income workers and they sometimes disappear faster than they came, in reaction to developments on Wall Street or if another country offers even lower cost conditions. Furthermore, the phenomenal gains of the international investors are usually not filed with the tax authorities in the host countries either. Finally, even under current trade law, the industrialized countries have retained certain powers or are simply maintaining certain trade barriers in more or less clear contravention to the law to protect sunset industries such as textiles and footwear. These are precisely the sectors where the developing countries have the largest comparative advantages based on low labour cost and where they could earn the private profits and tax revenue that would enable them to intrinsically accelerate their own development. Last but

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[58] *See, for example*, K. Anderson, *The Intrusion of Environmental and Labor Standards into Trade Policy*, *in* W. Martin & A. Winters (Eds.), The Uruguay Round and the Developing Countries (1996); D. C. Esty, Greening the GATT: Trade, Environment and the Future (1994).

not least, before the second and third world will sign on to another globalization agreement, this time for the creation of internationally applicable and enforceable standards for the protection of workers and environmental assets, they are demanding that the gigantic distortions of agricultural markets caused by EU and US subsidies must be terminated[59] and that Western markets must be opened to agricultural products from the rest of the world. While these demands may sound utopian given the strength of the agricultural lobby in the EU and in the US,[60] there is a lot to be said for them from the point of view of economic analysis, law and development, and simple justice and equity. Indeed, why should global liberalization and facilitation of trade in goods and services be focussed on those goods and services where the Western countries have the advantage?

H. Conclusions – Closing the Circle or Squaring It?

Globalization has so far covered primarily trade in goods and services. It has as yet failed to provide international standards for the protection of non-

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[59] The total amount of farm subsidies paid by OECD member states in 2001 was 311 billion USD, or 850 million USD per day according to X. Diao, E. Diaz-Bonilla & S. Robinson, *How Much Does it Hurt? The Impact of Agricultural Trade Policies on Developing Countries*, International Food Policy Research Institute (2003), at 2. This compares to approximately 116 billion USD in total "Official Development Finance" (ODF) paid by the richer to the poorer countries; see data compiled by nationmaster.com on the basis of CIA World Factbook 2002, available at http://www.nationmaster. com/graph-T/eco_eco_aid_rec. The OECD itself gives a total figure of 235 billion USD for the farm subsidies paid by its member countries in 2002, *see* OECD (Ed.), OECD Agricultural Outlook 2003-2008 (2003). The difference does not mean that the subsidies have gone down substantially between 2001 and 2002 but that the two reports use different calculation methods and the first one includes more indirect payments. Oxfam estimates that the level of agricultural subsidies paid by all Northern governments together has reached 1 billion US$ per day in 2003, *see* Oxfam (Ed.), *Running into the Sand – Why Failure at the Cancun Trade Talks Threatens the World's Poorest People*, Briefing Paper No. 53 (2003), at 3.

[60] The fact that the influence of the farm lobby is disproportionate can be demonstrated when comparing the number of farmer's votes in elections and their contribution to the national GDP to the amount of financial resources and favorable legislation devoted to the farmers. While they represent only 0.8% of the population (full-time and part-time farmers combined), provide only 3.2% of all jobs and generate only 1.6% of GDP in the USA, they receive some US$20 billion in direct subsidies per year, more than any other industry or sector of the economy (these figures are calculations of the author on the basis of statistics provided by the US Department of Agriculture, the US Department of Labor Bureau of Labor Statistics, the US Census Bureau, the Environmental Working Group, the Cato Institute, and the Heritage Foundation). According to one author, the combined cost of direct farm subsidies and loans, conservation payments, price supports, and crop insurance over a decade, beginning in 2002, will amount to US$190 billion. To this figure, a total cost of US$271 billion in inflated food prices has to be added, bringing the total cost of the current US farm policy to US$461 billion over ten years, or US$4,377 per household in America. *See* B.M. Riedl, *The Cost of America's Farm Subsidy Binge: An Average of $1 Million Per Farm,* available on the website of the Heritage Foundation at http://www.heritage. org/Research/Agriculture/BG1510.cfm.

commercial assets. This asymmetry is endangering the common good both in the developing and newly industrialized countries, that are racing each other to the bottom in their quest to attract foreign direct investment and jobs, as well as in the industrialized countries, that are more and more losing jobs and tax revenue and, therefore, the resources necessary to maintain the level of protection for the common good we have become used to and consider part of our Western civilization. The main beneficiaries have been the multinational enterprises that are more and more able to avoid national laws and taxes. Other beneficiaries include China and India, where millions of people have found work, have escaped poverty and are slowly growing into a veritable middle class. Finally, we all have benefitted via an ever greater choice of goods and services at our disposal at relatively modest prices.

The challenge for the future will be to preserve as many of the benefits of globalization while at the same time eliminating as many of the detriments as possible. Since it would be foolish to try to turn back the clock and to abolish globalization, the way forward must be in the form of more globalization and specifically globalization of the standards and enforcement mechanisms necessary to preserve the common good.[61] This will again not happen without leaving behind winners and losers. On the one hand, the developing countries have to be persuaded to agree to minimum standards for the protection of workers' rights and environmental assets and to tie the observation of these standards in law and in fact to trading rights. On the other hand, the agricultural subsidies and other protectionist measures maintained by the Western industrialized countries have to be phased out or at least down. The common good in all countries would be the main beneficiary of these reforms. Among the losers would be the large, quasi industrial farmers in the West, as well as some small family farmers that survive only because of the current subsidies. Some food products would become more expensive in the shops and some imported goods as well. However, this would also create more and better jobs both in the developed and the developing world and provide an opportunity to phase out the industrialized agricultural economy in favour of organic farming and healthier food. Furthermore, an end to all the agricultural subsidies would free up significant funds that could be better used for debt reduction and investment into the future, in particular in education.

At the same time, tax evasion needs to be combated more effectively since all of the abovementioned measures will not suffice for the protection of the common good if the states are unable to collect enough revenue to finance it. This means that the rules about who and what is subject to taxation also need to be globalized and international minimum standards for transparency and cooperation of tax authorities need to be developed and enforced for and against all countries. Countries like Switzerland have been arguing against stricter rules

[61] Many good ideas can be found in P. J. Harvey, T. Collingsworth & B. Athreya, Developing Effective Mechanisms for Implementing Labor Rights in the Global Economy (1998); Oxfam (Ed.), Harnessing Trade for Development (2001); and Oxfam (Ed.), Rigged Rules and Double Standards – Trade, Globalization, and the Fight Against Poverty (2002).

against international tax evasion for years. A key argument being made is the problem that stricter rules in one jurisdiction will merely cause the money to migrate to the next tax haven. The OECD has been putting pressure on Caribbean and other tax havens for years but the results are modest at best. Again, the problem lies in the fact that tax oasis like the Turks & Caicos Islands are sovereign states and cannot be told by other states to modify their domestic laws on banking and corporations. Even trade sanctions would be of little use in this respect because many of the worst offenders in this area are micro-states with little or nothing to trade who have only become wealthy in recent times precisely by offering themselves as havens for tax evading individuals and companies. Still, the problem could be resolved quite easily if there was a real will to do so. Just one look at the banks and the agencies that help with the establishment of corporations and management of their assets in these off-shore jurisdictions reveals that the brand names are not at all unknown. For the most part, these institutions are daughter companies of large and well-known Western financial institutions and financial service providers. Barclays Bank, Standard Bank and other British institutions are particularly well established and it is generally quite fascinating how the British are holding a sheltering hand over a multitude of tax havens around the British isles and in the Caribbean. It must be a lucrative thing to do for the British government and as long as the OECD and the rest of the world are beating the Swiss and others, why would they give it up? And this is precisely where the key to the resolution of the problem can be found. Even if the West cannot (easily) regulate corporate and tax laws in sovereign island states, it can certainly regulate what it's own financial institutions are doing around the world, even if they do it via more or less independent subsidiaries. After all, where are the wealthy tycoons from Russia, and the dictators from Africa and elsewhere, who want to entrust their hard stolen riches to some no-name bank from some banana republic? Effective regulation and enforcement against all Western banks would require a consensus of at least all OECD members, however.

The common good is under fire. It seems that globalization is delivering the ultimate victory to Manchester capitalism. The answer to the problem, however, is not less but more globalization. What we need is the establishment of adequate minimum standards for all countries and the effective enforcement in all countries, respectively against them, if necessary. In order to accomplish this, the developed and the developing countries need to realize that they are ultimately sitting in the same boat when it comes to the common good. That, in turn, requires that a number of resistances are overcome that have so far proven extremely resilient. Should we prove unable to overcome these forces, we will continue to witness the common good going down the slippery slope of unfinished globalization. As a consequence, the Western welfare state, which is the very core of our Western civilization and much coveted by the rest of the world, will turn from an eminently exportable idea into an endangered species.