

# Introduction

## THE NEW MULTILATERALISM

1. In the new multilateralism, people are at the centre of a global project for peaceful regulated interdependence. This means that state sovereignty may be *limited* and *shared* in the name of human well being. Single nation-states face challenges that transcend their policy-making and executive capacities. Preserving the environment and the oceans, combating international terrorism, illegal arms and drug trafficking, dealing with refugee flows and mass migration, overcoming the vicious cycle of poverty, and coping with humanitarian disasters - all these are problems that cannot be handled by single states. Sharing responsibility is essential. There are many signs of a limitation on sovereignty or sovereignty-sharing in the international arena today.

### *Global Trade Regulation*

2. Global trade flows are increasingly governed by rules that limit sovereignty and require a constant process of multilateral negotiation. The WTO has become the frame of reference for global trade regulation. It was created and is driven forward by the need to negotiate complex global economic interdependence. The WTO regulates almost 90% of world trade and has been notified of 120 regional agreements. Understanding agreements (which cover over 400 pages of legal texts and 22,000 pages of national liberalisation timetables) is not an option, as noted in a WTO report: it is a necessity for effective competition in the global market. Such is the pull of the WTO that even the Chinese authorities wish to accede to the organisation,

opening up the prospect for future democratisation and, with it, possibly jeopardising their political stranglehold over Chinese society.

### *Human Rights*

3. Human rights are to the political realm what trade is in the economic realm. They have been the main generators of challenges to traditional conceptions of sovereignty. They are revolutionising the way in which we view representation, citizenship and the status of individuals in international society. They establish a form of conditionality that is not as yet as stringent but is similar to that enveloping trade relations. A nascent universal jurisdiction can be observed in the fact that it is considered legitimate for the international community to intervene to establish peace (in order to avoid human rights violations), or to seek justice (and thus redress violations that have already occurred).

### *International Tribunals*

4. The attempt to bring human rights crimes to justice in international courts in the 1990s for the first time since 1945 reveals the importance attached to the rights of individuals above and beyond their membership of a sovereign community. The International Criminal Tribunals for the Former Yugoslavia (ICTFY) and Rwanda (ICTR) indicate a post-Cold War linkage between peace and stability, and the desire to combat impunity. Both courts gave gained custody over, tried and condemned high ranking official for genocide and other crimes against humanity. More recently, the UN has helped to establish, with the Cambodian government, a mixed national-international tribunal to try Khmer Rouge, and in 2000 the Security Council established a similar judicial mechanism to prosecute human rights criminals in Sierra Leone. These experiences, particularly the jurisprudence of the Ad Hoc Tribunals is providing a rich learning experience for the future ICC.

### *The International Criminal Court*

5. The 1997 Treaty of Rome to establish the ICC is perhaps the clearest indicator that the concern of the international community with gross violations is not *ad hoc* or selective, but a permanent one. The Preparatory Commission for the ICC, which drafted the Rules of Procedure and Evidence and Elements of Crimes

in 1999-2000, completed its work in June 2000. Despite strong resistance by some countries and the political compromises contained within the Rules, these sustain the principle that the chambers of the court maintain ultimate control over the conduct of proceedings.

### *The Pinochet Precedent*

6. The Pinochet case also boosted the notion of universal jurisdiction, namely that in the absence of a working ICC, the courts of any country can legitimately try the subject of any other country for crimes against humanity and other gross human rights violations. Although the general was returned to Santiago in March 2000 and will not be judged in Chile, for humanitarian and health reasons, the impact of this and other cases like it cannot be underestimated. The affirmation of extraterritorial jurisdiction against arguments of sovereignty, the denial of immunity to a former head of state, and the acceptance of broad definitions of genocide and terrorism by the Spanish courts are cases in point.

7. The 'snowball' effect set in motion by this precedent is notable. Some examples include the Senegalese arrest in 2000 of former leader of the Chad, Hissène Habré for torture, the Mexican arrest in 2000 of an Argentine military officer accused by a Spanish court of torture, and the accusations made against Israeli premier, Ariel Sharon, in Belgium in 2001. The impact of the Pinochet case can also be seen in the adoption by Canada and New Zealand of laws that give their courts jurisdiction over ICC crimes on the basis of universal jurisdiction, a step under consideration by Italy and France, among others.

8. It is important to note, however, that action against impunity existed before the Pinochet case. *Civil* suits have been pursued in US federal courts in accordance with the provisions of the 1793 Alien Tort Claims Act and the 1992 Torture Victims Protection Act for various human rights violations and crimes against humanity. Violators from various Latin American and other countries have been tried and millions of dollars awarded in damages. In Europe, there have been *criminal* prosecutions for crimes against humanity of Rwandans, of Bosnian Serbs and former Latin American military officers and government officials in a number of European and even third party Latin American countries. However, the inconsistencies that arise from a decentralised system of justice for human rights violations call the process into question, which makes it all the more important to have a single international criminal court.

### *Justice and Peace and the UN*

9. The raised profile of human rights concerns at the UN testifies to the idea that human well being must be at the core of the organisation's activities. This was the aim behind the establishment of the High Commissioner for Human Rights in 1993. The 1997 announcement by General Secretary Kofi Annan that human rights are at the heart of UN activities preceded the launching of a reform process to increase the efficacy of the Organisation. Human rights were set the fifth priority in the four new areas of UN work: peace and security, economic and social issues, development co-operation and humanitarian affairs.

### *Humanitarian Intervention*

10. A legitimacy of more wide-ranging grounds for humanitarian intervention also undermines the sanctity of sovereignty or non-intervention when gross violations are at stake. The 1997 announcement by Kofi Annan that "massive violations of human rights will not stand" since they constitute a threat to peace and security linked hard-core UN concerns under Security Council aegis, with what have generally been sidelined as 'soft-core' concerns relegated to committees, conventions and commissions.

11. There is some evidence of this new interventionist people-centred ethos. It is apparent in the role of the UN in protecting individuals during civil conflict, as in El Salvador in 1991, in Somalia and Sierra Leone, and in the former Yugoslavia in 1992, and the new 'state-building' role in East Timor, and in the administration of a future autonomy in Kosovo. The same applies to the North Atlantic Treaty Organisation (NATO) intervention in Kosovo. This new version of humanitarian intervention represents a shift from the 'New World Order' announced by former president Bush that, as exemplified by the Gulf War coalition, was less about humanitarian intervention than the restoration of sovereignty.

### *Multilateral Institutions and Conditionality*

12. Other international organisations have also expressed an increasing interest in issues related with human well being. The International Labour Organisation (ILO), which established the first human rights regime and the first human rights monitoring mechanisms (1926) in the world after the First War, is a key international player in the promotion of rights, particularly indigenous, women's, and children's rights, and against racial discrimination.

**13.** Democracy, human rights and the environment are also active concerns of multilateral financial institutions today, notably the World Bank (WB). Since the early 1990s, WB loans have been conditioned by adherence to respect for human rights and democracy, and new project arenas have been developed that are linked to the aims of good governance and rights. The decision on April 2000 by the European Bank for Reconstruction and Development to suspend lending to Turkmenistan, in protest against the absence of democracy in that country, also provides an indication of changing attitudes towards conditionality.

**14.** The emergence and reinforcement of regimes of conditionality, whereby development co-operation is conditioned by respect for human rights and democratic governance testify to in-built sovereignty-limiting mechanisms in inter-state relations. The democracy protecting regimes within the EU, the Council of Europe, the Organisation for Security and Co-operation in Europe (OSCE), the Organisation of American States (OAS), the Rio Group and the Mercosul indicate that democratic nations accept that non-intervention cannot be an argument when human well being is at stake.

### *The Role of Civil Society Actors*

**15.** States no longer have a monopoly over the creation of rules or the diffusion of values. They must struggle with and co-opt other non-governmental actors, both national and international, with a recognised 'right' to defining the international agenda. National executives must conquer legitimacy in new ways. They can no longer appeal to a nebulous but unitary notion of 'the national interest' because they are no longer its sole owners. Transnational activist or advocacy networks focused on normative issues are forcing states to share responsibility with civil society actors for issues that affect human well being across the globe. Propelled by democratisation, the revolution in the communications and information revolution, and growing public awareness, these networks have developed a strong capacity to act in the international and regional arenas and to influence national policies.

**16.** The involvement of NGOs in UN conferences (attendance of non-state actors at the Beijing Conference on Women's Rights was 50,000 and on the Environment in Rio in 1992 was 47,000) provides evidence of the great public interest in and capacity for civil society to mobilise around such issues. NGO participation in the preparation of the Rome Statute for the ICC, through the Coalition for an International Criminal Court (CICC), which co-ordinated the activity of more than 200 NGOs, was crucial for the approval of a stronger Statute for the Court. This is indicative of the growing relevance and power of

non-state actors in multilateral negotiations. The transnational pursuit of justice for human rights violations, as exemplified by the Pinochet case, spearheaded by NGOs has been one of the most notable expressions of the new power of such organisations.

### *Landmines and Small Arms*

**17.** Another example of the power of transnational civil society activism is the International Campaign against Landmines. Launched in 1992, by a handful of NGOs, it now involves 1,400 organisations in 90 countries, representing issues as wide-ranging as de-mining, victim assistance, children's and women's rights, veterans' associations, and the environment. In 1997, the campaign was awarded the Nobel Peace Prize and, in large part due to its efforts, the Treaty to Ban Landmines entered into force in 1999, the fastest process of ratification ever in international history. As of July 2000, 137 countries had signed and 100 ratified. All of the Western Hemisphere had signed except the US and Cuba, and all of the European Union except Finland. The campaign also mounted the Landmine Monitor initiative, which monitors compliance with the Treaty. This is the first example of NGOs working together systematically to monitor a humanitarian or disarmament treaty.

**18.** European and Latin American organisations are closely involved in this initiative. In Latin America, Chile, Colombia, Cuba, Guatemala, Honduras, Peru, and the Falkland Islands have mines and unexploded ordnance. Landmine Monitor has identified victims from these countries, and from mine-free Argentina, Brazil, Costa Rica, Uruguay (whose nationals have been involved in international peace keeping operations). De-mining and mine awareness programmes have been carried out in various affected countries. There are examples of intra-Latin American co-operation efforts (Brazilian military experts participate in OAS de-mining in Central America), and of inter-regional co-operation (as with Spanish contributions to Ecuadorian mine clearance, and EU countries' contributions to mine victim assistance programmes). On a different note, European and Latin American NGOs, among others, have also been involved in the International Action Network on Small Arms (IANSA), launched in May 2000. According to Human Rights Watch (HRW), this is the biggest international movement since the landmine campaign.

### *Holding Corporations Accountable*

**19.** Until recently, multinational corporations had immense power but were subject to little or no public scrutiny. Transnational advocacy networks have changed

that. NGOs, together with a mobilised public opinion, are now holding multinationals accountable for the labour and human rights of their employees in foreign territories, encouraging them to adopt codes of conduct and guidelines for investment, monitoring compliance with such rules, and even helping employees to take violating companies to court. Since 1999, dozens of companies, including brand names such as Polo Ralph Lauren, Calvin Klein, and Tommy Hilfiger, have been forced to pay millions of dollars in damages by US courts to workers in foreign factories. Pressure has led companies such as Levi-Strauss to adopt a code of conduct that re-defines the scope of corporate responsibility that extends beyond the traditional duty to shareholders to the rights of workers beyond borders.

**20.** Europeans and Latin Americans are active participants in corporate responsibility campaigns. European NGOs have played a leading role in applying pressure on home companies and informing the public about the labour conditions under which clothes are made. Such is the case of the coalition of NGOs led by the Dutch Clean Clothes Campaign which includes Labour Behind the Label from the United Kingdom, *Les Magasins du Monde* in Belgium, the *Artisans du Monde* from France and FENECON, the Dutch industry organisation. In Colombia in the late 1990s, the contracting of military and police forces by oil companies working in the Casare and Arauca regions led to action both by HRW and British-based human rights groups in conjunction with local populations and workers, to force companies to change their security arrangements.

**21.** This kind of action has prompted international multilateral institutions to take a stand. In July 2000, the UN launched the UN Global Compact, uniting UN agencies, corporations, labour unions, and NGOs to promote greater corporate responsibility for rights, the environment and labour. Although the guidelines are still vague and no enforcement mechanisms were adopted, nine principles were announced including reporting and a prohibition on UN partnerships for violating companies.

### *Business Actors*

**22.** Activist networks are not the only civil society actors involved in shaping multilateral rules and governance. The ever-increasing role that private business associations and groups are playing in international trade policy formulation provides an example of the growing power of private actors in multilateral negotiations. Business lobbies are key players in the negotiations for the Free Trade Area of the Americas (FTAA). They are perhaps the best-organised civil society lobby within the Merco-

sul and one of the most powerful within the EU. They are also playing a role in inter-regional relations. Although currently undergoing a difficult period, the Mercosul-EU Business Forum (MEBF), created in 1998 by a group of major European, Brazilian and Argentine companies, is playing an role in EU-Mercosul free trade negotiations. It has acted as a lobby and provider of technical information essential for the more specialised aspects of biregional trade negotiations. The new emerging role being played by multinationals in protecting labour rights and taking a stand on national human rights issues exemplifies how business actors can make a major contribution to human well being above and beyond the trade and economic realms.

### *Multilateralism Reinforcement Effect*

23. The presence of NGOs and other civil society actors in international relations and national political life can increase state accountability and democratise political relations. As individual citizens realise that their opinions matter and can change the behaviour of powerful institutions, their willingness to intervene and participate increases, raising the level of responsibility that ordinary citizens feel regarding international issues. Although there is no direct link between multilateral action and NGOs, these organisations tend to focus on global problems and to work towards global solutions within multilateral institutions. Thus, the growing number and participation of intergovernmental and NGOs in international life can also contribute to a 'multilateralism reinforcement effect'.

#### **KEY CONCEPTS**

- The new multilateralism is based on the notion that people are at the centre of a global project for peaceful regulated interdependence
- The raised profile of human rights concerns in the UN testifies to idea that human well being must be at the core of UN activities
- The emergence and reinforcement of regimes of conditionality testifies to in-built sovereignty-limiting mechanisms in inter-state relations
- The strength of transnational normative advocacy networks is forcing states to share responsibility with civil society actors for issues that affect human well being across the globe
- States must struggle with and co-opt other actors, both national and international, with a recognised 'right' to defining the international agenda
-